

# COMMERCIAL LEASE AGREEMENT

This Lease is entered into on \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, referred to in this Lease as "Landlord" and \_\_\_\_\_, referred to in this Lease as "Tenant."

## ARTICLE 1 LEASE OF PREMISES AND TERM OF LEASE

### Agreement to Lease Premises

**Section 1.01.** For and in consideration of the rents to be paid and covenants to be performed by Tenant under this Lease, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord those certain premises (hereinafter "Premises") located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, commonly known as \_\_\_\_\_, containing approximately \_\_\_\_\_ square feet.

Net Rentable Area: The rentable area computed by measuring to the window glass of outer building walls, to the Premises side of public corridors and/or other permanent partitions and to the center of partitions which separate the adjoining rentable areas with no deduction for columns and projections necessary to the building structure. On multi-tenant floors, common corridors and toilets, air conditioning rooms, fan rooms, janitorial closets, electrical and telephone closets and any other areas within and exclusively serving that floor are considered common area and for purposes of this section shall be allocated prorate to the Tenants on the floor.

### Term of Lease

Section 1.02. The term of this Lease shall be for a period of \_\_\_\_\_ years, beginning on \_\_\_\_\_, 20\_\_\_\_ and ending on \_\_\_\_\_, 20\_\_\_\_, unless terminated earlier as provided in this Lease.

## ARTICLE 2 RENT

### Minimum Rent

**Section 2.01.** Tenant agrees to pay to Landlord minimum monthly rent, monthly in advance, ("Minimum Rent") for each month during the term of this Lease in the following amounts:

- a. \$ \_\_\_\_\_ per month for the period commencing \_\_\_\_\_ and ending \_\_\_\_\_ and
- b. \$ \_\_\_\_\_ per month for the period commencing \_\_\_\_\_ and ending \_\_\_\_\_ and
- c. \$ \_\_\_\_\_ per month for the period commencing \_\_\_\_\_ and ending \_\_\_\_\_.
- d. or see attached schedule (if applicable).

**Security Deposit**

**Section 2.02.** Concurrently with Tenant’s execution of this Lease, Tenant shall deposit with Landlord the sum of \$ \_\_\_\_\_. Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including but not limited to, the provisions relating to the payment of rent and any of the monetary sums due herewith, Tenant may (but shall not be required to) use, apply or retain all or part of this Security Deposit for the payment of any other amount which Landlord may spend by reason of Tenant’s default. If any portion of said Deposit is so used or applied, Tenant shall, within ten (10) days after written demand therefore, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount; Tenant’s failure to do so shall be material breach of this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord’s option, to the last assignee of Tenant’s interest hereunder) at the expiration of the lease term and after Tenant has vacated the Premises. In the event of termination of Landlord’s interest in this Lease, Landlord shall transfer said Deposit to Landlord’s successor in interest whereupon Tenant agrees to release Landlord from liability for the return of such Deposit or the accounting therefore.

**Late Charges**

**Section 2.03.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Minimum Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to, processing and accounting charges, personnel costs, and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Minimum Rent or any other sum due from Tenant shall not be received by Landlord when due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant’s default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not

collected, for two (2) installments of Minimum Rent in any twelve (12) month period, then the Minimum Rent and/or all other charges hereunder shall, at Landlord's election by written notice to Tenant, become due and payable quarterly in advance, rather than monthly, notwithstanding any other provision of this Lease to the contrary.

### **No Partnership of Joint Venture**

**Section 2.04.** Nothing in this Lease shall be construed to render Landlord in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Landlord and Tenant, nor shall this Lease be construed to authorize either to act as agent for the other.

## **ARTICLE 3 USE OF PREMISES**

### **Permitted Use**

**Section 3.01.** Tenant agrees that the Premises shall be used, occupied, and conducted exclusively for \_\_\_\_\_ and for no other purpose without Landlord's prior written consent which may be withheld in Landlord's sole and absolute discretion. Under no conditions shall any residential use be made of the Premises.

### **Compliance with Laws**

**Section 3.02.** Tenant will use the Premises in a thoroughly orderly and respectable manner, without let, hindrance, annoyance, disturbance, detriment, injury or offense to Landlord; will not maintain, commit, nor suffer to be maintained or committed any nuisance or waste in or about the Premises; will not do or permit anything to be done in or about the Premises, nor bring or keep anything therein, which will in any way affect fire, or other insurance of the Premises or any of its contents, or which shall in any way conflict with any law, ordinance, rule or regulation affecting the occupancy of the Premises which are or may hereafter be enacted or promulgated by any public authority.

