CITY OF SAN DIEGO

**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

This LEASE AGREEMENT (this "**Lease**") is entered into by and between MCALISTER INSTITUTE FOR TREATMENT & EDUCATION, INC. a California Non-profit Benefit corporation, as tenant ("**Tenant**"), and the CITY OF SAN DIEGO, a California municipal corporation ("**Landlord**"). This Lease shall not become effective until approved as to form and signed by a Deputy City Attorney for the San Diego City Attorney's Office ("**Effective Date**").

LANDLORD, FOR AND IN CONSIDERATION OF THE RENT TO BE PAID BY TENANT AND THE CONDITIONS, COVENANTS, RESTRICTIONS AND AGREEMENTS TO BE OBSERVED AND PERFORMED BY TENANT UNDER THIS LEASE, LEASES TO TENANT, AND TENANT LEASES FROM LANDLORD, THE RENTAL SPACE (DEFINED IN SECTION 2.62) ON THE FOLLOWING TERMS:

**1. PURPOSE**. Landlord owns that certain real property located in the City of San Diego and specifically defined in Section 2.60 as the "Property." The Property is part of a larger approximately 3.2-acre parcel of land commonly known as "Lot 6," which, in 1978, Landlord leased to Montgomery Field One, LP ("Master Lessee") under that certain Flat Rate Lease on file with the San Diego City Clerk as Document No. RR-763376 ("Master Lease"). In 1979, pursuant to the Master Lease, Master Lessee constructed an approximately 40,193-square foot (sf) office building (the "Building") on the Property and subleased space in the Building to several tenants. Mcalister Institute for Treatment & Education, Inc. ("Sublessee") entered into a Standard Retail Lease (the "Sublease") to lease Suite 150, an approximately 5,398 sf space within the Building ("the Rental Space"), for the purpose of operating a business as a substance abuse treatment, recovery, and support services organization. From January 2019 through April 2019, Master Lessee failed to pay rent and defaulted on the Master Lease. Thereafter, Landlord commenced an action against Master Lessee in the San Diego Superior Court (Case No. 37-2019-00034312-CL-UD-CTL), which concluded upon execution of a Stipulation and Judgment, and which, among other things, terminated the Master Lease on or about August 7, 2019. Immediately after, Landlord and Mcalister Institute for Treatment & Education, Inc., as tenant, entered into a month-to-month lease to provide for continued occupancy of the Rental Space while Landlord assessed its options to repurpose the Rental Space for Landlord's use. Landlord has determined that it has no use for the Rental Space and desires to enter this Lease to establish Tenant's specific rights to occupy the Rental Space area of the Property for operation of an office and no other use.

**2. DEFINITIONS**. In addition to the definitions of certain words or phrases set forth in the preamble to this Lease, the following words or phrases shall have the meanings set forth below in this Section 2:

2.1 Additional Rent. All amounts this Lease requires Tenant to pay Landlord, whether or not expressly called Additional Rent, except Monthly Rent.

2.2 Application. Excluding this Lease, any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for improvement of the Rental Space or installation of any Personal Property in the Rental Space, including any application for any land use entitlement, building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or other instrument as Tenant may reasonably request in compliance with this Lease; or (b) to enable Tenant to seek any Approval or to use or operate the Rental Space in accordance with this Lease and Law.

2.3 Approval. Excluding this Lease, all licenses, permits (including building, grading, demolition, alteration, use, and special permits), approvals, consents, certificates, rulings, variances, authorizations, conditional use permits, or amendments to any of the foregoing, necessary or appropriate under any Law to commence, perform, or complete improvement of the Rental Space or installation of any Personal Property in the Rental Space.

2.4 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.5 Building. Defined in Section 9.3.

2.6 Business Day. Any weekday on which Landlord is open to conduct regular Landlord functions with Landlord personnel.

2.7 City. The City of San Diego, California, a municipal corporation.

2.8 City Attorney. The City Attorney of the City of San Diego.

2.9 Landlord Party(ies). Individually and collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.

2.10 RESERVED.

2.11 Claim. Any foreseeable or unforeseeable claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise), charge, award, assessment, fine or penalty of any kind (including related consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if Tenant improperly fails to provide a defense for Landlord or provides a defense under a reservation of rights, then Landlord's Legal Costs), and any resulting judgment.

2.12 Control. Power (and exercise thereof), directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract, or otherwise.

2.13 County. The County of San Diego, California.

2.14 RESERVED.

2.15 RESERVED.

2.16 RESERVED.

2.17 CPRA. Defined in Section 44.

2.18 Default. Any Monetary Default or Non-Monetary Default.

2.19 Default Interest. The lesser of eight percent (8%) annually or the maximum rate allowed by Law.

2.20 DREAM. City's Department of Real Estate and Airport Management or its successor in function.

2.21 Effective Date. The date shown on the signature page to this Lease as the date this Lease is signed by the City Attorney or designee approving this Lease as to form.

2.22 Environmental Claim. All Claims, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law relating to the Rental Space, Tenant's Operations, or any Hazardous Substance Discharge.

2.23 Environmental Condition. Any of the following events relating to the Rental Space, arising from Tenant's Operations, or any action or failure to act of any Tenant Party: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

2.24 Environmental Law. All Government laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements in effect on or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (to the extent relating to Hazardous Substances on, under or about the Rental Space or used in Tenant's Operations); (c) occupational or environmental conditions on, under or about the Rental Space or relating to Tenant's Operations; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use.

2.25 Equity Interest. Any equity or ownership interest (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

2.26 Event of Default. The occurrence of any one or more of the following:

2.26.1 *Monetary Default.* A Monetary Default continuing for seven (7) days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;

2.26.2 *Bankruptcy or Insolvency.* A Party ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to a Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one

hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all the Party's assets or the Party's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary, is contested with diligence and continuity, and is vacated and discharged within one hundred twenty (120) days);

2.26.3 *Tenant Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 24;

2.26.4 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Section 2.26.2 or 2.26.3, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of such Notice, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure; and (c) complete such cure within a reasonable time under the circumstances.

2.27 Extended Term. Defined in Section 2.46.1.

2.28 Federal. Relating or pursuant to the authority of the federal government of the United States of America.

2.29 Fee Estate. Landlord's fee estate in the Rental Space, including Landlord's reversionary interest in the Rental Space after the Termination Date.

2.30 Government. All courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, City, or otherwise) whether in existence on the Effective Date or subsequently established.

2.31 Gross Revenue. The sum of all the following: (a) the gross amount of cash received by Tenant or to be received by Tenant; (b) the fair market value of other property transferred or to be transferred; (c) the outstanding amount of Tenant liabilities assumed, or to be assumed; (d) the value of any liability forgiveness provided to Tenant; or (e) in the case of a Transfer without any of the previously described forms of consideration, the fair market value of the estate or interest in the property transferred. Any fair market value determination shall be as of the date of the subject Transfer.

2.32 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any Law, any matter, waste, or substance subject to any Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

2.33 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Rental Space, or during transportation of any Hazardous Substance to or from the Rental Space, or arising at any time from activities conducted at, on, under, or from the Rental Space, whether or not caused by a Party.

2.34 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including all loss, cost, liability, penalties, judgments, damages and other injury, detriment or expense (including Legal Costs, interest and penalties) the Person suffers or incurs: (a) from, as a result, or on account of the Claim; or (b) in enforcing the Indemnitor's indemnity obligation regarding the Claim.

2.35 Initial Term. Defined in Section 3.1.

2.36 Institutional Lender. Any of the following that is not a Prohibited Transferee: (a) a State or Federal bank; (b) trust company (in its individual or trust capacity); (c) insurance company; (d) credit union; (e) savings bank (State or Federal); (f) pension, welfare or retirement fund or system; (g) real estate investment trust (or an umbrella partnership or other entity of which a real estate investment trust is the majority owner); (h) Federal or State agency regularly making or guaranteeing commercial mortgage loans; (i) a Fortune 500 company; (j) a subsidiary of a Fortune 500 company (such as AT&T Capital Corporation or General Electric Capital Corporation); or (k) any Person that is a wholly owned subsidiary of or is a combination of any two or more of the Persons described in clauses "(a)" through "(j)" of this Section 2.36.

2.37 Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property or Tenant's Operations, including any development, use, maintenance, taxation, operation, occupancy of, or environmental conditions affecting or relating to the Property or Tenant's Operations, or relating to any taxes, or otherwise relating to this Lease or any Party's rights, obligations or remedies under this Lease, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

2.38 Lease Year. Each of: (a) the period from the Effective Date to the first day of the immediately, following calendar month and the subsequent twelve (12) calendar month period; provided, however, if the Effective Date is the first day of a calendar month, then Lease Year 1 is the twelve (12) months following the Effective Date; and (b) every subsequent period of twelve (12) calendar months during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1" and, if the Term is extended, continuing with "Lease Year 3."

2.39 Leasehold Estate. Tenant's leasehold estate in the Rental Space, and all of Tenant's rights and privileges under this Lease, upon and subject to all the terms and conditions of this Lease.

2.40 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and consultant and expert witness fees and expenses.

2.41 Lender. A holder of any Security Instrument and its successors and assigns.

2.42 RESERVED.

2.43 RESERVED.

2.44 Mayor. The Mayor of City or his or her designee or successor in function.

2.45 Monetary Default. Any failure by a Party to pay or deposit, when and as this Lease requires, any amount of money or evidence of any insurance coverage required to be provided under this Lease, whether to or with a Party or a Third Person.

2.46 Monthly Rent. The following monthly rent amounts, which include projected Operating Expenses, are payable by Tenant to Landlord for each calendar month during each respective Lease Year of the Initial Term and the Extension Term:

| | |
|---|---|
| Lease Year 1 | $10,571.36 per calendar month |
| Lease Year 2 | $10,888.50 per calendar month |
| Lease Year 3 | $11,215.15 per calendar month |

2.46.1 RESERVED.

2.46.2 RESERVED.

2.46.3 RESERVED.

2.47 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of its obligations under this Lease; (b) any failure of a Party to comply with any condition, restriction, or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease.

2.48 Notice. Any consent, demand, designation, election, notice, or request relating to this Lease. All Notices must be in writing.

2.49 Notify. To give a Notice.

2.50 RESERVED.

2.51 RESERVED.

2.52 Parking Lot and Parking Garage. The common area parking lot ("Parking Lot") and parking garage ("Parking Garage") as described in **EXHIBIT D** and subject to the Parking Rules and Regulations attached as **EXHIBIT E**, and as amended and established by Landlord from time to time.

Tenant shall have non-exclusive use of the Parking Lot and Parking Garage, as set forth in this Section 2.52. Tenant may use the parking spaces free of charge during the Term subject to the Rules and Regulations attached hereto as **EXHIBIT E**, and as established and amended from time to time by Landlord.

Landlord shall manage, operate and control the Parking Lot in such manner as Landlord, in its sole discretion, deems appropriate, including, establishing and enforcing reasonable rules and regulations applicable to all users of the Parking Lot and Parking Garage. Tenant and its Authorized Representatives shall comply with all rules and regulations established by Landlord for the Parking Lot and Parking Garage. Landlord reserves the right to (a) change, alter or add to the Parking Lot or Parking Garage, (b) rearrange parking spaces in the Parking Lot or Parking Garage, (c) temporarily close the Parking Lot or Parking Garage, Landlord will make reasonable efforts to provide alternative, temporary parking arrangements for Tenant, but is under no obligation to provide Tenant such alternative, temporary parking arrangements, and (d) repair, maintain, restore and perform such other acts with respect to the Parking Lot and Parking Garage in the Landlord's sole discretion.

