

CITY OF SAN DIEGO SUBLEASE

THIS CITY OF SAN DIEGO SUBLEASE ("Sublease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and MENTAL HEALTH SYSTEMS, INC., a California corporation ("SUBLESSEE"), to be effective when signed by the parties and approved by the San Diego City Attorney ("Effective Date").

Recitals

- A. The San Diego Housing Commission ("Housing Commission") administers the agreements for the City's Homeless Shelters and Services Programs based on a Memorandum of Understanding between the Housing Commission and the CITY that first took effect on July 1, 2010 ("MOU").
- B. The CITY and Housing Commission entered into a First Amendment to the MOU attached hereto as Exhibit A ("First Amendment") to agree to work together to provide for the operation of a transitional storage center to provide secure, protected space for homeless individuals in the City of San Diego to store their personal belongings on an ongoing basis, and have access to their belongings during hours of operation ("Transitional Storage Center") at the Premises (defined below).
- C. The Housing Commission entered into an agreement with SUBLESSEE to operate the Transitional Storage Center ("Storage Center Operation Agreement") on terms and conditions as set forth in the Storage Center Operation Agreement, which is attached hereto as Exhibit B.
- D. CITY, as lessee, and Debolt, Derrick, McFarland Properties, LLC, a California limited liability company, as lessor, entered into that certain lease on file with the Office of the City Clerk as Document No. RR 311627 and attached hereto as Exhibit C ("Primary Lease") for the operation of the Transitional Storage Center at the Premises.
- E. CITY now desires to sublease the Premises to SUBLESSEE in accordance with the terms and conditions of this Sublease.
- F. The term of this Sublease is coterminous with the term of the Storage Center Operation Agreement, as may be amended and extended from time to time.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, and in consideration of the foregoing facts and circumstances, the parties agree as follows:

1. Subleased Premises. CITY Subleases to SUBLESSEE and SUBLESSEE Subleases from CITY the warehouse building located at 116 South 20th Street, San Diego, California, 92113 (the "Premises"), containing an approximately 22,000 square foot single story building of which is more particularly depicted in **Exhibit D: Premises** attached hereto. The Premises has not been surveyed; CITY and SUBLESSEE have agreed to approximate square footage; and any deviation between approximate and actual square footage of the Premises shall not cause any reduction or change in rent or consideration due under this Sublease.

2. Allowed Uses. SUBLESSEE may use the Premises solely and exclusively for the purpose of the management and operation of a transitional storage center for the personal property of homeless individuals and such other related or incidental purposes as may be first approved in writing by CITY, and for no other purposes whatsoever (the "Allowed Uses").
3. Term. The initial term of this Sublease shall commence on May 14, 2018 ("Commencement Date") and shall expire on March 31, 2019 ("Term") unless otherwise sooner terminated in accordance with the provisions of this Sublease. CITY may, in its sole discretion, extend the Term of this Sublease for two (2) additional one (1) year periods.
4. Condition Precedent. SUBLESSEE and the Housing Commission entered into the Storage Center Operation Agreement. SUBLESSEE must comply with all terms and conditions of the Storage Center Operation Agreement. SUBLESSEE's compliance with all its obligations in the Storage Center Operation Agreement is a condition precedent to CITY's obligations in this Sublease.
5. Termination. In the event that the Housing Commission or the Housing Authority of the City of San Diego ("Housing Authority") notifies the CITY of its intent to cancel or terminate the Storage Center Operation Agreement, CITY may terminate this Sublease on thirty (30) days' written notice to the SUBLESSEE, the effective date of termination being the 30th day of said written notice with no further action required by either party. This right to terminate is in addition to the other rights of the CITY to terminate or cancel this Sublease as set forth in this Sublease.
6. Rent.
 - a. Base Rent. SUBLESSEE shall pay no base rent for the Term of the Sublease. The consideration for the Sublease is SUBLESSEE's management and operation of the transitional storage center in accordance with the Storage Center Operation Agreement between SUBLESSEE and Housing Commission.
7. Place of Payment. All amounts due under this Sublease shall be made payable to "City Treasurer" and delivered to the Office of the City Treasurer, Civic Center Plaza Building, 1200 Third Avenue, First Floor, San Diego, CA 92101, or mailed with an invoice to:

THE CITY OF SAN DIEGO
Office of the City Treasurer
P.O. Box 129030
San Diego, CA 92112-9030

8. Delinquent Payments. If SUBLESSEE fails to pay rent when due, SUBLESSEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent which shall be additional Rent. If the rent is still unpaid after fifteen (15) days past due, SUBLESSEE shall pay an additional five percent (5%) (being a total ten percent (10%)), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account, and shall be additional rent. In no event shall the charge for late payments of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Sublease may be referred to the San

Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. SUBLESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of SUBLESSEE's default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, SUBLESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

9. **Default and Remedies.**

a. **Default.** SUBLESSEE shall be in default of this Sublease if any of the following occurs:

- i. SUBLESSEE fails to make any payment required under this Sublease when due;
- ii. SUBLESSEE breaches any of its obligations under this Sublease, other than those requiring payment to CITY, and fails to correct the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to correct the breach within thirty (30) days and diligently pursue the cure to completion;
- iii. SUBLESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law, and such proceeding is not dismissed within sixty (60) days thereafter;
- iv. SUBLESSEE is adjudicated a bankrupt;
- v. SUBLESSEE makes a general assignment for the benefit of creditors; or
- vi. SUBLESSEE uses the Premises for any unauthorized purpose.

b. **Remedies.** Upon SUBLESSEE default, CITY may, at its option, either terminate this Sublease upon three (3) days prior notice delivered to SUBLESSEE (or any person claiming rights through SUBLESSEE), or deliver to SUBLESSEE (or any person claiming rights through SUBLESSEE) a thirty (30)-day written "Notice of Intent to Terminate" this Sublease. If CITY delivers such a "Notice of Intent to Terminate" and SUBLESSEE (or the persons claiming rights through SUBLESSEE) does not cure the default within the thirty-day period, CITY may, upon three (3) days prior notice delivered to SUBLESSEE (or any person claiming rights through SUBLESSEE) terminate this Sublease and all rights of SUBLESSEE (and/or each person claiming rights through SUBLESSEE) to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from SUBLESSEE the sum of:

- i. the worth at the time of award of any unpaid rent that was due at the time of termination;

- ii. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that SUBLESSEE affirmatively proves could have been reasonably avoided;
- iii. 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 rental loss, if any, that SUBLESSEE affirmatively proves could be reasonably avoided;
- iv. any other amount necessary to compensate CITY for all the detriment proximately caused by SUBLESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- v. all other amounts in addition to or in lieu of those previously stated as may be permitted at law or in equity.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any and all other amounts payable by SUBLESSEE under this Sublease.

- c. Abandonment by SUBLESSEE. If SUBLESSEE abandons the Premises, this Sublease shall continue in effect as long as CITY does not terminate this Sublease, and CITY may enforce all of its rights and remedies under this Sublease, including without limitation the right to recover rent as it becomes due, plus damages.
 - d. Waiver. Any waiver by CITY of a breach or default by SUBLESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Sublease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. SUBLESSEE acknowledges that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.
10. Unauthorized Use Charge. SUBLESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Sublease, regardless of any related penalties charged SUBLESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after SUBLESSEE receives such gross receipts. No unauthorized use charges shall satisfy or credit against any other rent obligations of SUBLESSEE under this Sublease. The unauthorized use charge shall otherwise be considered "rent" under this Sublease, and shall be subject to all costs and penalties for delinquent payments hereunder. The

existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Sublease.

11. Conduct of SUBLESSEE. SUBLESSEE and its employees shall at all times conduct themselves in a professional, creditable, and competent manner. SUBLESSEE shall comply with all permitting requirements. SUBLESSEE shall thoroughly train all employees in their duties, all requirements of this Sublease, and all applicable rules and regulations of CITY.
12. Governmental Approvals. By entering into this Sublease, neither CITY nor CITY's City Council is obligating itself to SUBLESSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to SUBLESSEE's occupancy, use, development, maintenance or restoration of the Premises. "Discretionary action" includes without limitation rezonings, variances, environmental clearances and all other required governmental approvals.
13. CITY's Consent, Discretion. CITY's consent or approval under this Sublease shall mean the written consent or approval of CITY's Mayor, or his or her designee ("Mayor"), unless otherwise expressly provided herein or required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided or required by law.
14. Assignment and Subletting. SUBLESSEE shall not assign this Sublease or any interest in this Sublease, and shall not sublet the Premises or any part of the Premises, or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except SUBLESSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises, without CITY's prior written consent. Any such consent shall not be deemed a consent to any subsequent assignment, subletting, occupation, or use by another person. Neither this Sublease nor any interest in it shall be assignable, as to SUBLESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Sublease and, if SUBLESSEE is other than a natural person, the transfer of a controlling interest in SUBLESSEE or any of SUBLESSEE's general partners, principals, or controlling shareholders.
 - a. Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Sublease be revised to comply with then-current CITY Sublease provisions, and that the assignment, sublease or other grant of rights be subject and subordinate to each and every provision of this Sublease.
 - b. Charter Section 225. Pursuant to San Diego City Charter section 225, SUBLESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Sublease and the Premises, and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Sublease or the Premises must be reviewed and approved by CITY.
15. No Holdover. SUBLESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Sublease without prior written consent by the

CITY. If SUBLESSEE continues to occupy the Premises after the expiration or earlier termination of this Sublease, such occupancy shall neither constitute a renewal or extension of this Sublease, nor give SUBLESSEE any rights in or to the Premises. If SUBLESSEE continues to occupy the Premises after the expiration or earlier termination of this Sublease, the Base Rent shall be at One Hundred Fifty Percent (150%) of the previous month's base rent under the Primary Lease. CITY's acceptance of such rent shall neither constitute a renewal or extension of the license, nor give SUBLESSEE any rights in or to the Premises.

16. Surrender of Premises. Upon the expiration or earlier termination of this Sublease, SUBLESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition, reasonable wear and tear excepted. At any time after the expiration or earlier termination of this Sublease, SUBLESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If SUBLESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting SUBLESSEE's failure to perform this Sublease provision, and the notice shall be deemed conclusive evidence of the termination of this Sublease and all of SUBLESSEE's rights in and to the Premises.
17. Restoration of Premises. Except as otherwise provided in this Sublease, prior to the expiration or as soon as practicable after termination of this Sublease, SUBLESSEE shall restore the Premises to their condition on the Effective Date, normal wear and tear excepted. Any restoration work requires CITY review and approval.
18. Superior Interests. This Sublease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, agreements and licenses, easements and rights-of-way pertaining to the Premises, whether or not of record. SUBLESSEE shall obtain all licenses and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If SUBLESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, SUBLESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
19. Maintenance of the Premises. SUBLESSEE shall, at SUBLESSEE's sole cost and expense and to CITY's satisfaction, maintain the Premises in good order and repair and in a safe, healthy and sanitary condition at all times during the Term. CITY shall not be required to make any improvements or repairs to the Premises. SUBLESSEE shall keep the Premises free and clear of rubbish, debris and litter at all times.
20. Trash and Refuse. SUBLESSEE must, at its sole cost and expense, provide containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Such containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions.
21. Inspection. CITY may at all times enter and inspect the Premises.

22. Improvements/Alterations. Except as otherwise provided in this Sublease, SUBLESSEE shall not construct any improvements, structures or installations on the Premises, and shall not alter the Premises without the express written consent of CITY. Except as required by law, CITY shall not be obligated to make any repair or assume any expense for any improvements or alterations to the Premises.
23. Improvements and Personal Property.
- a. Improvements. Upon expiration or termination of this Sublease, SUBLESSEE shall remove any and all improvements, fixtures, structures and installations or additions to the Premises that were solely constructed or installed on the Premises by SUBLESSEE ("SUBLESSEE Improvements"). Any restoration work requires CITY review and approval. SUBLESSEE shall, at SUBLESSEE's sole cost and expense, remove all SUBLESSEE Improvements as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Sublease. SUBLESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of SUBLESSEE Improvements as required by this Sublease. If SUBLESSEE fails to remove SUBLESSEE Improvements as required, CITY may, at its option, remove them at SUBLESSEE's sole cost and expense. Notwithstanding the foregoing, CITY may, upon notice to SUBLESSEE at termination or at any time prior to the expiration of the Term, elect to assume ownership of all or any SUBLESSEE Improvements as of the expiration or earlier termination of this Sublease, at no cost to CITY. If CITY elects to assume ownership of all or any SUBLESSEE Improvements, SUBLESSEE shall honor such assumption and execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to effect such transfer of ownership to CITY.
 - b. Personal Property. SUBLESSEE shall remove from the Premises all SUBLESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Sublease. Any such items which SUBLESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at SUBLESSEE's sole cost and expense. SUBLESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
 - c. Post-Sublease License. CITY grants permission to SUBLESSEE to enter upon and occupy the Premises after the expiration or earlier termination of this Sublease solely for the purpose of removing SUBLESSEE Improvements and SUBLESSEE's personal property as provided by this Sublease. This provision shall survive the expiration or earlier termination of this Sublease.
 - d. Late Removal. Notwithstanding any provision of this Sublease to the contrary, SUBLESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Sublease needed to remove SUBLESSEE Improvements or personal property as required by this Sublease, whether by CITY or SUBLESSEE. Such rent shall be calculated on a per diem basis using the rental rate in effect just prior to the expiration or termination of this Sublease.

