

# リーガルフロンティア21

プロジェクトベース

## 実務・英文契約書講座

### 第14回 不動産賃貸借契約

2013年8月14日(水) 午後7:00～9:00

会 場

〒101-0051 東京都千代田区神田神保町3-10 神田第3アメレックスビル7F  
株式会社リーガルフロンティア21  
セミナールーム

テーマ	トピック	学習目標
⑩不動産賃貸借契約①  2013年8月14日（水）	①として、英文の不動産賃貸借契約書を理解する「こつ」を紹介することにします。不動産賃貸借契約書は、それぞれ「定型化」されていますが、それは、国なり州なりが単位となっており、また、店舗・事務所・居住用物件というような単位で「定型化」されているに過ぎませんが、ニューヨーク州の店舗リース契約を最初の題材にして、基礎知識を身につけ、それから応用をはかっていくことにします。	店舗リース・オフィスリース・居住用物件リースを概観し、ニューヨーク州とカリフォルニア州のリース契約の違いを確認するとともに、特殊なリース契約があることも学びますが、学習の要点は、リース契約に現れる条項中、何が典型的なのか、そこに何が書かれているのか、また不動産リースをはじめとする、英米の不動産法律用語に慣れることにします。不動産賃貸借②があれば、日本語の不動産賃貸借契約を、米国のリース契約を下敷きに英語化していく作業の概要も紹介してみたいと思っています。

## 不動産賃貸借契約①

### 学習目標

ニューヨーク州の不動産業界団体が作成し、広く用いられている「書式」を確認する

- オフィスリース
- ストアリース
- レジデンシャルリース

英文で書かれている不動産賃貸借契約書（リース契約書）を勉強する「こつ」

- ストアリースの全訳を読む
- ニューヨークリースの「書式」がいかに似かよっているか

カリフォルニアリースを読む

□不動産賃貸借に特有な英語

□特殊な不動産リース

➤ build-to-suit lease

標準店舗物件賃貸借契約書

ニューヨーク不動産業者協会制定

本「賃貸借契約書」は、本 2000 年 12 月\_\_\_\_日付で、

Manor Equities, L.L.C.を、一方当事者とし（以下、「本物件所有者」又は「貸人」という）、

株式会社●●●を、他方当事者（以下、「借人」という）として、これらの間に締結される。

証： 本物件所有者は、ここに、借人に対して、下記の賃貸物件を借人に貸し、借人はここにこれを賃借する。

賃貸物件の表示： ニューヨーク市マンハッタン区、マジソン・アベニュー822 番地の建物の、地下室、1 階、2 階及び3 階

賃貸借期間： 2000 年 1 月 1 日（同日を含む）に始まり、2010 年 12 月 31 日（同日を含む）に終了する十(10)年間（又は、かかる賃貸借契約期間が、以下に規定するとおり期前終了され、失効する時まで）

年間賃料： 初年度は年間八百六十千ドル(\$860,000.00)とし、賃貸借契約期間中、毎年、消費者物価指数に連動して増額する。

借人は、当該賃料を、支払時に、公的なものであると私的なものであるとを問わず、すべての債務及び負債の支払にあたっての法貨とされるアメリカ合衆国の合法的な通貨で、当該賃貸借契約期間中、毎月第 1 日目に、先払いのかたちで、均等年賦払で、本物件所有者の営業所又は本物件所有者の指定することのあるその他の場所で、いかなるものであるとを問わず一切の相殺又は控除を行うことなく支払うことに同意する。但し、借人が、本賃貸借契約書を締結した際（本賃貸借契約書更新の場合を除く）に最初の月賦分を支払う場合はこの限りではない。

本契約書当事者は、自身のために、またその法定相続人、指定相続人、遺言執行者、遺産管理人、人格代表者、承継人及び譲受人のために、ここに以下のとおり誓約する。

**第1条（賃料）** 借人は、上記のとおり、また下記に規定するとおり、賃料を支払うものとする。

**第2条（占有）** 借人は、本賃貸物件を、飲食施設、事務所並びに飲み物、食品及び家庭用品、またこれに関連する用具の販売のために使用し、占有するものとし、これ以外の目的に使用しないものとする。借人は、つねに、高級かつ評判の高い態様で業務を遂行し、本契約書第 37 条に違反せず、またショー・ウィンドー及び看板を、こぎれいに、清潔な状態に保つものとする。

**第3条 (改修)** 賃借人は、本物件所有者の事前の書面による同意を得ることなく、いかなる種類の変更も賃貸物件に加えてはならない。本物件所有者の事前の書面による同意を得て、また、本条の規定にしたがい、賃借人は、賃借人の費用で、本物件所有者がまず承諾を与えた請負工事人又は機械工を使って、本賃貸物件内部の、建物の構造にかかわらない、また、ガス・水道等、配管及び配電線に影響を与えない改修、増築又は改良工事を行うことができる。賃借人は、何らかの改修、増築、設置又は改良を行う前に、自らの費用で、政府機関又は準政府機関より取得を義務づけられるすべての承認、許可及び証明書を取得し、並びに（工事が完了次第）かかる政府機関又は準政府機関からその最終認可証を取得し、かかるすべての承認、認可及び証明書の写しを、速やかに本物件所有者に交付するものとする。また、賃借人は、本物件所有者の要求するところにしたがって、労働者災害補償保険、一般賠償責任保険及び損害保険に加入するか、又は賃借人の工事請負人及び下請人をして加入せしめることに同意する。本条にしたがい行われたか否かを問わず、賃借人のために行ったと主張される工事、又は賃借人のために提供された資材に関して、何らかの建築工事に対する先取特権が、本賃貸物件又は本賃貸物件が一部をなす建物につき届け出られた場合には、賃借人はその費用負担で、その後10日以内に、法律に定める保証金を供託することより、当該先取特権を削除するものとする。賃借人によると本物件所有者によるとを問わず、賃借人のために、何れかの時点で本物件に設置されたすべての備品並びに、すべてのパネル、パーティション、レールその他の同様な設置物は、設置が行われ次第、本物件所有者の所有物となるものとし、本賃貸物件に残置され、本賃貸物件の明け渡しとともに引き渡されるものとする。但し、本賃貸借契約書の終了日として定められた日の遅くとも20日前に賃借人に通知を行うことにより、本物件所有者が、これに対する本物件所有者の権利を放棄し、賃借人に対してこれを撤去させることを選択する場合にはこの限りではない。かかる場合には、これらは、本賃貸借が失効する前に、賃借人の費用で、賃借人が本物件より撤去するものとする。本条の規定は、事業用備品、可動式事務用家具及び機器の所有権を本物件所有者に与えるものとも、又は賃借人がこれらを撤去することを本物件所有者が妨げることができるものと解釈されてはならない。但し、賃借人は、これらの何れかを本物件から撤去次第、又は本物件所有者から要求されるその他の設置物を撤去次第直ちに、また自らの費用負担で、本物件を改修して設置前の状態に復し、またかかる撤去に帰因する本賃貸物件又は建物のすべての損傷を補修するものとする。契約期間終了時に賃借人が撤去を行うことを認められた、又は義務づけられたすべての物で、賃借人の撤去後に本物件に残置された物がある場合には、これらは放棄されたものとみなされ、本物件所有者の選択にしたがい、本物件所有者の所有物としてこれを保管するか、又は賃借人の費用負担で、本物件所有者がこれを撤去することができる。

**第4条 (補修)** 本物件所有者は、本建物の共用部分、出口及び入口の保守と補修を行うものとする。但し、本物件所有者が、賃借人に対して、本建物の外側に看板、又は賃借人専用のホイスト、昇降機もしくはエレベーターを設置することを認めた場合には、賃借人がかかる屋外の設置物の良好な外観を保ち、これらを、良好な、専門的職人の行うような態様で稼働させ、これらを秩序だった状態に保つよう必要な全ての補修作業を、賃借人の費用負担で行うものとし、また、これらにつき、下記第8条に規定する保険に加入するものとする。賃借人は、本賃貸借契約の全ての契約期間中、本賃貸物件並びにその備品及び機器、これに隣接する歩道を管理し、これらを秩序だった状態に保つために必要な場合には、そのもっぱらの費用負担で、すべての建物の構造にかかわらない補修を行うものとする。但し、合理的な老朽・損耗、自然災害による使用廃止及び損傷、火災又はその他の災害の場合を除くものとする。本賃貸物件に害虫が寄生している場合、又は害虫が寄生するようになった場合には、賃借人は、賃借人の費用で、本物件所有者の満足のいくよう、随時これを駆除させるものとする。本賃貸借契約書第9条その他に明示の規定がある場合を除き、賃借人には、賃貸物件の減価を理由とする賃料減額請求権はないものとする。また、本物件所有者は、クレーン、デリック又は歩道の屋根の設置もしくは稼働を含め、建物の何れかの部分、又は本賃貸物件もしくはその建具、付属物もしくは機器の補修、改修、増築又は改良を行う義務を負わず、またこれを行うことができなかつた場合にも、

賃借人その他により生じた事業に対する不便、不都合又は障害を理由として、一切責任を負わないものとする。補修を行うことに関する本第4条の規定は、本契約書第9条で取り扱われる火災又はその他の災害の場合には適用されないものとする。

**第5条（窓の清掃作業）** 賃借人は、ニューヨーク州労働法典第202条、もしくはその他一切の適用のある法律、又は労働基準及び不服審判局規則、あるいは管轄権を有するもしくは管轄権を主張するその他一切の委員会もしくは団体の規則に違反するかたちで、外側から本賃貸物件の窓の清掃作業を行ってはならず、また、かように清掃作業を要求し、もしくはかかる清掃を承認し、容認し、もしくは許可してはならない。

**第6条（法律の要求事項、火災保険）** 賃借人が当該時点で占有所有している場合には、賃貸借契約期間の開始前に、またその後はつねに、賃借人は、賃借人のもっぱらの費用負担で、本賃貸物件に関して、また本物件が通りに面している場合には、賃借人の使用又はその使用方法に起因すると否とにかかわらず、本物件に隣接する歩道の部分に関して、あるいは本物件又は建物の賃借人による使用（本賃貸借契約に基づき承認された使用を含む）もしくは使用方法に起因する場合には建物に関して、本物件所有者又は賃借人に何らかの違反行為の禁止、命令又は義務を課す、ニューヨーク州火災保険業者協会もしくは保険サービス事務所（ISO）又は一切の同様な団体のすべてが制定する、現在及び将来の法律、命令、規則及び規制を、速やかに遵守するものとする。本契約書第29条に規定する場合を除き、本契約書の規定は、賃借人に建物の構造にかかわる補修又は改修工事を行うよう義務付けるものではない。但し、賃借人が、本賃貸物件の使用法又はその稼動方法により、これに関する適用のある法律、法令、命令、規則、規制又は要求事項に違反した場合はこの限りではない。賃借人は、法律に反する、又は、何れかの時点で本物件所有者により又は本物件所有者に代わり加入されている、一般損害賠償責任保険、火災保険その他の保険証券の規定に将来、違反し、もしくはこれに抵触する行為又は事柄を本賃貸物件にて行ってはならず、またこれを行うことを認めてはならない。賃借人は、賃借人が、本条の規定を遵守できなかったことを理由として、本物件所有者に課されることのあるすべての費用、支出、罰金、科金又は損害金を支払うものとする。火災保険の料金が、本賃貸借契約の開始時に又はその後何れかの時点で、本条の規定を遵守していたとした場合よりも高く設定された場合には、賃借人は、本契約書に基づく追加賃料のかたちで、賃借人が本条の規定を遵守できないことを理由に請求され、本物件所有者がその後支払ったすべての保険料の該当部分を、本物件所有者に対して弁償するものとする。本物件所有者及び賃借人が当事者となるすべての訴訟又は手続においては、当該物件に適用のある火災保険料率を定めた団体が公表している、本建物又は本賃貸物件に関する料率表又は「加算料率表」は、これに記載された事実について、また当該物件に当該時点で適用されていた火災保険料率の幾つかの項目及び請求金額について、確定的な証拠となるものとする。

**第7条（権利の劣後）** 本賃貸借権は、かかる賃貸借権又は本賃貸物件がその一部である不動産に、現在又は将来、影響を与えることのある、あらゆる土地賃貸借又は不動産転賃借、あるいはすべての抵当権、並びにいずれかのかかる不動産賃借権又は抵当権を更新、修正、結合、交換及び延長したあらゆるものに服し、またこれらに劣後する。本条は、単独で効力を有し、権利の劣後についてのさらなる証書は、土地賃貸借もしくは不動産転賃借、又は本賃貸物件がその一部である何れかの賃貸借契約もしくは不動産に影響を与える抵当権について、一切必要とされないものとする。かかる権利の劣後を確認するに際しては、賃借人は、本物件所有者が要求するところにしたがい、すべての証明書を速やかに作成するものとする。

**第8条（賃借人の賠償責任保険、財物損失、損害、免責）** 本物件所有者又はその代理人は、賃借人又は本建物の従業員として委託を受けたその他の者の、財産的損害、盗難その他による賃借人の財産の損失もしくは損害、又は原因がいかなるものであるかを問わずこれから生じた人もしくは財物に係

る障害もしくは損害につき、一切責任を負わないものとする。但し、これらが、本物件所有者又は本物件所有者の代理人、使用人もしくは従業員の過失に起因するか、又は由来する場合にはこの限りではない。本物件所有者又はその代理人は、当該建物におけるその他の賃借人もしくは人が引き起こした一切の損害、又は、私的であると公的な工事であると、準公的な工事であるとを問わず、建設中の工事により引き起こされた一切の損害につき責任を負わない。賃借人は、賃借人の費用負担で、本物件所有者及び賃借人のために、本賃貸物件で発生した人身傷害、死亡又は物的損害についての請求に備えて、賃借人が賃貸借契約を締結した日から効力を生じ、本賃貸借契約の契約期間中継続する、標準的な一般賠償責任保険を維持することに同意する。かかる保険は、本物件所有者が承諾可能な金額を保険金額とし、かつ、本物件所有者が承諾可能な保険会社によるものであるものとする。かかる保険証券は、本物件所有者に対して交付されるものとする。かかる保険証券を取得又は交付することにつき、賃借人に債務不履行があった場合、又はその保険料を支払うことを怠った場合には、本物件所有者は、かかる保険証券の請求金額を保証し、又は支払い、これを追加賃料のかたちで賃借人に対して請求することができる。賃借人は、賃借人、賃借人の代理人、建築請負業者、従業員、訪問客又は使用権者が、本賃貸借契約の何らかの誓約もしくは条件に違反した結果、あるいは賃借人、賃借人の代理人、建築請負業者、従業員、訪問客又は使用権者の不注意、過失、もしくは不適切な振る舞いの結果支払った、被った又は発生したものであって、合理的な弁護士費用を含め、本物件所有者が保険により補償を受けられないすべての責任、債務、損害、罰金、請求、費用及び支出につき、本物件所有者を免責し、本物件所有者に損害を被らせないものとする。本賃貸借契約書に基づく賃借人の責任は、一切の転借人、並びに転借人の代理人、建築請負業者、従業員、訪問客又は使用権者の作為及び不作為にまで及ぶ。かかる請求を理由として、本物件所有者に対し、何らかの訴訟又は手続が提起された場合には、賃借人は、本物件所有者からの書面による通知があり次第、賃借人の費用負担で、本物件所有者が書面にて承認した弁護士により、かかる訴訟又は手続に対抗し、またこれにつき防衛活動を行うものとする。但し、かかる承認は、不合理に留保されないものとする。

**第9条（倒壊、火災及びその他の災害）** (a) 本賃貸物件又はその一部が、火災その他の災害により損害を受けた場合には、賃借人は、その旨を直ちに本物件所有者に通知するものとするが、また、本賃貸借契約書は、以下に規定する場合を除き、引き続き、完全なる効力を有し、有効であるものとする。(b) 本賃貸物件が、火災その他の災害により一部損害を受け、又は一部使用不可能である場合には、その損害は、本物件所有者の費用負担で、本物件所有者が補修し、かかる補修が実質的に完了するまで、賃料は、当該災害の翌日から本物件の当該部分が使用可能となるまで、これにしたがい日割免除されるものとする。(c) 本賃貸物件全体が火災その他の災害により損害を受けた場合、又は完全に使用不可能となった場合には、賃料は、当該損害の時まで、日割配分して支払われ、その時点以後については、当該物件が本物件所有者により補修され、現状回復される日まで、賃料の発生は停止するものとする。但し、本物件所有者は、以下に規定するとおり、これの現状回復を行わないことを選択する権利を有する。(d) 本賃貸物件が完全に使用不可能となり、又は（本賃貸物件が全体であるとして一部であるとを問わず、損害を受けたと否とにかかわらず）本建物が、本物件所有者が取り壊しもしくは建て直しを決定する程の損害を受けた場合には、かかる何れの場合にも、本物件所有者は、本賃貸借契約書の失効日を明記し、当該火災又は災害から 90 日以内に賃借人に書面による通知を行うことにより、本賃貸借契約書を終了することを選択することができ、当該通知に明記した日が到来次第、本賃貸借契約書は、かかる日が、本賃貸借契約書の終了日として上記のとおり記載されていた日であったかのごとく、完全かつ完璧に失効するものとし、賃借人は、本物件から直ちに退去し、これを明け渡すものとし、支払うべき一切の賃料はかかる日に支払われるものとし、かかる日以後の期間につき既に賃借人が行った賃料の支払がある場合には、これは賃借人に返還されるものとする。但し、当該終了前に有効であった本賃貸借契約書の規定に基づく、本物件所有者の賃借人に対する権利及び救済方法は、害されることはない。本物件所有者が、本契約書に規定するとおり、すべて合理的に速やかに終了通知を行わなかった場合には、本物件所有者は、本条(b)及び(c)の条件に基づき、補修及び現