2.53 Parties. Collectively, Landlord and Tenant.

2.54 Party. Individually, either Landlord or Tenant, as applicable.

2.55 Permitted Leasehold Lender. A Lender holding a Permitted Leasehold Security Instrument. If a Permitted Leasehold Lender assigns its Permitted Leasehold Security Instrument or changes its address, then Landlord shall not be bound by the assignment or change of address, unless and until the affected Permitted Leasehold Lender(s) has/have given Landlord Notice of the address change or the name and address of the new Permitted Leasehold Lender. Any participant or partial assignee holding any direct or indirect interest in a Permitted Leasehold Security Instrument shall not be deemed a Permitted Leasehold Lender or affect Landlord in any way (only the "lead" Lender in any syndicated loan arrangement or loan participation arrangement shall be considered a Permitted Leasehold Lender. A lead Lender may be replaced at any time upon Notice from that Lender, but only the designated lead Lender in any syndication or participation arrangement shall be a Permitted Leasehold Lender.).

2.56 Permitted Leasehold Security Instrument. Any Security Instrument: (a) encumbering the Leasehold Estate or any interest in the Leasehold Estate; and (b) held by a Permitted Leasehold Lender that is an Institutional Lender. Tenant shall provide Landlord with a copy of each Permitted Leasehold Security Instrument (recorded or unrecorded) promptly after it is signed, with a certification by the Permitted Leasehold Lender that the copy is accurate and stating the Permitted Leasehold Lender's name and notice address.

2.57 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

2.58 Personal Property. All personal property (not permanently affixed to the Rental Space or integral to the operation of the Rental Space) brought into the Rental Space by or on behalf of Tenant.

2.59 Prohibited Transferee. Any Person: (a) with whom Landlord is in litigation at the time the Transfer to such Person is made or is to be made by Tenant, exclusive of defendants in eminent domain litigation commenced by Landlord where the right of Landlord to take the subject property is not challenged; (b) that Landlord reasonably determines has any connection with any terrorist organization, including, any foreign governmental entity identified as a "State Sponsor of Terrorism" by the United States Department of State or subject to economic or political sanctions by the United States or any Person identified as a specially designated national or blocked person by the United States Department of the Treasury listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, U.S. Department of the Treasury, or otherwise subject to any other prohibition or restriction imposed by laws, rules, regulations or executive orders, including Executive Order No. 13224, administered by the Office of Foreign Asset Control; (c) that is entitled to claim diplomatic immunity; (d) that is a domestic or foreign governmental entity; or (e) that is immune or may elect to be immune from suit under State or Federal law.

2.60 Property. That certain real property owned by Landlord specifically described in **EXHIBIT A** attached to this Lease.

2.61 Rent. Collectively, all Monthly Rent and all Additional Rent.

2.62 Rental Space. That part of the Property designated Suite 150 as shown in **EXHIBIT B** attached to this Lease.

2.63 Security Deposit. Nine Thousand Three Hundred Ninety-Two Dollars and Fifty-Two Cents ($9,392.52).

2.64 Security Instrument. Any security instrument, mortgage, deed of trust, security deed, contract for deed, deed to secure debt, or other voluntary real property (including leasehold) security instrument(s) or agreement(s) intended to grant real property (including leasehold) security for any obligation (including a purchase-money or other promissory note) encumbering the Leasehold Estate, as entered into, renewed, modified, consolidated, increased, decreased, amended, extended, restated, assigned (wholly or partially), collaterally assigned, or supplemented from time to time, unless and until paid, satisfied, and discharged of record. If two or more such security instruments are consolidated or restated as a single lien or held by the same Permitted Leasehold Lender, then all such security instruments so consolidated or restated shall constitute a single Security Instrument. A participation interest in a Security Instrument (or partial assignment of the secured loan) does not itself constitute a Security Instrument.

2.65 State. The State of California.

2.66 Structural Elements. Defined in Section 9.3.

2.67 Tenant. Mcalister Institute for Treatment & Education, Inc.

2.68 Tenant's Operations. Operation of a business as a substance abuse treatment, recovery, and support services organization.

2.69 Tenant Party(ies). Individually and collectively, Tenant, its employees, agents, contractors, attorneys, and any other Person whom Tenant authorizes or allows to enter the Rental Space.

2.70 RESERVED.

2.71 Term. Defined in Section 2.46.1.

2.72 Termination Date. The date of the expiration or termination of this Lease.

2.73 Third Person. Any Person that is not a Party, an affiliate of a Party, a Landlord Party, or a Tenant Party.

2.74 Transfer. Any assignment, sublease, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, occurring by operation of Law or otherwise, voluntarily or involuntarily, of all or any part of Tenant's legal, beneficial, or equitable interest in this Lease.

2.75 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strike, labor trouble, union activity, casualty, war, act of terrorism, riot, litigation, Government action, regional natural disaster, pandemic, or inability to obtain materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

## 3. TERM.

3.1 Term. This Lease commences on the Effective Date and continues until the end of Lease Year 3 ("**Term**").

3.2 Termination. Landlord may terminate this Lease, for any reason, by providing written notice of termination, sent by U.S. First Class Mail or hand delivered to the address for Notices under Section 9.1 between the hours of 8:00 AM to 5:00 PM on Monday through Friday, at least 180 days prior to the date of termination.

3.2.1 Tenant may terminate this Lease, for any reason, by providing written notice of termination, sent by U.S. First Class Mail or hand delivered to the address for Notices under Section 9.1 between the hours of 8:00 AM to 5:00 PM on Monday through Friday, at least 45 days prior to the date of termination.

3.3 Holdover. If Tenant continues to occupy the Rental Space after the Termination Date, such occupancy shall neither constitute a renewal or extension of this Lease pursuant to Civil Code Section 1945 or otherwise, nor give Tenant any right in or to the Rental Space after the Termination Date. Tenant's occupancy of the Rental Space after the Termination Date with Landlord's consent shall be a month-to-month tenancy and all other terms and conditions of this Lease shall continue in full force and effect, except that Landlord may demand and receive from Tenant monthly rent for the Rental Space calculated by the greater of: a) per diem basis using the fair market rental rate for the Rental Space determined as of the Termination Date by an appraiser

selected by Landlord; or b) monthly rent equal to 150% of the monthly rent owed under this Lease for the month immediately prior to the commencement of the holdover tenancy. Landlord's acceptance of any such monthly rent shall not constitute a renewal or extension of this Lease pursuant to Civil Code Section 1945 or otherwise, nor give Tenant any right in or to the Rental Space.

**4. SECURITY DEPOSIT**. Tenant deposited the Security Deposit with Landlord. Landlord shall hold the Security Deposit as security for Tenant's faithful performance of all the terms, covenants conditions, restrictions, and agreements of this Lease to be observed or performed by Tenant during the Term. If Tenant does not timely perform any provision of this Lease, including the provisions relating to payment of Rent, Landlord may (but shall not be required to) use, apply, or retain the Security Deposit for the payment of any Rent or other amount not timely paid, for the payment of any amount Landlord may spend or become obligated to spend by reason of Tenant's failure to perform, or to compensate Landlord for any other loss or damage Landlord may suffer by reason of Tenant's failure to perform. If any portion of the Security Deposit is so used or applied, Tenant shall, within seven (7) days after Notice requesting replenishment of the Security Deposit, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds. Tenant shall not be entitled to interest on the Security Deposit. If Tenant fully and faithfully observes or performs every term, covenant, condition, restriction, and agreement of this Lease to be observed or performed by Tenant, the unused balance of the Security Deposit will be returned to Tenant within thirty (30) days after the Termination Date Tenant waives all rights regarding the Security Deposit set forth in California Civil Code Section 1950.7, or any similar, related, or successor provision of law.

**5. RENT**. Tenant shall pay the Rent to Landlord on or before the first day of each calendar month, as part of the consideration to Landlord for permitting Tenant to use the Property for Tenant's Operations pursuant to this Lease. The monthly rent amounts set forth in Section 2.46 will be prorated for any partial months.

5.1 Payment. Rent is payable to the City Treasurer in lawful money of the United States of America. Rent payments shall be sent to Landlord by first-class mail through the United States Postal Service unless otherwise instructed via written notice from Landlord, with all postage pre-paid and addressed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

5.2 Required Payment Information. Tenant shall include Landlord's customer account number for Tenant with each Rent payment. Tenant's failure to include its Landlord customer account number may result in Tenant's payment not being timely applied to Tenant's account and the application of late payment charges. Tenant assumes all risk of loss and responsibility for all fees or penalties arising from its failure to include its Landlord customer account number with a Rent payment. The place of payment may be changed at any time by Landlord upon thirty (30) days prior Notice to Tenant. Payments are considered paid on the date the payment is negotiated by the financial institution on which the payment is drawn. Tenant assumes all risk of loss and responsibility for late payment charges if payments are sent by mail.

5.3 Invoicing Courtesy. Landlord may invoice Tenant for monetary amounts payable under this Lease. However, any such invoicing is a courtesy only. Tenant shall make all payments becoming due under this Lease on or before each applicable due date, regardless of whether or not Landlord invoiced the required payment.

5.4 Additional Rent. In addition to Monthly Rent, Tenant shall pay to Landlord (or the appropriate Third Person, as applicable) all Additional Rent. Except where this Lease expressly provides otherwise, Tenant shall pay all Additional Rent prior to delinquency.

5.5 No Offsets. Tenant shall pay all Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

5.6 Delinquent Rent. If Tenant fails to pay Rent when due, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the delinquent Rent. If the Rent remains unpaid after fifteen (15) days past due, Tenant shall pay an additional five percent (5%) (a total of ten percent (10%) of the delinquent Rent). The payments required in this Section 5.6 are agreed by the Parties to be reasonable amounts to compensate Landlord for the cost of servicing the delinquent account. In no event shall the charge for late payment of Rent be less than Twenty-Five Dollars ($25). Acceptance of late charges or any portion of the late Rent payment by Landlord shall neither constitute a waiver of Tenant's Default regarding the late payment nor prevent Landlord from exercising any rights or remedies available pursuant to this Lease, at Law, or in equity arising from such Default.

## 6. ADDITIONAL PAYMENTS BY TENANT; TAXES.

6.1 RESERVED.

6.2 RESERVED.

6.3 Taxes; Possessory Interest Taxes. Tenant shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Tenant, Tenant's Operations, the Rental Space, or Personal Property. Tenant acknowledges and agrees that this Lease may create a possessory interest in the Property subject to property taxation. Any possessory interest tax imposed as a result of this Lease shall be solely a tax liability of Tenant and shall be paid before delinquency by Tenant. In addition, Tenant shall pay before delinquency all personal property taxes becoming due for equipment, fixtures, inventory, or other Personal Property of Tenant or any Tenant Party installed, maintained, or present at or in the Rental Space.

6.4 Documentary Transfer Tax. Tenant shall pay all documentary transfer taxes imposed by the State, the County or other Government under California Revenue and Taxation Code Sections 11911, *et seq.*, with respect to entry into this Lease, each modification to this Lease, each extension of this Lease, each Transfer, or otherwise imposed regarding this Lease or Tenant.

6.5 Transfer of Leasehold Estate. Without limiting the generality of Tenant's obligations to pay taxes as required by Section 6.3 and subject to the limitations on Transfers in this Lease, Tenant agrees that it shall pay all increases in taxes resulting from a change in ownership of the leasehold estate.

6.6 Utilities. All utilities for the Rental Space shall be installed underground and shall be used for Tenant's Operations only. Landlord shall not be liable for any interference with or disruption of any utilities or services for the Rental Space, unless such interference or disruption results solely from landlord's gross negligence or willful misconduct while acting in its proprietary capacity, except to the extent Landlord is immune under applicable law and subject to any defense to such liability available to Landlord.

6.7 Unauthorized Use Charge. Tenant shall pay Landlord one hundred (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the Rental Space that is not for Tenant's Operations within thirty (30) days after Tenant receives such revenue. Nothing in this Section 6.7 or Landlord's acceptance of any payment under this Section 6.7 is intended to authorize any use of the Rental Space that is not for Tenant's Operations, waive Tenant's Default for conducting or allowing such use, or waive any Landlord right or remedy under this Lease.