- e. CITY's Right to Acquire Personal Property. If SUBLESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Sublease, CITY shall have the first right to acquire such personal property.

24. Insurance. SUBLESSEE shall obtain and maintain throughout the Term, at its sole cost and expense, all insurance required by this Sublease and the Primary Lease. SUBLESSEE's liabilities under this Sublease, including without limitation SUBLESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. SUBLESSEE's maintenance of the required insurance coverage is a material consideration for this Sublease. Notwithstanding any provision of this Sublease to the contrary, if SUBLESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, SUBLESSEE shall be in default of this Sublease. SUBLESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. SUBLESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):

- i. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy; and
 - ii. Workers' Compensation Insurance, as required by applicable laws, for all of SUBLESSEE's employees who are subject to this Sublease, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- a. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "Debolt, Derrick, McFarland Properties, LLC" and "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by SUBLESSEE or on SUBLESSEE's behalf; (b) SUBLESSEE's products; (c) SUBLESSEE's work, including without limitation SUBLESSEE's completed operations performed by SUBLESSEE or on SUBLESSEE's behalf; or (d) the Premises.
- b. Primary and Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees,

representatives and agents shall be in excess of SUBLESSEE's insurance and shall not contribute to it.

- c. Severability of Interest. Each policy must be endorsed to provide that SUBLESSEE's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- d. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Sublease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- e. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of SUBLESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- f. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, SUBLESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Sublease. SUBLESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, SUBLESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- g. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses or the Premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving SUBLESSEE thirty (30) days prior written notice. SUBLESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses or the Premises.
- h. Accident Reports. SUBLESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

- i. Causes of Loss - Special Form Property Insurance. SUBLESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of SUBLESSEE's insurable property related to the Allowed Uses or the Premises in an amount to cover 100 percent (100%) of the replacement cost. SUBLESSEE shall deliver to CITY a certificate of such insurance.
25. Indemnification and Hold Harmless. SUBLESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to SUBLESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Sublease or SUBLESSEE's occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that SUBLESSEE's duty to indemnify and hold harmless shall not include any established liability arising from the sole negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, SUBLESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.
26. Compliance with Laws. SUBLESSEE shall at all times in its use, occupancy, and maintenance of the Premises comply with all applicable laws, rules and regulations and direction by competent governmental authorities, and all at SUBLESSEE's sole cost and expense. At least annually, SUBLESSEE shall deliver to City copies of all documentary evidence of such compliance received by or otherwise available to SUBLESSEE (e.g., validation of periodic inspection of SUBLESSEE's fire-suppression equipment in the Premises).
27. California Public Records Act. CITY shall determine, in its sole discretion, whether this Sublease or any information provided by SUBLESSEE pursuant to this Sublease is or is not a public record subject to disclosure under the California Public Records Act. SUBLESSEE shall hold CITY and its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
28. No Discrimination. SUBLESSEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender identity, gender expression, sexual orientation, medical status, national origin, age, marital status or disability in SUBLESSEE's use of the Premises, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
29. Equal Opportunity. SUBLESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. SUBLESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth.

SUBLESSEE shall cause the foregoing provisions to be inserted in all of SUBLESSEE's contracts for work related to this Sublease so that such provisions will be binding upon each of SUBLESSEE's contractors. SUBLESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request SUBLESSEE shall submit a current Workforce Report. SUBLESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Sublease and debarment from participating in CITY contracts for a period of not less than one (1) year.

30. Equal Benefits. SUBLESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. SUBLESSEE shall certify that it will maintain such equal benefits throughout the term of this Sublease. SUBLESSEE's failure to maintain equal benefits shall be a material breach of this Sublease.
31. Disabled Access Compliance. SUBLESSEE shall comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. SUBLESSEE's compliance shall include without limitation the following:
 - a. SUBLESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
 - b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of SUBLESSEE;
 - c. SUBLESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - d. Where required by law, SUBLESSEE shall, at SUBLESSEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Premises which deny access to disabled persons; and
 - e. SUBLESSEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.

SUBLESSEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. SUBLESSEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Sublease.

32. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASp).

Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "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."

33. Drug-Free Workplace. SUBLESSEE shall comply with CITY's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Sublease by this reference.
34. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Sublease if SUBLESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of SUBLESSEE for this Sublease. It is not the intent of this policy that these provisions apply to members of the City Council.
35. Local Business and Employment. SUBLESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Sublease and to the extent legally possible, SUBLESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. SUBLESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
36. Sublessee's Risk. SUBLESSEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with SUBLESSEE's use or occupancy of the Premises and any damages to the improvements on, under or in the vicinity of the Premises resulting directly or indirectly thereby.
37. No Nuisance. SUBLESSEE shall not use the Premises in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
38. Signs. SUBLESSEE shall not erect or display any banners, pennants, flags, posters, signs, menu boards, decorations, marquees, awnings or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, SUBLESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may summarily thereafter remove the item at SUBLESSEE's cost.

39. **Encumbrances.** SUBLESSEE shall keep the Premises and the property of which it is a part free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Sublease or SUBLESSEE's use or occupancy of the Premises. SUBLESSEE shall protect, defend, indemnify and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the property in connection with such encumbrances and/or liens, including without limitation SUBLESSEE's failure or the failure of any contractor or subcontractor hired by SUBLESSEE to pay any person or persons entitled to lien or encumber the property pursuant to the California Civil Code.
40. **Operating Expenses.** SUBLESSEE shall have no obligation to pay real property taxes, base rent, security deposit rental costs. Notwithstanding the foregoing sentence, SUBLESSEE shall at SUBLESSEE's sole cost and expense and to CITY's satisfaction, maintain and repair the Premises in accordance with the provisions of this Sublease. SUBLESSEE'S maintenance obligations are more specifically delineated in the Transitional Storage Center Agreement.
41. **Unavoidable Delay.** If the performance of an act required by this Sublease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
42. **Hazardous Substances.** SUBLESSEE shall not allow the illegal installation, storage, utilization, generation, sale or re of Hazardous Substance or otherwise regulated substances in, on, under or from the Premises. SUBLESSEE and SUBLESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's prior written consent. SUBLESSEE shall, prior to initiating any operations, obtain all required agreements from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
- a. **Release.** For all purposes of this Sublease, a "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- b. **Hazardous Substance.** For all purposes of this Sublease, "Hazardous Substance" shall mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- c. **Remediation.** If SUBLESSEE's occupancy, use, development, maintenance or restoration of the Premises ("SUBLESSEE's Operations") results in a release of a Hazardous Substance,

SUBLESSEE shall pay all costs of remediation and removal to CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of governmental authorities.

- d. Removal. If SUBLESSEE or SUBLESSEE's contractor or agent has received approval and agreements to store, utilize, generate or install, or otherwise bring Hazardous Substances to the Premises, SUBLESSEE and/or SUBLESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device from the Premises immediately upon or prior to the expiration or earlier termination of this Sublease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment or devices from the Premises. SUBLESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- e. Indemnity. SUBLESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from SUBLESSEE's Operations, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, SUBLESSEE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If SUBLESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, SUBLESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. SUBLESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If SUBLESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, SUBLESSEE shall take all actions necessary to alleviate the danger. SUBLESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- g. Environmental Assessment. Upon reasonable cause to believe that SUBLESSEE's Operations resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at SUBLESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by SUBLESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the

Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. SUBLESSEE shall cause, or if SUBLESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, then CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental laws and regulations are achieved, and SUBLESSEE shall pay all costs and expenses therefor.

43. Storm Water Pollution Prevention Program. The CITY and SUBLESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the SUBLESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312),

Therefore, SUBLESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307(a).

It is ultimately the SUBLESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the SUBLESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

44. Waiver. CITY's failure to insist upon the strict performance of any of SUBLESSEE's obligations under this Sublease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Sublease, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
45. Prevailing Wages. By signing this Sublease, SUBLESSEE certifies that it is aware of the wage provisions described herein and shall comply with such provisions before entering onto the Location Areas, or allowing any contractors or subcontractors to perform work within the Location Areas. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Sublease is subject to State prevailing wage laws. For construction work performed under this Sublease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Sublease cumulatively exceeding \$15,000, SUBLESSEE and its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

- a. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, SUBLESSEE, its contractors and subcontractors, shall ensure that all workers who perform work under this Sublease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
- i. Copies of such prevailing rate of per diem wages are on file at CITY and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. SUBLESSEE shall require its contractors and subcontractors to post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - ii. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Sublease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Sublease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Sublease, each successive predetermined wage rate shall apply to this Sublease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Sublease, such wage rate shall apply to the balance of the contract.
- b. Penalties for Violations. SUBLESSEE and its contractors and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.
- c. SUBLESSEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. SUBLESSEE shall require its contractors and subcontractors to also comply with section 1776. SUBLESSEE's contractors and subcontractors shall submit weekly certified payroll records online via CITY's web-based Labor Compliance Program. SUBLESSEE is responsible for ensuring its subcontractors submit certified payroll records to CITY.
- i. In addition to submitting weekly certified payroll records to CITY, SUBLESSEE's contractors and their subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

- d. Apprentices. SUBLESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. SUBLESSEE shall be held responsible for the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
- e. Working Hours. SUBLESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- f. Required Provisions for Subcontracts. SUBLESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- g. Labor Code Section 1861 Certification. SUBLESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its contractors' and subcontractors' employees and by signing this Sublease, SUBLESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."
- h. Labor Compliance Program. CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. CITY will notify SUBLESSEE to withhold or cause to be withheld contract payments when payroll records are delinquent or deemed inadequate by CITY or other governmental entity, or it has been established after an investigation by CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact CITY's Equal Opportunity Contracting Department at 619-236-6000.
- i. SUBLESSEE's Contractors and Subcontractors Registration Requirements. Certain work performed pursuant to the Sublease is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Labor Code section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

- i. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, SUBLESSEE, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
 - ii. SUBLESSEE certifies that SUBLESSEE has verified that all contractors or subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and SUBLESSEE shall provide proof of registration to the CITY upon request.
46. Cumulative Remedies. CITY's rights and remedies under this Sublease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
 47. Survival. Any obligation which accrues under this Sublease prior to its expiration or termination shall survive such expiration or termination.
 48. Joint and Several Liability. If SUBLESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of SUBLESSEE under this Sublease.
 49. No Affiliation. Nothing contained in this Sublease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and SUBLESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of SUBLESSEE or any other party or entity.
 50. Entire Agreement. This Sublease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Sublease and SUBLESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Sublease shall be in writing and signed by all the parties hereto.
 51. Counterparts. This Sublease may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
 52. Notices. Any notice required or agreed to be given under this Sublease shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to SUBLESSEE and to CITY as follows:

SUBLESSEE:

Mental Health Systems, Inc.
Attention: James Callaghan
President and CEO
9465 Farnham Street
San Diego, California 92123

(858) 573-2600

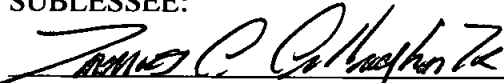
THE CITY OF SAN DIEGO

Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

53. Authority to Contract. Each individual executing this Sublease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Sublease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws or other written rules of conduct or governing agreement, and that this Sublease is binding upon such person or entity in accordance with its terms. Each person executing this Sublease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
54. Acceptance of Premises. By signing this Sublease, SUBLESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Premises and its suitability for the Allowed Uses. SUBLESSEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Premises or its suitability for the Allowed Uses, and that SUBLESSEE is relying solely on its own and independent inspections, tests, investigations and observations of the Premises in entering into this Sublease. SUBLESSEE accepts the Premises in their current condition. SUBLESSEE acknowledges and agrees that unless set forth in this Sublease, CITY has no obligation to improve, modify, repair, replace, alter, secure, or otherwise develop the Premises at any time either prior to, on or after the Effective Date. SUBLESSEE shall not hold CITY responsible for any defects in the Premises. SUBLESSEE accepts and assumes all risk of harm to all persons and property, including without limitation SUBLESSEE's employees, from any defects in the Premises, and shall be solely responsible therefor.
55. Primary Lease. SUBLESSEE by its execution of this Sublease hereby unconditionally acknowledges and agrees as follows: (a) SUBLESSEE has received a copy of the **Primary Lease**, between THE CITY OF SAN DIEGO, as lessee, and DEBOLT, DERRICK, MCFARLAND PROPERTIES, LLC, as lessor ("MASTER LESSOR"), (b) this Sublease represents a sublease of CITY's rights in and to the Premises, (c) SUBLESSEE agrees to assume all obligations, covenants, conditions, and provisions of the Primary Lease which are applicable to the rights subleased, (d) SUBLESSEE agrees to comply with all of the terms and conditions of the Primary Lease that apply to the lessee thereunder, and (e) this Sublease and the rights of SUBLESSEE hereunder are in all respects subject and subordinate to the Primary Lease. If the Primary Lease should terminate for any reason, this Sublease shall likewise terminate with no liability to the CITY.