### **Signage**

**Section 3.03.**

a. Tenant shall not place or permit to be placed in or upon the Premises, where visible from outside the Premises, or outside the Premises or any part of the Building any signs, notices, drapes, shutters, blinds or displays of any type without the prior written consent of Landlord.

b. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof, exterior of the Premises not leased to Tenant such signs, notices displays and similar items as Landlord deems appropriate in the proper operation of the Landlord.

## **Compliance with Government Regulations**

**Section 3.04.** Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such ordinance or statute pertaining to the Premises, shall be conclusive of the fact as between Landlord and Tenant.

### **ARTICLE 4**

#### **TAXES**

##### **Taxes**

**Section 4.01.** Landlord shall pay current real property taxes, other than taxes covered by Section 4.02, unless otherwise agreed (see attached schedule, if applicable).

##### **New Taxes**

**Section 4.02.** In addition to rent and other charges to be paid by Tenant hereunder, Tenant shall reimburse to Landlord, within thirty (30) days of receipt of a demand therefore, any and all new taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of the parties hereto;

- a. upon, allocable to, or measured by the area of the Premises or on the rent payable hereunder, including without limitation any gross income tax or excise tax levied by the State, any political subdivision thereof, city or federal government with respect to the receipt of such rent; or
- b. upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair; use of occupancy by Tenant of the Premises or any portion thereof; or
- c. upon or measured by the value of Tenant's personal property, equipment or fixtures located in the Premises; or
- d. upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. Tenant agrees to pay, before delinquency, any and all taxes levied or assessed and which become payable during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property located in the Premises. For the purpose of determining said amount, figures supplied by the County Assessor as to the amount so assessed shall be conclusive. Tenant shall comply with the provisions of any law, ordinance or rule of the taxing authorities which require Tenant to file a report of Tenant's property located in the Premises.

**ARTICLE 5  
SERVICE AND UTILITIES**

**Landlord's Obligations**

**Section 5.01.** Landlord agrees to furnish to the Premises, water, gas and electricity suitable for the intended use of the Premises, heat and air conditioning required in Landlord's judgment for the comfortable use and occupancy of the Premises, scavenger, and outside window washing service, and security customary in similar buildings in the competing geographical areas. Landlord shall also maintain and keep lighted the common stairs, common entries and common toilet rooms in the building.

**Tenant's Obligations**

**Section 5.02.** Tenant shall pay for, prior to delinquency, all telephone and all other materials and services, not expressly required to be paid by Landlord, which may be furnished to or used in, on or about the Premises during the term of this Lease. This Lease shall not include utilities/janitorial services. Landlord shall not be responsible to pay for the cost of Tenant's janitorial and utility costs.

**Tenant's Additional Requirements**

**Section 5.03.**

a. Tenant will not, without the written consent of Landlord, use any apparatus or device in the Premises including but without limitation thereto, electronic data processing machines, punch card machines and machines using current in excess of 110 volts, which will in any way increase the amount of electricity or water usually furnished or supplied for use of the Premises as \_\_\_\_\_ space; nor connect with electric current, except through existing electrical outlets in the Premises, or water pipes, any apparatus or device, for the purposes of using electric current or water.

b. If Tenant shall require water or electric current in excess of that usually furnished or supplied for use of the Premises as \_\_\_\_\_ space, Tenant shall first procure the consent of Landlord for the use thereof, which consent Landlord may refuse and Landlord may cause a water meter or electric current meter to be installed in the Premises, so as to measure the amount of water and electric current consumed for any such other use. The cost of such meters and of installation, maintenance and repair thereof shall be paid for by Tenant and Tenant agrees to pay Landlord promptly upon demand by Landlord for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the city in which the Building is located or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the water and electric current so consumed.

c. Wherever heat generating machines or equipment are used in the Premises which affect the temperature otherwise maintained by the air conditioning system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation, and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord.

### **Non-liability**

**Section 5.04.** Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of rent by reason of Landlord's failure to furnish any of the foregoing when such failure is caused by accidents, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, or by any other cause similar or dissimilar, beyond the reasonable control of Landlord. Landlord shall not be liable under any circumstances for loss of or injury to property, however occurring, through or in connection with or incidental to failure to furnish any of the foregoing.