状回復を行うものとする。但し、保険請求の査定、労働紛争及び本物件所有者の支配を超える原因による遅滞は除く。かかる何らかの損害の後、賃借人は、賃借人の引き揚げ可能な在庫及び移動可能な機器、家具その他の財物のすべてを、合理的に可能な限り速やかに、本物件より撤去することにより本物件所有者の現状回復作業に協力するものとする。賃料に関する賃借人の責任は、本物件が、賃借人が占有を回復するための用意が実質的に整った旨の書面による通知を、本物件所有者からの受けた後五(5)日目に、再開されるものとする。(e) 上記の規定は、火災その他の災害による損害の結果、発生することのある責任から、賃借人を免責するものではないものとする。前記にかかわらず、各当事者は、火災その他の災害の結果生じた損失又は損害を回復するため、他方当事者に対して請求を行う前に、自らの保険からの支払いをまず受けるものとし、かかる保険が有効で、取立可能な範囲で、また、法律により許容される範囲で、本物件所有者及び賃借人各々は、ここに、他方当事者を免責し、他方当事者又は権利の劣後その他により、これら権利を通じて請求する何人かに対して損害の回復を求めるすべての権利を放棄するものとする。前記の免責及び権利放棄は、権利放棄者双方の保険に、当該免責又は権利放棄が、保険を無効としない旨規定する条項がある場合に限り、また、当該保険証券が、追加保険料を支払うことなく取得できることを条件として、有効であるものとする。賃借人は、本物件所有者が、賃借人の家具及び又は備品もしくは建具、又は賃借人が撤去可能な機器、改良物もしくは付属物を付保していないことを了承しており、また、本物件所有者は、これらに対する一切の損害を補修する義務を負わず、またこれを交換する義務も負わないことに同意する。(f) 賃借人は、ここに、不動産法典第 227 条の規定に基づく権利を放棄し、本条の規定が、同規定に代わり効力をもつことに同意する。

**第 10 条 (公用収用)** 本賃貸物件の全部又は何れか一部が、何らかの公的な又は準公的な使用又は目的による公用収用により、没収又は収用された場合には、かかる場合には、本賃貸借契約書の契約期間は中止し、当該手続に付された日から終了されるものとし、賃借人は、当該賃貸借契約書の未履行期間相当の価額につき、賠償請求を行わないものとする。

**第 11 条 (譲渡、抵当権等)** 賃借人は、自身のために、またその法定相続人、指定相続人、遺言執行者、遺産管理人、人格代表者、承継人及び譲受人のために、賃借人は、各場合につき、本物件所有者の事前の書面による同意を得ることなく、本契約書を譲渡せず、これに抵当権又は物上負担を設定しないこと、また、本賃貸物件又はその何れかの部分を、転貸せず、又は他者による使用を許容もしくは承認しないことを明示に誓約する。本賃貸借契約を譲渡する場合、又は本賃貸物件もしくはその何れかの部分を転貸する場合、もしくは賃借人以外の何人かに占拠された場合には、本物件所有者は、賃借人がこれを行わない場合には、譲受人、転借人又は占有者から賃料を徴収することができ、また、本契約書で保証された賃料に、徴収した正味金額を充当することができる。但し、かかる譲渡、転貸、占有又は徴収によっても、誓約の履行を求める権利が放棄され、又は譲受人、転借人または占有者を賃借人として承諾し、あるいは賃借人による本契約書所定の賃借人の誓約のさらなる履行から、賃借人を免責したものとみなされないものとする。本物件所有者が、譲渡又は転貸に同意した場合にも、これは、いかなる場合にも、さらなる譲渡又は転貸につき、本物件所有者から書面による明示の同意を取得する義務から、賃借人を免責するものとは解釈されないものとする。

**第 12 条 (電気)** 電気使用量の区分計量の率及び条件、又は賃料への組み入れについては、適宜、本契約書添付の特約条項に付記することがある。賃借人は、電気のその使用が、つねに、本建物の既存のフィーダーの容量、又はライザーもしくは設置配線の容量を超えないものとする。また、賃借人が、本物件所有者が合理的に行使する判断によれば当該絶縁体の負荷を超えることとなる、電気機器を使用してはならず、また、本建物の他の賃借人による電気の使用を妨げない旨誓約し、またこれに同意する。配電サービスの内容につき変更があった場合は、いかなる時点あれ、本物件所有者は、賃借人が負担した一切の損失、損害又は費用につき、賃借人に対し、何らの損害賠償義務又は責任を



負わないものとする。

(注) ㊦は、必要に応じて、特約条項が追加される箇所を指す。

**第 13 条 (本物件への立入)** 本物件所有者及び本物件所有者の代理人は、緊急の際にはいつでも、本賃貸物件に立ち入る権利を有するものとする(但し、義務ではないものとする)。また、その他の合理的な時間にこれを調査し、本建物の何れかの部分につき本物件所有者が必要でありかつ合理的に望ましいと思量する場合、あるいは賃借人が本賃貸借契約書に基づき、又は法律、規制及び政府機関のその他の命令を遵守するため、履行する義務を負う補修工事又は何らかの作業を賃借人が行わない場合に、本物件所有者が、本賃貸物件においてこれを実施することを選択した場合には、補修、交換及び改良を行う権利を有するものとする(但し、義務ではないものとする)。賃借人は、本物件所有者が、本賃貸物件内及びこれを貫通するパイプ及び導管を使用し、維持し、交換すること、また、それらが壁の中に設置されることを条件に、本賃貸物件内に新しいパイプ及び導管を敷設することを認めるものとする。本物件所有者は、本賃貸物件内の作業中に賃借人を立ち退かせることなく、当該物件につきあらゆる必要な資材及び機器を持ち込むことができ、また、賃借人は、当該作業が行われている間について、賃料の減額、又は営業機会の喪失もしくは中断を理由として、損害賠償を受ける権限を有しないものとする。本契約書の契約期間中を通じて、本物件所有者は、これを見込購入者又は建物の抵当権者に内覧させるめ合理的な時間に、また、これを見込賃借人に内覧させるため契約期間の最後の6ヶ月間は、本賃貸物件に立ち入る権利を有するものとし、当該6ヶ月の期間中、本物件に「To Let (入居者募集)」及び「For Sale (売却物件)」の、一般的な表示を掲示することができる。賃借人は、かかる表示を妨害することなく、また本物件にこれらを掲示させておくことを認めるものとする。賃借人が本物件の開示に立ち会わず、また、立入を認めない場合には、本物件所有者又は本物件所有者の代理人は、かかる立入が必要又は認められる場合にはいつでも、マスターキーにより又は強制的に、これに立ち入ることができる。但し、賃借人の財産を保護するため合理的な注意を払うことを条件とする。かかる立入は、本物件所有者又はその代理人に、これにつき責任を課すものではなく、いかなる場合にも、本契約書に基づく賃借人の義務はその影響を受けないものとする。契約期間の最終月に、賃借人が、賃借人の財産の全て又は実質的に全てを本賃貸物件から撤去する場合には、本物件所有者は、賃料を削減もしくは減額することなく、又は補償のため賃借人に責任を負うことなく、本賃貸物件に直ちに立ち入り、これを改修、更新又は改装することができるが、これは本賃貸借契約書もしくは本賃貸借契約書に基づく賃借人の義務に影響を与えないものとする。本物件所有者は、立ち退きを行わせることなく、またこれにつき賃借人に責任を負うことなく、いつでも、共用のエントランス、通路、ドア、出入り口、廊下、エレベーター、階段、トイレ、その他の建物の共用部分の配置及び又は位置を変更し、また、一般にそれにより知られている建物の名称、番号又は表示を変更する権利を有するものとする。

**第 14 条 (保管庫、保管スペース又は区域)** 本契約書に基づく建物の境界線内には、密閉されていると被覆されているとを問わず、保管庫、保管スペース又は区域は賃貸されず、これは、概略図、青写真、あるいは本賃貸借契約書のどこかに、これに反する記載がある場合も同様とする。本物件所有者は、建物の境界線の場所について、何らの表示を行わない。本建物の境界線内に、何らかの保管庫及び保管スペース並びにかかる区域があり、これを賃借人が使用及び又は占有することが認められる場合にも、これらは、取消可能な許可に基づき使用及び又は占有が認められているものであって、かかる許可が撤廃された場合又は当該スペース又は区域の面積が、連邦、州、もしくは自治体の機関又は電気・ガス・水道業者により削減せられ、又は必要とされる場合には、本物件所有者は、一切の責任を負わず、また、賃借人は、補償又は賃料の減額もしくは削減を受ける権限を有せず、また、かかる撤廃、削減又は要求は、擬制的又は実際の立ち退き要求とみなされるものとする。かかる保管庫又は区域に関する自治体当局の一切の租税、手数料又は料金は、賃借人が支払うものとする。

**第15条 (占有)** 賃借人は、いかなる時点でも、本契約書第2条もしくは第37条、又は本賃貸物件の一部をなす本建物に関して発行された占有証明書に違反して、本賃貸物件を使用又は占有しない。賃借人は、本物件を検査済みであり、「現状で」本物件を受領する。但し、本物件所有者が行うべき作業に関する本契約書添付の特約条項（もしあれば）については、この限りではない。いかなる場合も、本物件所有者は、本物件の状態について何らの表示を行わず、賃借人は、記録されていると否とにかかわらず違反事由がある場合にもそのまま、これを受領することに同意する。

**第16条 (破産)** (a) 本賃貸借契約書のどこかにこれに反する規定がある場合でも、それにかかわらず、本賃貸借契約書は、以下の何れか一つ又は複数の事由が起きた場合には、これから合理的な時間内に書面による通知を送付することにより、賃貸人はこれを解除することができる。即ち、(1) 破産手続が開始された場合、又は何れかの州法に基づき賃借人を債務者とする手続が開始された場合、あるいは(2) 何れかの州の制定法に基づき、債権者のための譲渡又はその他何らかの和議手続が賃借人につき行われた場合。賃借人又は賃借人を通じてもしくは賃借人のもとで請求を行う何れの人も、何れかの制定法又は裁判所命令を理由として、その後、本賃貸物件の占有を取得する権限を有しないものとし、直ちに本物件より退去し、これを引き渡すものとする。本賃貸借契約書がその条件にしたがい譲渡される場合には、本第16条の規定は、賃借人の本賃貸借契約の権利を当該時点で有していた当事者にのみ、適用されるものとする。

(b) 本条(a)項により本賃貸借契約書が終了される場合には、本賃貸借契約書にこれに反する他の規定がある場合にも、それにかかわらず、本物件所有者は、賃貸借期間の満了していない部分につき本契約書に基づき約束されていた賃料と、かかる期間の本賃貸物件の合理的な賃貸価額との差額に相当する金額を、予定損害賠償額として賃借人から直ちに回復することのできる権限を有する旨約定され、合意される。かかる損害賠償額を算出するに当たっては、終了日の後に本契約書に基づき支払期限が到来することになる賃料の割賦払い金額と、かかる割賦払いが行われる期間に関する本賃貸物件の公正かつ合理的な賃貸相当額との差額については、契約終了日まで、毎年四パーセント(4%)の率で割り引き現在化されるものとする。裁判所に当該定額損害賠償の証拠を提出する前の、当該賃貸借契約書の満了していない期間、又はその一部の期間につき、本物件所有者がかかる物件又はその何れかの部分を再度賃貸した場合には、当該再度の賃貸に基づき保証される賃料の金額は、再度の賃貸契約期間中にかように再度賃貸される本物件の一部又は全部に関する、公正かつ合理的な価額であるとみなされるものとする。本契約書のいかなる規定も、賃貸人が当該契約終了を理由に実際の損害賠償額を証明し、これを取得し、また当該損害賠償が証明された時点で有効な、またこれについての手続を規定する、何れかの制定法又は法律の規則により認められる最大額に等しい金額を証明し、取得することのできる、賃貸人の権利を制限又は侵害するものではないものとする。これは、かかる金額が、上記の差額の金額を上回るものであると、同額のものであると、下回るものであるとを問わない。

**第17条 (債務不履行)** (1) その事実の判断は本物件所有者がもっぱら行うが、仮に賃借人が、賃料又は追加賃料の支払に関する誓約以外の本賃貸借契約書の誓約の何れかを履行することを懈怠した場合、あるいは本賃貸物件が空室となるか、もしくは放置された場合、あるいは何らかの強制執行もしくは差押えが、賃借人もしくは賃借人の資産の何れかにつき実行され、これに基づき、本賃貸物件が賃借人以外の何人かに引き渡された場合もしくは占有された場合、あるいは本賃貸借契約書が、米国法典第11章第365条（破産法典）に基づき承継を拒絶された場合、賃借人が、本賃貸借契約書の契約期間の開始から十五(15)日以内に本物件に引っ越しこれを占有することを怠った場合の、かかる何れか一つまたは複数事由が発生した場合には、本物件所有者は、当該債務不履行の内容を明記した書面による五(5)日前の通知を行い、賃借人が当該債務を履行せずもしくは当該債務不履行を治癒することを怠った場合、あるいは債務不履行が当該五(5)日以内に完全に治癒又は除却できるようなものではなかった場合、並びに賃借人が当該五(5)日の期間内に当該債務履行の治癒を勤勉に開始せず、当該

債務不履行の除却もしくは治癒のための手続を誠実にとらなかった場合には、本物件所有者は、かかる五(5)日が経過次第、本賃貸借契約書を解除する旨の三(3)日前の書面による通知を行うことができ、それに基づき、当該三(3)日の期間の満了が、あたかも本賃貸借契約書及びその契約期間の終了及び満了に関し本契約書で確定的に定められていた日であったかのごとく、本賃貸借契約書及び本賃貸借契約書に基づく契約期間は終了し、完全かつ完璧に失効するものとし、賃借人は、その後、本賃貸物件を本物件所有者に対して明け渡すものとするが、賃借人は、以下に規定するとおり引き続き責を負うものとする。

(2) 本条(1)項に規定される通知が行われ、契約期間が前記のとおり満了された場合、あるいは賃借人が、本契約書で保証される賃料もしくは本契約書に言及される何れかの項目の追加賃料、又はその何れかの何らかの部分の支払、あるいは本契約書で要求されるその他一切の支払を行うこと懈怠した場合には、そのうえで、またかかる事由の何れかの場合に、本物件所有者は、通知を行うことを要せず、強制的にまたその他の方法により、本賃貸物件の占有を回復することができ、また、略式手続もしくはその他により賃借人、賃借人の法的代表者又は本賃貸物件のその他の占有者に対して明け渡しを請求できるものとし、賃借人はその動産を撤去し、本物件につき本賃貸借契約書が締結されなかったのごとき状態におくものとし、また、賃借人は、ここに、かかる目的で占有を回復し、法的手続を提起する意思の通知を受ける権利を放棄する。

**第 18 条 (本物件所有者の救済方法及び賃貸借回復権の放棄)** かかる債務不履行、略式手続又はその他による自力占有回復、失効及び又は不動産占有回復の場合には、(a) 賃料及び追加賃料は、これに基づき支払期限が到来し、かかる自力占有回復、不動産占有回復及び又は失効の時までに払い込まれるものとし、(b) 本物件所有者は、本物件又はその何れかの部分（複数の場合もある）を、賃借人又はその他の名義で、本物件所有者の裁量にしたがい、本賃貸借契約書の契約期間の残余の期間を構成していたであろう期間を超えない又は超える期間、再度賃貸することができ、また、使用許可もしくは賃料無料を認めることができ、又は本賃貸借契約書におけるより高い賃料を請求することができ、及び又は (c) 賃借人又は賃借人の法的代表者は、また、賃借人が、本契約書所定の賃借人の当該誓約を賃借人が遵守し、履行することができなかったことにつき予定損害賠償として、本物件所有者に、本契約書に保証される及び又は支払う旨の誓約がされた賃料と、本賃貸借契約書の契約期間の残余の期間を構成したであろう各月に関して、後続の本賃貸物件の賃貸借で徴収される賃料の正味金額との間に差額がもすれば、これを支払うものとする。本物件所有者が本物件又はその何れかの部分を再度賃貸できないことは、賃借人の損害賠償に対する責任を免責するものでも、又は影響を与えるものではない。当該予定損害賠償額を計算する際に、当該差額に、再度の賃貸に関連して本物件所有者が負担した、例えば、法的費用、弁護士費用、仲介手数料、宣伝費等の支出、並びに、本賃貸物件を秩序だてて保持し、又はこれにつき再度賃貸する用意をするために、本物件所有者が負担した費用が追加されるものとする。かかる予定損害賠償額は、本賃貸借契約書に明記された賃料支払日に、賃借人が月賦払いにてこれを支払うものとする。本物件所有者は、本賃貸物件を秩序だてて保持し、又はこれを再度賃貸するため準備するに際して、本物件所有者の裁量にしたがい、本物件所有者が、本物件所有者のもつぱらの判断にて、本賃貸物件の再度の賃貸のために望ましくかつ必要であると思量する、改修、補修、交換及び又は改装を行うことができるが、かかる改造、補修、交換、及び又は改装を行うことは、賃借人をその責任から免責するものとして作用せず、またかようなものと解釈されないものとする。本物件所有者は、いかなる場合にも、いかなる態様によっても、本賃貸物件を再度賃貸できないことにつき責任を負わず、また、本賃貸物件が再度賃貸された場合には、当該再度の賃貸に基づき、その賃料を徴収できないことにつき責任を負わず、また賃借人は、いかなる場合も、本契約書に基づき本物件所有者に支払うべき金額を超えて徴収された、正味賃料に超過額がある場合にも、これを受け取る権限を有しないものとする。賃借人が本条の誓約又は規定の何れかに違反した場合、又は違反するおそれのある場合には、本物件所有者は、自力占有回復、略式手続及びその他の救済方法