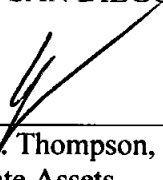
IN WITNESS WHEREOF, this Sublease is executed to be effective as of the Effective Date.

SUBLESSEE:


Mental Health Systems, Inc., a California corporation

THE CITY OF SAN DIEGO, a California municipal corporation

By:


Cybele L. Thompson, Director
Real Estate Assets

Approved as to form this 29th day of June, 2018:

MARA W. ELLIOTT, City Attorney

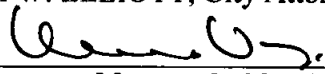
BY: 
Name: Marco A. Verdugo
Title: Deputy City Attorney

Exhibit A: First Amendment

Exhibit B: Storage Center Operation Agreement

Exhibit C: Primary Lease

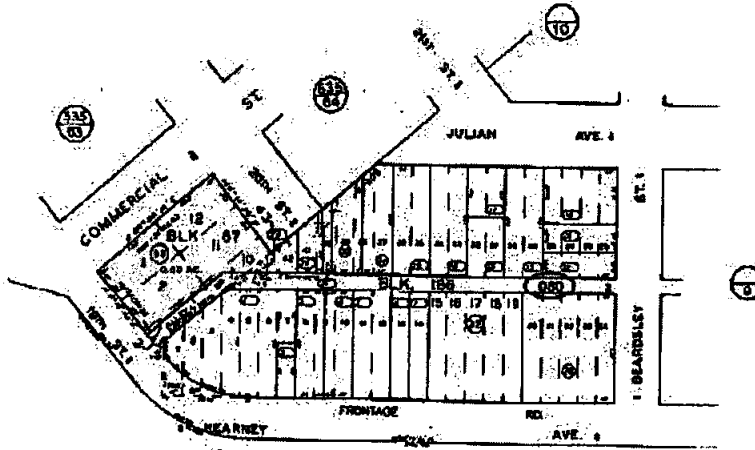
Exhibit D: Premises

Exhibit "D" - Premises

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CHANGES

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FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN DIEGO AND
THE SAN DIEGO HOUSING COMMISSION
FOR THE PROVISION OF TEMPORARY BRIDGE SHELTERS

This First Amendment to the Memorandum of Understanding between the City of San Diego and the San Diego Housing Commission for the Provision of Temporary Bridge Shelters ("First Amendment") is dated as of _____, and is entered into by and between the SAN DIEGO HOUSING COMMISSION, a public agency ("Commission") and the CITY OF SAN DIEGO, a municipal corporation ("City"), hereinafter referred to as the "Parties" and each, as a "Party," shall become effective upon signature of both Parties.

RECITALS

WHEREAS, the Parties entered into that certain Memorandum of Understanding Between the City of San Diego and the San Diego Housing Commission for the Provision of Temporary Bridge Shelters, dated as of December 13, 2017 ("MOU"); and

WHEREAS, the Commission and City desire to extend the scope of the MOU to include the provision of Temporary Storage Center services at the site located at 116 S 20th Street in the City of San Diego ("Premises");

WHEREAS, the term for the operation of the Temporary Storage Center which shall be primarily dealt with in this First Amendment shall run separate and apart from the Temporary Bridge Shelter program as set forth in the MOU, which was and is dealt with primarily in the original MOU; each program shall be treated separately when exercising options or providing funding for each program;

NOW THEREFORE, the City and Commission agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this First Amendment by this reference, as though fully set forth in this First Amendment.
2. Article VII. Temporary Storage Center. The Parties agree to amend the MOU to include Article VII Temporary Storage Center as set forth herein:

VII. Temporary Storage Center. The Parties agree to work together as set forth herein to provide for the operation of a Temporary Storage Center located at 116 S 20th Street in the City of San Diego ("Center").

A. **Commission Responsibilities:**

The Commission shall be responsible for the general management, administration, and oversight of the Center as defined herein, and as further defined within the applicable subcontractor agreement, once executed. Commission shall also be responsible for advancing funds to the City for base rent and operating expenses for the Premises, where funding is available, not to exceed the amounts that are appropriated by the Housing Authority of the City of San Diego ("Housing Authority") Board of Commissioners. Any responsibilities set forth in Section B ("City Responsibilities") below shall be explicitly excluded from Commission's responsibilities.

The Commission's responsibilities relating to the Center include the following:

1. **Administration and Oversight of the Center.** Commission shall:

- a. Monitor all agreements relating to the operation of the Center, including agreements with the Center operator, and any agreements for construction for initial tenant improvements and ADA related upgrades.
- b. Document outcomes for the Center, as defined within the applicable agreements.
- c. Notify City staff responsible for this program of any public meetings regarding the Commission's activities relating to the MOU, as amended, with sufficient time to allow the City to identify a representative to appear on its behalf at any such meeting.

2. **Advancement of Base Rent and Operating Expenses.** Commission shall:

- a. Advance funds to the City for the cost of Security Deposit, Base Rent and Operating Expenses as set forth in the lease agreement for the Premises, subject to the approval of such funding by the Housing Authority. The Commission's obligation for advancing funds is contingent on funding availability. It is anticipated that draft budgets of the Commission for FY19 and FY20 will seek approval from the Housing Authority for funding of additional years of operation of the Center, provided that options to extend the one- year lease are exercised by the City.

B. **City Responsibilities.** The City shall be responsible for the lease of the Premises and provision of City services under this MOU, as amended. Any responsibilities set forth in Section A ("Commission Responsibilities") above shall be explicitly excluded from City's responsibilities.

The City's responsibilities relating to the Center include the following:

1. **Lease of Premises.** City shall:

- a. Enter into a lease agreement for the Premises.

- b. Enter into a sublease agreement, in a form approved by Commission and the City, for the Premises with the Center operator as selected by the Commission. The sublease shall not include payment of the Base Rent or Operating Expenses as contained in the lease, by the Center's Operator. The Commission will fund the Security Deposit, Base Rent and the Operating Expenses for FY 18, if the reallocation of the Commission Budget is approved by the Housing Authority. Further, the Commission shall fund lease payments for FY19 and FY20, subject to the approval of the same by the Housing Authority in the Commission's annual budget process. Nothing contained in the MOU or this First Amendment is intended to, nor shall it, attenuate the Housing Authority's discretion to approve the Commission budget, and budget amendments, in FY18, FY19 and FY20.
- c. Obtain all necessary permits and clearances for the operation of a Center on the Premises, including CEQA review and any and all necessary permits for ADA upgrades.

2. City Services. City shall:

- a. Provide for Environmental Services cleanings of the exterior of the Premises; the regularity of cleaning shall be evaluated throughout the term of the operation of the Center and increased or decreased accordingly based on need.
- b. Provide Commission with a legal and San Diego Police Department approved process for disposal of abandoned shopping carts.
- c. Provide regular San Diego Police Department patrols in the vicinity of the Premises.

C. **Funding.**

At the start of each fiscal year, Parties will endeavor to secure funding for the performance of obligations for operation of the Center under MOU, as amended. Should funding become unavailable at any point during the term of the Center's operations, either Party may terminate its obligations for the Center under the MOU, as amended. The Parties will use good faith efforts to obtain funding for the operation of the Center, annually in FY19 and FY20.

D. **Term and Termination of Center Program.**

1. **Term of Center Program**

The Term for the operation of the Center shall be separate and apart from the Term of the MOU with respect to the operation of the Temporary Bridge Shelters. The term for the Temporary Bridge Shelters is set forth within the MOU, not in this paragraph D.

The term of the MOU, as amended, with respect to the operation of the Center is for the portion of FY18 beginning March 13, 2018 and ending June 30, 2018, with two (2) additional one (1) year options to extend the term, and one (1) additional 9 month option to extend the term of operation of the Center.

2. Termination of Center Program.

Either Commission or the City may terminate the Center operation portion of the MOU, as amended, and all obligations assigned thereunder for any reason by providing 45 days written notice to the other.

3. Confirmation of MOU. The MOU, as amended by this First Amendment, is in all respects confirmed and all of the terms, provisions and conditions of the MOU, as amended by this First Amendment, shall be and remain in full force and effect.
4. Entire Agreement. The MOU, as amended by this First Amendment, represents the entire understanding between the Parties about the subject matter of the MOU, as amended.
5. Counterparts. This First Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including facsimile or electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.
6. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this First Amendment. The Parties have participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this First Amendment may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this First Amendment. The words "include" and "including" in this First Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this First Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this First Amendment, refers to such document, as modified from time to time (excepting any modification that violates the MOU), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this First Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this First Amendment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

7. Binding on Successors and Assigns. This First Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.
8. No Other Representations or Warranties. Except as expressly set forth in this First Amendment, no Party makes any representation or warranty material to this First Amendment to any other Party.
9. Incorporation of Defined Terms. All terms, phrases and words indicated to be defined terms by initial capitalization in this First Amendment that are not specifically defined in this First Amendment (if any) shall have the meaning ascribed to the same term, phrase or word in the Agreement.

IN WITNESS WHEREOF, this First Amendment to MOU is entered into by the City of San Diego, acting by and through its Mayor or designee, and by the San Diego Housing Commission, by and through the signature of Commission's authorized representative(s), all as set forth below.

SAN DIEGO HOUSING COMMISSION,
a public agency

CITY OF SAN DIEGO
a California municipal corporation

By: _____
Jeff Davis
Chief of Staff

By: _____

Print Name: _____

Date: _____

Title: _____

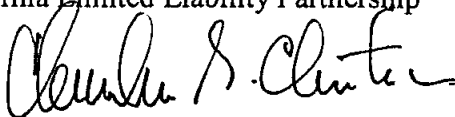
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

CHRISTENSEN & SPATH LLP,
a California Limited Liability Partnership

MARA W. ELLIOTT
CITY ATTORNEY

By: 
Charles B. Christensen
General Counsel

By: _____
Deputy City Attorney

Date: 6 / 29 / 18

Date: _____

SAN DIEGO HOUSING COMMISSION
AGREEMENT FOR TRANSITIONAL STORAGE CENTER
WITH
MENTAL HEALTH SYSTEMS, INC.

Contract No. HHI-18-18

THIS AGREEMENT, entered into this 10th day of May 2018,

between the Commission:

SAN DIEGO HOUSING COMMISSION
1122 Broadway, Suite 300
San Diego, California 92101
(619) 231-9400

and the Contractor:

MENTAL HEALTH SYSTEMS, INC.
9465 Farnham Street
San Diego, California 92123
(858) 573-2600

is as follows:

101. DESCRIPTION OF WORK

Contractor shall operate a Transitional Storage Center for homeless individuals to store their belongings as generally described in the Specifications/Scope of Work attached hereto.

102. CONTRACT ATTACHMENTS

The above services shall be performed in accordance with the following listed documents which are attached hereto and made a part hereof:

1. General Provisions, Contract Attachment No. 1
2. Specifications/Scope of Work, Contract Attachment No. 2
3. Compensation Schedule, Contract Attachment No. 3
4. Certificate of Compliance, Contract Attachment No. 4
5. Workforce Report, Contract Attachment No. 5
6. Additional Prevailing Wage Terms, Contract Attachment No. 6

103. TIME OF PERFORMANCE

a. Initial Term

All services required pursuant to this Agreement shall commence effective May 14, 2018 through May 13, 2019.

b. Option to Extend Term

Upon approval of the Housing Authority of the City of San Diego ("Housing Authority"), the President and Chief Executive Officer of the Commission, or his or her designee, may at his/her election extend the term of the Agreement to the Contractor for two (2) additional one-year terms, by giving written notice of the election to extend the Agreement to the Contractor, in accordance with the provisions set forth as set forth in Section 225. Only one (1) option may be exercised at any one time during any term of the Agreement. The option to extend the Agreement may be granted by the Commission in its sole discretion and is depended upon the availability of funds and budget approval by the Housing Authority. The compensation to be paid the Contractor during any optional terms shall be the compensation set forth in Contract Attachment No. 3.

Nothing contained in this Agreement shall require the Commission to exercise any or all of the options to extend the term of the Agreement. The options exist in favor of the Commission, at its sole option. All other terms and conditions of the Agreement during the option period(s) shall be as set forth in the Agreement and shall be unamended by the exercise of any option granted herein. The options granted herein are in addition to the ninety (90) day option to extend set forth in Section 225 herein.