## **ARTICLE 6 DAMAGE OR DESTRUCTION**

### **Partial Damage – Insured**

**Section 6.01.** In the event the Premises or the Building are damaged by any casualty which is covered under fire and extended coverage insurance carried by Landlord, then Landlord shall restore such damage provided insurance proceeds are available to pay eighty percent (80%) or more of the cost of restoration and provided such restoration can be completed within sixty (60) days after the commencement of the work in the opinion of a registered architect or engineer appointed by Landlord. In such event this Lease shall continue in full force and effect, except that Tenant shall be entitled to proportionate reduction of rent while such restoration takes place, such proportionate reduction to be based upon the extent to which the restoration efforts interfere with Tenant's business in the Premises.

### **Partial Damage – Uninsured**

**Section 6.02.** In the event the Premises or the Building are damaged by a risk not covered by Landlord's insurance or the proceeds of available insurance are less than eighty percent (80%) of the cost of restoration, or if the restoration cannot be completed within sixty (60) days after the commencement of work in the opinion of the registered architect or engineer appointed by Landlord, then Landlord shall have the option either to (1) repair or restore such damage, this Lease continuing in full force and effect, but the rent to be proportionately abated as hereinabove provided or (2) give notice to Tenant at any time within thirty (30) days after such damage terminating this Lease as of a date to be specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after giving such notice. In the event of the giving of such notice, this Lease shall expire and all interest of Tenant in the Premises shall terminate on such date so specified in such notice and the rent, reduced by any proportionate reduction based

upon the extent, if any, to which said damage interfered with the use and occupancy of Tenant, shall be paid to the date of such termination, Landlord agrees to refund to the Tenant any rent theretofore paid in advance for any period of time subsequent to such date.

### **Total Destruction**

**Section 6.03.** In the event the Premises are totally destroyed or the Premises cannot be restored as required herein under the applicable laws and regulations, notwithstanding the availability of insurance proceeds, this Lease shall be terminated effective the date of the damage.

### **Damage Near End of the Term**

**Section 6.04.** Notwithstanding anything to the contrary contained in Section 6, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Section 6 occurs during the last twelve (12) months of the term of this Lease or any extension thereof.

### **Landlord's Obligations**

**Section 6.05.** The Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any paneling, decorations, partitions, railings, floor covering, office fixtures, or any other improvements or property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. Tenant shall be required to restore or replace same in the event of damage. Except for abatement of rent, if any, Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

## **ARTICLE 7**

### **MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS**

#### **Maintenance and Repairs**

**Section 7.01.**

a. Landlord's Obligations. Landlord shall maintain in good order, condition and repair the Building and all other portions of the Premises not the obligation of Tenant or any other tenant in the Building.

b. Tenant's Obligations. (i) Tenant at Tenant's sole cost and expense, except for services furnished by Landlord pursuant to Section 5 hereof, shall maintain the Premises in good order, condition and repair including the interior surfaces of the ceilings, walls and floors, all doors, interior windows, exterior windows at or below street level, all plumbing pipes, electrical wiring, switches, fixtures and special items in excess of building standard furnishings, and equipment installed by or at the expense of Tenant.

(ii) Upon the expiration or earlier termination of this Lease, Tenant shall surrender the

Premises in the same condition as received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements alone excepted, and shall promptly remove or cause to be removed at Tenant's expenses from the Premises and the Building any signs, notices and displays placed by Tenant. (iii) Tenant agrees to repair any damage to the Premises or the Building caused by or in connection with the removal of any articles of personal property business or trade fixtures, machinery, equipment, cabinetwork, furniture, movable partition or permanent improvements or additions, including without limitation thereto, repairing the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction all at Tenant's sole cost and expense. Tenant shall indemnify the Landlord against any loss or liability resulting from delay by Tenant in so surrendering the Premises, including without limitation any claims made by any succeeding tenant found on such delay. (iv) In the event Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the event Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at ten percent (10%) per annum from the date of such work. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing any such work.

c. Compliance with Law. Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances, regulations and rules of any public authority relating to their respective maintenance obligations as set forth herein.

