

2A Cal. Real Est. Forms § 2:25 (2d ed.)

Miller & Starr California Real Estate Forms | September 2018 Update
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Chapter 2. Leasing

III. Forms

E. Industrial Leases

Industrial lease

Use of Form. This landlord-oriented form of lease can be used to lease space in a mixed-use industrial park. This lease is based on the assumption that the leased premises will be used as a warehouse. However, with minor modifications, this lease is appropriate for use with a manufacturing plant or a research and development facility. It is a “triple net” lease rather than a “gross” or “fully serviced” lease. In a “triple net” lease, the tenant makes rental payments to the landlord, in addition to paying for costs relating to the operation of the property, such as real property taxes, insurance, and utilities. In a “gross” or “fully serviced” lease, the tenant simply pays the rent, while the landlord remains responsible for all operating costs relating to the building. This form is not appropriate for a “build-to-suit” situation, other than the construction of agreed upon tenant improvements.

Generally speaking commercial leases have not been subject to statutory disclosures regarding their condition, the California legislature recently decided to require disclosures in commercial leases with respect to accessibility for the handicapped and energy consumption. Effective for leases of “commercial property” commencing on or after January 1, 2017, the California legislature significantly revised [Civ. Code, § 1938](#) to expand the rights of tenants and the disclosure obligations of commercial landlords. The section now not only requires that a commercial lease disclose whether or not the premises have been inspected by a CASp but requires that the landlord to provide the tenant a copy of the current disability access inspection certificate and inspection report, if the premises have been certified as compliant. Under the revised statute, if the premises have not been issued such a disability access inspection certificate, the lease may not prohibit CASp inspection of the premises at the request of tenant and must contain statutory language to that effect. The bill further requires a landlord of premises that have been subject to CASp inspection, and remain unmodified or altered, to provide tenants a copy of the CASp report that is to remain confidential except as necessary to make repairs and corrections,” as specified. The tenant or lessee is to be given an opportunity to review any CASp report prior to execution of the lease, and if the report is not provided at least 48 hours prior to execution of the lease, the bill grants a prospective lessee or tenant the right to rescind the lease, based upon information in the report, for 72 hours after its execution. See [Miller & Starr California Real Estate 4th § 34:111](#). In addition, commencing July 1, 2013, owners of certain commercial buildings are required to disclose to tenants and prospective tenants energy consumption information relating to the building, thus further implementing the Energy Star Benchmarking requirements promulgated as part of AB 1103 and subsequently, AB 531. Specifically commencing July 1, 2013, any commercial building with total gross floor area measuring in excess of 50,000 square feet must disclose energy benchmarking data to tenants leasing the entire building. Commencing on January 1, 2014, this requirement is expanded to include buildings with a total gross floor area measuring in excess of 10,000 square feet, and commencing on July 1, 2014, this requirement is further expanded to include buildings with a total gross floor area measuring at least 5,000 square feet. See [Miller & Starr California Real Estate 4th § 34:95](#).

INDUSTRIAL LEASE

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INDUSTRIAL LEASE

THIS INDUSTRIAL LEASE (“Lease”) is entered into as of *[date]* between *[name and capacity, of landlord]* (“Landlord”) and *[name and capacity, of tenant]* (“Tenant”).

Recitals

A. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the premises located at *[address of premises]* (“Leased Premises”), consisting of approximately *[number]* square feet as designated on the map attached to this Lease as Exhibit A and incorporated by reference.

B. The Leased Premises are located in *[description of building in which premises are located]* (“Building”), which together with certain common areas and other buildings constitute *[name of project]* (“Project”).

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Section 1. Definitions

As used in this Lease the following terms shall have the following meanings:

“Alterations” is defined in Section 12(a) hereof.

“Base Rent” is defined in Section 5 hereof.

“Building” is defined in Recital B hereof.

“Commencement Date” is defined in Section 4(a) hereof.

“Common Areas” is defined in Section 8(a) hereof.

“Environmental Laws” means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational Health or industrial hygiene (and only to the extent that the occupational Health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) [42 U.S.C.A §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (“RCRA”) [42 U.S.C.A §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (“FWPCA”) [33 U.S.C.A §§ 1251 et seq.]; the Toxic Substances Control Act (“TSCA”) [15 U.S.C.A §§ 2601 et seq.]; the Federal Insecticide, Fungicide, Rodenticide Act [7 U.S.C.A §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 U.S.C.A §§ 9601 et seq.]; the Clean Air Act [42 U.S.C.A §§ 7401 et seq.]; the Safe Drinking Water Act [42 U.S.C.A §§ 300f et seq.]; the Solid Waste Disposal Act [42 U.S.C.A §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 U.S.C.A §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act [42 U.S.C.A §§ 11001 et seq.]; the Occupational Safety and Health Act [29 U.S.C.A §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health & Saf. Code §§ 25280 et seq.]; the California Hazardous Substances Account Act [Health & Saf. Code §§ 25300 et seq.]; the California Hazardous Waste Control Act [Health & Saf. Code §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health & Saf. Code §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Act [Wat. Code §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational Health or industrial hygiene, and only to the extent that the occupational Health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

“Hazardous Substances” includes without limitation:

- (a) Those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, TSCA, or under any other Environmental Law;
- (b) Those substances listed in the United States Department of Transportation (DOT) Table [49 C.F.R. 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 C.F.R. Part 302];
- (c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and
- (d) Any material, waste, or substance that is
 - (i) a petroleum or refined petroleum product,
 - (ii) asbestos,

(iii) polychlorinated biphenyl,

(iv) designated as a hazardous substance pursuant to [33 U.S.C.A § 1321](#) or listed pursuant to [33 U.S.C.A § 1317](#),

(v) a flammable explosive, or

(vi) a radioactive material.

“Initial Term” is defined in Section 4(a) hereof.

“Landlord” is defined in the preamble hereto.

“Law” shall mean any constitution, statute, ordinance, regulation, rule, judicial decision, administrative order, or other requirement of any governmental entity.

“Lease” is defined in the preamble hereto.

“Leased Premises” is defined in Recital A hereof.

“Operating Expenses” is defined in Section 6 hereof.

“Option Notice” is defined in Section 4(b) hereof.

“Potential Default” is defined in Section 4(b) hereof.

“Project” is defined in Recital B hereof.

“Property Taxes” is defined in Section 6(d) hereof.

“Tenant” is defined in the preamble hereto.

“Tenant’s Share” is defined in Section 6(a) hereof.

“Trade Fixtures” is defined in Section 13(a) hereof.

Section 2. Leased Premises

Landlord leases to Tenant and Tenant leases from Landlord the Leased Premises for the term, at the rental, and upon all other terms, covenants, and conditions in this Lease.

Section 3. Use of Leased Premises

(a) The Leased Premises shall be used for *[describe permitted use of premises]* or as otherwise approved by Landlord in writing and for no other purpose.

(b) Tenant shall not do or permit any act that could:

(i) cause any structural damage to the Project, or

(ii) cause damage to any part of the Building, except to the extent reasonably necessary for the installation of Trade Fixtures, equipment, machinery, or the construction of alterations as permitted under this Lease or as approved in writing in advance by Landlord.

(c) Tenant shall not operate or permit the operation of any equipment or machinery on the Project that could:

(i) materially damage the Project,

(ii) impair the efficient operation of the Building's heating, ventilation, or air conditioning system,

(iii) block or otherwise impede the operation of the Building's sprinkler system,

(iv) overload or otherwise place an undue strain on the Building's electrical and mechanical systems, or

(v) damage, overload, or corrode the Building's sanitary sewer system.

(d) Tenant shall not install or attach anything in the Building in excess of the load limits established for the Building. Tenant shall contain and dispose of all dust, fumes, or waste products generated by Tenant's use of the Leased Premises so as to avoid:

(i) unreasonable fire or Health hazards,

(ii) damage to the Project, or

(iii) any violation of any Law.

(e) Except as may be approved by Landlord in advance and in writing, Tenant shall not change the exterior of the Building or install any equipment, machinery, or antennas on or make any penetrations of the exterior or roof of the Building. Tenant shall not commit any waste in or around the Project and shall keep the Leased Premises in a neat, clean, attractive and orderly condition, free of any nuisances. Tenant shall use and maintain Landlord's standard window covering to cover all windows in the Leased Premises. Tenant shall not conduct on any portion of the Leased Premises, the Building, or the Project, any sale of any kind, including but not limited to any public or private auction, going out-of-business sale, distress sale, or other liquidation sale.