104. **COMPENSATION AND METHOD OF PAYMENT**

a. Rates

For services performed under this Agreement, the Commission shall pay the Contractor at the rates set forth in Contract Attachment No. 3, "Compensation Schedule," attached hereto and made a part hereof.

b. Maximum Compensation

The total compensation for all services performed pursuant to this Agreement shall not exceed the sum of ONE MILLION ONE HUNDRED SEVENTY-SEVEN THOUSAND FORTY-SIX AND NO/100 Dollars (\$1,177,046.00). Contractor acknowledges that the Commission is under no obligation to compensate Contractor for services rendered or expenses accrued under this Agreement in excess of the maximum compensation specified above. It shall be the responsibility of the Contractor to monitor its activities to ensure that the scope of services specified in Contract Attachment No. 2 (Specifications/Scope of Work) may be completed and no charges accrued in excess of the maximum compensation during the term of this Agreement. In the event that the work required cannot be completed within the amount specified, or it appears that the maximum compensation provided may be exceeded before the term of the Agreement expires, Contractor shall promptly notify the Commission.

Further, the Commission may cancel the Agreement, without cause, by written notice to the Contractor at any time during the term of the Agreement, or any extension thereto, in the event that the Commission and/or the Housing Authority of the City of San Diego ("Housing Authority") fails to appropriate funds for the rendition of services set forth in this Agreement. This right to cancel is in addition to the rights of the Commission to terminate the Agreement as set forth in Section 214 of

this Agreement.

c. Method of Payment

The Contractor shall submit a requisition to the Commission specifying the amount due for services performed by the Contractor's staff. Such requisition shall at a minimum: (1) reference the contract number assigned hereto; (2) reference the purchase order assigned; (3) describe the services performed in detail, as specified in Contract Attachment No. 2; and (4) indicate the amount charged for the work performed. Such requisition for payment shall contain a certification by the Contractor specifying payment requested is for work performed in accordance with the provisions of this Agreement. Upon approval of the requisition, the Commission shall make payment by approximately the thirtieth day of a given month if the requisition is submitted to the Commission no later than the first day of said given month. Payments will be made to Contractor at the address given above.

105. NOTICES

Notices to the parties shall, unless otherwise requested in writing, be sent to the Commission and the Contractor at the addresses given above.

Signature Page to Agreement for Transitional Storage Center with Mental Health Systems, Inc.
(Contract No. HHI-18-18):

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR:
MENTAL HEALTH SYSTEMS, INC.

By: W. Broughton
Name: WENDY BROUGHTON
Title: COO

Date: 5-9-18

COMMISSION:
SAN DIEGO HOUSING COMMISSION

By: for [Signature]
Jeff Davis
Executive Vice President and Chief of Staff

Date: 5.10.18

By: [Signature]
for Debra Fischle-Faulk
Vice President of Procurement and Compliance

Date: 5/10/18

Approved as to Form:
Christensen & Spath LLP

By: [Signature]
Charles Christensen
General Counsel for San Diego Housing Commission

Date: 5/10/18

CONTRACT ATTACHMENT NO. 1

200. GENERAL PROVISIONS

201. Status of Contractor

This Agreement calls for the performance of the services of the Contractor as an independent contractor. Contractor will not be considered an employee of the Commission for any purpose.

202. Ownership of Materials and Documents

Any and all sketches, drawings and other materials and documents prepared by the Contractor shall be the property of the Commission from the moment of their preparation, and the Contractor shall deliver such materials and documents to the Commission whenever requested to do so by the Commission. However, the Contractor shall have the right to make duplicate copies of such materials and documents for his own file, or for other purposes as may be authorized in writing by the Commission.

203. Non-Disclosure

The designs, plans, reports, investigations, materials, and documents prepared or acquired by the Contractor pursuant to this Agreement (including any duplicate copies kept by the Contractor) shall not be shown or disclosed to any other public or private person or entity directly or indirectly, except as authorized by the Commission. The Contractor shall not disclose to any other public or private person or entity directly or indirectly, any information regarding the activities of the Commission during the term of this Agreement or at any time thereafter except as authorized by the Commission.

204. Conflict of Interest

(a) For the duration of this Agreement, the Contractor will not act as a consultant or perform services of any kind for any person or entity which would conflict with the services to be provided herein, without the written consent of the Commission.

(b) A conflict occurs when circumstances, known to the Contractor, place the Commission and the Contractor's new client in adverse, hostile or incompatible positions wherein the interests of the Commission, the Housing Authority, or the City of San Diego may be jeopardized. Contractor shall promptly notify the Commission in the event that such a conflict occurs.

(c) In the event of such a conflict, Contractor shall meet and confer with the Commission to agree upon modifications of its relationship with said new client or Commission in order to continue to perform services for said client and/or Commission without compromising the interests of either. Should no agreement regarding modification be reached, Commission may terminate this Agreement with Contractor.

(d) When consent has been given, Contractor shall endeavor to avoid involvement on

behalf of said new client which would in any manner undermine the effective performance of services by Contractor for Commission. Under no circumstances may Contractor convey, utilize, or permit to be utilized, confidential information gained through its association with Commission for the benefit of any other client.

(e) Contractor agrees to alert every client for whom consent is required, to the existence of this conflict of interest provision and to include language in its agreement with said client which would enable Contractor to comply fully with its terms. This last paragraph shall not apply to existing clients of the Contractor for which Contractor has previously received the Commission's consent.

(f) This Agreement may be unilaterally and immediately terminated by the Commission if Contractor employs an individual who, within twelve (12) months immediately preceding such employment, in their capacity as a Commission employee, participated in negotiations with or otherwise had an influence on the selection of the Contractor.

205. Contractor's Liability

Contractor agrees to and shall indemnify, hold harmless, and defend, with counsel of the Indemnitee's choosing, at Indemnitor's sole cost and expense, the Commission, the Housing Authority, the City of San Diego, and all commissioners, officers, employees, members, council members and agents of each public agency (hereinafter collectively referred to as the "Indemnitees" or individually as an "Indemnitee") from and against any and all damages, liabilities, claims, fines, fees, costs, penalties, judgments, complaints, causes of action, actions, and demands, including, without limitation, demands arising from injuries to or death of persons (Contractor's employees included) and damage to real or personal property, or any other losses, damages or expenses, arising directly or indirectly out of the acts, failure to act or negligence of the Contractor, all obligations of this Agreement, or out of the operations conducted by Contractor including those in part due to the negligence of any of the Indemnitees save and except for liabilities, claims, judgments or demands arising through the sole negligence or sole willful misconduct of such Indemnitee.

206. Insurance

(a) Contractor shall not commence work until Contractor has obtained, at its sole cost and expense, all insurance required under this Section. The insurance obtained must be approved by the Commission. Contractor shall obtain a single limit general liability insurance and automobile liability insurance in the minimum amount checked and initialed below. If nothing is checked or indicated below, the limit shall be Two Million Dollars (\$2,000,000.00):

		Initials			Initials
☒	General Liability \$2,000,000.00	<u>W.</u>	☒	Workers Compensation \$1,000,000.00	<u>W.</u>
☒	Automobile Liability \$500,000.00	<u>W.</u>	☒	Other: Fidelity Bond \$500,000	<u>W.</u>

(b) This coverage is in addition to workers compensation insurance and other insurance

coverages required by law. The Commission, the Authority, and the City of San Diego ("City"), shall be named as certificate holders on all insurance policies and shall be named as additional insured on all general liability and automobile policies. The policies shall provide that coverage on all policies may not be canceled, amended, terminated or otherwise modified without thirty (30) days advance written notice to the Commission, the Authority, and the City. Coverage shall remain in full force and effect during the entire term of the policy and for such term thereafter as the Commission shall determine.

(c) If the box shown below, marked "Errors and Omissions" is checked and initialed, then professional errors and omissions liability coverage is also required in the amount stated below:

		Initials
	Errors and Omissions	
☐	\$1,000,000.00	_____

(d) For any claims arising out of or in connection with Contractor's performance under this Agreement, the insurance required to be purchased and maintained by the Contractor shall be primary and non-contributory to any insurance carried by the Commission, the Housing Authority and/or the City of San Diego.

(e) All insurance required to be purchased and maintained by the Contractor shall be endorsed with a waiver of subrogation. Contractor's insurers, in their endorsements, agree to waive all rights of subrogation against the Commission, the Housing Authority, the City of San Diego, and their employees and agents for losses paid by Contractor's insurers that arise out of or in connection with Contractor's performance under this Agreement.

207. Correction of Work

The performance of services by the Contractor shall not relieve the Contractor from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the Commission, when such inaccuracies are due to the negligence of the Contractor, provided such work has not been accepted in writing by an authorized representative of the Commission.

208. Equal Opportunity Programs

During the performance of this Agreement, the Contractor agrees as follows:

(a) Contractor shall comply with all applicable local, state and federal Equal Opportunity Programs, as well as any other applicable local, state and federal law. Each month, the Contractor will report to the project manager, payments made to all vendors by month, contract to date and percentage of overall contract value.

(b) Contractor and each subcontractor, if any, shall fully comply with and shall submit a Report of San Diego County Work Force Report and Certificate of Compliance with Title VII of the

Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act, and any other applicable Federal and State law and regulations hereinafter enacted.

(c) Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law. Contractor shall ensure that applicants for employment and employees are treated equally without regard to their race, color, religion, ancestry, gender, disability or national origin or any other basis prohibited by law.

(d) If any underrepresentation is found after submission of Contractor's workforce report, the Commission may request an Equal Employment Opportunity Plan (EEOP). An acceptable plan to correct the identified underrepresented categories must be submitted within thirty (30) days. Once the EEOP has been approved by the Commission, the Contractor must adhere to said plan. In the case of multi-year contracts, the Contractor will be required to submit annual workforce reports and EEOP updates as requested.

(e) Contractor understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in penalties provided for in State and Federal law. In addition, the Contractor may, at the election of the Commission, be barred from participating in Commission projects for not less than one (1) year.

209. Cost Records

In accordance with generally accepted accounting principles, the Contractor shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to the inspection of the Commission or to the appropriate federal agencies after reasonable notice, and at reasonable times.

210. Subcontracting

(a) No services covered by this Agreement shall be subcontracted without the prior written consent of the Commission.

(b) In order to obtain consent, Contractor shall submit a list of all potential subcontractors, and a description of work to be performed by each subcontractor, to the Commission. Once this list has been approved, no changes to the list will be allowed except by written approval of the Commission.

(c) The Contractor shall be as fully responsible to the Commission for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him.

(d) Consistent with Presidential Executive Orders 11625, 12138, and 12432, Commission requires Contractor to take positive steps to ensure that small and minority-owned businesses, women's business enterprises, and other individuals and firms located in or owned in substantial part by persons residing in the area of the Commission and/or labor surplus areas are

used whenever possible, if the subcontracting of services or work covered by this Agreement is anticipated. Such efforts shall include, but shall not be limited to: (i) including such firms, when qualified, on solicitation mailing lists; (ii) encouraging their participation through direct solicitation of proposals whenever they are a potential source; (iii) dividing total subcontract requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms; (iv) establishing delivery schedules, where the requirement permits, which encourages participation by such firms; and (v) using the services and assistance of the Small Business Commerce.

(i) A small business is defined as a business that is independently owned, not dominant in its field of operation and not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) A minority-owned business is defined as a business which is at least 51% owned by one or more minority groups; or in the case of a publicly owned business, one in which at least 51% of its voting stock is owned by one or more minority group members, and whose management and daily business operation are controlled by one or more such individuals. Minority group members include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans, and Hasidic Jewish Americans.

(iii) A women's business enterprise is defined as a business that is at least 51% owned by a woman or women who are U.S. citizens and who control and operate the business.

(iv) A labor surplus area business is defined as a business which, together with its immediate subcontractors, will incur more than 50% of the cost of performing the contract in an area of concentrated unemployment or underemployment, as defined by the U.S. Department of Labor in 20 CFR Part 654, Subpart A, and in the list of labor surplus areas published by the Employment and Training Administration.

211. Assignability

(a) The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Commission.

(b) Claims for money due or to become due to the Contractor from the Commission under this Agreement may be assigned to a bank, trust company, or other financial institutions, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Commission.

212. Changes

The Commission may, from time to time, request changes in the Specifications/Scope of Work of the Agreement to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon, by and between the Commission and the Contractor, shall be incorporated into this Agreement.

213. Documents and Written Reports

The Contractor, when preparing any document or written report for or under the direction of the Commission, the Housing Authority, or the City of San Diego, shall comply with the provisions of Government Code Section 7550; to wit,

(a) Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of such contracts and subcontracts relating to the preparation of such document or written report; provided, however, if the total cost for work performed by non-employees of the agency exceeds five thousand dollars (\$5,000). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.

(b) When multiple documents or written reports are the subject or product of the contract, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

214. Termination

For lack of funding, this Agreement may be terminated by the Commission on thirty (30) days' written notice to the Contractor, the effective date of cancellation being the 30th day of said written notice with no further action required by either party.

This Agreement may be terminated for convenience by the Commission on ninety (90) days' written notice to the Contractor, the effective date of cancellation being the 90th day of said written notice with no further action required by either party.

215. Attorneys' Fees and Costs

If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

216. Entire Agreement

This Agreement represents the sole and entire agreement between the Commission and Contractor and supersedes all prior negotiations, representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto, relating to the subject matter of this Agreement, which are not fully expressed herein. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of both the Commission and Contractor.