が本契約書に規定されていないかのごとく、差止命令及びコモン・ロー上もしくは衡平法上認められるあらゆる救済方法を求める権利を有するものとする。特定の救済方法について本賃貸借契約書において言及されている場合にも、本物件所有者が、その他一切のコモン・ロー上もしくは衡平法上の救済を求めることの妨げとなるものではないものとする。賃借人は、ここに、現在もしくは将来の法律により、又はこれに基づき認められる賃貸借回復権を、一切、明示に放棄する。

**第 19 条 (諸経費)** 賃借人が、本賃貸借契約書の何れかの条項の条件又は規定の何れかに基づき、又はこれらにより、遵守し又は履行すべき賃借人の側の何れかの条件又は誓約の遵守又は履行を怠った場合には、本賃貸借契約書の他に別段の規定がない限り、本物件所有者は、直ちに、又はその後いつでも、通知を行うことなく、本契約書に基づく賃借人の義務を履行することができる。また、本物件所有者が、それらに関連する、又は本契約書に基づく賃料の支払いについての誓約の、賃借人の不履行に関連して何らかの支出を行い、又はこれに限定されないが、何らかの訴訟もしくは手続を提起し、追行し又は防御する際に、弁護士費用を含め、金銭の支払い債務を負担した場合には、かように支払われた金員又は発生した債務は、利息及び費用とともに、本契約書に基づく追加賃料とみなされるものとし、これにつき本物件所有者に対して何らかの請求書又は計算書を交付してから五(5)日以内に賃借人はこれを本物件所有者に対して支払うものとし、仮に、賃借人の賃借期間が、当該支出を行う時又は当該債務が発生した時に既に失効していた場合には、かかる金員は、損害として、本物件所有者が回復可能なものとする。

**第 20 条 (本物件所有者の表示の排除)** 本物件所有者又は本物件所有者の代理人は、本契約書に明示に規定されている場合を除き、建物、本件建物が立っている土地もしくは本賃貸物件、賃料、賃貸借契約書、営業支出、又は本物件に影響を与える、もしくは関連するその他一切の案件もしくは事柄に関して、一切の表示又は約束を行っておらず、また、本賃貸借契約書の条項に明示に規定されている場合を除き、黙示によるとその他によるとを問わず、権利、地役権又は利用権は、賃借人がそれらを一切を取得するものではない。賃借人は、建物及び本賃貸物件を検査済みであり、その状態を完璧に知っており、これを「現状」で受け取ることに同意し、賃借人による本賃貸物件の占有権の取得は、当該物件及びこれがその一部を構成する建物において、かかる占有がどのように引き継がれた当該時点における隠れたる瑕疵を除き、良好かつ満足のいく状態であったことの確定的証拠となることを了承している。本契約書当事者間でこれまでになされた全ての了解及び合意は、本物件所有者と賃借人との間の合意を、完全かつ完璧に、単一で具現する本契約書に吸収され、以後なされ、未履行の一切の合意は、かかる未履行の契約書が書面によるものであり、また当該変更、修正、取消又は廃止の強制実現がそれに対して請求される当事者による署名が付されたものでない限り、全体であると一部であるとを問わず、本契約書の変更、修正、取消、廃止、又はその効力に影響を与えないものとする。

**第 21 条 (契約期間の終了)** 本賃貸借契約書が満了となり次第、又は終了となり次第、賃借人は、本賃貸物件を、通常の摩耗を除き、清潔、整頓された良好な状態で、本物件所有者に明け渡すものとし、また、賃借人はその全ての財物を撤去するものとする。本誓約を遵守又は履行する賃借人の義務は、本賃貸借契約書の満了又はその他の終了にかかわらず、存続するものとする。本賃貸借契約書又はその更新期間の最終日が日曜日に当たる場合には、本賃貸借契約書は、その前の土曜日の正午に終了するものとするが、その日が法定の休日である場合はこの限りではなく、その場合には、その前の営業日の正午に終了するものとする。

**第 22 条 (平穏な占有享受)** 本物件所有者は、賃借人が賃料及び追加賃料を支払うことに基づき、また、遵守し、履行すべき賃借人の条件及び誓約のすべてを遵守し、履行することに基づき、賃借人が、本契約書により賃貸される物件を、平穏かつ静謐に享受できることを賃借人に誓約し、賃借人と同意する。但し、これに限定されないが、本契約書第 33 条を含む本賃貸借契約書の条件、並びに、

本契約書でこれまでに言及された土地賃貸借、土地賃貸借又は不動産転貸借権及び抵当権に服するものとする。

**第 23 条（占有の移転不能）** 本物件所有者が本契約書の契約期間の開始日に本賃貸物件の占有を与えることができないときにおいて、その理由が、何れかの賃借人、転賃借人もしくは占有者が保有期間満了後も占有を継続し又は占有権を留保したことを理由とする場合、又は本物件が建設中の建物に所在する場合において、本物件が直ちに占有できる状態に十分にまで、かかる建物が完成されていなかった場合、又は占有証明書が取得されていないという事実もしくはその他一切の理由による場合には、本物件所有者は、かかる期日に占有を移転することができなかったことの責を負わないものとし、本賃貸借の効力はかかる状況においても害されることなく、また、これは、賃貸借契約書の契約期間を延期するものとは解釈されないものとする。但し、本契約書に基づき支払われる賃料は、本物件所有者が、後に本物件が賃借人の占有に供するための用意が実質的に整った旨の、書面による通知を賃借人に交付するまで、減額されるものとする（但し、賃借人が、占有を取得できないことに責任を負わない場合に限る）。本賃貸借契約書の契約期間の開始日として指定された日の前に、本賃貸物件に立ち入ること、又は本物件を占有することの許可が賃借人に与えられた場合には、賃借人は、かかる占有は、本賃貸借契約書のすべての条件、誓約及び規定に基づくものであるとみなされることを誓約し、これに同意する。但し、賃料の支払いに関する誓約を除く。本条の規定は、ニューヨーク州不動産法典第 223 条 a の意味における、「これに反する明示の規定」を構成することが意図されている。

**第 24 条（権利の不放棄）** 本物件所有者が、本賃貸契約書の何れかの誓約もしくは条件、又は賃借人が規定する、もしくは以後採用する「賃貸物件利用細則」の何れかの違反の是正を求めなかったこと、又はその厳格な履行を主張しなかったことは、本来違反禁止措置を構成したであろう後の行為が、当初の違反禁止措置のすべての効力及び効果をもつことを妨げないものとする。本賃貸借契約書の何れかの誓約の違反について知りながら賃料を受領したことによって、本物件所有者が当該違反に関する責問権を放棄したものとはみなされないものとし、また、本賃貸借契約書の規定は、当該責問権の放棄が、本物件所有者が署名を付した書面にて行われない限り、本物件所有者によって放棄されたものとはみなされないものとする。賃借人が本契約書に規定する月間賃料より少ない金額を支払い、また本物件所有者がこれを受領することによっても、規定された賃料の早期の支払いのためのもの以外のものとはみなされないものとし、賃料としての何れかの小切手の裏書きし、もしくは計算書に記載し又は何れかの小切手又は支払いに添付した信用状は、代物弁済とはみなされないものとし、本物件所有者は、当該賃料の残額を受領し、また本賃貸借契約書に規定するその他一切の救済方法を求める本物件所有者の権利を害されることなく、かかる小切手又は支払いを受領することができる。本契約書により賃貸の期間中に、賃借人又は賃借人の代理人による行為又はこれらがなす事柄は、[本件賃貸借を終了させることを容認する] 当該物件の返還の受領であるとみなされないものとし、当該返還を受領する旨の合意は、賃借人が署名を付した書面によるものでない限り有効とはならないものとする。本物件所有者の従業員又は本物件所有者の代理人は、本賃貸借契約書の終了の前に、当該物件の鍵を受領する権限を有せず、鍵をかかえる代理人又は従業員に引き渡すことは、本賃貸借契約書の終了又は本物件の返還とはならないものとする。

**第 25 条（陪審による裁判権の放棄）** 本物件所有者及び賃借人により、またこれらの間で、本契約書の当事者のそれぞれが、ここに、本契約書の当事者の何れかが他方当事者に対して、いかなる案件であるとを問わず、本賃貸借契約書、本物件所有者と賃借人の関係、当該物件の賃借人の使用もしくは占有、及び何らかの緊急の制定法上の救済もしくはその他の制定法上の救済に起因し、又は何らかの点でこれに関連して提起された一切の訴訟、手続又は異議申立（人身傷害又は財物損害に関する場合を除く）において、陪審による裁判を受ける権利を放棄する。賃借人が、本物件の占有に関して略式手続を開始した場合には、賃借人が、かかる手続において、いかなる性質又は名称であるとを問

わず反訴を申し立てないことを、さらに相互に合意する。

**第 26 条（履行不能）** 仮に本物件所有者が、ストライキもしくは労働争議、国家の緊急事態に関連する政府の優先権を理由として、あるいは政府の何れかの省もしくは局又は何れかの政府機関の何らかの規則、命令又は規制を理由として、あるいは、戦争その他の緊急事態の影響を受けた、もしくは影響を受ける供給と需要の状況を理由として、あるいは本物件所有者の判断により、事故、機械故障を理由に、又は補修、改修又は改装を行うために、当該サービスを一時的に中断することが必要とされる場合には、本物件所有者が、本賃貸借契約書に基づくその義務の何れかを履行できないこと、又は明示であると黙示であるとを問わず、提供すべき役務を提供することに遅延すること、もしくはかかる役務をなすことができないこと、あるいは、何らかの補修、増築、改修もしくは改装を行うことに遅延すること、又は何らかの機器もしくは備品を供給できないこと、又はかかる供給に遅滞することによっては、本賃貸借契約書及び本契約書に基づき賃料を支払義務、また履行すべき賃借人の本契約書に基づくその他の誓約及び合意の全てを履行する旨の賃借人の義務は、一切、影響を受けず、害されず、また免責されるものでもない。

**第 27 条（請求書及び通知）** 本賃貸借契約書に別段の規定がある場合を除き、本物件所有者が、賃借人に交付したいと望む、又は交付する必要がある請求書、計算書、通知又は連絡は、書面にて、賃借人に手交されるか、あるいは本賃貸物件が一部をなす建物の賃借人の住所に宛て、又は賃借人の最新のものとして知られる居所もしくは営業所の住所宛てに、書留郵便もしくは内容証明郵便にて送付されるか、あるいは賃借人に宛てて、前記の物件の何れかに配達された場合には、十分有効に行われ又はなされたものと見なされるものとし、当該請求書もしくは計算書の交付された時、及びかかる通知もしくは連絡を行った時に、本契約書に規定されるとおり、これは本物件所有者に対して交付され、送付され、本物件に配達されたものとみなされるものとする。本物件所有者から賃借人への一切の通知は、本契約書冒頭記載の住所、又は本物件所有者が書面による通知にて指定するその他の住所の、本物件所有者に宛てた書留郵便又は内容証明郵便によって送達されるべきものとする。

**第 28 条（水道料金）** 賃借人が、通常の洗面の目的以外の目的で水を必要とし、使用し又は消費する場合（賃借人の行為がかかる事実を構成することについては、本物件所有者がもっぱら判断する）には、本物件所有者は、量水器を設置することができ、これにより、すべての目的における賃借人の水道使用量を測ることができる。賃借人は、本物件所有者にメーターの使用料とメーターの設置費用を支払うものとし、また、賃借人が占有を続ける間は、賃借人が賃借人のもっぱらの費用負担でかかるメーターと設置した機器を良好な状態に保ち、これを補修するものとする。賃借人は、請求が渡された時に、これにしたがい、当該メーターが示すとおり、消費した水道使用量につき支払を行うことに同意する。賃借人は、下水道の賃料と料金、又は現在もしくは以後、本賃貸物件及び水道、水道システム、あるいは下水道又は下水道の接続あるいはシステムの使用、消費、保守又は供給に関連して制定される、又は発効する法律、命令又は規則により、本賃貸物件が一部をなす不動産につき査定され、課されるその他一切の租税、賃料、付加金もしくは課徴金、あるいは、先取特権の担保金額を支払うことを誓約し、これに同意する。本物件所有者が行った請求は、追加賃料として賃借人により支払われるものとする。建物又は本賃貸物件もしくはその何れかの部分に、他の物件にも水を供給するメーターを通じて水を供給する場合には、賃借人は、賃借人の負担部分としてメーターが表示した料金総額の\_\_\_\_\_% (\$\_\_\_\_\_) を本物件所有者に毎月第 1 日目に、支払うものとする。上記又は本賃貸借契約書の別の条項において本物件所有者の保証された救済方法とは別に、またこれに加えて、本物件所有者は、理由の如何を問わず、また上記に規定される目的のため、賃借人が支払うべき又は本物件所有者が支払ったすべての金銭を請求し、これを徴収することができる。

**第 29 条（スプリンクラー）** 本賃貸借契約書のいずれかにこれに反する規定がある場合にも、それ

にかかわらず、ニューヨーク州火災保険業者協会もしくは保険サービス事務所（ISO）又は連邦、州もしくは市の何れかの省、庁、局が、賃借人の業務又はパーティション、事業用備品の場所、又は本賃貸物件のその他の内容物を理由として、あるいはその他何らかの理由により、スプリンクラー・システムの設置を義務づけもしくは勧告する場合、あるいは何らかの変更、修正、改変又はスプリンクラーその他の機器の追加を、既存のスプリンクラー・システムに行うよう、もしくは提供するよう義務づけるか又は勧告する場合、あるいはかかるスプリンクラー・システムの設置、変更、修正、改変、スプリンクラーもしくはその他のかかる機器の追加が、当該協会又は何れかの火災保険会社が設定する火災保険料につき、スプリンクラー・システム設置割引全額に対して、課徴金もしくは課金を課されることを防ぐのに必要となる場合には、賃借人は、賃借人のもっぱらの費用負担で、本賃貸物件に関して、かかるスプリンクラー・システムの設置、変更、修正、改変を行い、また、スプリンクラーその他の機器を増設するものとする。また、かかる工事が、建物の構造にかかわると、また構造にかかわるものであるとを問わないものとする。賃借人は、本物件所有者に対して、追加賃料として、金\$\_\_\_\_\_ドルを、本賃貸借の期間中、各月の初日に、スプリンクラー監視サービスの契約料金の負担部分として支払うものとする。

**第 30 条（暖房、清掃）** 賃借人が、本賃貸借契約書の誓約の何れかにつき債務不履行をおかしていない限り、賃借人は、本物件所有者が既存の施設がそれを可能とする場合に、またかような場合に限り、法律により義務づけられる時、法律により義務づけられるように、営業日は午前8時から午後6時まで、土曜日は午前8時から午後1時まで、本賃貸物件に暖房を送るものとする。賃借人は、賃借人の費用負担で、本賃貸物件を本物件所有者の満足のいくように清潔かつ秩序だった状態に保つようにするものとし、仮に本賃貸物件が通りに面している場合には、賃借人は、賃借人自身の費用負担で、歩道と歩道に隣接する縁石のすべての補修と交換を行うものとし、また、当該歩道と縁石を、雪、氷、泥及びごみのない状態に保つものとする。賃借人は、賃借人の何れかの廃棄物及びゴミの建物からの撤去にかかる費用を、本物件所有者に支払うものとする。これに関する請求書は、本物件所有者が選択する時に、本物件所有者が賃借人に対して提出するものとし、提出された時に弁済期が到来して支払われるべきものとなるものとし、かかる請求書の金額は、追加賃料とみなされ、また追加賃料として支払われるものとする。しかしながら、賃借人は、賃借人が、これを本物件所有者の従業員に行わせることを望まない場合には、かかるゴミ及び廃棄物の撤去につき、独立した請負人と契約を締結する選択権を有するものとする。しかしながら、かかる場合には、第三者による当該廃棄物及びゴミの撤去は、本物件所有者の判断において、本建物の適切な運営に必要であるとされる「賃貸物件利用細則」にしたがうものとする。