## 7. RENTAL SPACE USE.

7.1 Tenant's Operations. Tenant shall only use the Rental Space during the Term for Tenant's Operations in compliance with Law and this Lease and no other uses. Tenant shall operate the Rental Space in a manner that will provide decent, safe and sanitary facilities to all users of the Rental Space and will comply with all the provisions of this Lease and all applicable Law, including but not limited to the Building Rules and Regulations attached hereto as **EXHIBIT C** and incorporated herein by reference. Tenant shall keep all areas immediately adjacent to the Rental Space clean and clear of refuse and obstructions. Tenant shall be solely responsible for

operation of the Rental Space. Landlord shall have no responsibility for operation of the Rental Space.

7.1.1 RESERVED.

7.2 No Nuisance. Tenant shall not create or allow a nuisance, as defined in California Civil Code section 3479, in, around, or related to its use of the Rental Space.

7.4 Continuous Operation. If Tenant's Operations in the Rental Space are discontinued for more than sixty (60) days other than due to a casualty or other event constituting an Unavoidable Delay, Landlord may, in its sole and absolute discretion, terminate this Lease immediately by Notice to Tenant.

7.5 Accident Reports. Tenant shall immediately, or as soon as practicable and not more than 48 hours after Tenant becomes aware of any accident, in or around the Rental Space causing property damage or injury to any Person, report to Landlord the names and addresses of the Person(s) involved, the circumstances, the date and hour of the accident, the names and addresses of all witnesses, and all other pertinent information.

**8. ACCEPTANCE OF RENTAL SPACE IN AS-IS CONDITION**. TENANT ACKNOWLEDGES AND AGREES THAT IT HAS OCCUPIED THE RENTAL SPACE PURSUANT TO A SEPARATE AGREEMENT WITH LANDLORD WHICH COMMENCED ON AUGUST 7, 2019 PRECEDING THE EFFECTIVE DATE. TENANT ACCEPTS ALL PHYSICAL CONDITIONS OF THE RENTAL SPACE, AS OF THE EFFECTIVE DATE, AND RELEASES LANDLORD FROM ALL LIABILITY WHATSOEVER FOR ALL KNOWN OR UNKNOWN CONDITIONS OF THE RENTAL SPACE. TENANT SHALL ENTER THE RENTAL SPACE FOR THE TENANT'S OPERATIONS PURSUANT TO THIS LEASE, IN THE RENTAL SPACE'S "AS IS," "WHERE IS" AND "SUBJECT TO ALL FAULTS" CONDITION, AS OF THE EFFECTIVE DATE. TENANT ACKNOWLEDGES AND AGREES THAT IT IS RELYING SOLELY UPON ITS OWN KNOWLEDGE OR INVESTIGATION OF THE RENTAL SPACE, AS IT DEEMS APPROPRIATE. TENANT IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION BY ANY LANDLORD PARTY RELATING TO THE CONDITION OF THE RENTAL SPACE. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 8, LANDLORD MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE RENTAL SPACE OR WHETHER THE RENTAL SPACE PRESENTLY COMPLIES WITH ANY LAW. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 8, TENANT, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES LANDLORD AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO THE PHYSICAL CONDITION OF THE RENTAL SPACE OR COMPLIANCE OF THE RENTAL SPACE WITH ANY LAW APPLICABLE TO THE RENTAL SPACE. TENANT EXPRESSLY WAIVES ANY RIGHTS OR BENEFITS AVAILABLE TO IT WITH RESPECT TO THE RELEASES CONTAINED IN THIS SECTION 8 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR

SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY, INCLUDING CALIFORNIA CIVIL CODE SECTION 1542. THE PROVISIONS OF THIS SECTION 8 SHALL SURVIVE THE TERMINATION DATE.

## 9. IMPROVEMENTS.

9.1 Improvements. Tenant shall not make or permit any other Person to make any alterations or improvements in or to the Rental Space without the prior written consent of Landlord. Furthermore, all alterations, improvements, or fixtures, except furniture or trade fixtures, made or placed in or on the Rental Space by Tenant or any other Person shall become the property of Landlord on the Termination Date. Landlord shall have the option, however, on or after the Termination Date, to require Tenant, at Tenant's sole cost and expense, to remove such alterations, improvements, or fixtures from the Rental Space. Except as required by Law, Landlord is not obligated to make or pay for any repair, improvement, or alteration to the Rental Space.

9.2 Approvals. Tenant shall not make any improvement to or install any Personal Property in or on the Rental Space without first obtaining all necessary Approvals for such improvement or installation work. In obtaining any necessary Approval for improvement to or installation in or on the Rental Space, Tenant shall inform each Government to which Tenant applies for an Approval, in writing, that the Property is Landlord-owned.

9.3 Maintenance by Landlord. Landlord shall, at its own cost and expense and subject to Section 6, maintain in good condition and repair the structural elements of the building containing the Rental Space ("**Building**"). For purposes of this Lease, "**Structural Elements**" means and refers to the exterior roof, exterior walls (except show window glass), structural supports, and foundation of the Building. Landlord shall not be liable for any damages to Tenant or Tenant's Personal Property resulting from Landlord's failure to make any repairs required by this Section 9.3, unless Notice of the need for those repairs is given to Landlord by Tenant and Landlord does not make the repairs within 180 days after receipt of the Notice, unless prevented by an Unavoidable Delay. Notwithstanding anything in this Section 9.3 to the contrary, Tenant shall promptly reimburse Landlord for the full cost of all repairs made pursuant to this Section 9.3 because of the negligence or other fault of Tenant or a Tenant Party.

9.4 Maintenance by Tenant. Except as otherwise expressly provided in Section 9.3, Tenant shall at its own cost and expense keep and maintain the Rental Space and all Personal Property located in, on, or at the Rental Space in a good, safe, clean and organized condition, reasonable wear and tear excepted. Tenant's obligation to repair shall specifically include necessary repairs to interior walls, floor coverings, ceilings and painting of interior portions of all doors.

9.5 Landlord Entry. Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Rental Space at all reasonable times (and at any time during an emergency) for the purpose of inspecting the Rental Space to determine whether Tenant is complying with the terms of this Lease, for the purpose of doing other lawful acts that may be necessary to protect Landlord's interest in the Rental Space, or for the purpose of performing

Landlord's duties under this Lease or Law. Tenant shall make a representative available to be present at any Landlord entry into the Rental Space pursuant to this Section 5 on 48 hours' Notice; provided, however, the presence of a Tenant representative is not required for Landlord to exercise its rights under this Section 5.

9.6 Protection Against Claims or Liens. IF ANY CLAIM OR LIEN IS RECORDED OR ASSERTED AGAINST THE RENTAL SPACE, THE PROPERTY, OR LANDLORD FOR MATERIALS OR EQUIPMENT SUPPLIED OR LABOR OR SERVICES PERFORMED DIRECTLY OR INDIRECTLY FOR TENANT OR A CONTRACTOR OF TENANT RELATING TO CONSTRUCTION, DEMOLITION, MAINTENANCE, INSTALLATION, REMOVAL OR OTHER WORK ON THE RENTAL SPACE, TENANT SHALL SATISFY AND DISCHARGE SUCH CLAIM OR LIEN, AT THE SOLE COST AND EXPENSE OF TENANT, WITHIN TEN (10) DAYS FOLLOWING NOTICE OF THE EXISTENCE OR ASSERTION OF SUCH CLAIM OR LIEN. NOTICE IS HEREBY GIVEN THAT NEITHER LANDLORD, THE RENTAL SPACE, OR THE PROPERTY SHALL BE LIABLE FOR ANY SERVICES, LABOR, OR MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO TENANT OR TENANT'S CONTRACTOR(S) UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY SERVICES, LABOR, MATERIALS OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE RENTAL SPACE OR THE PROPERTY. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, PROFESSIONAL, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, DEMOLITION, MAINTENANCE, INSTALLATION, REMOVAL OR OTHER WORK ON THE RENTAL SPACE OR THE PROPERTY, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY CLAIM OR LIEN AGAINST THE RENTAL SPACE OR THE PROPERTY.

9.7 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE RENTAL SPACE AND THE PROPERTY ARE OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THE RENTAL SPACE AND THE PROPERTY ARE NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE RENTAL SPACE OR THE PROPERTY. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE RENTAL SPACE OR THE PROPERTY OF SUCH FACT AND THAT LANDLORD, THE RENTAL SPACE, AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

9.8 Signs. Tenant shall comply with all Laws requiring the posting of signs in or at the Rental Space. Tenant shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Property without Landlord's prior written consent, in each instance, which consent may be given or withheld in

Landlord's sole and absolute discretion. If any such unauthorized item is found in or at the Rental Space, Tenant shall remove the item at Tenant's sole cost and expense within twenty-four (24) hours after Notice from Landlord requesting the removal. If Tenant does not remove the item within such twenty-four (24) hour period, Landlord may enter the Rental Space and remove the item at Tenant's sole cost and expense. If Landlord performs work required of Tenant pursuant to this Section 9.8, Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of such costs. Any amount reimbursable to Landlord by Tenant pursuant to this Section 9.8 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest from the date incurred until paid.

**10. TENANT INSURANCE**. Tenant shall maintain, to protect the Landlord Parties against all insurable Claims arising from or relating to this Lease, the Rental Space, or the Personal Property, at the sole cost and expense of Tenant, all the insurance coverage required in **EXHIBIT F** attached to this Lease.

**11. WASTE OR DAMAGE**. Tenant shall immediately Notify Landlord of any waste, casualty, or damage to the Rental Space or the Property. Tenant shall not commit, or allow to be committed, any waste, casualty, or damage to property or injury to person in or around the Rental Space. If waste, casualty, or damage to the Rental Space or the Property arises from Tenant's Operations, at Landlord's election, in Landlord's sole and absolute discretion, Tenant shall make, or cause to be made, full repair of the waste, casualty, or damage and restore the Rental Space or the Property to its condition existing immediately prior to the waste, casualty, or damage. Tenant shall commence preliminary steps toward restoration of the Rental Space or the Property, as applicable, as soon as practicable, but no later than thirty (30) days after the date the waste, casualty, or damage occurs. Tenant shall complete all required repairs or restoration within ninety (90) days after the date the waste, casualty, or damage occurs. Tenant must obtain all Approvals required for repair or restoration of all waste, casualty, or damage to the Rental Space or the Property.

**12. DAMAGE TO OR DESTRUCTION OF STRUCTURAL ELEMENTS.**

12.1 Landlord's Right to Terminate Lease. Notwithstanding Section 9.3, Landlord shall have the right to terminate this Lease and shall have no obligation to repair, restore, or rebuild the Structural Elements under any of the following circumstances:

12.1.1 Damage or destruction from an insured casualty when the damage or destruction cannot reasonably be repaired, restored, or rebuilt within a period of 90 days; or

12.1.2 Damage or destruction from an uninsured casualty when the cost of repair, restoration, or rebuilding not covered by insurance exceeds $25,000.

12.2 Notice of Termination. If Landlord elects to terminate this Lease under any of the circumstances described in Section 12.1, Landlord shall give Notice to Tenant not later than 60 days after occurrence of the damage or destruction.

**13. ENVIRONMENTAL CONDITIONS.** Tenant shall not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant shall Notify Landlord of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following Tenant discovering or becoming aware of such Environmental Condition.

13.1 Remediation. If Tenant's action or inaction results in an Environmental Condition, Tenant shall remediate the Environmental Condition for unrestricted use of the Property in accordance with Law, at Tenant's sole cost and expense. If Tenant knows or reasonably believes an Environmental Condition is an imminent danger to public health and safety, Tenant shall take all action necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

13.2 Removal. If Tenant stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Rental Space in accordance with Law, Tenant shall remove all such Hazardous Substances from the Rental Space prior to the Termination Date and provide Landlord with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant shall be responsible for all costs incurred by Landlord to remove or dispose of any Hazardous Substances not removed from the Rental Space by Tenant in accordance with this Section 13.2.