217. Partial Invalidity

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

218. Contract Governed by Laws of State of California

This Agreement and its performance and all suits and special proceedings under this Agreement shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought arising out of, under, or because of this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted.

219. Interest of Member of Congress

No member or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

220. Interest of Current or Former Members, Officers, Employees

No member, officer or employee of the Commission, no member of the governing body of the locality in which the work is situated, no member of the governing body in which the Commission was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the assignment of work, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this section shall result in unilateral and immediate termination of this Agreement by the Commission.

221. Drug-free Workplace

Contractor shall certify to the Commission that it will provide a drug-free workplace and do each of the following:

(a) Publish a statement notifying its employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance as defined in schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) is prohibited in Contractor's workplace and specify the actions that will be taken against employees for violation of the prohibition.

(b) Establish a drug-free awareness program to inform employees about all of the following:

(i) The dangers of drug abuse in the workplace.

- (ii) The Contractor's policy of maintaining a drug-free workplace.
 - (iii) Any available drug counseling, rehabilitation and employee assistance programs.
 - (iv) The penalties that may be imposed upon employees for drug abuse violations.
- (c) Post the statement required by subdivision 221(a) in a prominent place at Contractor's main office and at any job site large enough to necessitate an on-site office.

222. Plan of Operation

The Contractor shall submit to the Contracting Officer a complete plan of operations. The Contractor is responsible for notifying the Contracting Officer of any changes to the plan of operations.

223. Labor Provisions

It is the responsibility of the Contractor and the Contractor shall be fully aware of and shall comply with each and every requirement of State, Federal and Local law concerning the provision of labor concerning this Agreement, including but not limited to, the payment of applicable wage rates, if any.

☒ If checked, additional state prevailing wage terms are contained in Attachment No. 6.

☐ If checked, additional federal prevailing wage terms are contained in Attachment No. 6.

224. Contract Work Hours and Safety Standards Act

In the event Contractor's performance of this Agreement entails the use of laborers or mechanics, and the Agreement is for more than the sum of \$100,000, and uses Federal funds, then Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.) as supplemented by Department of Labor regulations (29 CFR Part 5).

225. Extension of Contract Term

(a) Provided, that the Contractor is not in default under the terms of this Agreement, the Chief Executive Officer of the Commission, may extend the terms of the Agreement for a period, not to exceed ninety (90) days, on the same payment schedule, terms and conditions, in effect on the date that the Agreement would otherwise have terminated, including the option period, if any. The option to extend the Agreement shall be at the Commission's discretion only, and may not be exercised by the Contractor.

(b) The Agreement may not be extended for an aggregate period of more than ninety (90)

days, but may be exercised in multiple "Notices of Extension", of not less than seven (7) days in duration, for each such notice. The Agreement may be extended by the Commission by delivery of a Notice of Extension in writing to the Contractor and that the stated terms and conditions of the Agreement shall be adhered to by the Contractor and the Commission during the term of the extension.

(c) Nothing contained herein, however, shall require the Commission to exercise any option to extend the Agreement. During the extension of the Agreement, the Contractor shall provide the Commission with additional certificates of insurance, if necessary, covering the term(s) of the extension.

(d) Notice of Extension may be served by the Commission upon the Contractor not earlier than sixty (60) days before the original termination date of the Agreement and not later than eighty-three (83) days after the original termination date of the Agreement. Nothing contained herein shall be construed as granting the Contractor a right to compel the Chief Executive Officer of the Commission to exercise the option to extend the Agreement.

(e) The Commission and Housing Authority hereby delegate the authority to the Chief Executive Officer of the Commission to pay compensation to Contractor, during the option period, on a prorata basis, for any extension period, based upon the contract rate in effect on the date of the exercise of the extension.

(f) All contracts which are approved by the Commission and/or Housing Authority and include options for renewal may be renewed by the Chief Executive Officer or his/her designee at the previously stated terms for renewal. The Chief Executive Officer's authority to execute the option for renewal includes authorization to execute the required documents, identify appropriate funding source and authorize payment of funds for the continuation of services identified in the Scope of Services.

226. Intentionally omitted.

227. Conflict between Agreement and Attachments

To the extent that the provisions of the Agreement and the Attachments and Schedules conflict, the following order of construction shall apply:

(a) To the extent that the Agreement and any Attachments or Schedules conflict, the terms and conditions of the Agreement shall prevail; and,

(b) To the extent that any Contract Attachment and any Schedule conflicts, the Contract Attachment shall prevail.

228. Section 3 Contract Clauses

(a) The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section

3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this Agreement agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The Contractor agrees to include the Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD-assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment subcontracts shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

229. Audit Requirements

Where this Agreement is funded by federal funding, 24 CFR 84.26 requires that nonprofit institutions and institutions of higher education shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996, and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." All entities other than non-profit institutions shall be subject to the audit requirements of HUD or the prime recipient as incorporated into the award document.

Where this Agreement is funded by non-federal funds, Contractor shall be subject to audit requirements as set forth in the award document, if it exists. Otherwise Contractor shall adhere to those requirements as set forth in the Single Audit Act Amendments of 1996 and revised OMB Circular A-133.

230. Lobbying Provisions

Contractor hereby certifies to the Commission, under penalty of perjury, under the terms of applicable federal law, that at all applicable times before, during and after the term of the agreement, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(c) Contractor will require that the above stated language be included in the award documents for all subawards at all tiers, including subcontracts, subgrants, loans, contracts, and cooperative agreements concerning the subject matter of this Agreement; and

(d) Further, Contractor and all subrecipients, at all times, shall certify compliance with the provisions of 31 U.S.C. 1352 and any and all terms and conditions of the Byrd Anti-Lobbying Amendment, as amended from time to time.

231. Energy Conservation.

Provided this Agreement uses Federal funds, Contractor hereby certifies compliance with the mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-

163, 89 Stat. 871).

232. Disputes.

Provided that any source of funds for this Agreement is obtained from Federal sources, then this Agreement shall be subject to the Contract Disputes Act of 1978, as amended, (41 USC 601-613), and except as expressly otherwise provided in the Act, all disputes arising under or relating to this Agreement shall be resolved under the terms of this clause by litigation in State Court. If this Agreement is solely funded from Non-Federal funds, then all disputes shall be resolved by litigation in San Diego County Superior Court, Downtown Branch, after first attempting resolution of the dispute through non-binding mediation.

233. Remedies Upon Default

The failure of the Contractor to perform each and every, covenant of the Contractor; in a timely manner, and in a good and workmanlike manner, and in strict compliance with the requirements of the scope of work, shall constitute a breach under the terms of the Agreement. For any breach that does not jeopardize health, safety or the general welfare of the clients of the Contractor and/or members of the public, the Commission shall give seven (7) day-notice written to cure any breach to the Contractor. In the event that a breach is not timely cured, the Commission shall have all remedies available at law or in equity, including, without limitation, termination, the right to cancel the Contractor's right to proceed and to cause another contractor or the Commission to take over the duties under the terms of the contract, to sue for damages, specific performance and/or to seek an injunction, among other remedies. In determining whether there is a breach by Contractor concerning Program and Goal Outcomes as contained in Contract Attachment No. 2 to this Agreement, good faith efforts as reasonably determined by the Commission shall not constitute a breach. In the event of life, safety and/or general welfare of the clients of the Contractor or the general public arises, the Commission shall have the right to terminate the Contractor's right to continue to proceed with without a notice to cure. In addition, the Commission shall have the right to recoup any and all monies that may have been advanced to the Contractor and that have not been earned.

The failure of the Commission to make a timely payment to Contractor under this Agreement shall constitute a breach under the terms of the Agreement. The Contractor shall give seven (7) days written notice to cure any breach to the Commission. In the event that the breach is not cured, Contractor shall have the right to terminate this Agreement.

CONTRACT ATTACHMENT NO. 2 SPECIFICATIONS/SCOPE OF WORK

OVERVIEW

Contractor will operate a Transitional Storage Center ("Facility") for homeless individuals ("Clients") to store their belongings at the site located at 116 South 20th Street, San Diego, CA ("Premises").

THE PROGRAM

The purpose of this Facility is to have secure, protected space for Clients in the City of San Diego ("City") to store their personal belongings on an ongoing basis, and have access to their belongings during hours of operation. Each Client of the Facility will have access to one storage container free of charge.

Staff operating the Facility will provide Clients with access to their belongings in a staging area under supervision. Facility staff will need to develop a system for intake of Clients and inventory of their belongings to provide secure storage and access to those belongings while they are stored at the Facility.

As part of the ramp-up process, Contractor will be responsible for purchasing 500 lockable storage containers with a combination of large rolling storage containers to be placed on the floor, and stackable storage containers to be placed on shelves. Contractor will also be responsible for the safety and security of the storage containers and the contents thereof. Contractor will need to develop appropriate protocol for Client placement and retrieval of belongings. The Commission reserves the right to retain all items purchased under the Agreement including, but not limited to, lockable storage containers, at the conclusion of the Facility's operations.

Operation will also require reporting of basic outcomes: number of daily use by Clients, total number of people served, number and percent of storage containers used.

LOCATION

Contractor shall manage the Facility at the Premises located at 116 South 20th Street, San Diego, California 92113.

HOURS OF OPERATION

Beginning June 13, 2018, the Facility must be available to Clients Monday through Friday from 7:00am to 7:00pm, Saturday and Sunday from 8:00am to 11:00am. Hours of operation must be posted at the entrance to the Premises. The hours of operation are subject to change at the sole discretion of the Commission, and as based upon Client need. Contractor will be compensated accordingly for any changes in hours of operation.

TARGET POPULATION

The Facility's target population consists of homeless individuals and families residing in the City.

Each Client shall be Homeless as defined by the U.S. Department of Housing and Urban Development (HUD). All Clients will self-certify as homeless as part of the intake process.

The following criteria may not be used to determine usage of the storage center service:

- Access may not be denied to those expressing signs of inebriation, drug use or mental health issues, as long as the behaviors/actions do not pose a danger or threat to others
- Payment or ability to pay
- Identification

PROGRAM START UP

Prior to opening on June 13, 2018, Contractor shall:

- Purchase 500 lockable storage containers.
- Purchase Office Supplies and begin necessary staff development/training.

PROGRAM REQUIREMENTS

Contractor shall:

- Provide storage to Clients and limit that storage to no more than one storage container per Client at any one time.
- Provide a service delivery system that effectively serves the target population in a safe, secure, and welcoming Client-centric environment.
- Maintain an inventory system which tracks the location of stored items in such manner that enables accurate retrieval as requested.
- Devise and maintain an inventory system to log items stored by Clients.
- Make efforts to ensure Clients do not queue, litter or loiter within a one-block radius of the Facility. Contractor will report all suspected criminal activity to law enforcement and notify City's Environmental Services Department to mitigate related issues.
- Enter and maintain basic intake data into the regional Homeless Information System (HMIS), in accordance with the Regional Task Force on Homelessness (RTFH) data standards. [<http://www.rtfhsd.org/hmis/>].
- Coordinate with the San Diego Police Department to implement a comprehensive strategy for Client outreach.
- Provide presence, visibility, and assistance to individuals who are experiencing homelessness in the vicinity of the Facility.
- Employ a strategy of proactive engagement of Clients within the community to place belongings in storage as an alternative to in the public right of way or on private property.
- Further, work with City departments and community service agencies to:
 - Provide Clients basic information on locations where Clients can gain access to other homeless services.