(f) Landlord represents and warrants that as of the Commencement Date, the Leased Premises do not violate any recorded covenants or restrictions, or any applicable building code, regulation, or ordinance in effect on that date. If this warranty is untrue as of the Commencement Date, Landlord shall promptly, upon receipt of written notice from Tenant, cure the violation at Landlord's sole expense.

(g) Tenant shall use the Leased Premises in compliance with all applicable laws, statutes, ordinances, rules, regulations, orders, recorded covenants and restrictions, and requirements of any fire insurance underwriters or rating bureaus, now or later in effect.

Section 4. Lease Term

(a) The initial term ("Initial Term") of this Lease shall be for *[number]* years commencing on *[date]* ("Commencement Date"), and ending on *[date]*, unless sooner terminated according to this Lease.

(b) Tenant shall have the option to extend the term of this Lease for *[number]* years following the expiration of the Initial Term on all of the terms and conditions in this Lease, except that during that extended term, Tenant shall not have the further option to extend the term in this Section 2(b) and the rent during that extension term shall be \$*[dollar amount]* per month. To exercise this option, Tenant must give Landlord written notice of exercise of the option ("Option Notice") no earlier than *[number]* months and no later than *[number]* months prior to the expiration of the Initial Term. However, if, as of Landlord's receipt of the Option Notice, Tenant is in default under this Lease, or has committed or failed to perform acts that with the giving of notice or the lapse of time would constitute a default under this Lease ("Potential Default"), the Option Notice shall be totally ineffective. If after giving the Option Notice, Tenant is in default under this Lease, or if a Potential Default has occurred, and that default or Potential Default remains uncured as of the expiration of the Initial Term, this Lease shall, at the election of Landlord, terminate as of the expiration of the Initial Term.

(c) If Landlord fails to deliver possession of the Leased Premises to Tenant by the Commencement Date, Landlord shall not be liable for any damages resulting from that failure, nor shall that failure cause a termination of this Lease or Tenant's obligations under this Lease, except as otherwise permitted under this Section, nor shall that failure extend the term of this Lease. If Landlord has not delivered possession of the Leased Premises to Tenant within *[number]* days after the Commencement Date, Tenant may, however, cancel this Lease, by written notice to Landlord within ten (10) days after the end of the *[number]* day period; in that case, the parties shall be discharged from all obligations under this Lease, provided, however, that if the written notice of Tenant is not received by Landlord within that ten (10) day period, Tenant shall have no further right to terminate this Lease.

Section 5. Base Rent

Commencing on the Commencement Date and continuing thereafter on the first day of each month until the end of the term of this Lease, Tenant shall pay to Landlord, in advance, base rent in the following amounts for the following periods (“Base Rent”), all without offset or deduction, provided that Tenant shall pay Landlord, upon execution of this Lease, an amount equal to *[dollar amount]* Base Rent for the first month and last month of the term of this Lease Period:

Period	Amount
<i>[Month numbers]</i>	<i>[\$[dollar amount]]</i>
<i>[Month numbers]</i>	<i>[\$[dollar amount]]</i>
<i>[Month numbers]</i>	<i>[\$[dollar amount]]</i>

Tenant’s obligation to pay Base Rent shall be prorated in the first and last months of the term of this Lease based upon the portion of the month during which Tenant occupies the Leased Premises. Rent shall be payable in lawful money of the United States to Landlord at the address stated in this Lease or to any other address that Landlord may designate from time to time.

Section 6. Operating Expenses

(a) Tenant shall pay to Landlord during the term of this Lease as additional rent *[tenant’s percentage share of common operating expenses]* (“Tenant’s Share”) of all Operating Expenses, as defined in this Lease, incurred in connection with the operation of the Building or incurred in connection with the operation of the Project and fairly allocable to the Building.

(b) As used in this Lease, “Operating Expenses” means

(i) all costs and expenses incurred by Landlord for the following:

(A) the maintenance, repair, operation, and replacement of the Building’s heating, ventilation or air conditioning systems;

(B) the maintenance, repair, cleaning, resurfacing, or painting, as appropriate, of the Building’s roof and walls;

(C) the premiums paid to maintain the casualty and liability insurance carried by Landlord covering the Project pursuant to this Lease;

(D) the provision of utilities to the Common Areas, including but not limited to gas, electricity, garbage and trash removal, and water for irrigation;

(E) the maintenance of all landscaping in the Common Areas, including the installation and maintenance of irrigation system the planting and maintenance of shrubs, trees, flowering plants, and ground cover;

- (F) the compliance with all Laws;
 - (G) the operation, maintenance, repair, cleaning, painting, and resurfacing of the parking lots included in the Common Areas;
 - (H) the installation, repair, and maintenance of all light fixtures and signs located in the Common Areas and on or in the Building;
 - (I) the provision of security to the Building and the Common Areas;
 - (J) the maintenance of all parking areas, roadways, sidewalks, walkways, driveways, striping, fences, and gates contained in the Common Areas;
 - (K) the establishment and maintenance of directories of tenants in the Building and the Project; and
 - (L) the maintenance and repair of all fire prevention and detection systems, including smoke detectors and sprinkler systems.
- (ii) management fees, whether for services rendered by Landlord, an affiliate of Landlord, Landlord's employees, or a third-party property manager hired by Landlord, provided that the total amount of management fees includable in Operating Expenses for purposes of this Lease shall not exceed *[describe limit on pass-through of management fees]*;
 - (iii) Property Taxes paid by Landlord under this Lease;
 - (iv) the amount of any deductible paid by Landlord in connection with an insured loss resulting from damage to the Project;
 - (v) the amount of any uninsured loss resulting from damage to the Project; and
 - (vi) all additional costs and expenses incurred by Landlord in connection with the operation, maintenance, repair, replacement, and protection of the Project that would be considered a current expense according to generally accepted accounting principles.
- (c) "Operating Expenses" shall not include
- (i) depreciation;
 - (ii) any capital expenditures, except as permitted in Section 6(b)(iv) and 6(b)(v);
 - (iii) payments on any loans or ground leases affecting the Project;
 - (iv) leasing commissions;

(v) the cost of tenant improvements installed exclusively for the use of other tenants;

(vi) the cost of compliance with any Environmental Laws.

(d) As used in this Lease, the term “Property Taxes” shall mean any and all taxes, assessments, levies, and other charges of any kind, general and special, foreseen and unforeseen (including all installments of principal and interest required to pay any existing or future general or special assessments, and any increases resulting from reassessments made in connection with a change in ownership, new construction, or any other cause), now or later imposed by any governmental or quasi-governmental authority or special district having the power to tax or levy assessments, which are levied or assessed against or with respect to the value, occupancy, or use of all or any portion of the Project (as now constructed or as may at any later time be constructed, altered, or otherwise changed) or Landlord’s interest in the Project, the fixtures, equipment, and other property of Landlord, real or personal, that are an integral part of and located on the Project, the gross receipts, income, or rentals from the Project, or the use of parking areas, public utilities, or energy within the Project, or Landlord’s business of leasing the Project. If at any time during the term of this Lease, the method of taxation or assessment of the Project prevailing as of the Commencement Date is altered so that in lieu of or in addition to any Property Tax described above there shall be levied, assessed, or imposed (whether because of a change in the method of taxation or assessment, creation of a new tax or charge, or any other cause) an alternate or additional tax or charge (i) on the value, use, or occupancy of the Project or Landlord’s interest in the Project, or (ii) on or measured by the gross receipts, income or rentals from the Project, on Landlord’s business or leasing the Project, or computed in any manner with respect to the operation of the Project, then any tax or charge, however designated, shall be included within the meaning of the term “Property Taxes” for purposes of this Lease. However, the term “Property Taxes” shall not include estate, inheritance, transfer, gift, or franchise taxes of Landlord or the federal or state net income tax imposed on Landlord’s income from all sources.

Tenant shall not be responsible for paying Tenant’s Share of any Property Taxes resulting from additional improvements by other tenants, provided, however, that any Property Taxes resulting from Alterations made for or on behalf of Tenant under this Lease shall be paid entirely by Tenant. If the Leased Premises is not separately assessed, Tenant’s Share of any Property Taxes shall be an equitable proportion of the Property Taxes for all of the land and improvements included within the tax parcel that is assessed.

(d) The inclusion of any services, facilities, or improvements in Section 6(b) shall not be deemed to impose an obligation on Landlord to provide those services, facilities, or improvements unless otherwise required by this Lease.