13.3 Reports. Tenant shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to Landlord within three (3) days after Notifying Landlord of the Environmental Condition. Tenant shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

13.4 Environmental Assessment. If Landlord Reasonably believes that Tenant's action or inaction resulted in an Environmental Condition, Landlord may cause an environmental assessment of the Rental Space to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Tenant's sole cost and expense. Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing the environmental assessment within fifteen (15) days after Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to Landlord by Tenant pursuant to this Section 13.4 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest from the date incurred until paid.

**14. COMPLIANCE WITH LAW.** Tenant's Operations shall comply with all Laws, at Tenant's sole cost and expense. Tenant shall comply with all notices issued by Landlord or any other Government under the authority of current or future Law. Tenant shall not conduct any Tenant's Operations without first obtaining all necessary Approvals. Tenant shall promptly deliver

to Landlord documentary evidence of all Approvals obtained by Tenant regarding Tenant's Operations.

**15. COMPLIANCE WITH LANDLORD STANDARD CONTRACT PROVISIONS.** Tenant shall comply with all Landlord standard contract provisions set forth in **EXHIBIT G** attached to this Lease.

**16. TENANT INDEMNITY OBLIGATIONS.** In addition to other obligations of Tenant to Indemnify Landlord Parties stated in this Lease, Tenant shall Indemnify the Landlord Parties against each Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of a Tenant Party; (b) any Application made at Tenant's request; (c) any agreement Tenant (or anyone claiming by or through Tenant) makes with a Third Person regarding this Lease, the Rental Space, Tenant's Operations, or any Personal Property; (d) any claim or lien for services, labor, material, or equipment supplied to or for Tenant or Tenant's Operations; (e) any workers' compensation Claim relating to an employee or contractor of a Tenant Party; (f) any Environmental Claim relating to the Rental Space or relating to or arising from any action or failure to act of a Tenant Party or Tenant's Operations; or (g) any Hazardous Substance Discharge relating to or arising from any action or failure to act of a Tenant Party or Tenant's Operations.

16.1 Independent of Insurance Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall not be construed or interpreted as in any way restricting, limiting, or modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the Landlord Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations or other obligations under this Lease shall not in any way restrict, limit, or modify Tenant's obligations to Indemnify the Landlord Parties under this Lease and are independent of Tenant's obligations to Indemnify the Landlord Parties or other obligations under this Lease.

16.2 Survival of Indemnification and Defense Obligations. Tenant's obligations to Indemnify the Landlord Parties under this Lease shall survive the Termination Date, until all actual or prospective Claims regarding any matter subject to such obligations are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

16.3 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the Landlord Parties:

16.3.1 *Notice.* The Landlord Parties shall Notify Tenant of any Claim within a reasonable time.

16.3.2 *Selection of Counsel.* Tenant shall select legal counsel reasonably acceptable to the Landlord Parties. Legal counsel to Tenant's insurance carrier that is providing coverage for a Claim shall be reasonably acceptable to the Landlord Parties, except in the event of a potential or actual conflict of interest for such legal counsel regarding such representation, such legal counsel is reasonably determined by the Landlord Parties to be incompetent regarding such representation, or Tenant provides a defense to the Landlord Parties under a reservation of rights. Even though Tenant shall defend the Claim, the Landlord Parties may, at the Landlord Parties' option and the Landlord Parties' own expense, engage separate legal counsel to advise the

Landlord Parties regarding the Claim and the Landlord Parties' defense. Where Tenant provides a defense to the Landlord Parties under a reservation of rights, an actual or potential conflict of interest between Tenant and the Landlord Parties or another Person exists and the Landlord Parties do not consent to the representation, or Tenant's legal counsel is reasonably determined by the Landlord Parties to be incompetent regarding the representation, in each case, Tenant shall pay the Legal Costs of the Landlord Parties' separate legal counsel. The Landlord Parties' separate legal counsel may attend all proceedings and meetings relating to the Claim. Tenant's legal counsel shall actively consult with the Landlord Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

16.3.3 *Cooperation*. The Landlord Parties shall reasonably cooperate with the Tenant's defense of the Landlord Parties.

16.3.4 *Settlement*. Tenant may only settle a Claim against the Landlord Parties with the consent of the Landlord Parties. Any settlement shall procure a complete release of the Landlord Parties from the subject Claim, shall not require the Landlord Parties to make any payment to the claimant, and shall provide that neither the Landlord Parties, nor Tenant on behalf of the Landlord Parties, admits any liability.

**17. LANDLORD CURE RIGHT**. If Tenant at any time fails to take any action this Lease requires of Tenant, without waiving or releasing Tenant from any obligation, Default, or Event of Default and without waiving Landlord's right to take such action as this Lease may permit as a result of a Default or Event of Default, Landlord may (but is not obligated to) take such action. Tenant shall reimburse Landlord for an amount equal to: (a) all reasonable costs and expenses (including Legal Costs) incurred by Landlord in exercising its cure rights under this Section 17; and (b) Default Interest on all amounts described in clause "(a)" from the date incurred until all such amounts are reimbursed in full to Landlord by Tenant. Nothing in this Section 17 is intended to modify or restrict any other cure right provided to Landlord in this Lease.

**18. REMEDIES**. If an Event of Default occurs, then Landlord, at Landlord's option, in Landlord's sole and absolute discretion, may pursue any or all the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law, or in equity, or under any other provision of this Lease:

18.1.1 *Termination of Tenant's Rights*. Landlord may terminate Tenant's right to possession of the Rental Space by any lawful means, including Notice of termination to Tenant, in which case this Lease and the Term shall terminate, such date of termination shall be the Termination Date, and Tenant shall immediately surrender possession of the Rental Space to Landlord pursuant to Section 22.

18.1.2 *Recovery of Damages Following Termination*. Upon termination of this Lease pursuant to Section 18.1.1, Landlord may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) 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 Tenant proves could have been reasonably avoided;

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

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

(e) The "worth at the time of award" of the amounts referred to in Sections 18(a) and 18(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 18(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

18.1.3 *Taking Possession.* Landlord may re-enter and take possession of the Rental Space with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without being liable for damages or guilty of trespass or terminating this Lease. This Section 18.1.3 is intended to constitute an express right of re-entry in favor of Landlord. No re-entry by Landlord, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by Landlord, Landlord may, at any time and from time to time, relet the Rental Space. Landlord may at Landlord's election, in Landlord's sole and absolute discretion, eject all Persons or eject some and not others or eject none. Landlord shall apply all rents from any such reletting in the manner provided in Section 18.3. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may enter into any leases made under this Section 18.1.3 in Landlord's name and shall be entitled to all rents from the use, operation, or occupancy of the Rental Space. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of Landlord under this Section 18.1.3 shall constitute a termination of this Lease unless Landlord gives Tenant Notice of termination of this Lease.

18.1.4 *Suits Before Expiration Date.* Landlord may sue Tenant for damages or to recover Rent, from time to time, at Landlord's election, in Landlord's sole and absolute discretion.

18.1.5 *Receipt of Moneys.* No receipt of money by Landlord from Tenant after termination of this Lease, or after the giving of any Notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive Landlord's right to enforce payment of any Rent payable or later falling due, or Landlord's right to recover possession of the Rental Space by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of Notice of termination of this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession,

Landlord may demand, receive, and collect any moneys due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation of the Rental Space by Tenant or, at Landlord's election in Landlord's sole and absolute discretion, on account of Tenant's liability.

18.1.6 *No Waiver*. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, condition, or restriction of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, shall waive any such Default Event of Default, or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, shall be modified or waived, except by a written instrument signed by Landlord. No waiver of any Default shall amend this Lease. Each covenant, agreement, term, condition, and restriction of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

18.1.7 *Damages*. Landlord may recover from Tenant all damages Landlord incurs because of Tenant's Default, including reasonable costs of recovering possession, reletting the Rental Space, all other damages legally recoverable by Landlord, and reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. Landlord may recover such damages at any time after Tenant's Default, including after the Termination Date. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each month's Rent not paid, or each month's accrual of damages for Tenant's Default, but may bring and prosecute a single combined action for all such Rent and damages.

18.1.8 *Continue Lease*. Landlord may, at Landlord's option, in Landlord's sole and absolute discretion, maintain Tenant's right to possession of the Rental Space. Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). In that case, this Lease shall continue, and Landlord may continue to enforce it, including the right to collect Rent when due and any remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease are reasonable.

18.2 Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Non-Monetary Default.

18.3 Proceeds of Reletting. Landlord shall apply the proceeds of any reletting of the Rental Space as follows, without duplication, but including Default Interest on all such amounts:

18.3.1 *Landlord's Costs*. First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any construction, and the cost

and expense of removing all Persons and property from the Rental Space, including reasonable and customary brokerage commissions and Legal Costs;

18.3.2 *Preparation for Reletting*. Second, to pay to itself the cost and expense reasonably sustained in securing any new tenants or other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Rental Space for reletting;

18.3.3 *Costs of Maintenance and Operation*. Third, to the extent that Landlord shall maintain and operate the Rental Space, to pay to itself the reasonable cost and expense of doing so; and

18.3.4 *Residue*. Fourth, to pay to itself any balance remaining of Tenant's liability to Landlord.

**19. LEGAL ACTIONS**. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Lease or recover damages.

**19. CUMULATIVE RIGHTS AND REMEDIES**. The rights and remedies of the Parties under this Lease are cumulative with the other rights or remedies of the Parties under this Lease, at law, or in equity. The exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other right or remedy for the same Default or Event of Default or the same right or remedy for any other Default or Event of Default.

**20. SECURITY AND SAFETY OF RENTAL SPACE**. Tenant shall bear sole responsibility for the security and safety of the Rental Space during the Term. Tenant shall be responsible for the maintenance, cleanup, and securing of the Rental Space. Tenant shall comply with all Laws, at Tenant's sole cost and expense, with respect to maintaining the Rental Space in a safe and secure manner during the Term.

**21. ENCUMBRANCES**. Tenant shall keep the Rental Space free from all encumbrances and liens of any nature arising out of or in any manner directly or indirectly connected with this Lease or the Tenant's Operations. Tenant shall Indemnify Landlord from and against all such encumbrances or liens relating to or charged against the Rental Space, including Tenant's failure or the failure of any contractor or subcontractor hired by Tenant to pay any Person referred to in California Civil Code Section 3181 or other applicable Law.

**22. SURRENDER.**

23.1 Tenant Removal of Personal Property and Improvements. Before the Termination Date, Tenant shall, at its sole cost and expense, remove from the Rental Space and repair all damage from such removal, all in a manner reasonably satisfactory to Landlord: (a) all Personal Property brought into the Rental Space by or on behalf of Tenant; and (b) all improvements made to the Rental Space by or on behalf of Tenant. No later than the Termination Date, Tenant shall surrender and deliver the Rental Space to Landlord in as good a condition as the Rental Space existed on the Effective Date, excluding reasonable wear and tear.

23.2 Landlord Removal of Personal Property or Improvements. Landlord shall have the right to perform the work required of Tenant pursuant to Section 23.1 if Tenant does not either: (i) commence performing the work required by Section 23.1 within the required time, or (ii) complete all work required by Section 23.1 within the required time. If Landlord performs work required of Tenant pursuant to Section 23.1, Tenant shall reimburse Landlord for all costs and expenses reasonably incurred by Landlord in performing such work (including the costs of Landlord staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of the amount of such costs. Any amount reimbursable to Landlord by Tenant pursuant to this Section 23.2 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest from the date incurred until paid.

23.3 Quitclaim of Tenant's Interests. Following the Termination Date, Tenant shall sign, acknowledge, and deliver to Landlord a quitclaim deed acceptable to Landlord conveying all of Tenant's right, title, and interest in and to the Rental Space to Landlord, within thirty (30) days following Notice requesting such quitclaim deed. If Tenant fails or refuses to sign, deliver, and record such quitclaim deed to Landlord within the provided thirty (30) day period, Tenant appoints Landlord as its attorney-in-fact to sign, deliver, and record such a quitclaim deed, which appointment is irrevocable and coupled with an interest.