**第 31 条（保証金）** 賃借人は、本賃貸借契約書の条件及び規定の賃借人による忠実な履行と遵守に関する保証金として、金\$\_\_\_\_\_ドルを、本物件所有者に預託した。賃借人は、これに限定されないが、賃料及び追加賃料の支払を含め、本賃貸借の条件及び規定の何れかに関して不履行があった場合には、本物件所有者が、かように預託された保証金の全額または一部を、賃料及び追加賃料又は賃借人が債務不履行となっていることに関するその他一切の金額、あるいは、これに限定されないが、当該損害又は不足額が、本物件所有者による略式手続、又はその他の不動産占有回復の前に発生すると後に発生するとを問わず、本物件を再び貸す際のすべての損害又は不足額を含め、本物件所有者が、賃借人が本賃貸借契約書の条件及び誓約の何れかに関して債務不履行をおかしたことを理由に負担することのある、もしくは負担する必要がある、その他一切の金額の支払に必要とされる範囲で、使用し、充当し、又は留保することができる。賃借人が本賃貸借契約書の条件、規定及び誓約を完全に、かつ忠実に遵守している場合には、保証金は、本賃貸借契約の終了日として確定された日の後であって、本賃貸物件の完全なる占有権を賃借人に引き渡した後に、賃借人に返還されるものとする。本賃貸物件の一部をなす、土地及び建物が売却される場合又は建物が賃貸借される場合には、本物件所有者は、保証金を買主又は賃借人に譲渡する権利を有するものとし、本物件所有者は、これ



に基づき、当該保証金を返還するすべての債務から賃借人により免責されるものとし、また、賃借人は、もっぱら当該保証金の返還を、本物件の新所有者に求めることに同意し、また本条の規定が、本物件の新所有者に対してなされる保証金のすべての移転又は譲渡に適用されるものとするのが合意される。賃借人は、さらに、賃借人が、保証金として本契約書において預託された金銭を譲渡し、物上担保を付し、譲渡しようと試み、又は物上担保を設定しようとしない旨、また、本物件所有者又はその承継者もしくは譲受人の何れも、かかる譲渡、物上担保の設定、譲渡の試み、又は物上担保設定の試みにより拘束されない旨、誓約する。

☞ 空欄を記入するか、又は削除する。

**第 32 条 (見出し)** 見出しは、便宜及び参照のためにのみ挿入されたものであり、いかなる場合も、本賃貸借契約書の範囲又は本賃貸借契約書の何れかの規定の意図を定義し、制限し、又は説明するものではない。

**第 33 条 (定義)** 本賃貸借契約書で使用される「本物件所有者」の用語は、もっぱら本物件所有者、又は本賃貸物件が一部をなす土地及び建物を、当座、所有している抵当権者（又は建物の賃貸借もしくは土地及び建物の賃貸借の本物件所有者）を意味するものとし、それゆえ、当該土地及び建物又は当該賃貸借が売却される場合、あるいは当該建物もしくは土地及び建物が賃貸借される場合には、当該本物件所有者は、本契約書に基づく本物件所有者のすべての誓約及び義務を完全に免除され、また免責されるものとし、また、ここに、免除され、また免責される。また、当事者間又は権利のこれらの承継者との間では、あるいは当事者と購入者との間に、当該売却時、又は建物の当該賃貸借時もしくは土地及び建物の当該賃貸借時に、購入者又は建物の賃借人が、本契約書に基づく本物件所有者の一切の誓約及び義務を引き受け、また、これを履行することに同意した旨、さらなる合意を要せずして、みなされるものとし、またかように解釈されるものとする。本賃貸借契約書で使用される「自力で占有を回復する」及び「自力占有回復」の用語の意味は、その法律用語上の意味に限定されない。本賃貸借契約書で使用される「営業日」の用語は、土曜日（本契約書第 30 条で特別な時間の対象とされる土曜日の一部を除く）、日曜日及び該当する建物サービス組合の従業員サービス契約又は HVAC サービスに関して適用のある業務運営エンジニア契約書が休日と指定している、すべての日を除く日とするものとする。

**第 34 条 (近隣の掘削一支保工)** 本賃貸物件の一部及び近隣で掘削が行われる場合、又は掘削を行うことを認められた場合には、賃借人は、かかる掘削を行う者又はかかる掘削を行うことを監督する者を提供し、かかる者が本賃貸物件がその一部である壁又は建物を傷害又は損害から守り、また、本物件所有者に対する損害もしくは補償請求を行うことなく、又は賃料の減額もしくは軽減を請求することなく、適切な基礎によりかかる壁又は建物を支えるために必要であると思量する作業を行う目的で本賃貸物件に立ち入ることを認めるものとする。

**第 35 条 (「賃貸物件利用細則」)** 賃借人並びに賃借人の使用人、従業員、代理人、客人及び使用権者は、「賃貸物件利用細則」、並びに、本物件所有者又は本物件所有者の代理人が、随時、採用することのあるその他の合理的なさらなる「賃貸物件利用細則」を誠実に守り、厳格に遵守するものとする。追加の規則又は規制についての通知が、本物件所有者が選択することのある態様で行われるものとする。賃借人が、本契約書以後、本物件所有者又は本物件所有者の代理人が作成し、又は採択した追加の規則又は規制の合理性につき疑義がある場合には、本契約書当事者は、当該規則又は規制の合理性についての疑義につき判断を仰ぐため、これを、アメリカ仲裁協会のニューヨーク事務所に付託することに同意する。当該仲裁協会の決定は、本契約書当事者にとって、最終的かつ確定的なものとなる。何らかの追加の規則又は規制の合理性について賃借人が疑義を申し立てる権利は、かかる規則又は規



制についての通知がなされてから十(10)日以内に、本物件所有者に対して書面にて通知の送達により主張されない限り、放棄されたものとみなされるものとする。本賃貸借契約書の規定は、本物件所有者に、「賃貸物件利用細則」又はその他何れかの賃借人及び本物件所有者に対するその他一切の賃貸借契約書の条件、誓約もしくは条件を強制実現する責務又は義務を課すものであるとは解釈されないものとし、また、本物件所有者は、その他何れかの賃借人、その使用人、従業員、代理人、訪問客もしくは使用権者によるこれらの違反につき賃借人に対して、何ら責任を負わないものとする。

**第 36 条 (ガラス)** 本物件所有者は、賃借人の費用負担で、いかなる原因によってであれ、本賃貸物件内で損傷を受けた又は破壊された一切のプレートその他のガラスを交換するものとする。本物件所有者は、賃借人の費用負担で、本物件所有者のために、また本物件所有者の名義で、本賃貸物件内の全てのプレート及びその他のガラスにつき保険を掛け、これを維持することができる。その保険料は、本物件所有者が選択する時に、本物件所有者より賃借人に対して請求され、請求された時に、支払期限が到来し、賃借人により支払われるものとし、その金額は、追加賃料とみなされ、追加賃料として支払われるものとする。

**第 37 条 (風俗営業目的の使用の禁止)** 本賃貸物件の価値及び本物件所有者の評判は、仮に本物件が、何らかな猥褻な目的もしくは風俗営業目的のため、又は何らかの種類の業務用の性的な商売のために使用されたなら、賃借人は、重大な信用の失墜を被るであろうことに同意する。賃借人は、賃借人が、本物件に猥褻な、もしくは風俗営業目的の物品を一切持ち込まず、またこれを認めないこと、また、本物件で、猥褻な、ヌードもしくはセミヌードのライブショーを認めず、また行わないものとする、また、本物件をヌードモデルの使用、ラップセッション又はいわゆる避妊用具店、又はあらゆる種類の性同好会又は「マッサージ・パーラー」としての使用を認めないことに同意する。本条は、賃借人の権益の一切の承継者を直接的に拘束するものとする。賃借人は、いかなる時点でも、本条の規定の何れかを違反した場合には、かかる違反は、本賃貸借契約書の条件の実質的な義務の違反及び好ましくない振る舞いとみなされるものとするに同意する。本条の目的において風俗営業目的な物品とは、卑猥な興味をそそる文書もしくは絵によるもの、又はみだらな、もしくは猥褻な性的な活動に主として関連する器具の一切と定義される。本条における猥褻な題材とは、刑法典第 235.00 条に定義されるとおりとする。

**第 38 条 (禁反言証明書)** 賃借人は、何時でも、また随時、本物件所有者から少なくとも 10 日の事前の通知がある場合には、本賃貸借契約書が修正されず、完全なる効力を有し、有効であることを証明し（又は、仮に、修正がある場合には、修正済みのものが完全なる効力を有し、有効であること、及び修正の内容を説明する）、賃料及び追加賃料が支払われた日を記載し、また本賃貸借契約書に基づき本物件所有者による不履行が存在するか否かを記載し、仮にかかる不履行があればその不履行の各々の内容を記載する供述書を作成し、内証を承認して、これを本物件所有者及び/又は本物件所有者が特定したその他何れかの、人、団体もしくは法人に対して、提出するものとする。

**第 39 条 (承継人及び譲受人)** 本賃貸借契約書所定の誓約、条件及び合意は、本物件所有者及び賃借人、並びにそれぞれの法定相続人、指定相続人、遺言執行者、遺産管理人、承継人のために、本契約書に別段の規定のある場合を除き、その譲受人を拘束し、これらの利益に影響を及ぼすものとする。

上記の証として、本物件所有者及び賃借人は、それぞれ、頭書の日付で本賃貸借契約書に署名、捺印した。

本物件所有者の立会人： ..... [社印]

..... [捺印箇所]

賃借人の立会人： ..... [捺印箇所]

..... [社印]

公証条項

[左側]

「本物件所有者」が法人の場合  
 ニューヨーク州：  
 \_\_\_\_\_ 郡

名称：

本 19\_\_年\_\_月\_\_日、私の面前にて、出頭し、適法に宣誓を行った、\_\_\_\_\_と称する者は、自身が\_\_\_\_\_に居住しており、「本物件所有者」として前記証書に記載され、これを締結した会社\_\_\_\_\_の\_\_\_\_\_であり、本人自身は、当該法人の社印を知っており、当該証書に捺印された社印が、かかる社印であり、また、これが、当該法人の取締役会の命令によりかように捺印されたものであり、また、自身が、同様な命令にしたがいこれに氏名を署名したと、証言し、語った。

「本物件所有者」が個人の場合  
 ニューヨーク州：  
 \_\_\_\_\_ 郡

氏名：

本 19\_\_年\_\_月\_\_日、私の面前に出頭した者は、\_\_\_\_\_という氏名で私に知られ、前記証書に記載された個人であり、「本物件所有者」として、前記証書を作成したことが私の知るところとなり、また、本人自身がこれを締結したこと、私が了知するところとなった。

[右側]

「賃借人」が法人の場合  
 ニューヨーク州：  
 \_\_\_\_\_ 郡

名称：

本 19\_\_年\_\_月\_\_日、私の面前にて、出頭し、適法に宣誓を行った、\_\_\_\_\_と称する者は、自身が\_\_\_\_\_に居住しており、「賃借人」として前記証書に記載され、これを締結した会社\_\_\_\_\_の\_\_\_\_\_であり、本人自身は、当該法人の社印を知っており、当該証書に捺印された社印が、かかる社印であり、また、これが、当該法人の取締役会の命令によりかように捺印されたものであり、また、自身が、同様な命令にしたがいこれに氏名を署名したと、証言し、語った。

「賃借人」が個人の場合  
 ニューヨーク州：  
 \_\_\_\_\_ 郡

氏名：

本 19\_\_年\_\_月\_\_日、私の面前に出頭した者は、\_\_\_\_\_という氏名で私に知られ、前記証書に記載された個人であり、「賃借人」として、前記証書を作成したことが私の知るところとなり、また、本人自身がこれを締結したこと、私が了知するところとなった。

**第 35 条にしたがい本賃貸借契約書に添付され  
本賃貸借契約書の一部をなす  
「賃貸物件利用細則」**

1. 賃借人は、歩道、入り口、道路、通路、路地、エレベーター、入り口ホール、階段室、階段又はホールを遮り、又は遮蔽してはならないものとし、また、本賃貸物件への出入り、本物件所有者が当該配送につき指定したエレベーター及び通路を使用する、迅速かつ効率な態様での商品及び機器の搬入のため以外の目的で使用してはならないものとする。賃借人、運送人又はその他の者の何れであるかを問わず、いかなるスペース、又は建物の共用ホールにおいても、商品の配送又は受領の際に、ゴムタイヤ及び安全装置がついているものを除き、台車を使用してはならないものとする。
2. 本物件が建物の 1 階にある場合には、その賃借人は、賃借人の費用負担で、さらに、当該物件の前の歩道及び縁石を清潔に保ち、また、氷、雪等のない状態に保つものとする。
3. 水道と洗面所及び配管設備は、それらが設計又は建設された目的以外の目的で使用してはならないものとする。
4. 賃借人は、本賃貸物件内で不潔もしくは有害なガスもしくは物体を使用し、保管してはならず、又は第三者がこれを使用もしくは保管することを認めてはならず、あるいは、騒音、臭い及び又は振動を理由に、本賃貸物件を賃借人又は建物のその他の占有者の苦情を惹き起こし、又はこれらに不快を与える態様で、占有又は使用させることを認めてはならず、また、これを放置してはならず、あるいは、いかなる点においても、その他の賃借人又はそこで事業を行う者の邪魔をしてはならない。
5. 看板、宣伝、通知又はその他の賃貸の掲示は、賃貸人の事前の書面による同意を必ず得て、本賃貸物件もしくは建物の外側、又は本物件の外側からこれが見える場合には、本賃貸物件の内側に、賃借人が提示し、刻字し、印字し、又は付記するものとする。但し、賃借人の名称を、本物件の入口に表示することは、この限りではない。賃借人が前記に違反する場合には、賃貸人は、一切の責任を負うことなく、これを撤去することができ、また、当該撤去につき負担した費用を本規則に違反した賃借人（複数のこともある）に請求することができる。扉の内側の看板及び居住者案内板は、賃借人の費用負担で、賃貸人が各賃借人のために刻字し、印字し、又は付記するものとし、賃貸人が承諾可能な大きさ、色及び様式であるものとする。
6. 賃借人は、本賃貸物件又は本賃貸物件がその一部をなす建物の何れの部分にも記号を記し、絵を描き、穴をあけ、又はいかなる場合もその表面を傷つけてはならないものとする。掘削、切除又はワイヤ通しは、賃貸人の事前の書面による同意がなければ、認められないものとする。賃借人は、リノリウム又はその他同様な床用敷物を敷いてはならない。これが本賃貸物件の床に直接に接触することになるからであり、仮に、リノリウム又はその他同様な床用敷物の使用を望む場合には、建築業者用の防音フェルトの芯を、水溶性の糊その他の材料を使って、まず、床に固定する。セメントその他同様な接着剤の使用は明示に禁じられる。
7. 貨物、家具、事務機器、商品及びあらゆるかさばる物品は、荷物専用エレベーターでのみ、また、業務用入り口と通路を通して、また、賃貸人が認める時間中に、賃貸人が認める態様で、これを、配送し、また、撤去するものとする。賃貸人は、建物に持ち込まれる全ての貨物を検査し、本「賃貸物件利用細則」又はこれがその一部をなす賃貸借契約書の何れかに違反しているすべての貨物を建物から除却する権利を留保する。

8 賃貸人は、午後6時から午前8時までの時間、並びに日曜日と休日のすべての時間、賃貸人が署名した建物への入室許可証を掲示しない全ての人を、建物から退出させる権利を留保する。賃貸人は、賃借人が書面にてこれを請求した人に対して、入室許可証を提供する。各賃借人は、自らがかかる入出許可証を請求した全ての人に関して責任を負うものとし、かかる者のすべての行為につき賃貸人に対して債務を負うものとする。

9. 賃借人は、賃借人の見解によれば、賃貸人の評判又は店舗もしくは事務所用の建物としての妥当性を害する傾向にある賃借人による一切の宣伝を、禁ずる権利を有するものとする。賃借人は、本物件所有者からの書面による通知を受けた場合には、かかる宣伝を止めるか又は中断するものとする。

10. 賃借人は、本賃貸物件に、引火性、可燃性、又は爆発性の液体、資材、薬品又は物体を持ち込まず、又はこれを第三者をして持ち込み、もしくは保管することを認めないものとし、あるいは、料理その他の調理の臭い、又は異常な臭いもしくは不快な臭いを本賃貸物件への流入させ、又は本賃貸物件からの放出させず、又はかような行為を認めないものとする。

11. 賃借人は、耐用設計され、また法律により認められている、床1フィート当たりの積載量を超える荷物を置いてはならないものとする。本物件所有者は、重量並びに全ての金庫、事務用機械及び機械装置の場所を指定する権利を留保する。かかる設置物は、賃貸人の判断において、振動、騒音及び不快な要素を吸収し、防ぐのに十分な位置に、賃借人の費用負担で、賃借人により配置され、保守されるものとする。

## 保証状

下記の保証人は、賃貸人、賃貸人の承継者及び譲受人に対して、下記署名者が、「賃貸物件利用細則」を含め、当該賃貸契約書において賃借人が履行し、遵守すべきすべての契約を完全に履行し、遵守することを保証する。本保証状に基づき、本保証人に責任を問うには、不払い又は不履行、あるいは証拠又は要求通知について、保証人に通知を行うことを要しないものとし、これらすべては、下記署名者がここに明示に放棄する。本契約書の合法性及び本契約書に基づく保証人の合意は、添付の賃貸借契約書で合意されたとおりとし、賃貸人に与えられた権利又は救済方法の何れかにより、賃借人に対して本物件所有者が請求を行ったことを理由に、終了されたり、変更されたりしないものとする。保証人は、さらに、本保証状が、賃貸借契約書の更新、変更又は延長についても引き続き、完全なる効力を有し、有効であり続けるものとするに同意する。賃貸借契約書を締結するにあたって本物件所有者をさらに誘因するものとして、本物件所有者及び保証人は、賃貸借契約書又は本保証状に関する事案について、本物件所有者又は保証人の何れかが他方当事者に対して提起する一切の訴訟又は手続において、本物件所有者及び下記署名者は、陪審による裁判を受ける権利を放棄するものとし、現に放棄する。

.....保証人

[表紙]

住所

物件

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対する

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標準書式

[紋章]

店舗賃貸借契約書

[紋章]

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全体であると一部であることを問わず複写・複製を禁ずる

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日付 19\_\_\_\_年\_\_\_\_月\_\_\_\_日

年間賃料

月間賃料

契約期間

自\_\_\_\_年\_\_\_\_月\_\_\_\_日

至\_\_\_\_年\_\_\_\_月\_\_\_\_日

起案者.....検査者.....