- Coordinate with San Diego Police Department (SDPD) and the City's Environmental Services Department to devise a system for intake of property with unknown owners which provides for: intake, inventory, tagging with a unique identifier, and storing of the property for a prescribed amount of time. Verify and restore belongings to claimants and provide opportunity for ongoing storage.
- Provide a point of contact representative who shall coordinate security and accessibility issues with the SDPD, the Commission, the City, and the community.
- Reserve and maintain 50-100 spaces for SDPD referrals at all times.
- Ensure regular exterior clean-up of the Premises by the Environmental Services Department.
- Conduct intake, review the Rules and Regulations and Terms of Service of the Facility with Clients; Rules and Regulations and Terms of Service may be developed by the Contractor as reasonably necessary to ensure operational effectiveness, but shall include the minimum standards contained herein and shall be subject to review and approval by the Commission.
- Require Clients to sign an agreement acknowledging compliance with the Terms of Service set forth herein, and certifying they are not in violation of those requirements.
- At every check in/check out, require Clients to sign an agreement acknowledging compliance with the Terms of Service set forth herein, and certifying they are not in violation of those requirements.
- Create a "Terms of Service" to include the following at minimum:
 - One locking storage container per person
 - Storage containers are assigned to individuals only; no joint ownership permitted
 - An assigned container may only be accessed by the Client it is assigned to
 - Only site attendants or authorized volunteers may retrieve storage containers from storage area
 - Storage containers may not contain the following items:
 - Food or beverages
 - Perishables
 - Alcohol, drugs, or drug paraphernalia
 - Medication
 - Weapons
 - Hazardous, combustible, or chemical materials
 - Animals or living things
 - Items showing signs of infestation
 - Any illegal items, including stolen items, contraband, or any item that is not legally in the Client's possession
 - Shopping carts, bicycles, carts, or other wheeled devices, except privately owned shopping carts which fit in the storage container
 - All property must fit securely within the storage container and lids must be able to close;
 - Contractor shall inform Clients that abandoned items will be discarded. The Contractor shall track the dates that the Clients access the containers. If 90 days

- elapse from the date a Client last accesses the Client's container, the items in the container will be considered abandoned, and the Contractor shall discard them at that time.
- When storage containers are no longer needed by a Client, the Facility office must be notified;
 - A release of liability for damage to items stored at the Facility, not including damage from the Commission's or City's sole negligence or willful misconduct, as approved by the Commission along with a warning that Clients should not store valuable items at the Facility;
- The Premises shall maintain a list of rules and regulations on site, including but not limited to the following:
 - Prohibiting anyone from engaging in the below conduct, any violation of these rules will result in the loss of storage privileges:
 - Commercial activity;
 - Recreational activity;
 - Watching television;
 - Religious activity;
 - Distributing food or water;
 - Making loud noises;
 - No smoking or drinking alcohol or illegal drug use allowed on the Premises;
 - No unruly or threatening behavior allowed on the Premises;
 - No urinating, defecating, or spitting allowed on the Premises; and
 - Violation of terms of service may result in loss of access to the Facility.
 - Only Clients and Facility Staff are allowed to be on the Premises. Clients are only allowed to conduct storage-related business on the Premises. Once such business is completed, Clients must leave the Premises. Loitering shall be prohibited.
 - Clients are not allowed to use the restrooms on the Premises.
 - No animals or pets of any kind are allowed on the Premises, except for service, signal, or trained guide dogs that are otherwise allowed in public places under California state law.
 - Provide a plan for outreach in the vicinity of the Facility to inform people of the availability of storage units, explain how the Facility operates, and direct them to the Facility.
 - Attend meetings quarterly with community and other respective neighborhood groups, as directed by Commission.
 - During the first 90 days of operation of the Facility, Clients must be referred to the Facility by a service provider, City staff, or currently be on the waiting list at the Think Dignity Transitional Storage Center. Contractor shall only accept Clients who have been referred. After the initial 90 days, Contractor may begin accepting all applicable Clients.

PROGRAM OUTCOMES

- a. The Contractor agrees to enter all HUD UDEs and program-specific data elements (PSDEs), as applicable, into the RTFH-approved HMIS for data collection and analytics.

All program progress will be documented to the Commission through monthly and term-end reports in a form and format determined by the Commission in consultation with the City. All monthly reporting is due to the Commission within 15 calendar days of the end of the reporting period. Failure to submit monthly reports within 15 calendar days of the end of the reporting period may result in an action of noncompliance.

- b. If stated benchmarks are not met, Contractor may be required to submit a performance improvement plan in a form and format determined by the Commission.
- c. For the Agreement term, the Contractor will ensure the following primary program outputs and standards:

PERFORMANCE OUTPUTS & STANDARDS	MEASURE	STANDARD
Efficient Number of Persons Served	Persons Served	500
Data Quality	RTFH Performance Standards and Requirements for HMIS	100%
Efficient and Effective Use of Community Resources	Program Participants Self- Certified as Homeless at Intake	100%
	Utilization Rate	Reporting Only
	Average Length of Use	
	Number of Individuals on Program Waitlist	
	Abandoned Containers	
	Monthly New Intakes	
	Daily Check-Ins	
System Coordination	Referrals from City Departments and Community Providers	Reporting Only
	Referrals to Resources	
	Critical Incident Reports	

GENERAL STANDARDS

Contractor will ensure:

- Service delivery will be Client-focused. Staff and all persons that interact with Clients will be trained on homeless population service provision, positive engagement and general customer service standards that addresses the needs of the target population.
- Adequate staffing with appropriate on-going training for service delivery and data collection and analysis;
- 24-hour security to ensure a safe environment at the Facility for Clients, volunteers, and others who may come in contact with the Facility.
- Designated point-of-contact who is available at all times to address issues that may arise at the Facility and coordinate security issues with the SDPD.
- Compliance with Fire Marshal inspections and recertifications as needed.
- Development of appropriate Rules and Regulations for Facility operations including low barrier Terms of Service, which will be displayed on site at all times, and various means for Clients to provide input into the Facility.
- Data entry, analysis and reporting in the RTFH-approved HMIS of all Facility activities; Contractor will maintain all appropriate documentation, including but not limited to number of individuals or families served.
- That the Facility is operated in compliance with the Americans with Disabilities Act (ADA) and all other applicable rules and regulations.
- Ensure all elements of the "Good Neighbor Obligations" are implemented effectively, including, but not limited to:
 - Provide 24 hour security within a one-block radius of the Facility for the first 90 days of operation; following the initial 90 day period, security schedules may be adjusted at the sole discretion of the Commission based upon input from Contractor and the community;
 - Conduct homeless outreach in the surrounding community;
 - Take measures to prevent Client queuing and loitering;
 - Prevent litter, debris, and graffiti on the Premises;
 - Notify City's Environmental Services Department to mitigate related issues;
 - Zero tolerance enforcement for alcohol or illegal or recreational drug use on site; and
 - Report criminal activity to law enforcement.

PROPERTY MANAGEMENT

Contractor will:

- Maintain a secure and healthful environment for delivery of all services.
- Provide for:
 - Operating supplies;
 - Site control;

- Prompt maintenance and repair;
- Utilities;
- Security;
- Janitorial services;
- Waste removal and disposal; and
- Other program related items.
- Provide secure entry/exit for Clients and others to be monitored by staff.
- Ensure maintenance and upkeep of forklift.
- Maintain a fire escape emergency plan.
- Maintain a fire watch, or fire lookout to monitor the Facility at all times for risk of fire. The person or people designated as the fire watch must check for fires and fire threats within the Facility.
- Maintain a written drug and alcohol-free policy for staff that is posted/displayed at the Premises at all times; the written policy shall include and describe the disciplinary action to result from the illegal use, consumption, distribution, and/or possession of drugs and/or alcohol.
- Maintain the Facility, at all times, in an orderly and vermin-free condition.
- Provide design specification for proposed design of intake area. Contractor will not be responsible for the construction of intake area improvements or initial improvements relating to ADA compliance.
- The Premises is to be used as a storage facility only. Operation of the storage facility shall not create any conditions that amount to a public nuisance and shall not be detrimental to the residential neighborhood by causing increased noise, traffic, lighting, odor, or by violating any applicable ordinance or laws.
- Enter into a sub-lease agreement with the City for the Facility setting forth all maintenance and repair obligations. Any and all rental costs (including base rent and operating expenses, but not repair or maintenance costs) in the sub-lease will be borne by the Commission and shall not be a part of this scope.

CONTRACT ATTACHMENT NO. 3 **COMPENSATION SCHEDULE**

SALARIES AND BENEFITS COSTS

Position	Year 1 Costs (Initial Set-Up)	Year 1 Costs (Ongoing)	Year 2 Costs	Year 3 Costs	Total Proposed Budget
Program Manager		\$ 70,720.00	\$ 74,256.00	\$ 77,979.00	\$ 222,955.00
Facility Supervisor		\$ 58,240.00	\$ 61,152.00	\$ 64,210.00	\$ 183,602.00
Homeless Outreach Worker (Bilingual)		\$ 43,680.00	\$ 45,864.00	\$ 48,152.00	\$ 137,696.00
Homeless Outreach Worker		\$ 41,600.00	\$ 43,680.00	\$ 45,864.00	\$ 131,144.00
Homeless Outreach Worker		\$ 22,880.00	\$ 24,024.00	\$ 25,225.00	\$ 72,129.00
Inventory Specialist (Bilingual)		\$ 43,680.00	\$ 45,864.00	\$ 48,152.00	\$ 137,696.00
Inventory Specialist		\$ 41,600.00	\$ 43,680.00	\$ 45,864.00	\$ 131,144.00
Inventory Specialist		\$ 22,880.00	\$ 24,024.00	\$ 25,225.00	\$ 72,129.00
Building Custodian		\$ 41,600.00	\$ 43,680.00	\$ 45,864.00	\$ 131,144.00
Administrative Assistant		\$ 41,600.00	\$ 43,680.00	\$ 45,864.00	\$ 131,144.00
Vice President of Clinical Services		\$ 15,600.00	\$ 16,380.00	\$ 17,201.00	\$ 49,181.00
Vice President of Housing		\$ 5,050.00	\$ 5,303.00	\$ 5,568.00	\$ 15,921.00
Program Analyst		\$ 4,550.00	\$ 4,777.00	\$ 5,016.00	\$ 14,343.00
Total Salaries	\$	\$ 453,680.00	\$ 476,364.00	\$ 500,184.00	\$ 1,430,228.00

Payroll Taxes @ 7.65%		\$ 34,707.00	\$ 36,442.00	\$ 38,264.00	\$ 109,413.00
Retirement @ 8.00%		\$ 36,294.00	\$ 38,109.00	\$ 40,015.00	\$ 114,418.00
Health Insurance Expense @ 12.35%		\$ 56,029.00	\$ 58,831.00	\$ 61,773.00	\$ 176,633.00
Total Benefits @ 28% of Salaries	\$	\$ 127,030.00	\$ 133,382.00	\$ 140,052.00	\$ 400,464.00

TOTAL SALARIES AND BENEFITS	\$	\$ 580,710.00	\$ 609,746.00	\$ 640,236.00	\$ 1,830,692.00
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OPERATING COSTS

Position	Year 1 Costs (Initial Set-Up)	Year 1 Costs (Ongoing)	Year 2 Costs	Year 3 Costs	Total Proposed Budget
Equipment Rent & Leases		\$ 11,260.00	\$ 2,640.00	\$ 2,640.00	\$ 16,540.00
Building Repairs/Maintenance	\$ 1,500.00	\$ 57,225.00	\$ 57,225.00	\$ 57,225.00	\$ 173,175.00
Equipment Repair/Maintenance	\$ 1,450.00	\$ 3,823.00	\$ 3,823.00	\$ 3,823.00	\$ 12,919.00
Telephone & Utilities		\$ 43,596.00	\$ 43,596.00	\$ 43,596.00	\$ 130,788.00
Supplies Minor Equipment	\$ 47,080.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 50,080.00
Office Supplies	\$ 3,632.00	\$ 3,492.00	\$ 3,450.00	\$ 3,479.00	\$ 14,053.00
Housekeeping Supplies		\$ 8,000.00	\$ 8,000.00	\$ 8,000.00	\$ 24,000.00
Printing	\$ 5,500.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 8,500.00
Insurance		\$ 15,449.00	\$ 15,578.00	\$ 16,118.00	\$ 47,145.00
Subscriptions		\$ 300.00	\$ 300.00	\$ 300.00	\$ 900.00
Staff Development/Training	\$ 3,750.00	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00	\$ 8,250.00
Accounting/Auditing/Legal Fees		\$ 200.00	\$ 200.00	\$ 200.00	\$ 600.00
Other Business Services	\$ 2,704.00	\$ 5,760.00	\$ 5,760.00	\$ 5,760.00	\$ 19,984.00
Gas and Mileage		\$ 9,951.00	\$ 9,951.00	\$ 9,951.00	\$ 29,853.00
Tax/License/Banking Fees		\$ 706.00	\$ 675.00	\$ 697.00	\$ 2,078.00
Security Guard Service		\$ 218,400.00	\$ 218,400.00	\$ 218,400.00	\$ 655,200.00
TOTAL OPERATING COSTS	\$ 65,616.00	\$ 381,662.00	\$ 373,098.00	\$ 373,689.00	\$ 1,194,065.00

TOTAL DIRECT COSTS	\$ 65,616.00	\$ 962,372.00	\$ 982,844.00	\$ 1,013,925.00	\$ 3,024,757.00
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Indirect Costs @ 14.5% (*)	\$ 9,514.00	\$ 139,544.00	\$ 142,512.00	\$ 147,019.00	\$ 438,589.00
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TOTAL PROJECT COSTS	\$ 75,130.00	\$ 1,101,916.00	\$ 1,125,356.00	\$ 1,160,944.00	\$ 3,463,346.00
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NOTE: (*) Contractor is entitled to an indirect cost rate of 13.5% from the effective date of this Agreement. The parties agree to amend the Agreement upon written notification and proof that the Contractor has secured a higher indirect cost rate agreement with HUD. Contractor acknowledges that the Commission is under no obligation to compensate Contractor for an indirect cost rate in excess of 14.5%.