**24. TRANSFER.** Tenant shall not have any right to make or allow any Transfer without the prior written consent of Landlord, which may be given or withheld in the Landlord's reasonable discretion. Tenant acknowledges and agrees that, under the circumstances that this Lease is entered into by Landlord and Tenant, the restrictions in this Lease on Transfers are reasonable.

24.1 Transfer Revenue Sharing with Landlord. If Landlord approves a Transfer, Tenant shall pay to Landlord two percent (2%) of the Gross Revenue resulting from the Transfer, except for Permitted Transactions, as defined in Section 24.3, on or before the effective date of the Transfer.

24.2 Transfers to Lenders. At any time, a Transfer may be made to: (a) a Permitted Leasehold Lender or its Affiliate as collateral under a Permitted Leasehold Security Instrument, without Landlord's consent; (b) a Person who obtains the Leasehold Estate (or an interest therein) through exercise of remedies under a Permitted Leasehold Security Instrument, with Landlord's prior written consent, in Landlord's sole and absolute discretion.

24.3 No Transfers to Prohibited Transferees. Notwithstanding Sections 24.1 or 24.2 or any other provision of this Lease to the contrary, Tenant shall not make any Transfer to a Prohibited Transferee. Any assignment, sublease, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer in violation of the terms and conditions of this Section 24 shall be void. The provisions of this Section shall not apply to the following "**Permitted Transactions**":

24.3.1 an assignment or transfer or a beneficial interest in Tenant's leasehold estate resulting from a devise, bequest, or intestate succession for the benefit of Tenant's principal owner or chief executive officer (if Tenant is other than an individual); or

24.3.2 such other assignment or transfer due to a reorganization or other activity of Tenant which Landlord reasonably determines does not result in a substantial change with

respect to the direct or indirect legal and equitable ownership interests in Tenant, because there is no material change in the equity, in the beneficial use of, or in the legal title to the leasehold as an asset or the income produced thereby.

24.4 Leasehold Security Instruments.

24.4.1 Tenant's Rights. Subject to the terms and conditions of this Lease, Tenant shall have the right during the Term to: (a) make and deliver one or more Permitted Leasehold Security Instrument(s) encumbering this Lease and the Leasehold Estate, provided that all Defaults are cured before or on the effective date of the Permitted Leasehold Security Instruments; and (b) assign (absolutely or collaterally) Tenant's rights under this Lease to any Permitted Leasehold Lender as collateral under a Permitted Leasehold Security Instrument.

24.4.2 Limitations on Leasehold Security Instruments. Landlord shall not be required to join in, or "subordinate" the Fee Estate to, any Permitted Leasehold Security Instrument. Under no circumstances shall the Fee Estate be subject to any Security Instrument made or entered into by or on behalf of Tenant or any Person other than Landlord. Permitted Leasehold Security Instruments may only secure repayment of financing being applied solely to pay the cost of alterations or improvements to the Rental Space. Notwithstanding anything to the contrary contained in this Lease, any grant of a Security Instrument in the Leasehold Estate during a period while any Notice of Default to Tenant is outstanding under this Lease shall not encumber the Leasehold Estate and shall be a Default by Tenant, subject to applicable Notice and cure periods, unless all Defaults of Tenant under this Lease are cured concurrent with the grant of such Security Instrument.

24.4.3 Effect on Landlord. No Permitted Leasehold Security Instrument shall affect, limit, or restrict Landlord's rights or remedies under this Lease, except as this Lease expressly states. If a Permitted Leasehold Security Instrument purports to encumber or attach to the Fee Estate, then such Permitted Leasehold Security Instrument shall be null, void, and of no force or effect to the extent that it purports to affect the Fee Estate. Nothing in any Permitted Leasehold Security Instrument shall bind Landlord or impose any obligation or liability on Landlord.

24.4.4 Leasehold Estate Acquisition. Subject to the terms of this Lease, a Permitted Leasehold Lender may initiate and complete a foreclosure of the Leasehold Estate and exercise any other rights or remedies against Tenant and the Leasehold Estate (but not the Fee Estate) under its Permitted Leasehold Security Instrument. Notwithstanding any other provision of this Lease to the contrary, before any Permitted Leasehold Lender or any other assignee or purchaser acquires the Leasehold Estate, it shall, as an express condition precedent to acquisition of the Leasehold Estate, agree in writing for the benefit of Landlord to assume each obligation of Tenant under this Lease. No Permitted Leasehold Lender (or anyone whose title derives from a Permitted Leasehold Lender) shall have any personal liability under this Lease unless and until (and then only so long as) it is Tenant under this Lease. Any such personal liability shall be limited to the Person's interest in this Lease.

24.4.5 Permitted Leasehold Lender Notice of Default. Any Landlord right to terminate this Lease following any Tenant Default shall be conditioned upon Landlord first

Notifying each Permitted Leasehold Lender of which Landlord received Notice and an address for service of Notice of the Default, and no Permitted Leasehold Lender timely curing such Default, timely acquiring the Leasehold Estate, or timely commencing foreclosure proceedings under its Permitted Leasehold Security Instrument to acquire the Leasehold Estate, all in accordance with Section 24.4.6.

24.4.6 Permitted Leasehold Lender's Cure Rights. If any Tenant Default occurs, then any Permitted Leasehold Lender shall have the time provided for below in this Section 24.4.6 within which to take (if such Permitted Leasehold Lender so elects) whichever of the actions set forth below as shall apply to such Default:

(a) *Monetary Defaults*. In the case of a Monetary Default, Permitted Leasehold Lender may, at its option, cure such Default, within fifteen (15) days following expiration of Tenant's cure period under this Lease for such Monetary Default.

(b) *Non-Monetary Defaults Curable Without Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender can reasonably cure without obtaining possession of the Premises (excluding any Tenant-Specific Default), provided that Permitted Leasehold Lender has cured all Monetary Defaults, Permitted Leasehold Lender may: (a) Notify Landlord of the Permitted Leasehold Lender's intent to cure the Non-Monetary Default; (b) within thirty (30) days following expiration of Tenant's cure period for such Non-Monetary Default, commence to cure such Non-Monetary Default; and (c) diligently prosecute the cure of such Non-Monetary Default to completion within a reasonable time under the circumstances.

(c) *Defaults Curable Only by Obtaining Possession*. In the case of any Non-Monetary Default that a Permitted Leasehold Lender cannot reasonably cure without possession of the Rental Space, Permitted Leasehold Lender shall be entitled (but not required) to do the following:

(i) **Pursue Premises Control**. At any time within thirty (30) days following expiration of the cure period (if any) applicable to Tenant, or if no cure period applies to Tenant, then within thirty (30) days after receiving Notice of the Non-Monetary Default, Permitted Leasehold Lender may initiate proceedings to obtain Premises Control, and then diligently prosecute such proceedings to completion. If a Permitted Leasehold Lender obtains Control of the Rental Space in accordance with this Section 22(c)(i) (whether before or after the expiration of any cure period that otherwise applies), that Permitted Leasehold Lender shall proceed with reasonable diligence to cure all Non-Monetary Defaults within: (i) thirty (30) days after such Permitted Leasehold Lender obtains Control of the Rental Space; or (ii) if such Non-Monetary Default is not reasonably susceptible of cure within such thirty (30) day period, then within a reasonable time under the circumstances.

(ii) **Performance of Lease Obligations**. Perform all of Tenant's covenants and obligations under this Lease that can be performed by such Permitted Leasehold Lender, until the applicable Permitted Leasehold Security Instrument is released or reconveyed or the Leasehold Estate is transferred by judicial foreclosure, exercise of power of sale, or assignment in lieu of foreclosure, in each case under a Permitted Leasehold Security Instrument and in compliance with this Lease.

24.4.7 Indemnity Regarding Cure Activities. Notwithstanding anything to the contrary in this Lease, if any Permitted Leasehold Lender desires to enter the Rental Space to cure any Default, then, as a condition to such entry, such Permitted Leasehold Lender shall agree in writing to Indemnify the Landlord Parties regarding Claims arising from any negligence or willful misconduct of such Permitted Leasehold Lender in pursuing the cure of any such Default, except Claims arising solely from the active negligence or willful misconduct of the Landlord Parties.

24.4.8 Limited Assignment of Security Instruments. No Permitted Leasehold Lender shall assign its Permitted Leasehold Security Instrument, in whole or in part, to any Person in any manner that would result in a Person that is not an Institutional Lender Controlling such Permitted Leasehold Security Instrument or Controlling the payment or performance obligations secured by such Permitted Leasehold Security Instrument.

**25.** RESERVED.

**26. LANDLORD'S RESERVATION OF RIGHTS.**

26.1 Government Action. By entering into this Lease, Landlord is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Rental Space, including re-zonings, variances, environmental clearances, any Approval required for Tenant's Operations, or otherwise. Tenant shall diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from Landlord and other Governments necessary for Tenant's Operations.

26.2 Natural Resources. Landlord reserves all right, title, and interest in all natural resources relating to the Rental Space, including subsurface natural gas, oil, minerals, and water, on or within the Rental Space.

**27. EMINENT DOMAIN.** If all or part of the Rental Space or any other part of the Property is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any Government with the power of eminent domain over the Property, the interests of Landlord and Tenant shall be as follows:

27.1 Full Taking. If all or substantially all the Rental Space or access to the Rental Space is taken, this Lease shall terminate on the earlier of the date title or possession of the Rental Space or access to the Rental Space is transferred to the condemning Government.

27.2 Partial Taking - Remainder Unusable. If a partial taking of the Rental Space or access to the Rental Space occurs and, in Landlord's sole and absolute discretion, the remaining part of the Rental Space or access to the Rental Space is unsuitable for Tenant's Operations, this Lease shall terminate on the earlier of the date title or possession of the part of the Rental Space or access to the Rental Space taken is transferred to the condemning Government.

27.3 Partial Taking - Remainder Usable. If a partial taking of the Rental Space or access to the Rental Space occurs and, in Landlord's sole and absolute discretion, the part of the Rental Space or access to the Rental Space not taken is suitable for Tenant's Operations, this Lease shall terminate regarding the part of the Rental Space or access to the Rental Space taken on the earlier

of the date title or possession of the part of the Rental Space or access to the Rental Space taken is transferred to the condemning Government, but shall continue for the part of the Rental Space or access to the Rental Space not taken.

27.4 Award. Notwithstanding anything to the contrary in this Lease, in all eminent domain proceedings, settlements, or other means by which a Government taking of the Rental Space or access to the Rental Space by exercise or threat of exercise of the power of eminent domain is pursued or resolved, all money paid or awarded in such process shall be the sole property of Landlord.

27.5 Transfer. Landlord may transfer its title or interest in the Rental Space or access to the Rental Space in lieu of condemnation to any Government entitled to exercise the power of eminent domain over the Property.

27.6 No Inverse Condemnation. Landlord's exercise of any right or performance of any obligation under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon Landlord for inverse condemnation.

**28. NOTICES**. All Notices submitted by a Party to the other Party pursuant to or as required by this Lease shall be sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, or by e-mail, in each case, to the address of the recipient Party designated below in this Section 28. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 28. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 28, or on a Business Day sent by e-mail, if sent before 3:00 p.m. Pacific Time, otherwise on the next Business Day. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To Landlord:

City of San Diego
Department of Real Estate and Airport Management
Attention: Director
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, CA 92101
Telephone: (619) 236-6020

And

City of San Diego
Airport Management
Attention: Deputy Director
3750 John J. Montgomery Drive
San Diego, CA 92123
Telephone: (858) 573-1441

To Tenant:

Mcalister Institute for Treatment & Education, Inc.
8665 Gibbs Drive
Suite 150
San Diego, CA 92123
Attention: Cinde Torres
Telephone: (619) 442-0277
E-Mail: cinde.torres@mcalisterinc.org

**29. REPLACEMENT OF STATUTORY NOTICE REQUIREMENTS**. When this Lease requires service of a Notice, that Notice shall replace, rather than supplement, any equivalent or similar notice required by Law, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor Law. When a Law requires service of a notice in a particular manner, service of that notice (or a similar Notice required by this Lease) in the manner required by Section 28 shall replace and satisfy the service-of-notice procedures of such Law, including those required by Code of Civil Procedure Section 1162 or any similar or successor Law.