(e) Tenant shall pay Tenant’s Share of the actual Operating Expenses incurred or paid by Landlord within ten (10) days after receipt by Tenant of a reasonably detailed billing from Landlord, provided that Landlord shall not bill Tenant more frequently than once a month. Commencing in the second year of the Lease, Landlord may estimate the amount of Tenant’s Share of Operating Expenses on a monthly or quarterly basis, which amount shall be payable on the same day as the Base Rent is due. If Landlord chooses to collect Tenant’s Share of the Operating Expenses based upon Landlord’s estimate, Landlord shall deliver to Tenant, within sixty (60) days after the expiration of each calendar year, a reasonably detailed statement showing Tenant’s Share of the actual Operating Expenses incurred or paid during the preceding calendar year. If that statement reflects that Tenant’s payments during the preceding calendar year exceed Tenant’s Share as indicated on the statement, Landlord shall credit the amount of the excess against the Base Rent next falling due. If the excess occurs in the last year of term of the Lease, Landlord shall refund the excess after applying it to any other amounts then due by Tenant to Landlord within ten (10) days after delivery by Landlord to Tenant of the statement. If the statement reflects that Tenant’s payments during the preceding calendar year were less than Tenant’s Share as indicated on the statement, Tenant shall pay to Landlord the amount of the deficiency within ten (10) days after delivery by Landlord to Tenant of the statement.

Section 7. Security Deposit

Tenant agrees to deposit with Landlord on the date of this Lease the sum of *[dollar amount]*, which shall be held by Landlord, without interest, as security for the performance of Tenant's covenants and obligations under this Lease, it being expressly understood and agreed that the deposit is not an advance rental deposit or a measure of the Landlord's damages in case of Tenant's default. Upon the occurrence of any Event of Default by Tenant, Landlord may, from time to time and without prejudice to any other remedy provided by this Lease or by law, use that fund to the extent necessary to make good any arrears of rent or other payments or liability caused by the Event of Default. Tenant shall pay to Landlord on demand the amount that was applied in order to restore the security deposit to the amount then required under this Lease. Although the security deposit shall be deemed the property of Landlord, any remaining balance of the deposit shall promptly be returned by Landlord to Tenant at the time after termination of this Lease that all of Tenant's obligations under this Lease have been fulfilled. If the Base Rent increases during the term of this Lease, Tenant shall, at the time of each increase, deliver to Landlord an additional security deposit proportionate to the increase in the Base Rent. Landlord shall not be required to keep the security deposit separate from the general accounts of Landlord.

Section 8. Common Areas

(a) As used in this Lease, the term "Common Areas" shall mean all areas and facilities within the Project that are not designated by Landlord for the exclusive use of Tenant, Landlord, or any other tenant of the Project, including but not limited to parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, recreation areas, and green belts, and does not include *[exclusions to definition of common areas]*.

(b) Landlord shall have exclusive control over the Common Areas, provided that Tenant and Tenant's employees, agents, suppliers, shippers, customers, and invitees shall have the nonexclusive right to use the Common Areas during the term of this Lease, subject to the rights reserved by Landlord under this Lease and further subject to all rules and regulations governing the use of the Common Areas from time to time issued by Landlord.

(c) Landlord shall have the right, without it constituting an actual or constructive eviction of Tenant, without any abatement of rent under this Lease and without notice to or the consent of Tenant, to

(i) close any part of the Common Areas to the extent necessary in Landlord's opinion to prevent the accrual of any prescriptive rights;

(ii) temporarily close any part of the Common Areas to repair and maintain them or for any other reasonable purpose;

(iii) change the nature of the Common Areas, including without limitation changes in the location, size, shape, and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, and walkways;

(iv) eliminate from or Add to Project any land or improvement;

(v) designate additional property outside the boundaries of the Project to be a part of the Common Areas;

(vi) remove unauthorized persons from the Project;

(vii) change the name or address of the Building or the Project;

(viii) use or allow the use of the Common Areas while engaged in maintenance, repairs, construction, or other alterations to the Project; and

(ix) perform any other acts and make other changes or alterations in the Common Areas and the Project as Landlord may deem reasonably appropriate.

Section 9. Delivery of Possession

Except as otherwise provided in this Lease, Tenant agrees to accept possession of the Leased Premises in its then existing condition, “as is,” including all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Leased Premises, and any recorded covenants or restrictions. Tenant’s taking possession of any part of the Leased Premises shall be deemed to be an acceptance by Tenant of any completed work of improvement done by Landlord and in accordance with the terms of this Lease, except for defects of which Tenant has given Landlord written notice prior to the time Tenant takes possession.

Section 10. Hazardous Substances

(a) Tenant agrees that any and all handling, transportation, storage, treatment, disposal, or use of Hazardous Substances by Tenant in or about the Project shall strictly comply with all applicable Environmental Laws.

(b) Tenant agrees to indemnify and defend Landlord harmless from any liabilities, losses, claims, damages, penalties, fines, attorney’s fees, expert fees, court costs, remediation costs, investigation costs, or other expenses resulting from or arising out of the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about the Project by Tenant.

(c) If the presence of Hazardous Substances on the Project caused or permitted by Tenant results in the contamination or deterioration of the Project or any water or soil beneath the Project, Tenant shall promptly take all action necessary to investigate and remedy that contamination.

(d) Landlord and Tenant each agree to promptly notify the other of any communication received from any governmental entity concerning Hazardous Substances or the violation of Environmental Laws that relate to the Project.

(e) Tenant shall not use, handle, store, transport, generate, release, or dispose of any Hazardous Substances on, under, or about the Project, except that Tenant may use (i) small quantities of common chemicals such as adhesives, lubricants, and cleaning fluids in order to conduct business at the Leased Premises and (ii) other Hazardous Substances that are necessary for the operation of Tenant’s business and for which Landlord gives written consent prior to the Hazardous Substances being brought onto the Leased Premises. At any time during the term of this Lease, Tenant shall, within ten (10) days after written request from Landlord, disclose in writing all Hazardous Substances that are being used by Tenant on the Project, the nature of the use, and the manner of storage and disposal.

(f) At any time and upon prior written notice to Tenant, Landlord may require testing wells to be drilled on the Project and may require the ground water to be tested to detect the presence of Hazardous Substances by the use of any tests that are then customarily used for those purposes. Landlord shall supply Tenant with copies of the test results. The cost of these tests and of the installation, maintenance, repair, and replacement of the wells shall be paid by Tenant if the tests disclose the existence of facts that give rise to liability of Tenant pursuant to this Section 10.

Section 11. Repairs and Maintenance

(a) Subject to reimbursement pursuant to Section 6 and the provisions of Section 10, Section 11(b) and Section 15, and except for damage caused by any negligent or intentional act or omission of Tenant or Tenant's employees or agents, in which event Tenant shall repair the damage, Landlord shall repair, maintain, and operate the Common Areas and repair and maintain the roof and exterior and structural parts of the Building so that they are kept in good working order and repair. If any heating, air conditioning, ventilation, plumbing, electrical, or other equipment serves both the Leased Premises and portions of the Common Areas or both the Leased Premises and other parts of the Building, Landlord shall maintain and operate and replace when necessary that equipment. Landlord shall not be responsible for repairs required by an accident, fire, or other peril or for damage caused to any part of the Project by any act or omission of Tenant or Tenant's employees or agents, except as otherwise required by this Lease. Landlord may engage contractors of Landlord's choice to perform the obligations required by this Section, and the necessity of any expenditure to perform those obligations shall be at the sole discretion of Landlord. Tenant expressly waives the benefits of any statute now or later in effect that would otherwise give Tenant the right to make repairs at Landlord's expense and deduct that cost from rent owing to Landlord.

(b) Subject to the provisions of Section 11(a) and Section 15, Tenant shall clean and maintain in good order, condition, and repair and replace when necessary the following:

(i) all plumbing and sewage facilities in the Leased Premises, including but not limited to all plumbing fixtures, pipes, fittings, or other parts of the plumbing system in the Leased Premises;

(ii) all fixtures, interior walls, floors, carpets, draperies, window coverings, and ceilings in the Leased Premises;

(iii) all windows, doors, entrances, and plate glass in the Leased Premises;

(iv) all electrical facilities and all equipment in the Leased Premises, including all light fixtures, lamps, bulbs, tubes, fans, vents, exhaust equipment, and systems; and

(v) any fire detection or extinguisher equipment in the Leased Premises.

(c) With respect to utility facilities serving the Leased Premises, Tenant shall be responsible for the maintenance and repair of any facilities that serve only the Leased Premises, including all facilities that are within the walls or floor or on the roof of the Leased Premises, and any part of the facility that is not within the Leased Premises, but only up to the point where the facilities join a main or other junction from which the utility services are distributed to other parts of the Project as well as to the Leased Premises.