記入者.....承認者.....

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## 賃貸借契約書特約条項

当事者：賃貸人として MANOR EQUITIES, L.L.C.

及び賃借人として株式会社●●●

本賃貸物件：ニューヨーク州ニューヨーク市マジソン・アベニュー822 番地の地下室、1 階、  
2 階及び3 階

日付：2000 年 12 月\_\_日

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本賃貸借契約書にこれに反する規定がある場合にもそれにかかわらず、第 40 条ないし第 66 条として、[契約書本体と連続して] 続き番号を付された以下の条文は、本賃貸借契約書の条件の一部であり、仮に前記条文の規定が、本特約条項が添付された印刷された書式の規定に何らかの点で抵触する場合には、本特約条項の規定が優先されるものとし、印刷された賃貸借契約書の相反する又は矛盾する文言は、これにしたがい改定されたものとみなされるものとする。

### 第 40 条 租税

賃借人は、本賃貸借契約書の契約期間中又はその更新期間中、毎租税年度又はその一部の期間に関して、本件不動産に課税される 2000 年ないし 2001 年ニューヨーク市会計年度（以下、「基本租税年度」という）の不動産税を上回る不動産税の一切の増加分の 80%を、追加賃料として支払うことに同意する。これは、かかる増額が、税率の増加によるものであると、本件不動産の評価価額の増額によるものであるとその双方によるものであるとを問わない。「本件不動産」とは、本賃貸物件が一部をなす一切の「空中権」を含む、土地及び建物を意味するものとする。「不動産税」とは、本件不動産に課される租税及び査定額を意味するものとするが、これには、いかなる目的のものであれ、本件不動産に課される特別査定額が含まれ、また、本件不動産に関して賃貸人が土地賃貸人支払う租税も含まれる。課税方法の変更により、いかなる名称であるかを問わず、営業税、所得税、利益税その他の租税が、それがなければ不動産税を構成していたであろう一切の租税に代わって、全体であるとして一部であるかを問わず、不動産における賃貸人の権利に課された場合には、課税方法のかかる変更は、本契約書の目的においては「不動産税」という用語に含まれるものとする。「課税年」とは、本賃貸借契約書の契約期間もしくはその更新期間の何れかの部分が生ずる、基本租税年度の後の 7 月 1 日から始まる 12 ヶ月の各期間、又は以後、ニューヨーク市の不動産税のために会計年度として適法に採用されることのある本賃貸借契約書の契約期間もしくはその更新期間中に発生する 12 ヶ月の他の期間を意味するものとする。かかる全ての支払は、本賃貸借契約書の契約期間又はその更新期間の初年度及び最終年度に起こる、租税年度の一部に関しては、適切に比例按分されるものとする。ニューヨーク市の納税請求書の写しをもって、不動産税の税額及び賃借人が支払うべき金額の計算に関する十分な証拠とするものとする。

賃貸人のみが、租税控除又は査定価額の減額を求めるその他の手続を求める資格を有するものとする。仮に、賃貸人がかかる減額手続に成功し、賃借人が増加分の賃借人の部分を支払った期間につき割戻しを取得した場合には、賃貸人は、賃貸人の弁護士費用及び支払を控除した後に、賃借人に対して、当該割戻し中の、賃借人の比例按分部分を返還するものとする。但し、かかる年度が、基本租税年度に課された不動産税を下回る租税年度であった場合には、賃借人は、不動産税の減額から賃貸人に生ずることのある利益を一切取得できないものとする。

不動産税の増額を理由として生ずる賃料の一切の調整は、関連する租税年度の1日付で有効となるものとし、賃貸人が賃借人に、基本租税年度の不動産税と関連する租税年度の不動産税を定めた計算書を提出した後に、賃借人は、該当する租税年度の7月1日と1月1日に、2度の均等分割払いにより当該調整額を賃貸人に支払うものとする。基本租税年度又は現行の年度の前の何れかの租税年度に関する不動産税の変更を理由として、支払われるべき賃料につき行われた一切の調整がもしあれば、これは、適宜、当該期間を対象とする計算書が賃借人に交付されてから三十(30)日以内に、賃借人は賃貸人に対してかかる調整額を支払うか、又は借入勘定が全額消滅するまで、次の続く賃料の割賦払いに対して、賃貸人が借入勘定として処理するものとする。

#### 第41条 保証金

賃借人は、本賃貸借契約書の条件及び規定の賃借人による忠実な履行と遵守を担保する保証金として、金\$860,000.00を賃貸人に預託した。本金額は、賃貸人が選択した金融機関の利付口座に、これにつき発生する利息とともに預託されるものとし、預託された金額の1%にあたる管理費用を控除して、毎年、賃借人に支払われる。賃借人が、これに限定されないが賃料及び追加賃料の支払を含め、本賃貸借の条件及び規定の何れかに関して債務不履行をおかした場合には、賃貸人は、かように預託された保証金の全額または一部を、賃料及び追加賃料又は賃借人が債務不履行をおかしたことに關するその他一切の金額を支払うのに必要とされる範囲で、また、これに限定されないが、当該損害又は不足額が、賃貸人による略式手続又はその他の自力占有回復の前に発生すると後に発生したとを問わず、本物件を再度貸し出す場合のあらゆる損害又は不足額を含め、賃借人が本賃貸借契約書の条件及び誓約の何れかに関して債務不履行をおかしたことを理由として、賃貸人が負担することのある、もしくは負担する必要のあるその他一切の金額の支払に必要とされる範囲で、使用し、充当し、又は留保することができる。賃借人が本賃貸借契約書の条件、規定及び誓約を完全に、かつ誠実に遵守している場合には、保証金は、本賃貸借契約の終了日として確定された日の後で、本賃貸物件の完全なる占有権を賃貸人に引き渡した後に、賃借人に返還されるものとする。本賃貸物件が一部をなす、土地及び建物が売却される場合又は建物の賃貸借される場合には、賃貸人は、保証金を買主又は賃借人に譲渡する権利を有するものとし、賃貸人は、これに基づき、当該保証金を賃借人に返還するすべての債務から免責されるものとし、また、賃借人は、もつぱら当該保証金の返還を、新



賃貸人に求めることに同意し、本条の規定が、新賃貸人に対してなされた保証金のすべての移転又は譲渡に適用されるものとするに合意する。賃借人は、さらに、賃借人が、保証金として本契約書に基づき預託する金銭を譲渡し、物上担保を付し、譲渡しようとし、又は物上担保を設定しようとし、又は、また、賃貸人又はその承継者もしくは譲受人の何れも、かかる譲渡、物上担保の設定、譲渡の試み、又は物上担保設定の試みにより拘束されない旨誓約する。

## 第 42 条 改修

A 賃借人は、賃貸人の事前の書面による同意を得ることなく、本賃貸物件又はその一部につきいかなる改修も行つてはならない。本賃貸物件へのすべての増築又は改修は、本不動産の一部となり、賃貸人の所有に帰するものとする。賃借人は、その費用負担で、発生した一切の損傷を補修するものとする。

B 賃借人の改修には、あらゆる先取特権及び物上負担が設定されないかたちで行われるものとし、全体であるとして一部であるを問わず、条件付売買又は動産譲渡抵当の対象物とはならないようにするものとし、又はこれに服さないものとする。賃借人は、自身が請負契約を結んだ全ての改修作業につき全額支払いを行うことに同意し、また、当該作業を実際に竣工させることを保障する。賃借人が作業を竣工させない場合には、賃貸人が、賃借人の費用負担で、作業を竣工させることができる。

C 賃借人の改修は、すべて迅速に、第一級の技法で、第一級の資材と出来映えをもって行うものとし、また改修についての計画書及び仕様書にしたがい、行われるものとする。賃借人の行う改修工事、またはこれに関しては、新品の資材、備品及び機器のみを使用する。賃借人の行う改修工事は、本物件又は本物件を含む本建物の何れの部分をも傷つけることなく、安全かつ注意深く行われるものとする。賃借人は、本物件又は本物件を含む本建物の何れの部分への損傷又は破壊を防ぐため、適切な措置を講ずるものとする。

D 本物件に影響を与える計画書及び仕様書の変更、追加又は乖離は、まず、当該変更、追加又は乖離に関して、賃貸人から書面による承認を先ず取得することなく行つてはならないものとするが、かかる承認は不合理に留保されないものとする。

E 賃借人が改修作業を開始する前に、賃借人は、賃借人のもつぱらの費用負担で、管轄権を有するすべての政府機関から必要かつ適切なすべての許可、認可、承認及び免許を取得するものとし、また、請求があり次第、これらの写しを賃貸人に交付するものとする。賃貸人は、必要であれば、認可の申請を共同して行うことに同意する。

F 賃借人の改修は、準拠するすべての法令及びすべての政府機関の適用のある全ての規則、規制、命令及び要求事項、さらには、火災保険業者協会及び本物件に関連するその他の保険会

社の適用のある全ての規則、規制、命令及び要求事項を遵守し、かつこれにしたがい、また、本物件又はその何れかの部分の全ての火災保険証券、賠償責任保険証券その他の保険証券並びにかかる保険証券を発行する保険会社の要求事項を遵守し、かつこれにしたがい、履行されるものとする。

G. 賃借人は、賃借人の改修又はその履行に起因する、又は関連するあらゆる種類及び内容のすべての請求、要請、訴訟及び判決については、誰が主張し、提起し、また取得したかを問わず、賃貸人を免責し、賃貸人に損害を被らせないことに同意し、また、請求があり次第、当該請求、要請、訴訟又は判決に関連して賃貸人が負担したすべての費用及び支出（これに限定されないが、弁護士費用を含む）を、賃貸人に弁償するものとする。

H. 賃借人が改修作業を開始する前に、賃借人のもっぱらの費用負担で、賃借人の改修工事の最中に本物件につき又はその周囲で起こる事故、災害又はその他の偶発的事故に起因する、又はこれにより引き起こされるすべての請求及び責任に備えて、賃借人のみならず、賃貸人を保護するため、賃貸人を被保険者とする、偶発的事故を含めた総合賠償責任保険及び財物損傷賠償責任保険に加入し、その保険証券（又はその証明書）を取得し、これを賃貸人に交付するものとする。当該保険証券は、賃借人の改修工事が全て竣工するまで維持されるものとし、1件の事故、災害又は偶発的事故に関して\$5,000,000 ドル、何れか1人の傷害もしくは死亡に関して\$3,000,000 ドル、そして財物損害に関しては\$500,000 ドルの担保額を提供するものとする。賃借人は、当該保険証券の保険料が適切に全額支払われている旨の、賃貸人が満足 of いく証拠書類を提出するものとする。同時に、賃借人は、賃借人のために本物件にて作業を履行する予定の全ての建築請負業者又は下請人が、適切な労働者災害補償保険を良好な状態で有している旨の、賃貸人の満足がいく証拠書類を、賃貸人に対し交付するか、又は第三者をして交付せしめるものとする。

I. 賃借人の改修の竣工後、速やかに、賃借人は、賃借人のもっぱらの費用負担で、法令又は政府の規則もしくは規制により義務づけられるところの、竣工した賃借人の改修工事について、政府からの承認をもしあれば取得できる場合には、これを取得するものとし、また、そのフォトスタットによる写しを賃貸人に交付するものとする。

J. 賃貸人は、いかなる状況においても、賃借人の改修費用又はその何れかの部分に対して、一切の拠出を行う義務を負わず、また、かかる拠出を要求されないものとする。賃借人は、賃借人が使用するために本賃貸物件を改修するのに、賃貸人が何らかの費用を負担した場合には、一切の費用を賃貸人に弁済するものとする。本金額には、これに限定されないが、本賃貸物件を賃借人の使用のために改修する際に賃貸人が負担した、専門家の手数料及び又は政府の手数料が含まれるものとする。

#### 第 43 条 損傷又は倒壊

A. 本賃貸物件が火災その他の災害により一部損傷を受けた場合には、本賃貸物件の損傷部分（但し、賃借人の業務用備品又は動産を除く）は、賃貸人が、また賃貸人の費用負担で補修するものとし、賃料は、かかる補修が行われるまで、賃借人が利用可能な本賃貸物件の部分に応じて配分するかたちで減額されるものとする。賃借人が、賃料を前もって既に支払い済みの場合には、賃貸人は、その支払が減額されたものに相当する前もってかように支払われた賃料の部分と同等の金額を、賃借人に払い戻すものとする。

B. 本賃貸物件が、火災その他の災害により、全体にわたり損傷を受け、完全に賃貸に適さないものとなった場合には、賃貸人は、かかる火災その他の災害から九十(90)日以内に、賃借人の下記の何れかの選択につき、賃借人に対して書面による通知を行うものとする。

(i) 本賃貸借契約書を終了させること。これに基づき、本賃貸借契約書の契約期間は、かかる通知が行われてから三(3)日目に失効するものとし、賃借人は、本賃貸物件より退去し、これを賃借人に引き渡すものとする。賃借人が、本賃貸借契約書に基づき債務不履行となっていない場合には、前段に規定する条件に基づき、本賃貸借契約書が終了次第、火災又は災害の後に発生した賃借人の賃料の支払義務はその発生を止め、かかる火災又は災害の日付で、配分されるものとするか、又は

(ii) 本賃貸物件を、特徴、レイアウト、面積及び機器（但し、賃借人の業務用備品又は動産を除く）の面で、当該損傷又は倒壊の直前と実質的に同じ状態に、損傷を受けた又は倒壊した本物件を回復させるか、又は再築すること。かかる場合には、本賃貸借契約書は、引き続き完全なる効力を有し、有効であり続けるものとするのが合意されているが、賃料、追加賃料並びに賃借人のその他すべての支払及び債務は、本物件が賃貸人により完璧かつ完全に現状回復され、又は再築され、その占有が、賃借人に引き渡されるまで、かかる火災又はその他の災害の日現在で減額されるものとする。

C. 賃貸人は、賃貸人及び又は賃借人の保険の損害査定を理由として生ずることのある上記 A 項及び B 項に基づく工事の合理的な遅滞、あるいは、これに限定されないが、ストライキ、労働争議又は資材の不足を含め、賃貸人又は賃貸人が雇った建築請負業者の支配力を超える事由による合理的な遅滞につき、責任を負わないものとする。

D. 賃借人は、ここに、実質的に、火災又はその他の災害に起因し、本賃貸物件の倒壊又は賃貸不可能を理由として不動産の賃貸借契約が終了できる旨規定する、現行の又は将来施行される法律の規定を援用する権利を明示に放棄し、本条の規定が、かかる法律の一切の規定に代わって適用されるものとするに同意する。

#### 第 44 条 動産担保権に関する合意

A. 賃借人は、条件付き売買、動産譲渡抵当又は同様な趣旨の担保権が、本不動産に対して賃借人が行った一切の改良工事によって、成立するに至らしめられないようすることを誓約し、これに同意する。

B. 本賃貸物件に賃借人が設置した機械、備品、家具及び機器の何れかを賃借人が購入し又は取得した場合において、これらが、動産譲渡抵当、条件付き売買又はその他の所有権留保もしくは動産担保権、又は約定担保権に服している場合には、賃借人は、(i) かかる動産譲渡抵当、条件付き売買又はその他の所有権留保もしくは動産担保に関する合意又は統一商事法典による担保権の登録が、本賃貸物件がその一部をなす本建物及び不動産に対する先取特権として届け出ることが認められないようにするものとし、また、(ii) 上記の所有権留保、動産譲渡抵当又は動産担保に関する合意の一切に、以下の規定を挿入せしめることを約束し、これに同意する。

「本契約書にこれに反する規定がある場合でも、それにかかわらず、本動産譲渡抵当、条件付き売買、所有権留保又は動産担保に関する合意は、本契約書の対象となる商品、機械、機器、装置又はその他の動産が位置し、又は設置される予定の土地、建物及び改良物に対する先取特権を創出するものではなく、また、かかるものに対する先取特権として届け出られてはならないものとする。」