**30. CALCULATION OF TIME PERIODS**. Unless otherwise specified, all references to time periods in this Lease measured in days shall be to consecutive calendar days, all references to time periods in this Lease measured in months shall be to consecutive calendar months, and all references to time periods in this Lease measured in years shall be to consecutive calendar years. All references to Business Days in this Lease shall be to consecutive Business Days.

**31. PRINCIPLES OF INTERPRETATION**. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Lease. The Parties participated substantially in the negotiation, drafting, and revision of this Lease, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Lease. The words "include" and "including" in this Lease shall be construed to be followed by the words: "without limitation." Each collective noun in this Lease shall be interpreted as if followed by the words "(or any part of

it)," except where the context clearly requires otherwise. Every reference to a document, including this Lease, refers to such document, as modified from time to time (excepting any modification violating this Lease), and includes all exhibits, schedules, addenda, or riders to such document. The word "or" in this Lease includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar Government requirement refers to each such law, statute, regulation, order, form, or requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

**32. GOVERNING LAW.** The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Lease, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Lease is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Lease shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

**33. PRIOR AGREEMENT TERMINATION.** As of the Effective Date, all leases, right-of-entry permits, or other agreements between Landlord and Tenant concerning Tenant's Operations in or at the Rental Space, other than this Lease, are terminated, except as to any rents, fees, rights, or remedies accrued to either Party under those agreements prior to the Effective Date.

**34. RELATIONSHIP OF PARTIES.** The Parties each intend and agree that Landlord and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

**35. ACCORD AND SATISFACTION; PARTIAL PAYMENTS.** No payment by Tenant or receipt by Landlord of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment shall not be deemed an accord or satisfaction. Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of the amount due to Landlord or pursue any other remedy.

**36. WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR LEASE.** Tenant represents and warrants to Landlord that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of Tenant's agents, employees or representatives to any elected or appointed official or employee of Landlord in an attempt to secure this Lease or favorable terms or conditions for this Lease. Breach of the representations or warranties of this Section 36 shall entitle Landlord to terminate this Lease immediately, without liability. Upon any termination of this Lease pursuant to this Section 36, Tenant shall immediately repay to Landlord any payments made to or on behalf of Tenant by Landlord (if any) pursuant to this Lease prior to the Termination Date.

**37. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE.** Performance by either Party under this Lease shall not be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall

Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this Lease, no obligation of Tenant for payment of money under this Lease may be delayed by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay preventing or materially limiting the ability to transfer funds by or between Federal or State chartered financial institutions.

**38. NO OTHER REPRESENTATIONS OR WARRANTIES**. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to the other Party.

**39. TAX CONSEQUENCES**. Tenant acknowledges and agrees that it shall bear all responsibility, liability, costs, or expenses connected in any way with any tax consequences experienced by Tenant related to this Lease.

**40. LANDLORD ATTORNEY COSTS**. All references to Legal Costs in this Lease include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate based on their respective salary and multiplied by the time spent on such matter rounded to increments of 1/10th of an hour, in addition to Legal Costs of outside counsel retained by Landlord or Tenant, respectively, for any matter.

**41. NO THIRD-PARTY BENEFICIARIES**. Nothing in this Lease, express or implied, is intended to confer any rights or remedies under or by reason of this Lease on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Lease intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

**42. TIME OF THE ESSENCE**. As to the performance of any obligation under this Lease of which time is a component, the performance of such obligation within the time specified is of the essence of this Lease.

**43. WAIVERS AND AMENDMENTS**. All waivers of the provisions of this Lease must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Lease shall not constitute a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any right or power under this Lease, at any one time or more times, constitute a waiver or relinquishment of such right or power at any other time or times. All amendments of this Lease must be in writing and signed by the authorized representative(s) of both Landlord and Tenant.

**44. CALIFORNIA PUBLIC RECORDS ACT**. Landlord shall determine, in Landlord's sole and absolute discretion, whether information provided to Landlord by or about Tenant pursuant to

or in relation to this Lease or Tenant's Operations is or is not a public record subject to disclosure under the California Public Records Act ("**CPRA**"). If Tenant Notifies Landlord that Tenant objects to the disclosure of certain Tenant information to a Third Person pursuant to the CPRA before the Landlord discloses the information, provides detailed legal analysis with such Notice supporting Tenant's position that the information is exempt from disclosure under the CPRA, and Landlord withholds disclosure of the information in reliance on such legal analysis (but Landlord is under no obligation to do so), Tenant will Indemnify the Landlord Parties regarding all Claims arising or resulting from Landlord's withholding the information. TENANT, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES LANDLORD AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO DISCLOSURE OR WITHHOLDING OF INFORMATION PROVIDED TO LANDLORD BY OR ABOUT TENANT PURSUANT OR IN RELATION TO THIS LEASE OR TENANT'S OPERATIONS UNDER THE CPRA. TENANT EXPRESSLY WAIVES ALL RIGHTS OR BENEFITS AVAILABLE TO TENANT RELATING TO THE RELEASES CONTAINED IN THIS SECTION 44 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. THE PROVISIONS OF THIS SECTION 44 SHALL SURVIVE THE TERMINATION DATE.

**45. ACCESSIBILITY ASSESSMENT**. Landlord discloses to Tenant that the Property has not been inspected by a Certified Access Specialist (CASp). Landlord further states:

> 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 Tenant or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the Tenant or tenant, if requested by the Tenant 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.

**46. SURVIVAL OF LEASE**. All the provisions of this Lease shall be applicable to each dispute between the Parties arising from or relating to this Lease, whether prior to or after the Termination Date, until such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Lease relating to dispute resolution and remedies shall survive the Termination Date.

**47. INTEGRATION**. This Lease includes thirty-five (35) pages and eight (8) exhibits (the exhibits are incorporated into this Lease by this reference) constituting the entire understanding and agreement of the Parties regarding the subject matter of this Lease and supersedes all previous negotiations or agreements between the Parties relating to the subject matter of this Lease.

**48. TITLES AND HEADINGS FOR REFERENCE ONLY**. The titles and headings of the articles, paragraphs, or sections of this Lease are for the Parties' convenience of reference only, are not to be considered a part of this Lease, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this Lease.

**49. SEVERABILITY**. If any term or provision of this Lease or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms and provisions of this Lease shall be valid and enforced to the fullest extent Law allows.

**50. COUNTERPARTS**. This Lease may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

**51. ELECTRONIC SIGNATURES**. The parties agree: (a) to deliver and accept signatures on or under this Lease by e-mail or electronic means (including digital signatures); and (b) that electronic signatures shall be binding as originals upon the party so signing and delivering.

**52. FAA REQUIREMENTS**. Tenant acknowledges and agrees that, in addition to the foregoing terms and conditions of this Lease, Tenant shall strictly adhere to, and at all times be subject to the Federal Aviation Administration (FAA) Requirements set forth in the attached **EXHIBIT H**, which by this reference are made a part of this Lease. Failure to strictly adhere to the FAA Requirements shall subject this Lease to immediate termination with no liability to Landlord.

**53. EXHIBITS**. All the exhibits attached to this Lease are incorporated into this Lease and described as follows:

| | |
|---|---|
| **EXHIBIT A** | Property Description |
| **EXHIBIT B** | Rental Area Description and Layout |
| **EXHIBIT A** | Building Rules and Regulations |
| **EXHIBIT D** | Parking Lot and Parking Garage Description |
| **EXHIBIT A** | Parking Rules and Regulations |
| **EXHIBIT F** | Insurance Requirements |

| | |
|---|---|
| **EXHIBIT G** | Landlord Standard Contract Provisions |
| **EXHIBIT H** | Federal Aviation Administration Lease and Use Agreement Provision |

**SIGNATURE PAGE**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

IN WITNESS WHEREOF, Tenant and Landlord sign and enter into this Lease by and through the signatures of their respective authorized representatives, as follow:

**LANDLORD:**

City of San Diego,
a California municipal corporation

By: _____
Jorge Rubio, Deputy Director, Airports
Department of Real Estate and Airport
Management

**TENANT:**

Mcalister Institute for Treatment &
Education, Inc.,
a California Non-profit Benefit corporation

By: _____
Jeanie McAlister, CEO

Approved as to form on
June 18, 2024 :

MARA W. ELLIOTT
City Attorney

By: _____
Brian W. Byun
Deputy City Attorney

**EXHIBIT A**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

## PROPERTY DESCRIPTION

8665 Gibbs Drive, San Diego, CA 92123. APN 760-222-09-00.

**EXHIBIT B**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

## RENTAL AREA DESCRIPTION AND LAYOUT

The Rental Area is referred to as Suite 150 and is comprised of approximately Five Thousand Three Hundred Ninety-Eight square feet (5,398 sf) of office space.

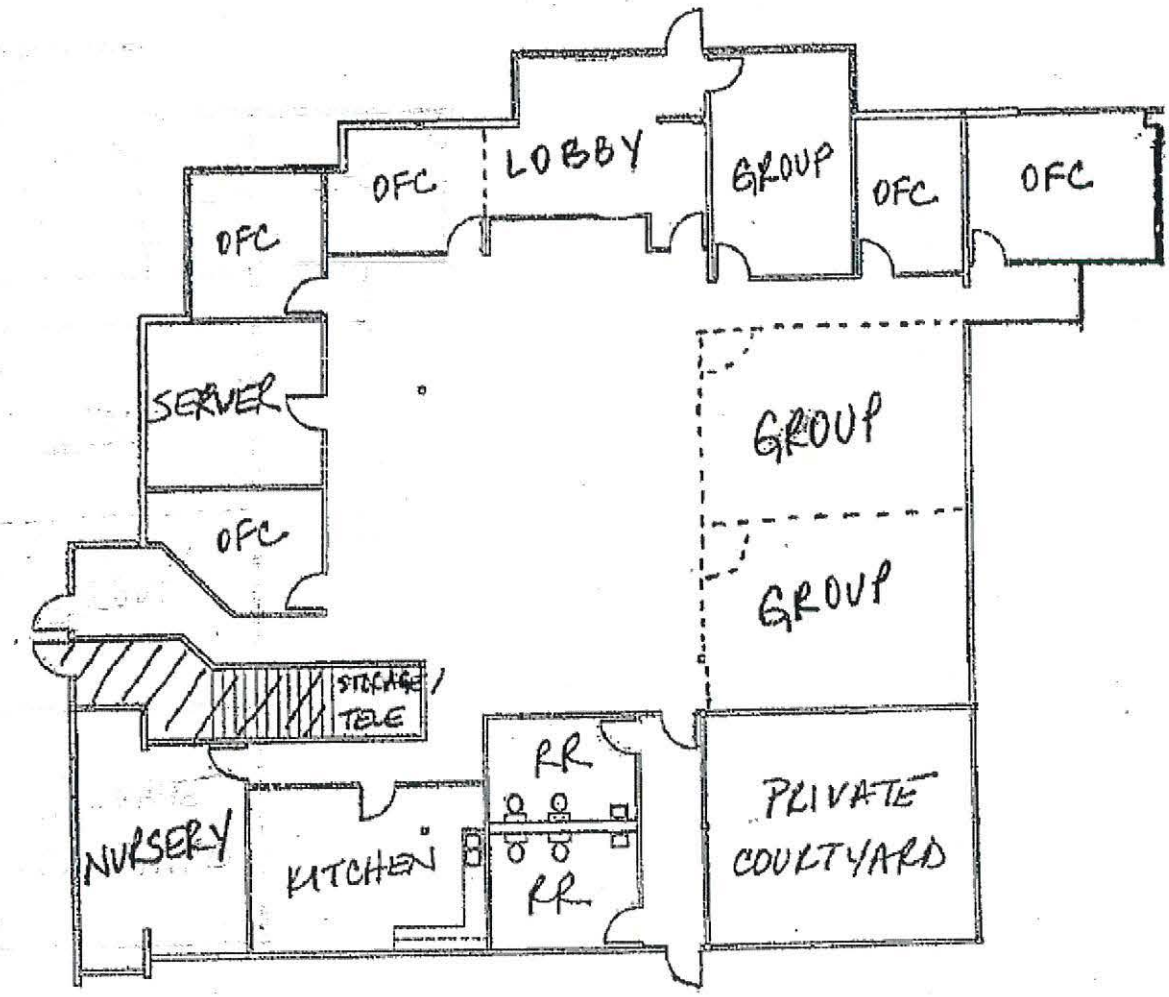


**EXHIBIT C**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

## BUILDING RULES AND REGULATIONS

1. In case of invasion, riot, public excitement or other commotion, Landlord also reserves the right to prevent access to the Building during the continuance of same. Landlord shall in no case be liable for damages for the admission or exclusion of any person to or from the Building. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Building.