(d) Tenant shall:

(i) maintain, repair, and replace when necessary all heating, air conditioning, and ventilation equipment that services only the Leased Premises, and shall keep the them in good condition through regular inspection and servicing, and

(ii) maintain continuously throughout the term of the Lease a service contract for the maintenance of all heating, air conditioning, and ventilation equipment with a licensed repair and maintenance contractor approved by Landlord; the contract should provide for periodic inspections and servicing of the heating, air conditioning, and ventilation equipment at least once every ninety (90) days during the term of the Lease. However, Landlord may elect at any time during the term of the Lease to assume responsibility for the maintenance, repair, and replacement of the heating, air conditioning, and ventilation equipment that serves only the Leased Premises. Tenant shall maintain continuously throughout the term of the Lease a service contract for the washing of all windows, both interior and exterior surfaces, in the Leased Premises; the contract should provide for the periodic washing of all windows at least once every forty-five (45) days during the term of the Lease.

(e) All repairs and replacements required of Tenant shall be promptly made with new materials of like kind and quality. If the work affects the structural parts of the Building or if the estimated cost of any item of repair or replacement is in excess of *[dollar amount]*, Tenant shall first obtain Landlord's written approval of the scope of the work, the plans for the work, the materials to be used, and the contractor hired to perform the work.

(f) If Tenant fails to perform Tenant's obligations under this Section or under any other section of this Lease, after five (5) days' prior written notice to Tenant, except in an emergency when no notice shall be required, Landlord may enter the Leased Premises, perform the obligations on Tenant's behalf, and recover the cost of performance, together with interest at the maximum rate then allowed by law, as additional rent payable by Tenant with the next installment of Base Rent.

Section 12. Alterations

(a) Tenant shall not construct any alterations, improvements, or additions or otherwise alter the Leased Premises ("Alterations") without Landlord's prior written consent, provided, however, that Tenant shall be entitled, without Landlord's prior consent, to make Alterations (i) that do not affect the structural integrity, the exterior sections, or water-tight nature of the Building, and (ii) the reasonably estimated cost of which does not exceed *[dollar amount]*. If Landlord's approval for any Alterations is required, Tenant shall not undertake the Alterations until Landlord has given written consent to the plans and specifications, and the Alterations shall be constructed substantially in compliance with plans and specifications approved by a licensed contractor and by Landlord. All Alterations shall be constructed by a licensed contractor in accordance with all Laws using new materials of good quality.

(b) Tenant shall not commence construction of any Alterations until:

(i) all required governmental approvals and permits have been obtained,

(ii) all requirements regarding insurance imposed by this Lease have been satisfied,

(iii) Tenant has given Landlord at least ten (10) days' prior written notice of Tenant's intention to commence construction, and

(iv) Tenant has provided to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1 1/2) the estimated cost of the Alterations, to insure Landlord against any liability for mechanics' and materialmen's liens and to ensure completion of the Alterations.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished in connection with the Alterations that are or may become mechanics' or materialmen's liens against the Leased Premises or the Project or any interest in them. Tenant shall have the right to, in good faith, contest the validity of any lien, claim, or demand, provided that Tenant shall, at Tenant's sole expense, defend Landlord against the lien, claim, or demand, and, upon the request of Landlord, Tenant shall furnish to Landlord a surety bond in an amount equal to the contested lien, claim, or demand indemnifying Landlord against liability and holding the Leased Premises, the Building, and the Project free from the effect of the lien, claim, or demand. In addition, Landlord may require Tenant to pay Landlord's attorney's fees and costs in connection with the defense of any lien, claim, or demand. Tenant shall pay and satisfy any adverse judgment that may be rendered to enforce the lien, claim, or demand against the Landlord, the Leased Premises, or the Project.

(d) All Alterations shall be and remain the property of Tenant during the term of this Lease but shall not be altered or removed from the Leased Premises. At the expiration or sooner termination of the term of this Lease, all Alterations shall become the property of Landlord, and Landlord shall have no obligation to reimburse Tenant for any portion of the value or cost. However, Landlord shall have the right to require Tenant to remove any Alterations; in that case, Tenant shall remove the Alterations prior to the expiration or sooner termination of the term of this Lease. However, Tenant shall not be obligated to remove any Alterations with respect to which:

(i) Tenant was required or elected to obtain the consent of Landlord;

(ii) at the time Tenant requested the consent of Landlord, Tenant requested that Landlord inform Tenant of whether Landlord would require Tenant to remove the Alteration at the expiration of the term of this Lease; and

(iii) at the time Landlord granted consent, Landlord notified Tenant that Landlord would not require the removal of the Alteration at the expiration of the term of this Lease.

(e) Tenant shall make any alteration, addition, or change of any sort to the Leased Premises that is required by any Law because of:

(i) Tenant's particular use or change of use of the Leased Premises;

(ii) Tenant's application for any permit or governmental approval; or

(iii) Tenant's construction or installation of any Alterations. Any other alteration, addition, or change required by Law shall be the responsibility of Landlord, subject, if any, to Landlord's right of reimbursement in Section 6.

Section 13. Trade Fixtures

(a) Tenant shall have the right, at any time and from time to time during the Term and any renewal or extension, at Tenant's sole cost and expense, to install and affix in, to, or on the Leased Premises items for use in Tenant's trade or business that

Tenant, in Tenant's sole discretion, deems advisable (collectively, "Trade Fixtures"). Trade Fixtures or any other equipment installed in the Leased Premises by Tenant shall remain the property of Tenant and may be removed at the expiration of the Term or any extension, provided that any damage to the Leased Premises caused by the removal of Trade Fixtures or equipment shall be repaired by Tenant, and further provided that Landlord shall have the right to keep any Trade Fixtures or equipment that Tenant otherwise elects to abandon.

(b) As security for Tenant's performance of this Lease, Tenant grants to Landlord a security interest in all Trade Fixtures owned by Tenant and now or later placed on the Leased Premises by Tenant. Any right given Tenant by the provisions of Section 13(a) to remove the Trade Fixtures shall be exercisable only if, at the time of the removal, Tenant is not in default in performance of this Lease. Tenant may, however, at any time Tenant is not in default in performance of this Lease, trade in or replace any Trade Fixture, free of the security interest created by this Section. This security interest will then attach to the item that replaced the previous Trade Fixture. Upon default under this Lease, Landlord shall immediately have, as to the Trade Fixtures, the remedies provided to a secured party under the UCC in California.

Section 14. Insurance

(a) Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease:

(i) Commercial general liability insurance, including property damage, against liability for bodily injury, personal injury, death, and damage to property occurring on the Leased Premises with combined single limit coverage of at least [*dollar amount*] per occurrence and a general aggregate combined single limit of bodily injury and property damage liability of at least [*dollar amount*]; that policy shall include contractual liability, insuring Tenant's performance of indemnification obligations contained in this Lease; and

(ii) Fire and "all risk" property damage insurance, insuring any Alterations and all of Tenant's equipment and Trade Fixtures located on the Leased Premises for full replacement cost.

(b) Where applicable, each policy of insurance required to be carried by Tenant pursuant to Section 14(a):

(i) shall name Landlord and any other parties in interest that Landlord reasonably designates as additional insureds;

(ii) shall be primary insurance that provides that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage of Landlord;

(iii) shall be in a form satisfactory to Landlord;

(iv) shall be carried with companies reasonably acceptable to Landlord;

(v) shall provide that the policy shall not be subject to cancellation, lapse, or change, except after at least thirty (30) days' prior written notice to Landlord;

(vi) shall not have a "deductible" in excess of any amount reasonably approved by Landlord;

(vii) shall contain a cross liability endorsement; and

(viii) shall contain a “severability” clause. If Tenant has in full force a blanket policy of liability insurance with the same coverage for the Leased Premises as described in Section 14(a), that blanket insurance shall satisfy the requirements of Section 14(a), provided that the blanket policy specifically states the address of the Leased Premises as being covered. A copy of each policy evidencing the insurance required to be carried by Tenant pursuant to Section 14(a) or a certificate of the insurer, certifying that the policy has been issued, which provides the coverage required by Section 14(a) and which contains the specified provisions, shall be delivered to Landlord prior to the time Tenant takes possession of the Leased Premises and upon renewal of those policies, not less than thirty (30) days prior to the expiration of the term of the coverage.