C. かかる先取特権又は UCC 登録書が、上記の合意に基づき、本賃貸物件がその一部をなす、本建物及び改良物に対して登録された場合には、賃借人は、賃貸人から少なくとも十(10)日前の通知をもって、賃借人の費用負担で、当該先取特権又は公示を除却させ、又は取り消させるものとし、賃借人がかかる措置を怠った場合には、本賃貸借契約書の重大な規定の違反を構成するものとなるものとする。

#### 第 45 条 公用収用

A. 本賃貸物件の全部が、収用権に基づき又は何れかの政府機関もしくは私的機関により収用される場合には、本賃貸借契約書及びその契約期間は、停止され、かかる収用が行われる日付で終了され、先払いされた賃料所得その他の金額がある場合には、これは賃借人に返還されるものとする。

B. 本賃貸物件の一部のみが、収用権に基づき又は何れかの政府機関もしくは私的機関により収用される場合には、本賃貸借契約書及びその契約期間は、賃貸人の裁量にしたがい、引き続き完全なる効力を有し、有効であり続けるものとする。しかしながら、賃貸人は、その費用

負担で、実質的に公用収用が行われる前と同じ状態に本賃貸物件の残る部分を直ちに現状回復するものとする。また、かように収用された床面積と、かかる収用前の床面積とを比較する範囲で、本賃貸物件の当該部分の使用機会の喪失について賃借人を補償するために、本契約書に基づき基本賃料を比例按分して減額するものとする。本契約書で確保される最低賃料及び本契約書に基づき賃借人が支払うべきその他一切の料金は、本賃貸物件の残余の部分が、収用された時から上記のとおり現状回復される時までの期間、発生しないものとする（但し、その時に、賃借人が本賃貸物件を使用していないことを条件とする）。

C. 賃借人は、借地の収容又は借地の価額の損失についての補償金を一切、受領する権限を有さず、その備品に対する損失もしくは損害についてのみ補償金を受領する権限を有するものとする。かかる収用を理由として、賃貸人及び賃借人が受領する権限を有するそれぞれの損害賠償額は、その権利関係が示すとおり確定されるものとし、賃貸人及び賃借人に対して、それぞれ、支払われるものとし、いかなる場合も、権利の混同は生じないものとする。

#### 第 46 条 賃借人の証明書

賃借人は、いかなる時点でも、料金を負担することなく、随時、賃借人の請求から十(10)日以内に、適法に作成され、確認され、交付される書面による証書で、すべての抵当債権者、何れかの抵当債権者の予定される譲受人もしくは予定される購入者、又は賃貸人が指定するその他の人、団体もしくは法人に対して、以下の事項を証明するものとする。

- (i) 本賃貸借契約書は、修正されておらず、完全なる効力を有し、有効であること（又は、修正があった場合には、修正箇所を記載した修正済みの本賃貸借契約書が完全なる効力を有し、有効であること。）
- (ii) 賃借人が履行し、遵守すべき本契約書の合意、条件又は誓約の何れかの強制実現に対して相殺権又は抗弁権が存在しているか否か（及び、もし存在しているのであれば、これを明記する）、及び
- (iii) 本契約書に基づく賃料及びその他の料金が前払いされている場合には、前払いされた日。

#### 第 47 条 追加賃料

賃借人が、本契約書に基づき追加賃料の弁済期が到来した時に追加賃料を支払うことを怠った場合には、賃貸人に対して、賃料の不払いに関し本契約書に規定された全ての権利及び救済方法を行行使する権限を与えるものとなり、賃貸人は、追加賃料の不払いの後の何れの月においても、賃貸人が利用できる一切の手続を開始する権限を有するものとする。本契約書に基づき

支払期限の到来した基本賃料及び最低賃料を受領することは、本賃貸借契約書の条件にしたがい支払うべきものとされる追加賃料に関する賃貸人の権利の放棄を構成するものではなく、またかかる権利を放棄するものとみなされないものとする。

第 48 条 賠償責任保険及び免責

A. 本契約書の契約期間中、賃借人は、自らの費用負担で、以下の保険に加入するものとする。

(i) 賃貸人及び賃借人のために、下記に規定される上限で本賃貸物件内、本物件上又は本物件周辺（もしある場合には、賃借人の看板を含むものとする）のリスクを保障する、総合賠償責任保険に加入し、維持し、これを有効に保つものとする。

(a) 人身傷害：

	人 1 名 — — — — —
\$3,000,000.00	
	オカーレンス（偶発事故） 1 件 — — —
\$5,000,000.00	

(b) 物的損害：

	各オカーレンス（偶発事故） 1 件 — — — —
\$500,000.00	

(c) 上記(a)及び(b)に記載されているのと同じ、人身傷害及び物的損害の限度額を有する完全な営業及び契約賠償責任保険

B. 賃貸人は、その権利関係が示すとおり、当該保険証券の追加被保険者に指定されるものとし、被保険偶発事故から発生した全ての責任から保護されものとする。かかる全ての保険証券は、賃借人の満足のいく保険会社で、ニューヨーク州で営業免許を得ているものにより合理的に発行されるものとする。賃借人は、保険証券又はその証明書を、その保険料の払込証明書とともに、賃貸人に交付し、また、当該保険証券の失効日の少なくとも二十(20)日前に、これに変わる新しい保険証券又は証明書を、その保険料の払込証明書とともに、賃借人に提出するものとする。当該保険証券には、また、保険会社が、賃貸人に対して、当該保険証券の解除にあたって、その少なくとも三十(30)日前に、書面にて通知を行う旨規定するものとする。

C. 本条所定の保険の上限額にかかわらず、賃借人は、本条で言及されたリスクの何れかよ

り生ずる一切の損害、損失又は責任から賃貸人を免責することに同意する。かかる免責は、賃借人が本条所定の保険に加入し、これを維持していたと否とにかかわらず、行われるものとし、また、かかる保険に加入し、維持されていたかかる保険の受取金が、実際に、1社又は複数社の保険会社から回収可能であるかにかかわらずのものとする。しかしながら、賃借人は、本物件が被った傷害もしくは損害、又は損失を理由として、1社又は複数社の保険会社から実際に回収された金額に至るまでは、本契約書における損害のてん補義務から免責されるものとする。

D. 賃借人は、当該保険証券の全てにつき、保険料及び請求金額の全てを支払うものとし、仮に賃借人が、支払期限が到来した時に支払を行うことを怠った場合、又はかかる保険に入ることができない場合には、賃貸人は、これを行うことを義務づけられるものではないが、かかる支払を行い又はかかる保険に加入することができ、賃貸人が支払った金額は、これについての利息とともに、請求があり次第、賃借人が賃貸人に返済するものとし、また、かように返済されるべき全ての金額は、当該利息とともに、本契約書に基づき支払われるべき追加賃料であるとみなされるものとし、その徴収に関して、賃貸人は、賃料の徴収に関して規定される本契約書又は法律による救済方法の全てを有するものとする。当該保険料の賃貸人による支払い、又は当該保険への賃借人による加入は、これに関して賃借人の不履行についての責問権を放棄するもの、又は賃借人を免責するものとみなされないものとする。

E. 賃借人は、本賃貸物件内、本物件上もしくはその周辺での、又は本賃貸物件に隣接する舗道上での、人もしくは財物についての損害もしくは損傷又は生命の喪失に関して、本賃貸借契約書の契約期間中に生ずる一切の請求から、賃貸人を免責し、賃貸人に損害を被らせないことを誓約し、これに同意する。但し、当該請求が、賃貸人、その代理人、従業員もしくは建築請負業者の過失に起因する場合、又は本賃貸借契約書の賃貸人の義務の何れかを賃貸人が履行することを怠ったことに起因する場合はこの限りではない。

F. 賃借人は、本賃貸物件を、「飲食施設、並びにかかる使用に関連する備品及び機器の設置と使用」として賃借人が使用することにより起因する、レストラン小売店舗以外の使用を行ったことに関して、通常の保険費用を上回って本賃貸借契約書の契約期間中に賃貸人が増加保険費用を負担した場合には、かかる保険費用の増額につき、賃貸人に弁償することに同意する。

#### 第 49 条 建築工事人の先取特権

A. 賃借人は、賃貸人の財産復帰権、本契約書に基づき賃貸される本物件又は賃貸人の建物及び改良物に対して、先取特権を創設する、又はその基礎となるような行為を行い、又はかような契約を締結する何らかの権限も有していないものとし、賃借人が本賃貸物件の改修、変更、増築、改良もしくは補修を行わせ、又は本賃貸物件内もしくは本賃貸物件上に資材を提供させ、労働を行わせた場合にも、賃貸人又は本賃貸物件は、いかなる状況においても、発生した一切の支出の支払、あるいは本賃貸物件又はその一部で行われたかかる作業又はそこに提供された

資材の価額につき、何らの責任も負わないものとする。但し、かかる全ての改修、変更、増築、改良及び補修、並びに資材と労働は、賃借人の費用負担で行われるものとし、賃借人は、当該物件及び建物、又はその何れかの部分につき、賃借人に対し又は賃借人のために、労働及び資材を提供する建築請負業者、労働者及び補修工に対して、もっぱらかつ全面的に責任を負うものとする。

B. 賃借人は、賃借人又は本賃貸物件のあらゆる占有者に対して提供された、又は提供されたと主張される作業、労働、役務又は資材を理由として、本賃貸物件の所有権に対して、又は当該物件の不動産賃借権に対して、登録された一切の建築工事人の先取特権の影響を被らせず、また、これを承認しないものとする。かかる一切の建築工事に関する先取特権が、何れの時点であれ、本賃貸物件又は建物及びその改良物に対して登録された場合には、賃借人は、もっぱらの費用負担で、これが登録された日から十(10)日以内に、保証金又は適切な預託金を行うことにより、これを抹消し、登録を抹消させるものとする。

C. 賃借人は、また、賃貸人に対して提起されることのある一切のコモン・ロー上の訴訟、衡平法上の訴訟もしくは手続において、又はかかる先取特権の強制実現もしくは命令に関して、賃貸人に代わり、賃借人のもっぱらの費用負担で、これらを防御するものとし、さらに賃借人は、一切の損害賠償を支払い、これにつき下された判決を履行し、弁済し、また賃貸人を、その結果生ずる一切の請求又は損害から免責するものとする。

D. 賃借人が、当該期間内にかかる建築工事に関する先取特権を削除することを怠った場合には、賃貸人は、そのその他一切の権利又は救済方法に加えて、但し、賃貸人がこれを行う義務を負うものではないが、弁済期が到来していると主張のある金額を支払うことにより、又は裁判所へ供託し、又は保証金を積むことによって当該先取特権の抹消を獲得することにより、これを抹消することができ、かかる場合には、賃貸人は、賃貸人がかように選択する場合には、先取特権設定者による当該建築工事に関する先取特権の請戻権の切断手続を追行させ、また、先取特権設定者に有利な金銭支払判決がもしあれば、これを、利息、費用及び付加金とともに、支払わせる権限を有するものとする。

E. 上記の料金の何れかを支払うために賃貸人が支払ったいずれかの金額、並びに、すべての合理的な弁護士費用を含め、当該訴訟を防御する際に、又は当該先取特権の抹消を得る際にもしくはかような抹消を得るについて、賃貸人の合理的な訴訟その他の支出すべては、これに関連する必要な全ての立替費用とともに、支払日より年間二十パーセント(20%)の利息を付して、賃貸人が賃借人に対してこれについての書面による要求を行った日から二十(20)日以内に、返済されるものとし、年間基本賃料の次回の分割払いとともに支払われる追加賃料として取り扱うことができるものとする。

F. 本賃貸物件について、賃借人が雇ったゼネコン業者もしくはかかるゼネコン業者が雇っ



た下請業者、又は賃借人が雇った下請業者が、何らかの作業を開始する前に、賃借人は、以下のとおり行うものとする。

(i) 賃借人のゼネコン業者及びゼネコン業者が雇う下請業者の名称及び事業所住所を記載する、書面による賃借人の陳述書を賃貸人に提出すること。

(ii) 賃借人のゼネコン業者が雇う全て下請人の書面による一覧表を取得し、ゼネコン業者から保証を得て、これを賃貸人に提出すること。

#### 第 50 条 締結するまでの賃貸借契約書の不拘束

賃借人の締結を求めて、書面〔within は writing?〕による賃貸借契約書を賃貸人が提出することは、賃貸人及び賃借人の双方が本賃貸借契約書を締結しない限り、また、これを締結するまでは、何れの当事者に対しても一切の権利を付与せず、また一切の義務を課すものではないものとする。

#### 第 51 条 立入権

A. 賃借人は、賃貸人が、現在又は将来、本賃貸物件の一部をなす建物の適切な運営と維持のために必要又は相応しいと思量する場合には、また、かかる範囲では、本賃貸物件内、及び本賃貸物件全体を通じて、パイプ、ケーブル、導管、配電、通気口及び架線を敷設し、使用し、維持することを、賃貸人に対して認めるものとする。かかる全ての作業は、合理的な限り、賃借人による本賃貸物件の使用を妨害することを避ける態様で行われるものとする。

B. 賃貸人、又はその代理人もしくは被指定人は、賃貸人が要求し、又は本賃貸借契約書の規定により行う権利を有する補修又は改修を行う目的で、営業時間内に、本賃貸物件に立ち入る権利を有するものとする。賃貸人には、全体であると一部であるとを問わず、賃借人に立ち退きを行わせることのない場合には、補修又は改修のために必要となる一切の資材を、本賃貸物件内及び本賃貸物件上に持ち込むことが許されるものとする。賃貸人は、また、本賃貸物件又はこれを含む建物に影響を与える緊急事態が発生した場合に、これに立ち入ることが必要であるようなその時は、本賃貸物件に立ち入る権利を有するものとする。

D. **[C.項が欠落?]** さらに、賃貸人又はその代理人もしくは被指定人は、本物件の一般的状態及び補修状況を検査するため、並びに本物件を見込購入者、賃借人又は抵当権者に内覧させるため、営業時間内に本賃貸物件に立ち入る権利を有するものとする。

E. 本条の条件により賃貸人に許諾される権利は、本契約書第 13 条に規定される規定を補足するものとみなされる。

F. 緊急事態の場合を除き、賃貸人は、本賃貸物件に影響を与える何らかの改修又は補修に着手する場合は、その十(10)日前に、賃借人に通知を行うものとする。

## 第 52 条 サービスの停止

本賃貸借契約書にこれに反する規定がある場合にも、それにかかわらず、賃貸人は、事故、又は本賃貸物件もしくはその一部をなす建物に対して行う必要のある補修、改修又は改良を理由として、必要に応じて、ユーティリティ（電気・ガス・水道等）のサービスを、当該補修、改修又は改良が完了するまで、停止する権利を留保し、賃貸人は、当該サービスの停止につき何らの責任もしくは債務を負わないものとする。但し、賃貸人は、かかる補修、改修又は改良を勤勉かつ継続的に完了させ、合理的に可能な限り速やかにかかるサービスを回復するよう最善の努力を払う。全段の規定は、賃貸人に、本賃貸借契約書に特に規定されているもの以外の役務、保守又は補修を提供する義務を、賃貸人に課すものであるとはみなされないものとする。

## 第 53 条 衛生面での保守作業

A. 賃借人は、賃借人のもっぱらの費用負担で、本賃貸物件及び本賃貸物件の前の歩道を清潔に保つものとし、賃借人は、これにつき管轄権を有するすべての政府機関の要求事項を遵守するものとする。賃借人は、また、もっぱらの費用負担で、賃借人、その顧客、訪問者、ベンダー及びサービス請負業者が利用するところの、これに限定されないが、ホール、階段及びエレベーターを含め、建物の共用スペース部分を清潔に保つものとする。

B. 賃借人は、もっぱらの費用負担で、本賃貸物件から賃借人の廃棄物及びゴミを撤去するための手はずを整え、これに関する全ての連邦、州及び市の法律、並びに賃貸人の合理的な全ての規則及び規制を遵守するものとする。賃貸人は、当該放棄物及びゴミの除去に関し、サービス又は機器を一切、提供する義務を負わないものとする。

C. 賃貸人に対する本質的な誘因として、賃借人は、生活用品、引渡物、賃借人の廃棄物もしくはゴミを、賃借人が雇ったゴミ収集会社が、かかるゴミを収集する直前に縁石にゴミを出す場合を除き、本賃貸物件の外の場所に置いておかないこと、また、これを置いておくことを認めないことに同意する。

D. 賃借人は、もっぱらその費用負担で、本賃貸物件内又はその周囲に、いかなる種類又は名称のものであるとを問わず、一切の害虫が発生することを防ぐため、本賃貸物件内で害虫根絶及び害虫管理サービスを利用を継続するものとする。

E. 賃借人は、もっぱらの費用負担で、適切な場合、及び法律により義務づけられる場合に

は、本賃貸物件の前の歩道から雪及び氷を取り除き、必要であれば、適切な溶氷剤を用意するものとする。

## 第54条 看板

A. 賃借人は、賃貸人の事前の書面による同意を得ることなく、本賃貸物件又はその一部をなす建物の外側、本賃貸物件の窓又はドアの内側もしくは外側に、看板、警備門又は注記書きを配置、又は設置してはならない。賃借人は、看板の寸法、かたち、デザイン、大きさ、色、文言、構成資材、設置場所及び建物に看板を固定させるのに使用する方法については、賃借人の事前の承認を得ることを条件に、もっぱらの費用負担で、対外的な看板を設置し、これを維持することが認められるものとする。