### **Alterations and Additions**

#### **Section 7.02.**

a. Tenant shall make no alterations, additions or improvements to the Premises or any part thereof without obtaining the prior written consent of Landlord.

b. Landlord may impose as a condition to the aforesaid consent such requirements as Landlord may deem necessary in its sole discretion, including without limitation thereto, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, the times during which is to be accomplished, and the requirement that upon written request of Landlord prior to the expiration or earlier termination of the Lease, Tenant will remove any and all permanent improvements or additions to the Premises installed at Tenant's expense and all movable partitions, counters, personal property, equipment, fixtures and furniture.

c. All such alterations, additions or improvements shall at the expiration or earlier termination of the Lease become the property of Landlord and remain upon and surrendered with the Premises, unless specified pursuant to Section 7.02(b) above.

d. All articles of personal property and all business and trade fixtures, machinery and equipment, cabinetwork, furniture and movable partitions owned by Tenant or installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the lease term when Tenant is not in default hereunder.

## **ARTICLE 8 INSURANCE**

### **Indemnity**

**Section 8.01.** Tenant shall indemnify and hold Landlord and Landlord’s property, including the Premises and improvements now or hereafter on the Premises, free and harmless from any and all liability, claims, loss, damages, or expenses resulting from Tenant’s occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of the following:

- a. the death or injury of any person, including Tenant or any person who is an employee or agent of Tenant or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatsoever while that person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;
- b. the death or injury of any person, including Tenant or any person who is an employee or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or Tenant, caused or allegedly caused by either (1) the condition of the Premises or improvements on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;
- c. any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or
- d. Tenant’s failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

### **Insurance**

**Section 8.02.** Tenant shall, at Tenant’s own expense, obtain and keep in force during the term, public liability and property damage insurance coverage with special extended coverage endorsement (“all risk” property insurance) including business interruption insurance and rental income insurance for a period of up to twelve (12) months, naming Landlord and Tenant as the insured and insuring the Premises for one hundred percent (100%) of the replacement value of the improvements thereon. Additionally, such “all

risk” property insurance shall include a demolition endorsement, increased costs of construction endorsement, and such other endorsements as may be required by Landlord. Tenant shall further maintain in full force and effect on all furniture, fixtures and equipment in the Premises, policies of fire insurance with extended coverage endorsements in the amount of at least ninety percent (90%) of their replacement values.

Tenant shall at Tenant’s expense obtain and keep in force during the term hereof a policy of general liability insurance covering liability for bodily injury and death and property damage insurance naming Landlord as an additional insured against liability in an amount of not less than \$1,000,000.00 per occurrence, inclusive of umbrella coverage. The policy shall include cross liability endorsements.

All insurance required to be provided shall be carried with insurance companies having the rating of A or better in Best’s Insurance Guide. Tenant may satisfy any of its insurance obligations, under a blanket policy so long as such blanket policy provides the coverage required hereunder and names Landlord as an additional insured as required pursuant hereto. If an independent insurance expert or Landlord determines that the \$1,000,000.00 liability limit no longer provides adequate protection according to prevailing practice, Tenant will be required to increase the \$1,000,000.00 liability insurance to an adequate level.

Tenant shall supply to Landlord annually a copy of the above described policies upon receipt of a written request therefore and shall provide Landlord with evidence of renewal or replacement thereof at least twenty (20) days prior to expiration of such policies. In no event shall Tenant open for business in the Premises unless and until copies of such policies have been provided to Landlord. In the event Tenant fails to provide such coverage, Landlord may provide such insurance and Tenant shall bear the cost thereof, together with interest from the date of the expenditure until paid. Such sums shall be paid within ten (10) days of receipt of a bill therefore. All such policies shall provide that Landlord shall receive written notice not less than ten (10) days prior to the expiration or intended cancellation of the policy.

Additionally, Tenant shall carry Workers’ Compensation Insurance as required by law.

During the term of the Lease and any extension thereof, the proceeds from the policy of insurance covering the Premises shall be used for the proper repair or replacement of any of the property insured, except that if the property is destroyed during the last three (3) years of the term of the Lease, the improvements need not be repaired or replaced and the Lease shall terminate. In the event this Lease is terminated as a result of damage or destruction, all insurance proceeds pertaining to the Premises, including the improvements shall be paid to Landlord until Landlord has received one hundred (100%) percent of the replacement cost thereof and Tenant shall demolish and remove the remainder of improvements upon written request by Landlord to Tenant; thereafter all insurance proceeds relating (1) to furniture, fixtures and equipment, and (2) to costs of demolition of and removal of improvements (if Landlord requests Tenant to do so), shall be paid to Tenant.