(c) Landlord shall maintain, subject to reimbursement pursuant to Section 6, the following policies of insurance:

(i) a policy of fire and “all risk” property damage insurance insuring Landlord against loss of rents for a period of not less than twelve (12) months and from physical damage to the Project, with coverage of not less than the full replacement cost. Landlord may insure the Project separately, or may insure the Project with other property owned by Landlord that Landlord elects to insure together under the same policy. Any fire and property damage insurance:

(A) may be endorsed to cover loss caused by any additional perils against which Landlord may elect to insure, including earthquake or flood, and to provide any additional coverage Landlord reasonably requires, and

(B) shall contain reasonable “deductibles,” which in the case of earthquake and flood insurance, may be up to ten percent (10%) of the replacement value of the property insured or any higher amount that is then commercially reasonable. Landlord shall not be required to insure any Alterations constructed by Tenant;

(ii) a policy of commercial general liability insurance insuring Landlord against liability for personal injury, bodily injury, death, and damage to property occurring or resulting from an occurrence in, on, or about the Project, with combined single limit coverage of at least [*dollar amount*] and general aggregate combined single limit of bodily injury and property damage liability of [*dollar amount*].

(d) Tenant shall pay any increase in Landlord’s property insurance over the amount of the premium immediately prior to the commencement of the Term that is attributed by Landlord’s insurance carrier to the nature of Tenant’s occupancy or any act or omission of Tenant.

(e) Tenant and Landlord each release the other and waive the entire right of recovery against the other for any damage or liability arising out of or incident to the perils insured against, whether due to the negligence of Landlord, Tenant, or their respective employees, agents, contractors, and invitees. Prior to obtaining the required policies of insurance, Tenant and Landlord shall notify their respective insurance carriers that the previous waiver of subrogation is in this Lease.

Section 15. Damage and Destruction

(a) If the Leased Premises are destroyed or damaged to the extent of ten percent (10%) or more of the then full replacement cost from a cause not insured against under either Landlord’s or Tenant’s casualty insurance policy, Landlord shall have the right to terminate this Lease by giving written notice of termination to Tenant within thirty (30) days after the date of the

damage or destruction, in which case this Lease shall terminate as of the receipt by Tenant of Landlord's notice. If the Lease is not so terminated, then Landlord shall diligently proceed to repair and restore the Leased Premises.

(b) If the Leased Premises, the Building, or the Project are destroyed or damaged to the extent of ten percent (10%) or more of the then full replacement cost from a cause covered by either Tenant's or Landlord's casualty insurance, and that damage or destruction may be repaired or restored within ninety (90) days after commencement of repair or restoration, then Landlord shall diligently proceed to repair and restore the Leased Premises. If Landlord determines that the Leased Premises cannot be repaired or restored within that period, then Landlord shall have the right to terminate this Lease by written notice to Tenant given within sixty (60) days after the date of damage or destruction; Tenant's obligation to pay rent and other charges under this Lease shall terminate as of the date of the damage or destruction or as of the date Tenant ceases to do business at the Leased Premises, whichever date is later.

(c) If the Building or the Project is damaged to the extent of fifty percent (50%) or more of its replacement cost, Landlord may elect to terminate this Lease by written notice to Tenant given within sixty (60) days after the date of damage or destruction, whether the Leased Premises are affected or not; in that case, this Lease shall terminate as of the receipt by Tenant of Landlord's notice.

(d) If, in any case that is the subject of Section 15, the Leased Premises or any portion of the Leased Premises is rendered unfit for use and occupancy and this Lease is not terminated as provided above, a just proportion of the Base Rent, in light of the nature and extent of the damage, shall be abated until the Leased Premises are restored by Landlord as provided above, excluding any fixtures or items installed or paid for by Tenant that Tenant is entitled or required to remove under this Lease.

(e) Except as expressly provided in this Lease, damage to or destruction of the Leased Premises, the Building, or the Project shall not terminate this Lease or result in any abatement of rentals. Tenant waives any right of offset against Tenant's rental obligations that may be provided by any statute or rule of law in connection with Landlord's duties of repair and restoration under the provisions of this Lease.

Section 16. Condemnation

If any part of the Leased Premises is condemned or otherwise taken under the power of eminent domain or conveyed in lieu of condemnation, and the condemnation or taking materially and adversely affects Tenant's occupancy of the Leased Premises, either party shall, at each party's option, have the right to terminate this Lease. If any part of the Project is condemned or taken and that materially and adversely affects the normal operation of the Building, Landlord, at Landlord's option, may terminate this Lease. In either event, Landlord shall receive any award that may be paid in connection with any condemnation or taking, and Tenant shall have no claim or interest in any award, whether or not the award or any part of it is attributable to the value of the unexpired term of this Lease. If a part of the Leased Premises is condemned or taken, and neither party elects to terminate this Lease, but the Leased Premises have been damaged as a consequence, Landlord shall not be required to repair or restore any damage to the Leased Premises, provided that the Base Rent for the remainder of the term of this Lease shall be proportionately reduced, based on the degree of interference with Tenant's use of the Leased Premises. If the Leased Premises is temporarily condemned or taken, this Lease shall be unaffected, and Tenant shall continue to pay all rent payable under this Lease; provided, however, that in such case, Tenant shall be entitled to receive that portion of any award that represents compensation for the use or occupancy of the Leased Premises.

Section 17. Utilities

Tenant shall promptly pay, as they become due, all charges for water, gas, electricity, telephone, sewer service, waste pick-up, and any other utilities or services furnished directly to or used by Tenant on or about the Leased Premises, including but not limited to any connection or hook-up fees and any penalties for discontinued or interrupted service. If any utility service is not separately metered to the Leased Premises, Tenant shall pay Tenant's pro rata share of the cost of that utility service with all others served, provided, however, that if Landlord reasonably determines that Tenant is using a disproportionate amount of any utility service not separately metered, Landlord may

- (a) periodically charge Tenant, as additional rent, a sum equal to Landlord's reasonable estimate of the cost of Tenant's excess use of the utility service, or
- (b) install a separate meter, at Tenant's expense, to measure the utility service supplied to the Leased Premises.

Section 18. Assignment and Subletting

(a) The terms and conditions in this Lease were offered solely to Tenant as an inducement to lease the Leased Premises. Landlord would not necessarily lease the Leased Premises to another tenant on such favorable terms and conditions, it being understood that Landlord is specifically relying on the identity of Tenant in agreeing to the terms and conditions in this Lease. Tenant acknowledges that the lease terms and conditions are for Tenant's benefit only so long as Tenant operates the business allowed by this Lease, and that Tenant is not entering into this Lease for any other purpose, such as the recognition of a leasehold value that it could later sell. It is understood and agreed that any value, upon the early termination of Tenant's occupancy of the Leased Premises, shall revert to Landlord, either by termination of this Lease or as a condition of assignment or subletting, as provided in this Section. But for the previously stated reasons, Landlord would not enter into this Lease. Therefore, Tenant shall not voluntarily, involuntarily, or by operation of laws, without the prior written consent of Landlord

- (i) sublet all or any part of the Leased Premises or allow it to be sublet, occupied, or used by any person or entity other than Tenant;
- (ii) assign Tenant's interest in this Lease;
- (iii) mortgage or encumber the Lease, or otherwise use the Lease as a security device in any manner; or
- (iv) amend or modify an assignment, sublease, or other transfer that has been previously approved by Landlord.

Any action taken or proposed to be taken pursuant to Section 18(a) shall be collectively referred to as an "Assignment," and any third party succeeding to all or a portion of Tenant's interest under this Lease or proposed to succeed to all or a portion of Tenant's interest under this Lease shall be referred to as an "Assignee." If Tenant is a partnership, any withdrawal or substitution, whether voluntary, involuntary, or by operation of law, and whether occurring at one time or over a period of time, of any partner owning twenty-five percent (25%) or more, cumulatively, of any interest in the capital or profits of the partnership or the dissolution of the partnership, shall be deemed an Assignment. If Tenant is a corporation, any dissolution, merger, consolidation, or other reorganization of Tenant, any sale or transfer or cumulative sales or transfers of the capital stock of Tenant in excess of twenty-five percent (25%) or any sale or cumulative sales of fifty-one percent (51%) or more of the value of Tenant's assets shall be deemed an Assignment. However, the previous provisions shall not apply to corporations, the capital stock of which is publicly traded.

(b) Regardless of Section 18(a), Tenant may assign Tenant's interest under this Lease, without Landlord's prior consent, to any Affiliate, provided that before that Assignment is effective, the Assignee shall assume in full Tenant's obligations under this Lease. As used in Section 18(b), an Affiliate means any person that controls, is controlled by, or is under common control with Tenant, or any person who acquires all or substantially all of the assets of Tenant as a going concern of the business that is being conducted on the Leased Premises. Any Assignment pursuant to the terms of Section 18(b) shall in no way affect the liability of Tenant or any guarantor under the terms of this Lease.