CONTRACT ATTACHMENT NO. 4

**EQUAL EMPLOYMENT OPPORTUNITY PROGRAM
FOR CONTRACTORS DOING BUSINESS WITH
THE SAN DIEGO HOUSING COMMISSION**

The City of San Diego, the San Diego Housing Commission and the Housing Authority of the City of San Diego are committed to an Equal Opportunity Program pursuant to applicable State and Federal laws and guidelines, which provide Equal Opportunity in all activities of the State and its agencies, including the employment of individuals and firms which contract with the San Diego Housing Commission.

CERTIFICATE OF COMPLIANCE

Mental Health Systems, Inc.

(Name of Firm)

As an authorized official for the above named firm, I hereby certify by the signature affixed to this document that said firm will comply with Executive Order 11246, Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment Practices Act and any other applicable Federal and State laws and regulations hereinafter enacted.

Further, I am submitting a current Report of San Diego County Workforce; and if requested, an acceptable Equal Employment Opportunity Plan which addresses the affirmative actions that will be taken by this firm to eliminate any under-representation within identified categories. The elements of this Plan would include effective outreach and other employment practices to maximize opportunities for all qualified individuals.

James C. Callaghan, Jr.

Name of Authorized Official



Signature of Authorized Official

2/8/2018

Date

CONTRACT ATTACHMENT NO. 5 **WORK FORCE REPORT**

SAN DIEGO HOUSING COMMISSION

1122 Broadway, Ste 300, San Diego, CA 92101

Name of Firm Mental Health Systems

Payroll Ending Date _____

WORK FORCE REPORT OF SAN DIEGO COUNTY

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- | | |
|--|---|
| (1) Black, African-American | (5) Caucasian |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Other ethnicity not falling into other groups |
| (3) Asian, Pacific Islander | |
| (4) American Indian, Eskimo | |

OCCUPATIONAL CATEGORY	(1) Black		(2) Latino		(3) Asian Pacific Islander		(4) American Indian		(5) Caucasian		(6) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial	1	0	1	11	0	1	0	2	1	18	0	0
Professional Specialty	0	0	0	0	0	0	0	0	0	0	0	0
Engineers/Architects	0	0	0	0	0	0	0	0	0	0	0	0
Technicians and Related Support	0	0	0	0	0	0	0	0	0	0	0	0
Sales	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Support/Clerical	0	6	2	38	2	4	0	6	4	37	0	0
Services	19	27	59	111	12	16	12	5	113	117	0	0
Precision Production, Craft and Repair	0	0	0	0	0	0	0	0	0	0	0	0
Machine Operators, Assemblers, Inspectors	0	0	0	0	0	0	0	0	0	0	0	0
Transportation and Material Moving	0	0	0	0	0	0	0	0	0	0	0	0
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS EACH COLUMN	20	33	62	160	14	21	12	13	118	172	0	0
Disabled (by Gender & Ethnicity)	0	1	1	1	0	0	0	4	5	1	0	0
GRAND TOTAL ALL EMPLOYEES	625											

NON-PROFIT AGENCIES ONLY

President	0	0	0	0	0	0	0	0	0	1	0	0
Vice President	0	0	0	0	0	0	0	0	1	0	0	0
Secretary	0	1	0	0	0	0	0	0	0	0	0	0
Treasurer	0	0	1	0	0	0	0	0	0	0	0	0
TOTALS EACH COLUMN	0	1	1	0	0	0	0	0	1	1	0	0

Indicate the gender and minority composition of the board as required above.
Please substitute titles of officers or board members as necessary.

OCCUPATIONAL CATEGORY LIST

Executive, Administrative and Management

Executive, Administrative Management
Related

Professional Specialty

Engineers, Architects, Surveyors
Mathematical and Computer Scientists
Health Diagnosing
Health Assessment and Treating
Teachers, Postsecondary
Teachers, Except Postsecondary
Counselors, Educational and Vocational
Librarians, Archivists, Curators
Social Scientists and Urban Planners
Social, Recreation and Religious Workers
Lawyers and Judges

Technicians and Related Support

Health Technologists and Technicians
Engineering and Related Technologists and
Technicians
Technicians, Except Health, Engineering and
Service

Sales

Supervisors and Proprietors
Sales Representatives, Finance and Business
Services
Sales Representatives, Commodities Except Retail
Sales Workers, Retail and Personal Services

Administrative Support

Supervisors, Administrative Support
Computer Equipment Operators
Secretaries, Stenographers, Typists
Information Clerks
Records, Processing Except Financial
Financial Records Processing
Duplicating and Other Office Machine Operators
Communications Equipment Operators
Mail and Message Distributing
Material Recording and Distributing Clerks
Adjusters and Investigators
Other Administrative Support

Precision Production, Craft and Repair

Supervisors, Mechanics and Repairers
Vehicle and Mobile Equipment Mechanics and
Industrial Machinery Repairer
Machinery Maintenance
Electrical and Electronic Equipment

Repairers

Heating, Air Conditioning, Refrigeration
Mechanics
Other Mechanics and Repairers
Supervisors Construction
Construction Trades, Except Supervisors
Extractive Occupations
Precision Production Occupations

Machine Operators, Assemblers and Inspectors

Metalworking and Plastic Working Machine
Operator
Metal and Plastic Processing Machine
Operators
Woodworking Machine Operators
Printing Machine Operators
Textile, Apparel and Furnishing Machine
Operators
Machine Operators, Assorted Materials
Fabricators, Assembler & Hand Working
Occupations

Transportation and Material Moving

Motor Vehicle Operators
Rail Transportation Occupations
Water Transportation Occupations
Material Moving Equipment Operators

Handler, Equipment Cleaners, Helpers and Laborers

Handlers
Equipment Cleaners
Helpers
Laborers

Services

Private Households
Protective Services
Supervisors, Protective Services
Firefighting and Fire Prevention
Police and Detectives
Guards
Supervisors, Food Preparation and Services
Health Services
Cleaning and Building Services
Personal Services

NAME OF COMPANY: Mental Health Systems, Inc. TELEPHONE: (858) 573-2600
ADDRESS: 9465 Farnham Street
San Diego CA 92123
CITY STATE ZIP
PREPARED BY: Violet Rieger, Director of Operations DATE: 02/26/18

CONTRACT ATTACHMENT NO. 6

ADDITIONAL PREVAILING WAGE TERMS

Contractors are required to verify the applicable California Wage Determination in effect at the bid advertised date, January 26, 2018 at, www.dir.ca.gov.

All rates applied must be for San Diego County. The following wage determination applies:

General Prevailing Wage Determination: 2017-2 effective August 22, 2017

A. Contractor shall comply with the prevailing wage requirements and restrictions, obligations, requirements, and penalties of Section 1770 et seq. of the Labor Code, which requires the payment of prevailing wages to appropriate work classifications in all bid specifications and subcontracts.

B. Contractor shall furnish all subcontractors/employees a copy of the Department of Industrial Relations prevailing wage rates, which Contractor will post at the job site in a visible location in accordance with Labor Code Section 1773.2

C. Contractor shall comply with the payroll record keeping and availability requirement of Section 1776 of the Labor Code.

D. Contractor shall make travel and subsistence payments and follow holiday schedule in accordance with Section 1773.2 of the Labor Code.

E. Contractor must employ registered apprentice on all public works projects in accordance with Labor Code 1777.5.

F. Contractor is prohibited from accepting or extracting kickbacks from employees' wages under Labor Code 1778.

G. Upon work completion, Contractor will be required to sign and notarize an Affidavit of Compliance with California Prevailing Law, California Labor Codes Sections 1720-1815, which will be provided by the San Diego Housing Commission.

H. If discrepancies are discovered by either an audit of certified payroll records and/or employee interviews, payment may be withheld until such actions are corrected.

I. The following requirements apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into or after April 1, 2015:

Section 1725.5 requires that Contractor and its subcontractors register and qualify with the State of California Department of Industrial Relations ("DIR") in order to bid on, be listed in a bid proposal for, or engage in the performance of any contract for a public work. In order to register with the DIR, Contractor and its subcontractors must pay an initial nonrefundable registration fee of \$300, pay an annual renewal fee each July 1 thereafter, and provide the specified information

to establish eligibility. Contractor and its subcontractors must register with the DIR at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

Contractor or its subcontractors shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work as defined in Labor Code § 1720, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered Contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform Public Work pursuant to Labor Code § 1725.5 at the time the contract is awarded. A contract entered into with a Contractor or subcontractors who failed to register as required herein shall be subject to cancellation as set forth in Labor Code § 1771.1.

The project is subject to compliance monitoring and enforcement by the DIR and Commission, as set forth in Section 1771.4 of the Labor Code. On a weekly basis, the Contractor and its subcontractors shall furnish records, in a format prescribed by the Labor Commission and as specified in Labor Code § 1776, to the Commission and California Labor Commissioner for the following:

- a. Projects for which the initial contract is awarded on or after April 1, 2015. (Labor Code § 1771.4(c)(2)(B))
- b. All projects, whether new or ongoing, on or after January 1, 2016. (Labor Code § 1771.4(c)(2)(D))
- c. Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records. (Labor Code § 1771.4(c)(2)(C))
- d. Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to June 20, 2014. (Labor Code § 1771.4(c)(2)(A))

Contractor shall post job site notices as prescribed by Labor Code § 1771.4(a)(2).

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STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET (DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only 4/4/18, is made by and between DEBOLT, DERRICK, MCFARLAND PROPERTIES, LLC, a California limited liability company ("Lessor") and City of San Diego, a California Municipal Corporation ("Lessee").

(collectively the "Parties," or individually a "Party").

1.2 Premises: That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 116 S 20th Street, San Diego, located in the County of San Diego, State of California, and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) a warehouse building containing approximately 22,000 square feet

1.3 Term: 1 years and 0 months ("Original Term") commencing April 1, 2018 ("Premises"). (See also Paragraph 2) ("Commencement Date") and ending March 31, 2019 ("Expiration Date"). (See also Paragraph 3)

1.4 ~~Early Possession~~ If the Premises are available Lessee may have non-exclusive possession of the Premises commencing April 1, 2018 ("Early Possession Date"). (See also Paragraphs 2.2 and 2.3)

1.5 Base Rent: \$ 14,740.00 per month ("Base Rent"), payable on the first day of each month commencing on the Commencement Date. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 1.6

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) Base Rent: \$ 14,740.00 for the period per month for months 1-12, increasing 3% annually for each year one (1) year renewal period on the anniversary of the Commencement Date

(b) Security Deposit: \$ 15,637.66 ("Security Deposit"). (See also Paragraph 5)

(c) Association Fees: \$ _____ for the period _____

(d) Other: \$ _____ for _____

(e) Total Due Upon Execution of this Lease: \$ 30,377.67

1.7 Agreed Use: warehouse storage in compliance with all laws and zoning regulations and for any other legal and allowable use. (See also Paragraph 8)

1.8 Insuring Party: Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.9 Real Estate Brokers: (See also Paragraph 15 and 25)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☐ None represents Lessor exclusively ("Lessor's Broker");
☐ None represents Lessee exclusively ("Lessee's Broker"); or
☐ None represents both Lessor and Lessee ("Dual Agency").

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Michael Manley

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PAGE 1 OF 19

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STN-27.00, Revised 01-03-2017

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(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of None or None % of the Rent) for the brokerage services rendered by the Brokers.

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by _____ ("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 1.6(b), 2.2 & 2.3, 6.4, 8, 10.1, 11, 12, 23, and 51 through 56 inclusive;
☐ a plot plan depicting the Premises;
☐ a current set of the Rules and Regulations;
☐ a Work Letter;
☐ other (specify): _____

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **Note:** Lessee is advised to verify the actual size prior to executing this Lease.

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, as long as the required service contracts described in Paragraph 7.4(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, pump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 90 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premises; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor makes no representation or warranty that the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed or said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE:** Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to

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PAGE 2 OF 19

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STN-27.00, Revised 01-03-2017

4/44th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 90 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Payment. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay


INITIALS

PAGE 3 OF 19


INITIALS

to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

~~4.3 Association Fees. In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fee levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.~~

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.


INITIALS

PAGE 4 OF 19


INITIALS

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 15 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 15 days of the receipt of a written request therefor.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder to the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

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INITIALS

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PAGE 5 OF 19

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INITIALS

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7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a good condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, and (vi) clarifiers. However, Lessor reserves the right, upon Lessee's default, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or

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INITIALS

PAGE 6 OF 19

CT

INITIALS

for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment For Insurance. Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an insured loss.