## Waiver of Subrogation

**Section 8.03.** Landlord and Tenant hereby waive any rights each may have against the other in connection with any of the damage or injury occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises, or its contents, or to the improvements, arising from any risk actually covered by insurance in effect at the time to the extent of the available proceeds; the parties each, on behalf of their respective insurance companies insuring property of either Landlord or Tenant against any such loss, waive any right of subrogation that it may have against Landlord or Tenant, as the case may be to the extent of available proceeds. Tenant, on behalf of its insurance companies insuring the Premises, its contents, Tenant's other property, or other improvements, waives any right of subrogation that such insurer or insurers may have against any of the parties hereto to the extent of available proceeds. The foregoing waivers of subrogation shall be operative only so long as available in the State of California and provided they do not invalidate any such policy.

## ARTICLE 9 CONDEMNATION

### Definitions

#### Section 9.01.

- a. For the purposes of this Lease, "eminent domain" means the right of the people or government to take private property for public use. As used in this article, the words "condemned" and "condemnation" are coextensive with that right, and a voluntary conveyance by Landlord to the condemnor under threat of a taking under the power of eminent domain in lieu or after commencement of formal proceedings shall be deemed a taking within the meaning of this article.
- b. As used in this article, the terms "total condemnation" and "total taking" mean the taking of the entire leased premises under the power of eminent domain.
- c. As used in this article, the terms "partial condemnation" and "partial taking" mean any condemnation of the leased premises other than a total taking as defined in subsection (b) of this section.

### Condemnation

**Section 9.02.** If all or any part of the Premises shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with such public or quasi-public use, either party hereto shall have the right at its option exercisable within thirty (30) days of receipt of notice of such taking to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before Tenant may terminate this Lease by reason of taking or appropriation as provided hereinabove, such taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair Tenant's use of

the Premises. If any part of the Building other than the Premises shall be so taken or appropriated, Landlord shall have the right at its option to terminate this Lease. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for the interruption of or damage to Tenant's business and/or for Tenant's unamortized cost of leasehold improvements. In the event of a partial taking which does not result in a termination of this Lease, rent shall be abated in the proportion which the part of the Premises so made unusable bears to the rented area of the Premises immediately prior to the taking. No temporary taking of the Premises and/or of Tenant's rights therein or under this Lease shall terminate this Lease or give Tenant any right to any abatement of rent thereunder; any award made to Tenant by reason of any such temporary taking shall belong entirely to Tenant and Landlord shall not be entitled to share therein.

## **ARTICLE 10 ASSIGNMENT**

### **Assignment and Subletting**

**Section 10.01.** Tenant shall not voluntarily assign its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining Landlord's prior written consent, which consent will not unreasonably be withheld. Tenant shall, in each instance of a proposed assignment or subletting, give written notice of its intention to assign or sublet to Landlord at least thirty (30) days or more before the effective date of any such notice of any such proposed assignment or subletting, specifying in such notice whether Tenant proposes to assign or sublet, the proposed date thereof, and specifically identifying the proposed assignee or subtenant, and such notice shall be accompanied by copies of the proposed assignment document or sublease, current financial statements of the proposed assignee or subtenant certified as to accuracy by the proposed assignee or subtenant and guarantor (if any), and detailed documentation relating to the business experience of the proposed assignee or subtenant. Any assignment, encumbrance, or sublease without Landlord's prior written consent shall be voidable, and at Landlord's election, shall constitute a default. No consent to any one assignment or sublease shall constitute a waiver of the provisions of this Section.

**ARTICLE 11  
ABANDONMENT**

**Abandonment**

**Section 11.01.** Tenant shall not vacate or abandon the Premises at any time during the term nor permit the Premises to remain unoccupied for a period longer than ten (10) consecutive days during the term without Landlord's prior written consent.

**ARTICLE 12  
DEFAULT AND REMEDIES**

**Acts of Default**

**Section 12.01.** The occurrence of any of the following shall constitute a material breach and default of this Lease by Tenant:

- a. vacation or abandonment of the Premises, except as permitted by Section 11.01, for ten (10) consecutive days or more shall conclusively be deemed an abandonment or vacation of the Premises;
- b. failure to pay any installment of Rent or any other sum due on the date when such payment is due, with such failure continuing for a period of three (3) days after written notice of such delinquency;
- c. assignment or subletting in violation of the provisions of Article 10;
- d. failure by Tenant to perform any other covenants, agreements or obligations required of Tenant under this Lease with such a failure continuing for twenty (20) days after written notice of such failure; provided, however, if the nature of the failure is such that it cannot with the exercise of reasonable diligence be cured within said twenty (20) day period, then Tenant shall not be in default hereunder if it shall promptly commence such cure (in any event within said twenty (20) day period) and thereafter pursue the same to completion with diligence and continuity;
- d. a general assignment by Tenant for the benefit of creditors;
- f. the filing of a voluntary petition in bankruptcy by Tenant or the filing of an involuntary petition by Tenant's creditors, with such a petition remaining undischarged for a period of sixty (60) days;
- g. the appointment of a receiver to take possession of substantially all of Tenant's assets or of the Premises, with such a receivership remaining undissolved for a period of sixty (60) days;

h. the attachment, execution or other judicial seizure of substantially all of Tenant's assets or the Premises, which such attachment, execution or other seizure remaining undismissed or undischarged for a period of sixty (60) days after the levy thereof;

i. the chronic delinquency by Tenant in the payment of Rent or any other sum due hereunder. "Chronic delinquency" shall mean the failure by Tenant to pay any Rent or other sums due hereunder, by the required due date on three (3) or more occasions during any twelve (12) month period;

The notices required under this Section are the only notices required to be given by Landlord to Tenant in the event of Tenant's default and are not in addition to any statutory notices otherwise required by the unlawful detainer statutes of California.

### **Termination of Lease and Remedies**

**Section 12.02.** In the event of any default by Tenant, then, in addition to any and all other rights and remedies available to Landlord at law or in equity, Landlord shall have the right to immediately terminate this Lease and all rights of Tenant hereunder by giving written notice to Tenant of such election by Landlord. If Landlord shall elect to terminate this Lease, then it may recover the following from Tenant:

(i) the worth at the time of the award of any unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of the award of the amount by which the unpaid Rent (which would have been earned after termination until the time of the award) exceeds the amount of the loss of such Rent that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent (for the balance of the term after the time of the award) exceeds the amount of the loss of such Rent that Tenant proves could have been reasonably avoided; (iv) any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant's default or which in the ordinary course of things would be likely to result therefrom; and (v) at Landlord's election, such other amount in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

### **Right of Re-Entry**

**Section 12.03.** In the event any default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all property, and persons therefrom, and any such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant.

### **Lease Not Terminated**

**Section 12.04.** If Landlord does not elect to terminate this Lease, Landlord may either recover all Rent as it becomes due or relet the Premises or any part or parts thereof for such term or terms and upon such provisions as Landlord, in its sole judgment, may deem advisable, and Landlord shall have the right to make repairs to and alterations of the Premises. No re-entry or taking possession of the Premises by Landlord under this

Section shall be construed as an election to terminate this Lease unless a written notice of such termination be given to Tenant or unless the termination thereof be adjudged by a court of competent jurisdiction.

### **Election to Rent**

**Section 12.05.** If Landlord shall elect to relet the Premises, then rentals received by Landlord from such reletting shall be applied as follows:

- a. to the payment of any indebtedness other than Rent due hereunder from Tenant;
- b. to the payment of all costs and expenses incurred by Landlord in connection with such reletting;
- c. to the payment of the costs of any alterations or any repairs to the Premises;
- d. to the payment of Rent due and unpaid hereunder, the residue, if any, shall be held by Landlord and applied in payment of future Rent as the same may become due and payable hereunder. In no event shall Tenant be entitled to any excess Rent received by Landlord over and above that which Tenant is obligated to pay hereunder. Should that portion of such Rent received from such reletting during any months which is applied to the payment of Rent hereunder be less than Rent payable hereunder during that month by Tenant, then Tenant shall pay such deficiency to Landlord immediately upon demand, and such deficiency shall be calculated and paid monthly. Tenant shall also pay Landlord as soon as ascertained and upon demand, all costs and expenses incurred by Landlord in connections with such reletting and in making any such alterations and repairs which are not covered in the Rent received from such reletting. Notwithstanding any reletting without termination by Landlord because of Tenant's default, Landlord may at any time after such reletting elect to terminate this Lease because of such default.