2. Landlord will furnish each Tenant with keys to each door lock on the premises upon initial occupancy of premises. Each Tenant, upon the expiration or termination of its tenancy, shall deliver to Landlord all keys in any such Tenant's possession for all locks and bolts in the Building and in the event of loss of any keys so furnished, shall pay Landlord therefore.

3. Tenant shall not cause any unnecessary labor by reason of such Tenant's carelessness or indifference in the preservation of good order and cleanliness of the premises. In the event Tenant must dispose of crates, boxes, etc. which will not fit into the dumpster bins, it will be the responsibility of Tenant dispose of same. In no event shall Tenant set such items in the public areas of the building, excepting Tenant's own premises, for disposal. Tenant shall store all of its trash and garbage within its premises or in any other facilities· provided by Landlord. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord. Tenant shall comply with the mandatory senate bill (SB 1383) ordinance for disposal of organic waste.
(https://www.sandiego.gov/environmental-services/recycling/sb1383).

4. The toilet rooms, toilets, urinals, wash bowls and water apparatus shall not be used for any purpose other than for those for which they were constructed or installed, and no sweepings, rubbish, chemicals, or other unsuitable substances shall be thrown or placed therein. The expense of any breakage, stoppage or damage resulting from violation(s) of this rule shall be borne by the Tenant by whom, or by whose agents, employees, invitees, licensees or visitors, such breakage, stoppage or damage shall have been caused.

5. No signaling, telegraphic or telephonic instruments or devices, burglar alarm systems or similar service, or other wire, instruments or devices, shall be installed in connection with the leased premises without the prior written approval of Landlord. Such installations, and the boring or cutting for wires, shall be made at the sole cost and

expense of the Tenant and under the control and direction of Landlord. Landlord retains, in all cases, the right to require (i) the installation and use of such electrical protecting devices that prevent the transmission of excessive currents of electricity into or through the Building; (ii) the changing of wires and of their installation and arrangement underground or otherwise as Landlord may direct; and (iii) compliance on the part of all using or seeking to such wires with such rules as Landlord may establish.

6. Tenant, its agents, servants or employees, shall not (i) go on the roof of the Building; (ii) use any additional method of heating or air conditioning the premises; (iii) sweep or throw any dirt or other substance from the premises into any of the public areas of the Building; (iv) bring in or keep in or about the premises any vehicles or animals of any kind, except for ADA assistance or service animals; (v) install any radio or television antennae or any other device (including satellite dishes, vents, stacks, etc.) or item on the roof, exterior walls, windows or window sills of the Building. Any such items so installed without such written consent shall be subject to removal by Landlord at any time without notice. Any repair to the Premises required as a result of the installation or removal of these items will be paid in full by Tenant to Landlord. (vi) place objects against doors or windows which would be unsightly from the interior or exterior of the Building; (vii) use the premises for any manufacturing or storage; (viii) cause or permit unusual or objectionable odor to be produced or permeate from the premises, including, without limitation, duplicating or printing equipment fumes; or (ix) install or operate any vending machines in the premises without the prior written consent of Landlord. Tenant, its agents, servants and employees, invitees, licensees, or visitors shall not permit the operation of any device which may emit electrical waives which will impair radio or television broadcast or reception from the building.

7. Tenant shall not store or use in any premises any (i) ether, naphtha, phosphorous, benzol, gasoline, benzine, petroleum, crude or refined earth or coal oils, flashlight power, kerosene or camphene; (ii) any other flammable, combustible, explosive or illuminating fluid, gas or material of any kind; or (iii) any other fluid, gas or material of any kind having an offensive odor, without the prior written consent of Landlord.

8. Tenant shall give Landlord prompt notice of all accidents to or defects in air conditioning equipment, plumbing, electrical facilities or any part or appurtenances of the premises.

9. If any premises become infested with vermin, the Tenant, at its sole cost and expense, shall cause its premises to be exterminated from time to time to the satisfaction of the Landlord and shall employ such exterminators as shall be approved by Landlord.

10. No curtains, blinds, shades, screens, awnings or other coverings or projections of any nature shall be attached to or hung in, or used in connection with any door, window or wall of a leased premise of the Building without the prior written consent of Landlord.

11. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate with Landlord to assure the most effective operation of the building's heat and air conditioning

and to comply with the governmental energy saving rules, laws or regulations of which Tenant has actual notice, and shall refrain from attempting to adjust controls.

12. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to impair the reputation of Landlord or of the Building, or its desirability as an office building for existing or prospective Tenant who require the highest standards of integrity and respectability, and upon written notice from Landlord, Tenant shall immediately refrain from or discontinue such advertising.

13. No residential uses including residing or sleeping are permitted in the premises.

14. Smoking is prohibited inside the retail spaces and within 25 feet of any entrance to the retail building.

15. Whenever the word "Tenant" occurs, it is understood and agreed that it shall also mean Tenant's associates, employees, agents and any other person entering the building or the leased premises under the express or implied invitation of Tenant. Tenant shall cooperate with Landlord to assure compliance by all such parties with the Rules and Regulations.

16. Landlord reserves the right to make reasonable amendments, modifications and additions to the Rules and Regulations heretofore set forth, and to make additional reasonable rules and regulations, as in Landlord's sole judgment may from time to time be needed for the safety, care, cleanliness and preservation or good order of the Building.

17. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and the street address of the Building of which leased premises are a part. Landlord will pay for all reasonable cost incurred by Tenant as a result of changing the street address of the Building unless the change is requested by an authorized governmental agency.

18. Landlord may waive any one or more of these Rules and Regulations for the benefit of any Tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other Tenant nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the Tenants of the Building.

19. Tenant assumes any and all responsibility for protecting its leased premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the leased premises secured. Tenant shall comply with all safety and fire protection evacuation procedures and regulations established by Landlord or any governmental agency.

**EXHIBIT D - 1**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

## PARKING LOT AND PARKING GARAGE DESCRIPTION

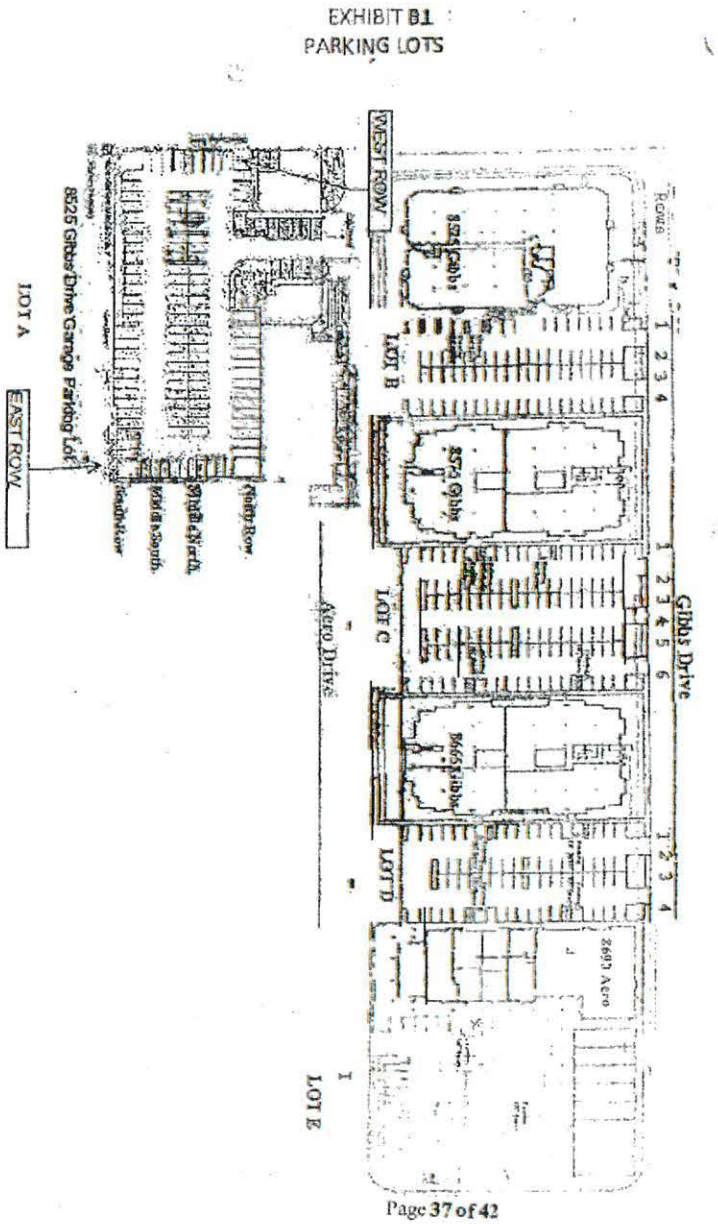





EXHIBIT D - 1
Parking Lot and Parking Garage Description

**EXHIBIT E**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

## PARKING RULES AND REGULATIONS

These Rules shall apply to those parking lots as described as Parking Lot A, the parking garage below the building at 8525 Gibbs Dr., Parking Lot B, the concrete lot between buildings 8525 and 8575 Gibbs Dr., Parking Lot C, the asphalt lot between buildings 8575 and 8665 Gibbs Dr. and Parking Lot D, the asphalt lot between 8665 Gibbs Dr. and 8690 Aero Dr.

1. Parking areas shall be used only for parking of vehicles that are no longer than full size, passenger automobiles, herein called "Permitted Size Vehicles." Vehicles other than Permitted Size Vehicles are herein referred to as "Oversized Vehicles."

2. Tenant shall not permit or allow any vehicles that belong to or are controlled by tenant or Tenant's employees, suppliers, shippers, customers, or invitees to be loaded, unloaded or parked in areas other than those designated by Landlord for such activities.

3. Landlord reserves the right to refuse the sale of identification devices to any person or entity that willfully refuses to comply with the applicable rules, regulations, laws and/or agreements.

4. Landlord reserves the right to relocate all or part of parking spaces and/or to reasonably adjacent offsite locations and to reasonably allocate them between compact and standard size spaces, as long as the same complies with applicable laws, ordinances and regulations.

5. Users of the parking area will obey all posted signs and park only in the areas designated for vehicle parking.

6. Unless otherwise instructed, every person using the parking area is required to park and lock his/her own vehicle. Landlord will not be responsible for any damage to vehicles, injury to persons or loss of property, all of which risks are assumed by the party using the parking area.

7. The maintenance, washing, waxing or cleaning of vehicles in the parking area is strictly prohibited.

8. Tenant shall be responsible for seeing that all of its employees, agents and invitees comply with the applicable parking rules, regulations, laws and agreements.

9. Landlord reserves the right to modify these rules and/or adopt such other reasonable and non-discriminatory rules and regulations as it may deem necessary for the proper operation of the parking area.

10. Such parking use as is herein provided is intended merely as a license only and no bailment is intended or shall be created hereby.

11. Smoking is prohibited within 25 feet of any entrance.

12. Vehicles shall only drive through lots as indicated by directional markings. Cutting corners and driving through vacant stalls is prohibited.