B. 賃借人は、賃貸人の承認を得た、外部的看板、警備門又は注記書きを、賃借人が、これにつき管轄権を有する政府機関からの全ての承認及び認可をまず得るまで、設置しないものとする。並びにかかる設置、維持及び認可に関連して支払うべき全ての料金を賃借人が支払うことに同意する。

C. 賃借人は、まず、賃貸人の事前の書面による承認を得ることなく、窓又は本賃貸物件の外側から大衆に見られるディスプレイもしくはその他の場所に、ぴかっと光るサイン、またたくサイン、ネオンサインもしくは動画サイン、又は様々な輝度のイルミネーションを有するその他のものを、設置しないことに同意する。

D. 本条で使用される場合、「看板」とは、これが一時的なものであると、永続的なものであるとを問わず、あらゆるプラカード、ポスター、ライト又はその他の宣伝用シンボルもしくは宣伝用のものを含むものと解釈されるものとする。

E. 本賃貸物件又はその一部をなす建物内、もしくはこれに対して、又はこれの上に、何らかの補修、改修又は改良を行うために、賃借人の何れかの看板を取り除くことが必要であると思量する場合には、賃貸人は、これを行う権利を有するものとする。但し、賃貸人の費用負担で、これを取り除き、かかる補修、改修又は改良が完了次第速やかに、元に戻すものとする。

F. 賃借人には、本賃貸物件の開始時に、建設用被覆の外側にビニール製の看板を設置することが認められる。しかしながら、かかる看板については、賃貸人と適切な政府機関の承認を受けるものとする。賃貸人は、かかる承認を非合理に留保してはならない。賃借人が、看板を設置する場合には、賃借人は、かかる看板の設置時から改修の終了時に被覆と関連する看板を取り除くまでは、足場を設置した会社が賃貸人に請求した被いの賃料を、直接、かかる足場を設置した会社に支払うものとする。

## 第 55 条 ブローカー

賃借人は、本賃貸借契約書を締結する仲介者として、Redac Incorporated, 437 Madison Avenue, New York, New York 10022（以下、「本ブローカー」と呼ぶ）以外のブローカーがいないこと、並びに本賃貸物件の賃貸に関して、本ブローカー以外のブローカーと話し合い又は事前の交渉がなかったことを誓約し、保証し、これを表示する。賃借人は、本ブローカー以外のブローカーによる仲介手数料の請求につき、賃貸人に損害を被らせないことに同意する。

## 第 56 条 ユーティリティー

A. 賃借人は、本契約書で特別に規定されることのあるものを除き、ユーティリティー（電気・ガス・水道等）その他のサービス料金が、賃借人の賃料に含まれていないこと、また、賃貸人が、電気、空調、水道、ガス、又はその他のユーティリティーもしくはサービスを、本賃貸物件に対して、又は本賃貸物件のために、提供又は供給する義務を負わないものとするを了承し、これに同意する。

B. 賃借人は、もっぱらの費用負担で、本契約書の契約期間中、以下のとおり行うものとする。

(i) 本賃貸物件で賃借人が使用した全ての電気及びガスにつき、これを提供する公共サービス機関に直接、支払を行うものとする。賃借人は、もっぱらの費用負担で、かかる使用を測定する目的のメーターを、仮にかかるメーターが、本賃貸物件に電気及びガスを提供する公共サービス機関により提供されていない場合には、備える。

(ii) 本賃貸物件のために自らの空調設備を用意する。しかしながら、賃貸人は、賃貸人に提出した図面に記載されているとおり、建物の屋根に賃借人の空調圧縮ポンプのためのダンネージと建物の後ろに新鮮な空気の取り入れ口へのアクセスを提供するものとする。

(iii) 水が建物の量水器より賃借人に供給される場合には、賃借人は、その請求書の写しが賃借人に提出された時に、水道料金及び建物の関連する下水道料金の全ての費用を賃貸人に支払うものとする。賃借人は、賃借人のもっぱらの費用負担で、賃借人の総水道使用量を計測する、賃借人の自らの量水器を設置する選択権を有するものとする。賃借人がかかるメーターを設置する場合には、賃借人は、かかるメーターに表示された賃借人の水道料金及び関連する下水道料金のみを支払うものとする。賃借人は、また、かかる量水器の設置に関連して、賃借人のもっぱらの費用負担で、政府機関が義務づけることのある適切な逆流防止装置を備えるものとする。

C. 賃借人が、暖房使用の季節の間に、本賃貸借契約書の条件に基づき債務不履行をおかし

ていないことを条件に、賃貸人は、本賃貸物件の暖房を行う際に賃借人が使用するための建物のボイラーからの熱湯を賃借人に提供することに同意する。賃借人は、以下のとおり了承し、これに同意する。

(i) 賃貸人は、本賃貸物件内の暖房の配分につき責任又は義務を負わないものとする。

(ii) 賃貸人は、最低 22 GPM で本賃貸物件を暖房するため熱湯を提供するものとする。

(iii) 賃貸人は、暖房が建物の居住部分に提供することが必要である期間（つまり、暖房シーズン）のみ本賃貸物件を暖房するため、熱湯を提供する義務を負うものとする。

(iv) 賃借人は、追加賃料として、本賃貸物件が一部をなす建物につき各燃料の請求書の八十パーセント(80%)を、賃貸人の書面による請求があり次第、賃貸人に支払うものとする。燃料を賃貸人に供給する公共サービス機関が作成した燃料に係る請求書の写しをもって、支払うべき金額の十分な証拠であるものとする。

#### 第 57 条 賃貸人が提供する図面の基準力

賃借人は、賃貸人が賃借人に提供する図面に明記される状態で、本賃貸物件を受領し、賃貸人は、本賃貸借契約書の契約期間中又はその更新期間中、本賃貸物件について装飾又は改修を、一切、行う義務を負わず、賃借人は、賃借人が、これらの図面を既に検査しており、図面に記載されるとおり本賃貸物件を受領する旨了承する。

#### 第 58 条 抵当権に関する修正

本賃貸物件が一部をなす建物に関して融資又は再融資を得ることに関連して、銀行、保険会社又はその他の金貸し機関が、かかる融資又は再融資の条件として本賃貸借契約書に合理的な修正を行うよう要求する場合には、賃借人は、これについての同意を非合理に留保、遅延又は延期しない。但し、かかる修正が、本契約書に基づく賃借人の義務を増加させるものではないこと（おそらく、賃借人が、賃貸人又は賃借人の債務不履行につき、かかる貸付人に通知を行うことを義務づけられることのあること、及び又はかかる建物の占有をかかるとして取得せしめるために必要な、治癒のための追加期間を付与することとともに、かかる債務不履行を治癒する機会を許容することを、かかる貸付人から要求される範囲を除く。）、又は本契約書により創設された賃貸借の権利に重大な悪影響を与えないことを条件とする。

#### 第 59 条 板ガラス

賃借人は、もっぱらの費用負担で、原因がいかなるものであるかを問わず、本賃貸物件内又

はその周囲のすべての破損した又は割れた板ガラスを交換するものとする。賃借人は、賃貸人のためにかかるガラスを付保し、かかる保険証券とその保険料の支払証明書を、請求があり次第、賃貸人に提出するものとする。かかる保険証券には、当該保険を、賃貸人に対して書面による十(10)日前に通知を行わない限り、解約できない旨の裏書が記載されるものとする。

## 第 60 条 通知

本賃貸借契約書に基づく又は関連する、賃料の全ての支払、及び賃貸人への一切の通知又は要請は、Manor Equities L.L.C., 10 Fourth Road, Great Neck, New York 10021 宛て、又は賃貸人が書面にて随時、指示することのあるその他の場所宛に送付されるものとする。本賃貸借契約書に基づく又は関連する、賃借人への一切の通知又は要請は、本物件の賃借人宛又は賃借人が書面にて随時、指示することのあるその他の場所宛てに送付されるものとする。通知は、引渡時、又は適切に宛名書きされ、郵便料金先払いにて、受取証明付きの書留郵便もしくは内容証明郵便にて送付された場合には、営業時間内にアメリカ合衆国郵政公社の郵便局に引き渡された日、もしくはかかる郵便局で投函された日に、到達したものとみなされるものとする。

## 第 61 条 転貸

A. 賃借人は、賃貸人の事前の書面による同意を得て、本賃貸物件を転貸することができる。かかる同意は、不合理に留保されないものとする。但し、以下を条件とする。

(i) 賃借人は、予定される転借人、予定される転貸契約書の相手方当事者並びに名称及び営業所の住所、それに予定される転貸人の事業の内容と性格に関する十分な情報を、賃貸人が合理的に満足できる現在の財務情報と参考資料とともに、賃貸人に提出するものとする。

(ii) 賃貸人の合理的な判断にしたがい、予定される転借人が、予定される契約書に基づきその予定される義務を、財政上責任をもって履行できること、本賃貸物件が所在する建物の基準に適う性格をもち、かような事業に従事していること。

(iii) 賃貸人の弁護士が検討するために、当該転貸借契約書の賃貸人の満足のいく書式の締結済みの副本が、その発効日の少なくとも五(5)営業日前に、賃貸人に交付されるものとし、また、賃借人と転借人の双方が、本賃貸借契約書の条件及び誓約の全てに連帯して責任を負うものとする。

(iv) 賃借人による賃貸人への転貸を除き、各転貸は、本賃貸借契約書所定全ての誓約、合意、条件及び規定に服するものとする。

(v) 賃借人は、賃貸人又はその他の転借人への転貸、及び又は転借人からの賃料もしくは

追加賃料を賃貸人が受領した場合にも、それにかかわらず、賃借人が、本契約書に基づき支払期限の到来した、また、支払期限の到来することになる賃料及び追加賃料の支払、並びに賃借人が履行すべき本賃貸借契約書所定の誓約、合意、条件及び規定の全てを遵守する責任を有するものとし、将来も引き続き完全に責任を負うこと。

(vi) 賃借人は、本条の規定の各々を遵守しており、また遵守するものとする。

(vii) 転借人は、本契約書規定の目的、又は賃貸人が承諾可能なその他の目的でのみ、本賃貸物件を占有するものとする。賃借人は、承諾可能な使用の賃借人の決定に拘束されることに同意すること。

B. (i) 賃借人は、ここに、賃貸人が本条による転貸借への同意を不合理に留保した、又は不合理にかかる同意が遅れたという主張に基づき有することのある金銭的損害につき、賃貸人に対する一切の請求権を放棄する。賃借人は、そのもっぱらの救済方法が、当該規定の強制実現又は特定履行のための訴訟であるものとするに同意する。

(ii) 法律の作用によるとその他のよとを問わず、本賃貸借契約書における賃借人の権利（全体であると一部であるとを問わない）の五十パーセント(50%)を超える譲渡（株式であると、パートナーシップ持分であると、その他であるとを問わない）は、第 11 条の(v)項以下の意味における本賃貸借契約書の譲渡であるとみなされるものとする。

(iii) 転貸についての賃貸人による同意は、さらなる転貸について賃貸人から書面による明示の同意を取得する義務から、賃借人を免責するものでないものとする。

(iv) 賃借人は、本賃貸借契約書の条件に基づき支払期限の到来した支払に加え、転貸借契約書の条件に基づき転借人が賃借人に支払う、当該賃貸料金と追加賃料を超える、賃料又は追加賃料の差額を、賃貸人に支払うものとする。

(v) 賃借人が、本賃貸借契約書を譲渡することは認められない。

C. 本条に関する一切の紛争は、アメリカ仲裁協会が任命する仲裁人 1 名の拘束力のある仲裁に付託されるものとする。仲裁手続は、アメリカ仲裁協会の規則にしたがうものとする。

## 第 62 条 占有期間及び使用

買主は、本賃貸物件を、飲食施設、事務所並びに飲み物、食品及び家庭用品、またこれに関連する用具の販売のためにのみ使用することを誓約し、これに同意する。

## 第 63 条 追加賃料「延滞料金」

A. 本賃貸借契約書で使用される場合、「追加賃料」（大文字で始まっていると否とにかかわらず）は、賃借人が負担する、もしくは賃借人が支払うことに同意する、又は本賃貸借契約書にしたがい支払期限が到来し、賃借人が賃貸人に支払うべきあらゆる種類又は金額のすべての金銭、費用、支出又は料金（最低年間賃料を除く）であるものとし、また、これらからなるものとする。賃借人が、何れかの追加賃料の支払いを怠った場合には、賃貸人は、最低年間賃料の不払いの場合と同一の、本賃貸借契約書に基づく権利と救済方法を有するものとする。

B. 賃借人が、本賃貸借契約書の条件にしたがい、賃貸人に対して金銭の支払を行うよう要求され、支払が、かかる金銭の支払期限が到来してから七(7)日以内に行われない場合には、賃貸人は、賃借人に対して、追加賃料として五百ドル(\$500.00)を請求する裁量権を有するものとする。かかる五百ドル(\$500.00)の請求金額に加え、本賃貸借契約書又はその更新契約書の条件に基づき、当該金額の支払期限が到来した日から十五(15)日以内に支払われなかった金額全てにつき、追加賃料として、当該金額の支払期限が到来した日から年率二十パーセント(20%)の遅延利息が付され、支払われるべきものとなる。

## 第 64 条 契約期間の終了

賃借人は、本賃貸借契約書の契約期間又はその何れかの更新期間の満了又は期前終了時に、本賃貸物件の占有を、賃貸人に引き渡さなければならないことを了承している。賃借人は、これに限定されないが、当該遅滞に基づき後継の賃借人がなす請求を含め、賃借人の本賃貸物件のかような引渡の遅滞に起因する、全ての費用、請求、損失又は責任から、賃貸人を免責し、賃貸人に損害を被らせないことに同意する。当事者は、賃借人が、本賃貸物件の占有を、上記のとおり適時に引き渡すことを怠ったことにより賃貸人に発生する損害は、非常に重大であり、月間の賃料の金額を超え、またかくして本契約書に基づき支払われるべき追加賃料の金額を超え、正確に測定不可能なものであることを承認し、これに合意する。賃借人は、よって、本賃貸物件の占有が本賃貸借契約書の契約期間又はその更新期間の満了又は期前終了から 24 時間以内に賃貸人に引き渡されない場合には、賃借人は、本賃貸借契約書の契約期間又はその更新期間の満了又は期前終了後に、本賃貸物件内に賃借人が留まった各月又は各日について、固定年間賃料の当該部分の二(2)倍額と、本賃貸借契約書又はその更新期間の最終月に本賃貸借契約書に基づき支払われるべきであった追加賃料に等しい額との合計額を、賃貸人に支払うものとするに同意する。本契約書所定の規定は、本賃貸借契約書の契約期間又はその更新期間の満了又は期前終了後に、本賃貸物件の占有を賃貸人が留保することを認めるものとみなされないものとする。本条の前記の規定は、本賃貸借契約書の契約期間又はその更新期間の満了又は期前終了にかかわらず、存続するものとする。

## 第 65 条 賃料無料期間



賃借人は、賃借人の改修工事の開始から 2001 年 3 月 31 日までの期間、本賃貸物件を賃料無料で使用する権限を有するものとする。しかしながら、賃借人が、2001 年 4 月 1 日より前に、営業を開始する場合には、賃借人は、かかる業務開始後直ちに、賃料の支払を開始し、業務開始日から比例按分した賃料を賃貸人に対して支払うものとする。賃貸人は、賃貸人【ママ。賃借人?】が建物の残る部分の改修を継続する期間中、賃借人の改修の便宜をはかるため、賃借人に協力するものとする。

#### 第 66 条 契約更新のオプション

賃借人が、本賃貸借契約書の条件に基づく全ての義務を履行している場合には、賃借人は、当該時点の市場の賃料で（いかなる場合も、本賃貸借契約書の最終年の賃料を下回らない賃料で）、年間賃料と契約期間について以外、本賃貸借契約書と同一の条件及び誓約に基づき、さらに五(5)年間、本賃貸借契約を更新する権利を有するものとする。賃貸人と賃借人とが、市場賃料について合意することができない場合には、賃貸人と賃借人は、互いに、本賃貸物件の所在する区域の市場賃料について通じている、定評ある自らの不動産鑑定人を雇うものとする。これらの評価人が、次に第三の鑑定人を雇うものとする。3名の鑑定人のグループが市場賃料を決定するものとする。

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**STANDARD FORM OF STORE LEASE**  
**THE REAL ESTATE BOARD OF NEW YORK, INC.**  
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AGREEMENT OF LEASE, made as of this 16th day of June 2000, between JOHANNA MERSON / DIDIT LLC, party of the first part, hereinafter referred to as OWNER, and SYBARI SOFTWARE, INC. party of the second part, hereinafter referred to as TENANT,

WITNESSETH: Owner hereby leases to Tenant and Tenant hereby hires from Owner in the building known as 353 - 355 LARKFIELD ROAD, EAST NORTHPORT, N.Y. for the term of TEN (10) YEARS (or until such term shall sooner cease and expire as hereinafter provided) to commence on the 1st day of OCTOBER, 2000 TWO THOUSAND, and to end on the 30th day of SEPTEMBER, 2010 and both dates inclusive, at an annual rental rate of SEE LEASE RIDER TWO (II)

This lease consists of six (6) pre-printed pages and four (4) typed rider pages. which Tenant agrees to pay in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any set off or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

In the event that, at the commencement of the term of this lease, or thereafter, Tenant shall be in default in the payment of rent to Owner pursuant to the terms of another lease with Owner or with Owner's predecessor in interest, Owner may at Owner's option and without notice to Tenant add the amount of such arrears to any monthly installment of rent payable hereunder and the same shall be payable to Owner as additional rent.