(c) Tenant shall pay to Landlord, as an additional rent, all reasonable costs and attorney's fees incurred by Landlord in connection with the evaluation, processing, or documentation of any requested Assignment, whether or not Landlord's consent is granted. Landlord's reasonable costs shall include the cost of any review or investigation performed by Landlord or consultant acting on behalf of Landlord of:

(i) any Hazardous Substances used, stored, released, or disposed of by the proposed Assignee, or

(ii) violations of any Environmental Law by the Tenant or the proposed Assignee.

(d) Any Assignment approved by Landlord shall not be effective until Tenant has delivered to Landlord an executed counterpart of the document evidencing the Assignment that:

(i) is in form and substance reasonably satisfactory to Landlord, and

(ii) contains the same terms and conditions as stated in Tenant's notice given to Landlord pursuant to Section 18(d).

(e) Any attempted Assignment without Landlord's consent shall constitute an Event of Default and shall be voidable at Landlord's option. Landlord's consent to any one Assignment shall not constitute a waiver of the provision of Section 18 as to any subsequent Assignment or a consent to any subsequent Assignment. No Assignment, even with the consent of Landlord, shall relieve Tenant of the obligation to pay the rent and to perform all of the other obligations to be performed by Tenant. The acceptance of rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease, nor to be a consent to any Assignment.

(f) At least sixty (60) days before a proposed Assignment is to become effective, Tenant shall give Landlord written notice of the proposed terms of the Assignment and request Landlord's approval, which notice shall include the following:

(i) the name and legal composition of the Assignee;

(ii) a current financial statement of the Assignee, financial statements of the Assignee covering the preceding three (3) years, if they exist, and, if available, an audited financial statement of the Assignee for a period ending not more than one (1) year prior to the proposed effective date of the Assignment, all of which are to be prepared in accordance with generally accepted accounting principles;

(iii) the nature of the Assignee's business to be carried on in the Leased Premises;

(iv) a statement of all consideration to be given on account of the Assignment; and

(v) any other information that Landlord requests.

(g) Landlord's consent to a requested Assignment shall not be unreasonably withheld, but may be conditioned on amending the economic provisions of the Lease to the then current fair market levels or the other terms of the Lease, and be subject to the payment to Landlord of all consideration paid or to be paid by the Assignee to the Tenant.

(h) Notwithstanding compliance of a proposed Assignment with the provisions of Section 18, if Landlord no longer desires Tenant to be bound, Landlord, in Landlord's sole and arbitrary discretion, in lieu of consenting to the proposed Assignment, by written notice to Tenant, may refuse to consent to the proposed Assignment, and Landlord may terminate this Lease effective thirty (30) days after receipt of notice, and Tenant and Landlord shall then be relieved of all subsequent liability under this Lease. ANY ASSIGNMENT, SUBLETTING, OCCUPANCY, OR USE WITHOUT THE PRIOR WRITTEN CONSENT OF LANDLORD, SHALL BE VOID AND SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THIS LEASE. TENANT SPECIFICALLY UNDERSTANDS AND AGREES THAT AT ANY TIME AN EVENT OF DEFAULT OCCURS AND IS CONTINUING, TENANT SHALL HAVE NO RIGHT TO ASSIGN TENANT'S INTEREST IN THIS LEASE, AND LANDLORD SHALL HAVE NO OBLIGATION TO GIVE LANDLORD'S APPROVAL UNDER THIS SECTION IF TENANT ATTEMPTS AN ASSIGNMENT OR SUBLETTING WHILE IN DEFAULT.

(i) If Tenant's obligations under this Lease have been guaranteed by third parties, any Assignment of Tenant's interest under this Lease and Landlord's consent shall not be effective unless those guarantors give written consent to the Assignment.

(j) If an Event of Default occurs and is continuing, Landlord may proceed directly against Tenant, any Assignee, any guarantors, or any other party responsible for the performance of this Lease, without first exhausting Landlord's remedies against any other party responsible to Landlord, or resorting to any security held by Landlord.

(k) If an Event of Default occurs and is continuing, Landlord may require any subtenant to attorn to Landlord, in which event Landlord shall undertake the obligations of Tenant under any sublease, provided, however, that Landlord shall not be liable for any amounts paid by the subtenant to Tenant or for any defaults by Tenant under the sublease.

(l) Every provision of Section 18 shall be binding on any Assignee as if that Assignee were the tenant under this Lease.

(m) No Assignee shall further assign or sublet the Leased Premises without Landlord's prior written consent.

(n) Landlord's consent to any Assignment shall not constitute an acknowledgment that no default exists under this Lease, nor shall consent be deemed a waiver of any existing default, except as otherwise stated by Landlord at the time.

Section 19. Indemnity

(a) Tenant agrees to indemnify, defend, and hold Landlord, and Landlord's employees, agents and contractors harmless from all liability, penalties, losses, damages, costs, expenses, causes of action, claims, or judgments arising by reason of any death, bodily injury, personal injury, or property damage resulting from:

- (i) any cause occurring in or about or resulting from an occurrence in or about the Leased Premises during the Lease Term,
- (ii) the negligence or willful misconduct of Tenant or Tenant's agents, employees, and contractors, wherever it occurs, or
- (iii) an Event of Tenant's Default.

The provisions of Section 19(a) shall survive the expiration or sooner termination of this Lease.


(b) Except as otherwise provided in this Lease, Landlord shall not be liable to Tenant, nor shall Tenant be entitled to terminate this Lease or to any abatement of rent for any damage to Tenant's property or any injury to Tenant or any of Tenant's employees, agents, or invitees, or loss to Tenant's business arising out of any cause, including but not limited to:

- (i) the failure, interruption, or installation of any heating, air conditioning, or ventilation equipment;
- (ii) the loss or interruption of any utility service;
- (iii) the failure to furnish or delay in furnishing any utilities or services when the failure or delay is caused by fire or other casualty, the elements, labor disputes, acts of God, or any other circumstance beyond the control of Landlord;
- (iv) the limitation, curtailment, rationing, or restriction on the use of water or electricity, gas or any other form of utility;
- (v) vandalism, malicious mischief, or forcible entry by unauthorized persons or the criminal act of any person; or
- (vi) seepage, flooding, or other penetration of water into any portion of the Premises.

Section 20. Default

Each of the following shall constitute an event of default under this Lease (each, "Event of Default"):

- (a) Tenant's failure to make any payment required under this Lease when due;
- (b) The failure of Tenant to perform any of the covenants, conditions, or provisions of this Lease to be performed by Tenant, other than those requiring any payment to Landlord, where this failure continues for a period of thirty (30) days after written notice from Landlord to Tenant. However, if the nature of Tenant's failure reasonably requires more than thirty (30) days for cure, Tenant shall not be deemed to be in default if Tenant commences to cure within the thirty (30) day period and thereafter diligently continues this cure to completion;
- (c) Any of the following:

- (i) The making by Tenant of any general arrangements or assignments for the benefit of creditors;
- (ii) Tenant's becoming a "debtor" as defined in  11 U.S.C.A § 101 or any successor statute, unless, in the case of a petition filed against Tenant, it is dismissed within sixty (60) days after filing;
- (iii) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Leased Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days of this appointment;
or
- (iv) The attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease, where this seizure is not discharged within thirty (30) days after the seizure.
- (d) The vacation or abandonment of the Leased Premises by Tenant;
- (e) Tenant's Assignment in violation of Section 18.

Section 21. Remedies

Upon the occurrence of an Event of Default, Landlord, in addition to any other rights or remedies available to Landlord at law or in equity, shall have the right to:

- (a) terminate this Lease and all rights of Tenant by giving Tenant written notice that this Lease is terminated, in which case Landlord may recover from Tenant the sum of:
 - (i) the worth at the time of award of any unpaid rent that had been earned at the time of termination;
 - (ii) the worth at the time of award of the amount by which (A) the unpaid rent that would have been earned after termination until the time of award exceeds (B) the amount of rental loss, if any, as Tenant affirmatively proves could have been reasonably avoided;
 - (iii) the worth at the time of award of the amount by which (A) the unpaid rent for the balance of the term after the time of award exceeds (B) the amount of rental loss, if any, as Tenant affirmatively proves could be reasonably avoided;
 - (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations or that, in the ordinary course of things, would be likely to result; and
 - (v) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law. As used in clauses (i) and (ii) of this Section, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (iii) of this Section, the worth at the time of award is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). As used in this Section the term rent shall include Base Rent, Percentage Rent, and any other payments required

by Tenant.