### **Landlord's Right to Cure Tenant's Defaults**

**Section 12.06.** Landlord may, at any time after Tenant commits an act of default, upon ten (10) days notice or a shorter period if additional damage may result, cure the act of default for the account and at the expense of Tenant. If Landlord at any time, by reason of an act of default, is compelled to pay, or elects to pay, any money, or is compelled to incur any expense, including reasonable attorneys' fees in instituting, prosecuting or defending any actions or proceedings to enforce Landlord's rights under this Lease, the sum or sums paid by Landlord (together with interest accruing until paid) and the attendant costs and damages shall be deemed to be additional Rent under this Lease and shall be due from Tenant to Landlord immediately upon receipt of written demand.

## **Non-waiver**

**Section 12.07.** Nothing contained in this Article shall constitute a waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate damages to it caused by Tenant's default; nor shall anything in this Article adversely affect Landlord's rights, as provided in this Lease, to indemnification against liability for damage to persons or property occurring prior to a termination of this Lease. In any case where Landlord has a cause of action for damages, Landlord shall have the privilege of splitting its cause so as to permit the institution of a separate suit for the Rent and neither institution of any such suit, nor the subsequent entering of judgment, shall bar Landlord from bringing another suit for other sums due hereunder; it being the express purpose of this provision to provide that the forbearance on the part of Landlord in any suit or entry of judgment for any part of the Rent reserved under this Lease, to sue for, or to include in any such suit and judgment the aforesaid expenses, shall not serve as defense against, nor prejudice a subsequent action to recover such sums. Tenant waives any right to claim a merger of such a suit for expenses with any previous suit or judgment entered. The claims for Rent and those for the expenses may be regarded by Landlord, if it so elects, as separate claims capable of being assigned separately.

Landlord shall be under no obligation to observe or perform any covenant of this Lease on its part to be observed or performed that cures after the date of any default by Tenant hereunder.

The remedies given to Landlord in this Article shall be in addition and supplemental to all other rights or remedies that Landlord may have under the laws then in force.

## **ARTICLE 13 SURRENDER**

### **Surrender of Lease**

**Section 13.01.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work as a merger, and shall at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to Landlord of any or all such subleases or subtenancies. Tenant shall remain liable for all delays in delivering the Premises at the expiration of the term resulting from Tenant's holdover from failure to deliver the Premises in the condition required pursuant hereto.

## **ARTICLE 14 WAIVER**

### **Waiver**

**Section 14.01.** The waiver of Landlord of any breach of any lease provision shall not be deemed to be a waiver of such lease provision or any subsequent breach of the same or

any other term, covenant or condition therein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant or any provision of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

## **ARTICLE 15 SURRENDER OF PREMISES**

### **Surrender of Premises**

**Section 15.01.** On expiration or earlier termination of this Lease, Tenant shall surrender the Premises and all improvements in or on the Premises to Landlord in as good, safe, and clean condition as practicable, reasonable wear and tear excepted.

## **ARTICLE 16 ATTORNEYS' FEES**

### **Tenant Liable for Attorneys' Fees**

**Section 16.01.** If Landlord becomes a party to any litigation by reason of any act or omission of Tenant or its authorized representatives, and not by any act or omission of Landlord or its authorized representatives, Tenant shall be liable to Landlord for reasonable attorneys' fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by Landlord in the litigation.

### **Prevailing Party Entitled to Attorneys' Fees**

**Section 16.02.** In the event a dispute arises between Landlord and Tenant regarding the interpretation or enforcement of this Lease, then in that event, the prevailing Party in any action or dispute, whether by final judgment, or out of court settlement shall be entitled to have and recover of and from the other Party all costs and expenses of suit, including actual reasonable attorneys' fees incurred. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual reasonable attorneys' fees (collectively "Costs") incurred in enforcing, perfection, and executing such judgment. For the purposes of this section 16.02 costs shall include, without limitation, attorneys' fees, costs and expenses incurred in the following: (i) post-judgment motions; (ii) contempt proceeding; (iii) garnishment, levy, and debtor and third party examination; (iv) discovery; (v) appeal; and (vi) bankruptcy litigation.



## **Time**

**Section 18.04.** Time is of the essence of this Lease with respect to each and every article, section and subsection hereof.

## **Force Majeure**

**Section 18.05.** Delay in construction, repairs or rebuilding any building, improvements or other structure or performing any other obligation other than Rent and other monetary items hereunder shall be excused to the extent that the delay is occasioned by the other party, strikes, threats of strike, blackouts, war, bombing, insurrection, invasion, acts of God, calamities, civil commotions, violent action of the elements, fire, action or regulations of any governmental authority, statutes or ordinances, impossibility of obtaining materials, or other matters or things, whether similar or dissimilar to the foregoing beyond the reasonable control of the obligated party.