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INITIALS

PAGE 7 OF 19

CT

INITIALS

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said Insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such Insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such Insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

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INITIALS

PAGE 8 OF 19

CT

INITIALS

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to Improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the Improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires remediation.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no

HD

INITIALS

PAGE 9 OF 19

CT

INITIALS

liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 Termination; Advance Payments. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 Definition. As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 Payment of Taxes. In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax Installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 Joint Assessment. If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 Personal Property Taxes. Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting

HO
INITIALS

PAGE 10 OF 19

CR
INITIALS

as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder,

HD

INITIALS

PAGE 11 OF 19

CD

INITIALS

whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or, the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 30 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of 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 the Lessee proves could have been reasonably avoided; (iii) 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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee'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 the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

HD

INITIALS

PAGE 12 OF 19

CT

INITIALS

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

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

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.9 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15.1, 22 and 31. If Lessor fails to pay to Brokers any amounts due to and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and

HD
INITIALS

PAGE 13 OF 19

CT
INITIALS

~~If Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and effect such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

~~45.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Broker, if any) in connection with this Lease, and that no one other than said named Broker is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.~~

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

HD
INITIALS

PAGE 14 OF 19

CT
INITIALS

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Broker in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: a Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In those situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations: To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: a Diligent exercise of reasonable skills and care in performance of the agent's duties. b. A duty of honest and fair dealing and good faith. c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. b. Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease, provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

HD
INITIALS

PAGE 15 OF 19

CF
INITIALS

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. ~~Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.~~

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party ~~or Broker~~ brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party ~~or Broker~~ who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent which shall not be unreasonably withheld. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

HD
INITIALS

PAGE 16 OF 19

CT
INITIALS

36. **Consents.** All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

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

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply:

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. **Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" with 6 months shall be deemed to have waived its right to protest such payment.

HP

INITIALS

PAGE 17 OF 19

CT

INITIALS

44. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. Conflict. Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. ~~Waiver of Jury Trial.~~ THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

50. Accessibility; Americans with Disabilities Act.

(a) The Premises:

☒ Have not undergone an inspection by a Certified Access Specialist (CASP). Note: 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.

☐ Have undergone an inspection by a Certified Access Specialist (CASP) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ Have undergone an inspection by a Certified Access Specialist (CASP) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE, AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.


INITIALS

PAGE 18 OF 19


INITIALS

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: San Diego, CA Executed at: SAN DIEGO, CA
On: 3/9/18 On: 4/4/18

By LESSOR:

DEBOLT, DERRICK, MCFARLAND PROPERTIES, LLC,

By LESSEE:

City of San Diego, a California Municipal

Corporation

By: Heather Dunaway
Name Printed: Heather Dunaway
Title: Manager
Phone: _____
Fax: _____
Email: _____

By: Cybil Thompson
Name Printed: Cybil Thompson
Title: Office Real Estate Assets
Phone: _____
Fax: _____
Email: _____

By: _____ By: _____
Name Printed: _____ Name Printed: _____
Title: _____ Title: _____
Phone: _____ Phone: _____
Fax: _____ Fax: _____
Email: _____ Email: _____

Address: P.O. Box 501901 Address: _____
San Diego, CA 92150
Federal ID No.: _____ Federal ID No.: _____

BROKER

None

BROKER

None

Att: _____ Att: _____
Title: _____ Title: _____
Address: _____ Address: _____
Phone: _____ Phone: _____
Fax: _____ Fax: _____
Email: _____ Email: _____
Federal ID No.: _____ Federal ID No.: _____
Broker/Agent BRE License #: _____ Broker/Agent BRE License #: _____

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Approved As To Form

Mara W. Elliott

BY: Marco A. Verdugo Date: 4/4/18

NAME: Marco A. Verdugo

TITLE: Deputy City Attorney

HD
INITIALS

PAGE 19 OF 19

CT
INITIALS

**ADDENDUM TO
AIR CRE
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE--NET
DATED APRIL 9, 2018 ("LEASE"), BY AND BETWEEN DEBOLT,
DERRICK, MCFARLAND PROPERTIES, LLC ("LESSOR"), AND
THE CITY OF SAN DIEGO ("LESSEE")**

In consideration of the mutual promises made in this "Addendum" to Lease, Lessor and Lessee agree to the following changes or supplements to the Lease:

1.6(b) **Security Deposit.** Security Deposit shall be equal to last month's full, non-prorated Base Rent in option year 3 as shown in Section 52 below.

2.2 & 2.3 **Condition.** Notwithstanding anything to the contrary in the Lease, Lessee has inspected the Premises and Project and Lessee shall accept the Premises in its "as-is" and "where-is" condition with all faults as of the date Lessor delivers the Premises to Lessee. Lessee's acceptance of possession of the Premises constitutes Lessee's acknowledgment that the Premises and Project are acceptable and in the condition required by this Lease. Lessor makes no representations as to the physical condition of the Premises, including the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building"), the heating, ventilating and air conditioning systems ("HVAC"), any other part of the Project, their compliance with applicable laws, or their fitness for any particular purpose. Unless otherwise stated in the Lease, Lessor shall not be obligated to provide or pay for any improvements, work or services related to the improvement, remodeling or refurbishment of the Premises. Prior to commencing any construction or modification of the Premises, Lessee shall obtain Lessor's prior written consent, which shall not be unreasonably withheld, delayed, or conditioned, and shall procure all necessary governmental permits and approvals. Prior to Lessee occupying the Premises, Lessee shall obtain a certificate of occupancy and any other governmental permits and licenses required for Lessee to use and occupy the Premises, and deliver a copy of each to Lessor.

6.4 **Inspection; Compliance.** Notwithstanding anything to the contrary in Paragraph 6.4, Lessor acknowledges and agrees that items left for storage in the Premises by community members are the personal property of those individuals and are not subject to inspection by Lessor or any third party except as may be warranted for reasons of health and safety; compliance with applicable laws; or otherwise as required by Lessor's insurer or lender.

8. **Insurance; Indemnity.** Lessor shall be named as additionally insured for all insurance required to be held by Lessee under the Lease and as required to be held by any Permitted Transferee (as defined below). Notwithstanding anything to the contrary in the Lease, Lessee shall have the right to "self-insure" with respect to any of the insurance required to be carried by Lessee under this Lease. "Self-insure" shall mean that Lessee is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and Lessee shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease. All amounts which Lessee pays or is required to pay and all loss or damages resulting from risks for which Lessee has elected to self-insure shall be subject to the waiver of subrogation provisions of this Lease and shall not limit

Lessee's indemnification obligations set forth in this Lease. In the event that Lessee elects to self-insure as permitted, Lessor shall have the same benefits and protections as if Lessee carried insurance with a third-party insurance company satisfying the requirements of this Lease. Any self-insurance so maintained by Lessee shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Paragraph 8, including, without limitation, a deemed additional insured provision and a deemed waiver of subrogation; consequently, Lessor shall be treated as if Lessee had actually purchased such insurance from a third party. If Lessee elects to so self-insure, then with respect to any claims which may result from incidents occurring during the term, such self-insurance obligation shall survive the expiration or earlier termination of this Lease to the same extent as the insurance required hereunder would survive. If Lessee elects to self-insure, Lessee will deliver written notice to Lessor detailing the coverages being self-insured and how claims are administered.

10.1 **Real Property Taxes.** If Lessor sells the Premises or the Project and as a direct result the Premises or the Project is reassessed and the Real Property Taxes increase, Lessee shall not be obligated to pay more than 105% of the Real Property Taxes payable immediately prior to such sale during the remainder of the then applicable term and any extended option period.

11. **Utilities and Services.** Lessee shall have all utilities and service contracts placed into Lessee's name on or before the Commencement Date.

12. **Assignment and Subletting.** Lessor acknowledges and agrees that Lessee intends on entering into agreements with the San Diego Housing Commission, a California public agency, and a third-party operator, chosen by Lessee in conjunction with the San Diego Housing Commission, for the operation of a storage warehouse. Notwithstanding any provision in this Lease to the contrary, Lessee shall have the right, without obtaining Lessor's consent to transfer or sublease all or any part of Lessee's interest in this Lease or in the Premises, (whether by sublease or through an operations or management agreement) to the San Diego Housing Commission and a third party operator (each a "**Permitted Transfer**" to a "**Permitted Transferee**") as long as the following conditions are met:

12.1. Lessee shall provide written notice of the Permitted Transfer to Lessor together with copies of the written agreements with the San Diego Housing Commission and third-party operator (as applicable) at least ten (10) business days before the Permitted Transfer;

12.2. Any Permitted Transfer shall be at no cost to Lessor, shall not be a subterfuge by Lessee to avoid its obligations under the Lease and all Permitted Transferees shall agree in writing to comply with the terms of the Lease;

12.3. Lessee shall pay to Lessor all Rent, additional rent or other such consideration payable by such Permitted Transferee to Lessee or on behalf of Lessee in connection with the transfer or subletting in excess of the rent, additional rent and other sums payable by Lessee under this Lease during the term of the agreement (on a per square foot basis if less than all of the Premises is subleased), less the reasonable costs actually incurred by Lessee to secure the sublease.

12.4. No Permitted Transfer shall release Lessee of any obligations hereunder or alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

23. **Notices.** A copy of all notices to the parties pursuant to Paragraph 23 shall be concurrently transmitted to the following addresses:

To Lessor: Debolt, Derrick, Mcfarland Properties, LLC
14945 Del Diablo Lane
San Diego, CA 92129

With a copy to: The Opus Law Firm
Attn: Justin White
662 Encinitas Blvd, Ste 248
Encinitas, CA 92024

To Lessee: The City of San Diego
Attn: Director, Real Estate Assets Department
1200 Third Ave., Ste 1700
San Diego, CA 92101

With a copy to: San Diego Housing Commission
Attn: President
1122 Broadway
San Diego, CA 92101

ADDITIONAL PROVISIONS:

51. **Option to Extend.** Lessor hereby grants to Lessee the option to extend the term of this Lease for two (2) additional one (1) year periods commencing when the prior term expires upon each and all of the following terms and conditions:

51.1. In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least three (3) months but not more than (12) months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options may only be exercised consecutively.

51.2. Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease, including but not limited except where specifically modified by this option shall apply.

51.3. Notwithstanding Paragraph 39.2, this Option is personal to the original Lessee and any Permitted Transferees (as defined herein) and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee or a Permitted Transferee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

51.4. The monthly rent for each month of the option period shall be calculated in accordance with Paragraph 52.

52. **Rent.** The monthly Base Rent during the first twelve (12) months of the Original Term of this Lease shall be \$14,740 per month. Upon each anniversary of the Commencement Date, Base Rent shall increase by three percent (3%) for the following twelve (12) month option periods pursuant to Paragraph 51 in accordance with the following schedule:

<u>Year</u>	<u>Base Rent PSF</u>	<u>Base Rent Per Month</u>
Year 1:	\$0.67 psf	\$14,740.00/mo
Option Year 2:	\$0.69 psf	\$15,182.20/mo
Option Year 3:	\$0.71 psf	\$15,637.67/mo

53. **Operating Expenses.** It is understood that Lessee shall be one hundred percent (100%) responsible for all the costs to maintain, repair, insure and operate the Premises in the condition required under the Lease. However, if Lessor incurs any cost or expense to maintain, repair, insure and operate the Premises (including Real Property Taxes) (collectively, "**Operating Expenses**") then Lessee shall reimburse Lessor for the same. Lessee shall pay regular estimated Operating Expenses, commencing upon the Start Date, concurrently with the payment of Base Rent. It is estimated that the monthly Operating Expenses shall be \$1,496.00 per month, but are subject to reconciliation after Lessor determines the actual Operating Expenses for the fiscal period in question and the parties shall reconcile the payments as follows: If Lessee has under-paid any Operating Expenses, Lessee shall deliver to Lessor the difference in any under payment of Operating Expenses within ten (10) business days after demand. If Lessee has overpaid any Operating Expenses, Lessee shall be entitled to a credit against future Operating Expenses for such over-payment.

54. **Forklift Usage:** Lessee shall have the right to use Lessor's Toyota forklift (the "**Forklift**"). Lessee hereby agrees to indemnify, defend and hold Lessor harmless from and against any and all liabilities whatsoever arising out of or in connection with the use of the Forklift. Lessee shall be solely responsible for upkeep and maintenance for the Forklift. Bi-annual servicing shall be performed and paid for by Lessee. Forklift shall be returned to Lessor at the end of the Original Term in good working condition. Lessee shall procure reasonable insurance with regard to the Fork Lift, naming Lessor as an additional insured.

55. **Entire Agreement.** This Addendum, together with the Lease contain the final, complete and exclusive statement of all the representations, warranties, conditions and agreements of the Lessor and Lessee concerning the Premises. No other prior representation, warranty, condition, agreement or understanding concerning the Premises shall be effective for any purpose.

56. **Inconsistent Terms.** If any of the provisions of this Addendum are inconsistent with any of the provisions of the Lease, then the provisions of this Addendum shall prevail.

Signatures appear on the following page

IN WITNESS WHEREOF, Lessor and Lessee have executed this Addendum as of the date of the Lease above.

LESSOR: DEBOLT, DERRICK, MCFARLAND PROPERTIES, LLC
a California limited liability company

By: Heather Dunaway
Name: Heather Dunaway
Its: Manager

LESSEE: CITY OF SAN DIEGO
a California municipal corporation

By: [Signature]
Name: CYBIL THOMPSON
Its: DIRECTOR, PUBLIC WORKS

Approved As To Form
Mara W. Elliott

BY: [Signature] Date: 4/4/18

NAME: Marco A. Verdugo

TITLE: Deputy City Attorney

110