(b) continue this Lease, and from time to time, without terminating this Lease, either (i) recover all rent and other amounts payable as they become due or (ii) relet the Leased Premises or any part of the Premises on behalf of Tenant for any term, at any rent, and pursuant to any other provisions as Landlord deems advisable, all with the right, at Tenant's cost, to make alterations and repairs to the Leased Premises.

(c) Upon the occurrence of an Event of Default, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Leased Premises and remove all persons and property from the Leased Premises. Landlord may cause property so removed from the Leased Premises to be stored in a public warehouse or elsewhere at the expense and for the account of Tenant.

(d) None of the following remedial actions, singly or in combination, shall be construed as an election by Landlord to terminate this Lease unless Landlord has in fact given Tenant written notice that this Lease is terminated or unless a court of competent jurisdiction decrees termination of this Lease: any act by Landlord to maintain or preserve the Leased Premises; any efforts by Landlord to relet the Leased Premises; any re-entry, repossession, or reletting of the Leased Premises; or any re-entry, repossession, or reletting of the Leased Premises by Landlord pursuant to this Article. If Landlord takes any of the previous remedial actions without terminating this Lease, Landlord may nevertheless at any time after taking any remedial action terminate this Lease by written notice to Tenant.

(e) If Landlord relets the Leased Premises, Landlord shall apply the revenue as follows: first, to the payment of any indebtedness, other than rent due from Tenant to Landlord; second, to the payment of any cost of reletting, including without limitation finder's fees and leasing commissions; third, to the payment of the cost of any maintenance and repairs to the Leased Premises; and fourth, to the payment of rent and other amounts due and unpaid. Landlord shall hold and apply the residue, if any, to payment of future amounts payable as they become due. Should revenue from reletting during any month, after application pursuant to the foregoing provisions, be less than the sum of (i) Landlord's expenditures for the Leased Premises during that month and (ii) the amounts due from Tenant during that month, Tenant shall pay the deficiency to Landlord immediately upon demand.

(f) After the occurrence of an Event of Default, Landlord, in addition to or in lieu of exercising other remedies, may, but without any obligation to do so, cure the breach underlying the Event of Default for the account and at the expense of Tenant; provided that Landlord by prior notice shall first allow Tenant a reasonable opportunity to cure, except in cases of emergency, where Landlord may proceed without prior notice to Tenant. Tenant shall, upon demand, immediately reimburse Landlord for all costs, including costs of settlements, defense, court costs, and attorney's fees, that Landlord may incur in the course of any cure.

(g) No security or guaranty for the performance of Tenant's obligations, which Landlord may now or hereafter hold, shall in any way constitute a bar or defense to any action initiated by Landlord for unlawful detainer or for the recovery of the Leased Premises, for enforcement of any obligation of Tenant, or for the recovery of damages caused by a breach of this Lease by Tenant or by an Event of Default.

(h) Except insofar as this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy given now or later or existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by that party of any violation or nonperformance by the other party of any obligations, agreements, or covenants shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall

any forbearance by either party to exercise a remedy for any violation or nonperformance by the other party be deemed a waiver by that party of rights or remedies with respect to that violation or nonperformance.

Section 22. Default by Landlord

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Leased Premises, the name and address for that holder having been furnished to Tenant in writing, specifying in what respect Landlord has failed to perform the obligation. However, if Landlord's obligation requires more than thirty (30) days for performance, Landlord shall not be in default if Landlord commences to perform within the thirty (30) day period and afterwards diligently completes it.

Section 23. Late Charges

Tenant acknowledges that late payment of sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Therefore, if any sum due from Tenant is not received by Landlord when due, then without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to *[rate]* of the overdue sum. The parties agree that the late charge represents a fair and reasonable estimate of the costs Landlord will incur because of late payment by Tenant. Acceptance of the late charge by Landlord shall not constitute a waiver of Tenant's default for the overdue sum, nor prevent Landlord from exercising any of the other rights and remedies in this Lease.

Section 24. Interest on Past Due Obligations

Any amount that is due to Landlord and not paid when due shall bear interest from the date due at the maximum rate then allowable by law; provided, however, that interest shall not be payable on late charges incurred by Tenant. Payment of the interest shall not cure any default by Tenant under this Lease.

Section 25. Subordination

(a) This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or later placed upon the Premises and to any advances made on the security of it or Landlord's interest in it, and to all renewals, modifications, consolidations, replacements, and extensions of it. However, if any mortgagee, trustee, or ground landlord elects to have this Lease prior to the lien of the mortgage or deed of trust or prior to the ground lease, and gives notice of that to Tenant, this Lease shall be deemed prior to the mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease, or the date of recording. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Tenant shall attorn to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure. If any ground lease to which this Lease is subordinate is terminated, Tenant shall attorn to the ground landlord. Tenant agrees to execute any documents, in form and substance reasonably acceptable to Tenant, required to subordinate, to make this Lease prior to the lien of any mortgage or deed of trust or ground lease, or to evidence the attornment.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed. Neither shall the rights and possession of Tenant under this Lease be disturbed, if Tenant is not then in default in the payment of rental and other sums due under this Lease or otherwise in default under the terms of this Lease, and if Tenant attorns to the purchaser, grantee, or ground landlord as provided in Section 25(a) or, if requested, enters into a new lease for the balance of the term of this Lease on the same terms and provisions in this Lease. Tenant's covenant under Section 25(a) to subordinate this Lease to any ground lease, mortgage, deed of trust, or other hypothecation later executed is conditioned on each senior instrument containing the commitments specified in this subsection.

Section 26. Estoppel Certificates

(a) At all times during the term of this Lease, each party agrees, following any request by the other party, promptly to execute and deliver to the requesting party within ten (10) days following delivery of a request an estoppel certificate:

(i) certifying that this Lease is unmodified and in full force, or if modified stating the nature of the modification and certifying that this Lease, as so modified, is in full force,

(ii) stating the date to which the rent and other charges are paid in advance, if any,

(iii) acknowledging that there are not, to the certifying party's knowledge, any uncured defaults on the part of any party, or if there are uncured defaults, specifying the nature of the defaults, and

(iv) certifying any other information about the Lease as may be reasonably required by the requesting party.

(b) A failure to deliver an estoppel certificate within ten (10) days after delivery of a request shall be a conclusive admission that, as of the date of the request for such statement:

(i) this Lease is unmodified except as may be represented by the requesting party in the request and is in full force,

(ii) there are no uncured defaults in the requesting party's performance, and

(iii) no rent has been paid more than thirty (30) days in advance.

(c) At any time during the term of this Lease, Tenant shall, upon ten (10) days' prior written notice from Landlord, provide Tenant's most recent financial statement and financial statements covering the three (3) year period prior to the date of the most recent financial statement to any existing or potential lender or buyer of the Leased Premises. The statements shall be prepared in accordance with generally accepted accounting principles and, if it is the normal practice of Tenant, shall be audited by an independent certified public accountant.

Section 27. Transfer by Landlord

If Landlord transfers the Leased Premises, Landlord shall be relieved of all liability for the performance of Landlord's obligations after the date of the transfer. However, any prepaid rent or security deposit held by Landlord at the time of the transfer shall be delivered to the transferee.

Section 28. Severability

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect, unimpaired by the holding.

Section 29. Time of Essence

Time is of the essence under this Lease.

Section 30. Additional Rent

All monetary obligations of Tenant to Landlord under the Lease, including but not limited to the Base Rent, Tenant's Share of Operating Expenses, and the Percentage Rent, shall be deemed rent.

Section 31. Entire Agreement

(a) This Lease constitutes the entire agreement between Landlord and Tenant, and there are no agreements or representations between the parties except as expressed in this Lease. Tenant acknowledges that neither Landlord nor Landlord's representatives have made any legally binding representation or warranty as to any matter except those expressly set forth, including any warranty as to:

- (i) whether the Leased Premises may be used for Tenant's intended use under existing law,
- (ii) the suitability of the Leased Premises or the Project for the conduct of Tenant's business, or
- (iii) the condition of any improvements.

(b) There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between Landlord and Tenant with respect to the subject matter of this Lease. This instrument shall not be legally binding until it is executed by both Landlord and Tenant. No subsequent change or addition to this Lease shall be binding unless in writing and signed by Landlord and Tenant.