## **Miscellaneous Provisions**

**Section 18.06.**

- a. The captions in the margins of this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.
  
- b. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, the plural shall include the singular, and the masculine gender shall include the feminine and neuter genders and the word "person" shall include corporation, firm or association. If there be more than one Tenant, the obligations imposed under this Lease upon Tenant shall be joint and several.
  
- c. This instrument contains all the agreements, conditions and representations made between the parties to this Lease and may not be modified orally or in any other manner than by an agreement in writing signed by all of the parties to this Lease.
  
- d. Except as otherwise expressly stated, each payment required to be made by Tenant shall be in addition to and not in substitution for other payment to be made by Tenant.
  
- e. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provisions hereof.
  
- f. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
  
- g. If any term or provision of this Lease shall, to any extent be determined by a statute or by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be

valid and enforceable to the fullest extent permitted by law; it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

### **Estoppel Certificate**

#### **Section 18.07.**

- a. Tenant shall at any time upon not less than ten (10) day's prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.
- b. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance.
- c. If Landlord desires to finance or refinance the Building, or any part thereof, Tenant hereby agrees to deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant. All such financial statements shall be received by Landlord in confidence and shall be used only for the purposes herein set forth.

### **Americans with Disabilities Act**

**Section 18.08.** Any other provision of this Lease notwithstanding, the parties hereby agree that the demised Premises may be subject to the terms and conditions of the Americans With Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of the Tenant to comply with any and all provisions of the ADA, as such compliance may be required to operate the demised Premises. The Tenant further agrees to indemnify and hold the Landlord harmless against any claims which may arise out of Tenant's failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims. Exterior of the Premises are the sole responsibility of Landlord.

## **Bio-Hazardous Materials Disposal and Removal**

**Section 18.09.** Tenant shall be responsible for disposal and removal of all bio-hazardous materials.

### **ARTICLE 19 ENTIRE AGREEMENT**

#### **Entire Agreement**

**Section 19.01.** This instrument, along with any exhibits and attachments hereto, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Agreement, and the exhibits and attachments may be altered, amended, or revoked only by an instrument in representations between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, or representations, and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. There are no other representations or warranties between the parties or the parties and their agents or representatives and all reliance with respect to representations is solely upon the representations and agreements contained in this document.

### **ARTICLE 20 MEMO OF LEASE**

#### **Memorandum of Lease for Recording**

**Section 20.01.** Neither Landlord nor Tenant shall record this Lease without the written consent of the other. However, Landlord and Tenant shall, at the request of either at any time during the term of this Lease execute a memorandum or “short form” of this Lease for purposes of, and in a form suitable for, recordation. The memorandum or “short form” of this Lease shall describe the parties, set forth a description of the leased premises, specify the term of this Lease, and incorporate this Lease by reference.

### **ARTICLE 21 SUBORDINATION**

#### **Subordination, Nondisturbance, and Attornment**

**Section 21.01.**

a. This Lease shall be subordinate and subject to all mortgages and deeds of trust on the leased Premises, whether recorded before or after this Lease; provided, that if any mortgagee or beneficiary elects to have this Lease superior to its mortgage or deed of trust and gives notice of its election to Tenant, then this Lease shall be superior to the lien of any such mortgage or deed of trust; and provided, further, that in the event this Lease

is subordinate to a mortgage or deed of trust, the conditions set forth in subsection (b), below are satisfied.

b. The subordination provided for under this Article is conditioned on and subject to the following requirement. For each mortgage or deed of trust, Landlord shall obtain from the mortgagee or beneficiary an agreement in writing that, in the event of foreclosure, or any sale under a foreclosure, this Lease shall not be terminated and Tenant's right to possession under this Lease shall not be disturbed, provided Tenant is not then in default under the Lease.

c. In consideration of the mortgagee or beneficiary's agreement described in subsection (b), Tenant hereby agrees to attorn to the purchaser at any foreclosure, sale or other action or proceeding, provided that the purchaser accepts the Premises subject to this Lease.

d. The subordination described in this Article shall be effective without the necessity of having any further instruments executed by Tenant, but Tenant agrees to execute on demand any such further instruments evidencing subordination that Landlord or any mortgagee or beneficiary may reasonably request.

**EXECUTED ON** \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_, California.

**LANDLORD:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**TENANT:**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_