13. Vehicles shall not travel faster than 5 miles per hour.

14. Tenant and Tenant's employees are strictly prohibited from parking in Visitor Parking at ANY TIME.

15. Overnight parking, defined herein as between the hours of 11 p.m. and 4 a.m., is prohibited unless otherwise specified in your Lease agreement.

16. Vehicles MUST be parked within the marked lines. Vehicles parked over the line or taking up more than one space will be towed away at the vehicle owner's expense.

17. Landlord reserves the right to have any vehicle that violates any of these rules removed from the parking area at the vehicle owner's expense.

18. All persons receiving a parking permit MUST completely fill in all requested information on the vehicle registration form provided by Management.

19. Each permit holder is responsible for updating his/her information, including contact phone numbers and any changes in vehicle, license plates BEFORE parking in any lot.

20. Vehicles parked on-site must display a valid state registration sticker.

21. In compliance with California statutes all drivers must carry Liability insurance.

**EXHIBIT F**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

**INSURANCE REQUIREMENTS**

**1. Required Insurance Coverage.**

1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Tenant, with minimum limits for bodily injury and property damage of Two Million Dollars ($2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by Landlord, which pre-approval shall not be unreasonably withheld.

1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in or about the Rental Space or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars ($2,000,000) for any one occurrence and Four Million Dollars ($4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Rental Space.

1.3. *Property Insurance.* Insurance providing coverage for the Rental Space and all improvements on or to the Rental Space against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Rental Space, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

*Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One

Million Dollars ($1,000,000) per accident for bodily injury or disease, covering all employees of Tenant.

2. **Nature of Insurance**. The contents of this Exhibit F are sometimes referred to as the "**Insurance Requirements**." All Liability Insurance, Automobile Liability Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Rental Space, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.

3. **Policy Requirements and Endorsements**. All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:

3.1. *Insured*. Liability Insurance policies shall name the Landlord Parties as "additional insured." The coverage afforded to the Landlord Parties shall be at least as broad as that afforded to Tenant regarding the Rental Space and may not contain any terms, conditions, exclusions, or limitations applicable to the Landlord Parties that do not apply to Tenant.

3.2. *Primary Coverage*. Any insurance or self-insurance maintained by the Landlord Parties shall be excess of all insurance required to be maintained by Tenant pursuant to these Insurance Requirements and shall not contribute with any insurance required to be maintained by Tenant pursuant to these Insurance Requirements.

3.3. *Contractual Liability*. Liability Insurance policies shall contain contractual liability coverage for Tenant's Indemnity obligations under this Lease. Tenant's obtaining or failing to obtain such contractual liability coverage shall not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.

3.4. *Deliveries to Landlord*. Evidence of Tenant's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to Landlord before the Effective Date. No later than seven (7) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant shall deliver to Landlord evidence of Tenant's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to Landlord. Phrases such

as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the Landlord Parties pursuant to these Insurance Requirements.

3.5. *Waiver of Certain Claims*. Tenant shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage pursuant to these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the Landlord Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the Landlord Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier pursuant to such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, pursuant to which the carrier agrees to waive rights of recovery by way of subrogation against the Tenant Parties or the Landlord Parties for any loss such insurance policy covers.

3.6. *No Representation*. No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.

3.7. *No Claims Made Coverage*. None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.

3.8. *Fully Paid and Non-Assessable*. All insurance obtained and maintained by Tenant in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.

3.9. *Separation of Insured*. All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Tenant and the Landlord Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.

3.10. *Deductibles and Self-Insured Retentions*. All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by Landlord. Tenant shall pay all such deductibles or self-insured retentions regarding the Landlord Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, Landlord may pay the unpaid portion of such self-insured retention, in Landlord's sole and absolute discretion. All amounts paid by Landlord toward self-insured retentions regarding insurance policies covering the Landlord Parties pursuant to these Insurance Requirements shall be reimbursable to Landlord by Tenant in the same manner that insurance costs are

reimbursable to Landlord from Tenant pursuant to Section E of these Insurance Requirements.

3.11. *No Separate Insurance*. Tenant shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements, unless the Landlord Parties are made additional insured under such insurance coverage.

4. **Insurance Independent of Indemnification**. These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude Landlord from taking such other actions as are available to Landlord under any other provision of this Lease or otherwise at law or in equity.

5. **Landlord Option to Obtain Coverage**. During the continuance of an Event of Default arising from the failure of Tenant to carry any insurance required by these Insurance Requirements, Landlord may, in Landlord's sole and absolute discretion, purchase any such required insurance coverage. Landlord shall be entitled to immediate payment from Tenant of any premiums and associated reasonable costs paid by Landlord to obtain such insurance coverage. Any amount becoming due and payable to Landlord under this Section F that is not paid within fifteen (15) days after Notice from Landlord with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Any election by Landlord to purchase or not to purchase insurance otherwise required by these Insurance Requirements to be carried by Tenant shall not relieve Tenant of any Default or Event of Default or Tenant's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

**EXHIBIT G**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

## LANDLORD STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance**. By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following Landlord requirements in performance of this Lease:

1.1. Tenant Certification for Americans with Disabilities Act ("**ADA**") and State Access Laws and Regulations. Tenant shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Tenant shall comply with the most restrictive requirement (i.e., that which provides the most access). Tenant also shall comply with the Landlord's ADA Compliance/Landlord Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Lease by reference. Tenant warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that any subcontract agreement relating to this Lease contains language which indicates the subcontractor's agreement to abide by the provisions of the City Council Policy 100-04 and any applicable Federal and State access laws and regulations.

1.2. Compliance with Landlord's Equal Opportunity Contracting Program ("**EOCP**"). Tenant shall comply with Landlord's EOCP requirements. Tenant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant shall provide equal opportunity in all employment practices. Tenant shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.2 shall be interpreted to hold Tenant liable for any discriminatory practice of its subcontractors. Prior to commencing construction, Tenant shall contact the Landlord's Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

1.3. Equal Benefits Ordinance Certification. Unless an exception applies, Tenant shall comply with the Equal Benefits Ordinance codified in San Diego Municipal Code ("**SDMC**") section 22.4308.

1.4. Equal Pay Ordinance. Unless an exception applies, Tenant shall comply with the Equal Pay Ordinance codified in SDMC sections 22.4801 through 22.4809. Tenant shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Tenant to the same extent as it would apply to Tenant. Tenant shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts. Product Endorsement. Tenant shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to Landlord as a user of a good or service requiring the prior written approval of the Mayor.

1.5. Business Tax Certificate. Unless the City Treasurer determines in writing that Tenant is exempt from the payment of business tax, Tenant is required to obtain a City business tax certificate and provide a copy of its City business tax certificate to Landlord before this Lease is signed.

1.6. Non-Discrimination. Tenant shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subtenants, vendors, or suppliers. Tenant understands and agrees that violation of this clause shall be considered a material breach of the Lease and may result in contract termination, debarment, or other sanctions.

1.7. Compliance Investigation. Upon Landlord's request, Tenant agrees to provide to Landlord, within sixty calendar days, a truthful and complete list of the names of all subtenants, contractors, subcontractors, vendors, and suppliers that Tenant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Tenant for each subcontract or supply contract. Tenant further agrees to fully cooperate in any investigation conducted by Landlord pursuant to Landlord's Nondiscrimination in Contracting Ordinance. Tenant understands and agrees that violation of this clause shall be considered a material breach of the Lease and may result in contract termination, debarment, and other sanctions.

1.8. Single Use Plastic Reduction Ordinance. Unless an exception applies, Tenant will comply with the Single Use Plastic Reduction Ordinance codified in SDMC sections 66.0901 through 66.0907. By signing this Lease, Tenant certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.

**EXHIBIT H**
**TO**
**LEASE AGREEMENT FOR OFFICE SPACE**
[8665 Gibbs Drive, Suite 150, San Diego, CA 92123]

**Federal Aviation Administration Lease and Use Agreement Provisions**

Tenant shall adhere to the following terms and conditions during the entirety of the time period covered by this Exhibit. If any term and or condition contained in this Exhibit conflicts with any provision contained in the main body of the Lease, the terms and conditions contained in the main body of the Lease shall prevail.

Definitions: (For information purposes only)

Aeronautical Activities: Any activity that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Activities within this definition, commonly conducted at DREAM, include but are not limited to air taxi and charter operations, scheduled and nonscheduled air carrier services, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, aircraft sales and services, aircraft storage, sale of aviation petroleum products, repair and maintenance of aircraft, sale of aircraft parts, parachute, glider, balloon or ultralight activities and any other activities which, because of their direct relationship to the operation of aircraft, can appropriately be regarded as aeronautical activities.

Nonaeronautical activities: These include but are not limited to ground transportation (taxis, car rentals, limousines), restaurants, barber shops, auto parking lots, non-aviation businesses, recreational facilities and any other commodities, services, or accommodations made available to the general public that are of a nonaeronautical nature.

Assurance: A provision contained in a federal grant agreement with which the recipient of federal airport development assistance has voluntarily agreed to comply in consideration of the assistance provided.

Exclusive Right: A power, privilege, or other right excluding or debarring another from enjoying or exercising a like power, privilege, or right. An exclusive right can be conferred by express agreement, by the imposition of unreasonable standards or requirements, or by any other means. Such a right conferred on one or more parties but excluding others from enjoying or exercising a similar right or rights, would be an exclusive right.

Federal Obligation: Used in the context of a federal grant program, federal airport development assistance, land transfers, or other federal aid. It refers to an airport sponsor's legal duty and responsibility to comply with the terms of conveyance instruments and grant agreements.

Minimum Standards: The qualifications or criteria which may be established by an airport owner as the minimum requirements that must be met by businesses engaged in on- airport aeronautical

activities for the right to conduct those activities.

Revenue Diversion: The use of airport revenue for purposes other than the capital or operating cost of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

Self-Sustaining: The requirement to maintain a schedule of charges for use of the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the airport.

a) For aeronautical users, reasonable rates and charges that reflect the sponsor's cost of providing aeronautical services and facilities are satisfactory.

b) For nonaeronautical users, rates and charges must be based on the fair market value of the services and facilities provided.

PROVISIONS:

I. The Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the (tenant/concessionaire/lessor).

This provision obligates the Tenant for the period during which the property is owned, used or possessed by the Tenant and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

A. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

I. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to lease, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease

had never been made or issued.

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of San Diego will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.

D. The Tenant for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (I) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

E. With respect to the lease, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

F. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the City of San Diego will there upon revert to and vest in and become the absolute property of the City of San Diego and its assigns.

(Additional information regarding civil rights and disadvantaged business enterprise obligations can be obtained from the FAA Civil Rights Office or https://www.faa.gov/DREAM/aip/procurement/federal_contract_pro'l'isiqus/.)

3. The airport owner/sponsor reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or views of the Tenant and without interference or hindrance.

4. The airport owner/sponsor reserves the right, but shall not be obligated to the Tenant, to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the Tenant in this regard.

5. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the airport owner/sponsor and the United States, relative to the development, operation, or maintenance of the airport. Failure of the Tenant or any occupant

to comply with the requirements of any existing or future agreement between the lessor and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Tenant's rights hereunder.

6. There is reserved to the airport owner/sponsor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the leased premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through said airspace or landing at, taking off from, or operating on the airport premises.

7. The Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased premises. This requires the submission of FAA Form 7460-1, *Notice of Construction or Alteration* to the FAA.

8. The Tenant by accepting this lease agreement expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CPR Part 77. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the Tenant.

10. The Tenant by accepting this lease agrees for itself, its successors and assigns that it will not make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

11. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of U.S. Code 40103 (e) and 47107(a)(4).

12. This lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or nonexclusive use of the airport by the United States during the time of war or national emergency.

13. The Tenant will furnish services on a reasonable and not unjustly discriminatory basis to all users, and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the contractor may be allowed to make reasonable and

14. nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

15. The Tenant will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

*****THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK*****

Revised: September 2021, AWP 620