Section 32. Notices

Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed given when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to Tenant at

[address of tenant]

or to Landlord at

[address of landlord]

Either party, Tenant or Landlord, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

Section 33. Waivers

No waiver by Landlord, nor any provisions in this Lease shall be deemed a waiver of any other provision of this Lease, of any subsequent breach of this Lease by Tenant, or of any other provision. Landlord's consent to or approval of any act by Tenant shall not waive the necessity for Landlord's consent to or approval of any subsequent act by Tenant. Landlord's acceptance of rent shall not be a waiver of any preceding breach of Tenant, other than Tenant's failure to pay the rent that Landlord accepted, regardless of Landlord's knowledge of the preceding breach at the time of acceptance of the rent.

Section 34. No Recording

Neither party shall, without the express written consent of the other, execute, acknowledge, or record a memorandum of this Lease.

Section 35. Surrender of the Leased Premises

(a) Upon the expiration or sooner termination of this Lease, Tenant shall vacate and surrender the Leased Premises to Landlord in the same condition as existed at the Commencement Date, except for:

- (i) reasonable wear and tear, and
- (ii) damage caused by any peril or condemnation.

(b) If Landlord so requests, Tenant shall, prior to the expiration or sooner termination of this Lease:

(i) remove any Alterations that Tenant is required to remove pursuant to this Lease and repair all damage caused by such removal, and

(ii) return the Leased Premises or any part of the Leased Premises to its original configuration existing as of the time the Leased Premises were delivered to Tenant.

(c) If the Leased Premises are not so surrendered at the termination of this Lease, Tenant shall be liable to Landlord for all costs incurred by Landlord in returning the Leased Premises to the required condition. Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in surrendering the Leased Premises, including without limitation any claims made by any succeeding tenant or losses to Landlord due to lost opportunities to lease to succeeding tenants.

Section 36. Holding Over

At the end of the Term, or any extension, if Tenant holds over for any reason, it is hereby agreed that in the absence of a written agreement to the contrary that tenancy shall be from month-to-month only and not a renewal of this Lease, nor an extension for any further term. In that case, Tenant shall pay Base Rent in an amount equal to *[rate]* of the Base Rent payable prior to the end of the Term or any extension, and the month-to-month tenancy shall be subject to every other term, covenant, and condition contained in this Lease that is consistent with and not contrary to a month-to-month tenancy.

Section 37. Cumulative Remedies

No remedy of election under this Lease shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Section 38. Covenants and Conditions

Each term of this Lease performable by Tenant shall be deemed both a covenant and a condition.

Section 39. Binding Effect

Subject to Section 18, this Lease shall be binding on and inure to the benefit of the parties and their successors and assigns.

Section 40. Attorney Fees

If either party brings an action to enforce the Lease, the prevailing party, shall be entitled to reasonable attorney's fees as determined by the court. "Prevailing party" shall include without limitation:

- (a) a party who dismisses an action in exchange for sums allegedly due;
- (b) a party who receives performance from the other party for an alleged breach of covenant or who receives a desired remedy that is substantially equal to the relief sought in an action; or
- (c) a party determined to be the prevailing party by a court of law.

Section 41. Entry

(a) Landlord and its agents may enter the Leased Premises at any reasonable time after giving at least twenty-four (24) hours' prior written notice to Tenant, and immediately in the case of emergency, for the purpose of:

- (i) inspecting the Leased Premises;
- (ii) posting notices of nonresponsibility;
- (iii) supplying any service to be provided by Landlord to Tenant;
- (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants;
- (v) making necessary alterations, additions, or repairs;
- (vi) performing Tenant's obligations when Tenant has failed to do so after written notice from Landlord;
- (vii) placing on the Leased Premises ordinary "for lease" signs or "for sale" signs; and
- (viii) responding to an emergency.

(b) Landlord shall have the right to use any means Landlord deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises obtained by Landlord in accordance with this Section shall not be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of Tenant from the Leased Premises.

Section 42. Parking

Tenant shall be entitled to *[number]* reserved parking spaces and *[number]* unreserved parking spaces on those portions of the Common Areas appropriately designated on Exhibit A to this Lease. Tenant shall not use the parking spaces to park vehicles larger than full-size passenger vehicles. Loading and unloading of vehicles shall be permitted on designated loading docks or loading areas only. Any vehicle violating any provision of this Section shall be subject to towing at Tenant's expense.

Section 43. Signs

Tenant shall not place, maintain, nor permit on any exterior door, wall, or window of the Leased Premises, the Building or the Project any sign, awning, canopy, marquee, or other advertising without the express written consent of Landlord. Furthermore, Tenant shall not place any decoration, lettering, or advertising matter on the glass of any exterior show window of the Leased Premises without the written approval of Landlord. If Landlord consents to any sign, awning, canopy, marquee, decoration, or advertising matter, Tenant shall maintain it in good appearance and repair at all times during this Lease. If at the end of the term of this Lease, any of the items mentioned in this Section are not removed from the Leased Premises by Tenant, that item may, without damage or liability, be destroyed by Landlord.

Section 44. Merger

The voluntary or other surrender of this Lease by Tenant, a mutual cancellation of this Lease, or a termination by Landlord shall not cause a merger, and shall, at the option of Landlord, terminate all existing subtenancies or may, at the option of Landlord, cause an assignment to a Landlord of all of these subtenancies.

Section 45. Broker's Fee

Upon execution of this Lease by both parties, Landlord shall pay to *[name of broker]* ("Broker") a fee as provided for in a separate agreement between Landlord and Broker. The parties warrant to each other that each has not dealt with any real estate agents or broker other than Broker. Each party agrees to indemnify, defend, and hold the other harmless from all loss, claim, cost, and expense incurred as a result of the breach of this warranty.

Section 46. Security Measures

Tenant acknowledges that Landlord shall have no obligation to provide any guard service or other security measures to the Leased Premises, the Building, or the Project, and Tenant assumes all responsibility for the protection of Tenant, Tenant's agents, invitees, and customers, and the property of Tenant and of Tenant's agents, invitees, and customers from acts of third parties. Nothing in this Lease shall prevent Landlord, at Landlord's sole option, from providing security protection for the Project, the cost of which shall be included within the definition of Operating Expense, as set forth in Section 6(b).

Section 47. Easements

Landlord reserves the right to grant easements, rights, and dedications that Landlord deems necessary or desirable, and to record parcel maps and restrictions, so long as these easements, rights, dedications, maps, and restrictions do not unreasonably interfere with Tenant's use of the Leased Premises. Tenant agrees to sign any of these documents immediately upon request of Landlord.

Section 48. Authority

If Tenant is a corporation or partnership, each individual executing this Lease on behalf of Tenant represents and warrants that that individual is duly authorized to execute and deliver this Lease on behalf of the corporation in accordance with the by-laws of the corporation, or on behalf of the partnership in accordance with the partnership agreement of the partnership, and that this lease is binding upon the corporation or partnership, as applicable, in accordance with its terms. Each of the persons executing this Lease on behalf of a corporation covenants and warrants that the party for whom the person is executing this Lease is a duly authorized and existing corporation, that it is qualified to do business in California, and that the corporation has full right and authority to enter into this Lease.

Section 49. Governing Law

This Lease shall be governed by California law, and any litigation concerning this Lease between the parties shall be initiated in the Superior Court of *[name of county]* County.

Section 50. Offer

Preparation of this Lease by Landlord or Landlord's agent and submission to Tenant shall not be deemed an offer to lease. This lease shall become binding on Landlord and Tenant only when fully executed by Landlord and Tenant.

Section 51. Accessibility Requirements

The following requirements are included herein by Landlord to comply with [Civ. Code, § 1938](#):

- The Premises have not undergone inspection by a Certified Access Specialist (CASp).
- The Premises have undergone inspection by a Certified Access Specialist (CASp).
- Attached hereto is a copy of the current disability access inspection certificate.
- Tenant acknowledges that it has received at least 48 hours prior to the execution of this Lease a copy of the report prepared by the Certified Access Specialist (CASp) dated *[date of report]*, a copy of which is attached hereto as Exhibit *[designation of exhibit]* (the "CASp Report"). Tenants' initials _____.
- [Landlord/Tenant]* shall bear the cost of any work called for under the CASp Report.
- Tenant hereby agrees to keep and maintain the confidentiality of the CASp Report and will not disclose the contents thereof to any third party without first obtaining the written consent of Landlord, which consent Landlord may grant or withhold in its sole and absolute discretion, except as necessary for Tenant to complete repairs and corrections of violations of construction-related accessibility standards that Tenant agrees to make.
- Tenant acknowledges and agrees that a Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

LANDLORD:

[Name and capacity of landlord]

By:

Name:

Its:

By:

Name:

Its:

TENANT:

[Name and capacity of tenant]

By:

Name:

Its:

By:

Name:

Its:

[Attach exhibits]