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

RENT: 1. Tenant shall pay the rent as above and as hereinafter provided.

OCCUPANCY: 2. Tenant shall use and occupy demised premises for OFFICE USE and for no other purpose. Tenant shall at all times conduct its business in a high grade and reputable manner, shall not violate Article 37 hereof, and shall keep show windows and signs in a neat and clean condition.

ALTERATIONS: 3. Tenant shall make no changes in or to the demised premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner,

and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved in each instance by Owner. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner and Tenant agrees to carry and will cause Tenant's contractors and sub-contractors to carry such workman's compensation, general liability, personal and property damage insurance as Owner may require. If any mechanic's lien is filed against the demised premises, or the building of which the same forms a part, for work claimed to have done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within 30 days thereafter, at Tenant's expense, by payment or filing the bond required by law. All fixtures and all paneling, partitions, railings and like installations, installed in the premises at any time, either by Tenant or by Owner on Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises unless Owner, by notice to Tenant no later than twenty days prior to the date fixed as the termination of this lease, elects to relinquish Owner's rights thereto and to have them removed by Tenant, in which event, the same shall be removed from the premises by Tenant, prior to the expiration of the lease, at Tenant's expense. Nothing in this article shall be construed to give Owner title to or to prevent Tenant's removal of trade fixtures, moveable office furniture and equipment, but upon removal of any such from the premises or upon removal of other installation as may be required by Owner, Tenant shall immediately and at its expense, repair and restore the premises to the condition existing prior to installation and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the premises by Owner at Tenant's expense.

REPAIRS: 4. Owner shall maintain and repair the public portions of the building, both exterior and interior, except that if Owner allows Tenant to erect on the outside of the building a sign or signs, of a hoist, lift or sidewalk elevator for the exclusive use of Tenant. Tenant shall maintain in such exterior installations in good appearance and shall cause the same to be operated in a good and workmanlike manner and shall make all repairs thereto necessary to keep same in good order and condition, at Tenant's own cost and expense, and shall cause the same to be covered by the insurance provided for hereafter in Article 8. Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and appurtenances therein, and the sidewalks adjacent thereto, and at its sole cost and expense, make all non-structural repairs thereto as and when needed to preserve them in good working order and condition, reasonable wear and tear, obsolescence and damage from

the elements, fire and other casualty, excepted. If the demised premiss be or become infested with vermin, Tenant shall at Tenant's expense, cause the same to be exterminated from time to time to the satisfaction of Owner. Except as specifically provided in Article 9 or elsewhere in this lease, there shall be no allowance to the Tenant for the diminuation of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner, Tenant or others making or failing to make any repairs, alterations, additions or improvements in or to any portion of the building including the erection or operation of any crane, derrick or sidewalk shed, or in or to the demised premises or the fixtures, appurtenances or equipment thereof. It is specifically agreed that Tenant shall be not entitled to any set off or reduction of rent by reason of any failure of Owner to comply with the covenants of this or any other article of this lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Article 4 with respect to the making of repairs shall not apply in the case of fire or other Casualty which are dealt with in Article 9 hereof.

WINDOW CLEANING: 5. Tenant will not clean nor require, permit, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the New York State Labor Law or any other applicable law or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction.

REQUIREMENTS OF LAW, FIRE INSURANCE: 6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, rules and regulations of the New York Board of Fire Underwriters or the Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to the demised premises, and with respect to the portion of the sidewalk adjacent to the premises, if the premises are on street level, whether or not arising out of Tenant's use or manner of use thereof, or with respect to the building if arising out of Tenant's use or manner of use of the premises or the building (including the use permitted under the lease). Except as provided in Article 29 hereof, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant shall not do or permit any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner. Tenant shall pay all costs, expenses, fines, penalties, or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article. If the fire insurance rate shall, at the beginning of the lease or at any time thereafter, be higher than it otherwise would be, then Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by

Owner which shall have been charged because of such failure by Tenant, to comply with the terms of this article. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or demised premises issued by a body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate then applicable to said premises.

SUBORDINATION: 7. This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which demised premises are a part and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages. This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease or the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may request.

TENANT'S LIABILITY INSURANCE PROPERTY LOSS, DAMAGE, INDEMNITY: 8. Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to the negligence of Owner, its agents, servants or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building or caused by operations in construction of any private, public or quasi public work. Tenant agrees, at Tenant's sole cost and expense, to maintain general public liability insurance in standard form in favor of Owner and Tenant against claims for bodily injury or death or property damage occurring in or upon the demised premises, effective from the date Tenant enters into possession and during the term of this lease. Such insurance shall be in an amount and with carriers acceptable to the Owner. Such policy or policies shall be delivered to the Owner. On Tenant's default in obtaining or delivering any such policy or policies or failure to pay the charges therefor, Owner may secure or pay the charges for any such policy or policies and charge the Tenant as additional rent therefor. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agent, contractors, employees, invitees, or licensees, of any covenant or condition of this lease, or the carelessness, negligence or improper conduct of the Tenant, Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licensee of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend

such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

**DESTRUCTION, FIRE AND OTHER CASUALTY:** 9. (a) If the demised premises or any part thereof shall be damaged by fire or other casualty, Tenant shall give immediate notice thereof to Owner and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises are partially damaged or rendered partially unusable by fire or other casualty, the damages thereto shall be repaired by and at the expense of Owner and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casualty according to the part of the premises which is usable. (c) If the demised premises are totally damaged or rendered wholly unusable by fire or other casualty, then the rent and other items of additional rent as hereinafter expressly provided shall be proportionately paid up to the time of the casualty and thenceforth shall cease until the date when the premises shall have been repaired and restored by Owner (or sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged in whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within 90 days after such fire or casualty or 30 days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease and Tenant shall forthwith quit, surrender and vacate the premises without prejudice however, to Owner's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the premises as promptly as reasonably possible, all of Tenant's salvageable inventory and moveable equipment, furniture, and other property. Tenant's liability for rent shall resume five (5) days after written notice from Owner that the premises are substantially ready for Tenant's occupancy. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, Owner and

Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d), and (e) above, against the other or any one claiming through or under each of them by way of subrogation or otherwise. The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such a release or waiver shall not invalidate the insurance. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Tenant and agrees that Owner will not be obligated to repair any damage thereto or replace the same. (f) Tenant hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this article shall govern and control in lieu thereof.

**EMINENT DOMAIN:** 10. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim for the value of any unexpired term of said lease. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixtures and equipment at the end of the term and provided further such claim does not reduce Owner's award.

**ASSIGNMENT, MORTGAGE, ETC.:** 11. Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Transfer of the majority of the stock of a corporate tenant or the majority partnership interest of a partnership tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant, collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. The consent by Owner to an assignment or underletting shall not in any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

**ELECTRIC CURRENT:** 12. Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing

feeders to the building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no wise make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain. **TENANT SHALL PAY ALL ELECTRIC AND GAS BILLS**

**ACCESS TO PREMISES:** 13. Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times, to examine the same and to make such repairs, replacements and improvements as Owner may deem necessary and reasonably desirable to any portion of the building or which Owner may elect to perform, in the premises, following Tenant's failure to make repairs or perform any work which Tenant is obligated to perform under this lease, or for the purpose of complying with laws, regulations and other directions of governmental authorities. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through the demised premises and to erect new pipes and conduits therein, provided they are concealed within the walls, floors or ceiling, wherever practicable. Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction nor shall the Tenant be entitled to any abatement of rent while such work is in progress nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term for the purpose of showing the same to prospective tenants and may, during said six months period, place upon the demised premises the usual notice "To Let" and "For Sale" which notices Tenant shall permit to remain thereon without molestation. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agents may enter the same whenever such entry may be necessary or permissible by master key or forcibly and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation and such act shall have no effect on this lease or Tenant's obligations hereunder. Owner shall have the right at any time, without the same constituting an eviction and without incurring liability to Tenant therefor to change the arrangement and/or location of public entrances, passageways, doors, doorways, corridors, elevators, stairs, toilets, or other public parts of the building and to change the name, number or designation by which the building may be known.

**OCCUPANCY:** 15. Tenant will not at any time use or occupy the demised premises in violation of Articles 2 or 37 hereof, or of the certificate of occupancy issued for the building



of which the demised premises are a part. Tenant has inspected the premise and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, Owner makes no representation as to the condition of the premises and Tenant agrees to accept the same subject to violation whether or not of record.

**BANKRUPTCY:** 16. (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Landlord by the sending of a written notice to Tenant within a reasonable time after the happening of any one or more of the following events: (1) the commencement of a case in bankruptcy or under the laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) It is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions of this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the demised premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of four percent (4%) per annum. If such premises or any part thereof be re-let by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of the difference referred to above.

**DEFAULT:** 17. (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises becomes vacant or deserted; or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the demised premises shall be taken or occupied by someone other than Tenant; or if this lease be rejected under Section 365 of Title 11 of the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move into or take possession of the premises within thirty (30) days after the commencement of the term of this lease, of which

fact Owner shall be the sole judge; then, in any one or more of such events, upon Owner serving a written fifteen (15) days notice upon Tenant specifying the nature of said default and upon the expiration of said fifteen (15) days, if Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said fifteen (15) day period, and if Tenant shall not have diligently commenced curing such default within such fifteen (15) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Owner may serve a written five (5) days notice of cancellation of this lease upon Tenant, and upon the expiration of said five (5) days, this lease and the term thereunder shall end and expire as fully and completely as if the expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this lease and the term thereof and Tenant shall then quit and surrender the demised premises to Owner but Tenant shall remain liable as hereinafter provided.

(2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein or any item of additional rent herein mentioned or any part of either or in making any other payment herein required; then and in any of such events Owner may without notice, re-enter the demised premises either by force or otherwise, and dispossess Tenant by summary proceedings or otherwise, and the legal representative of Tenant or other occupant of demised premises and remove their effects and hold the premises as if this lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

**REMEDIES OF OWNER AND WAIVER OF REDEMPTION:** 18. In case of any such default, re-entry, expiration and/or dispossess by summary proceedings or otherwise, (a) the rent, and additional rent, shall become due thereupon and be paid up to the time of such re-entry, dispossess and/or expiration, (b) Owner may re-let the premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms, which may at Owner's option be less than or exceed the period which would otherwise have constituted the balance of the term of this lease and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representatives of Tenant shall also pay Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the subsequent lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for re-letting. Any such liquidated damages shall be paid in monthly

installments by Tenant on the rent day specified in this lease. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs, replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rent collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant or any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws.

**FEES AND EXPENSES:** 19. If Tenant shall default in the observance or performance of any term or covenant on Tenant's part to be observed or performed under or by virtue of any of the terms or provisions in any article of this lease, after notice if required and upon expiration of any applicable grace period if any, (except in an emergency), then, unless otherwise provided elsewhere in this lease, Owner may immediately or at any time thereafter and without notice perform the obligation of Tenant thereunder, and if Owner, in connection therewith or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorney's fees, in instituting, prosecuting or defending any action or proceeding and prevails in any such action or proceeding, such sums so paid or obligations incurred with interest and costs shall be deemed to be additional rent hereunder and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefor and if Tenant's lease term shall have expired at the time of making of such expenditures or incurring of such obligations, such sums shall be recoverable by Owner as damages.

**NO REPRESENTATIONS BY OWNER:** 20. Neither Owner nor Owner's agent have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation, or any other matter or thing affecting or related to the premises except as herein expressly set forth and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this lease. Tenant has inspected the building and the demised premises and is thoroughly acquainted with their condition and agrees to take the same "as is" and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said premises and

the building of which the same form a part were in good and satisfactory condition at the time such possession was so taken, except as to latent defects. All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

**END OF TERM:** 21. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, broom clean, in good order and condition, ordinary wear excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this Lease or any renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday unless it be a legal holiday in which case it shall expire at noon on the preceding business day.

**QUIET ENJOYMENT:** 22. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 33 hereof and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

**FAILURE TO GIVE POSSESSION:** 23. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof, because of the holding-over or retention of possession of any tenant, undertenant or occupants or if the premises are located in a building being constructed, because such building has not been sufficiently completed to make the premises ready for occupancy or because of the fact that a certificate of occupancy has not been procured or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any wise to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for the inability to obtain possession or complete construction) until after Owner shall have given Tenant written notice that the Owner is able to deliver possession in the condition required by this lease. If permission is given to Tenant to enter into the possession of the demised premises or to occupy premises other than the demised premises prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease except the obligation to pay the fixed annual rent set forth in page

one of this lease. The provisions of this article are intended to constitute “an express provision to the contrary” within the meaning of Section 223-a of the New York Real Property Law.

**NO WAIVER:** 24. The failure of Owner to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this lease or of any of the Rules or Regulations set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach and no provision of this lease shall be deemed to have been waived by Owner unless such waiver be in writing signed by Owner. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner’s right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner’s agents during the term hereby demised shall be deemed in acceptance of a surrender of said premises and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner’s agent shall have any power to accept the keys of said premises prior to the termination of the lease and the delivery of keys to any such agent or employee shall not operate as a termination of the lease or a surrender of the premises.

**WAIVER OF TRIAL BY JURY:** 25. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other (except for personal injury or property damage) on any matters whatsoever arising out of or in any way connected with this lease, the relationship of Owner and Tenant, Tenant’s use of or occupancy of said premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action, for possession including a summary proceeding for possession of the premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 4 except for statutory mandatory counterclaims.

**INABILITY TO PERFORM:** 26. This Lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease or to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repair, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment, fixtures or other materials if Owner is prevented or delayed from

so doing by reason of strike or labor troubles, government preemption or restrictions or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of which have been or are affected, either directly or indirectly, by war or other emergency, or when, in the judgement of Owner, temporary interruption of such services is necessary by reason of accident, mechanical breakdown, or to make repairs, alterations or improvements.

**BILLS AND NOTICES:** 27. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, delivered to Tenant personally or sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part or at the last known residence address or business address of Tenant or left at any of the aforesaid premises addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant, mailed, or left at the premises as herein provided. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice.

**WATER CHARGES:** 28. If Tenant requires, uses or consumes water for any purpose in addition to ordinary lavatory purposes (of which fact Tenant constitutes Owner to be the sole judge) Owner may install a water meter and thereby measure Tenant's water consumption for all purposes. Tenant shall pay Owner for the cost of the meter and the cost of the installation thereof and throughout the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own cost and expense. Tenant agrees to pay for water consumed, as shown on said meter as and when bills are rendered. Tenant covenants and agrees to pay the sewer rent, charge or any other tax, rent, levy or charge which now or hereafter is assessed, imposed or a lien upon the demised premises or the realty of which they are part pursuant to law, order or regulation made or issued in connection with the use, consumption, maintenance or supply of water, water system or sewage or sewage connection or system. The bill rendered by Owner shall be payable by Tenant as additional rent. If the building or the demised premises or any part thereof be supplied with water through a meter through which water is also supplied to other premises Tenant shall pay to Owner as additional rent, on the first day of each month, % (\$ ) of the total meter charges, as Tenant's portion. Independently of and in addition to any of the remedies reserved to Owner hereinabove or elsewhere in this lease, Owner may sue for and collect any monies to be paid by Tenant or paid by Owner for any of the reasons or purposes hereinabove set forth.

**SPRINKLERS:** 29. Anything elsewhere in this lease to the contrary notwithstanding, if the New York Board of Fire Underwriters or the Insurance Services Office or any bureau, department or official of the federal, state or city government require or recommend the

installation of a sprinkler system or that any changes, modifications, alterations, or additional sprinkler heads or other equipment be made or supplied in an existing sprinkler system by reason of Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or for any other reason, or if any such sprinkler system installations, changes, modifications, alterations, additional sprinkler heads or other such equipment, become necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate set by any said Exchange or by any fire insurance company, Tenant shall, at Tenant's expense, promptly make such sprinkler system installations, changes, modifications, alterations, and supply additional sprinkler heads or other equipment as required whether the work involved shall be structural or non-structural in nature. Tenant shall pay to Owner as additional rent the sum of \$ , on the first day of each month during the term of this lease, as Tenant's portion of the contract price for sprinkler supervisory service.

**SECURITY:** 31. Tenant has deposited with Owner the sum of \$30,000 as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed that in the event Tenant defaults in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment of rent and additional rent, Owner may use, apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent or any other sum as to which Tenant is in default or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damages or deficiency in the re-letting of the premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner. In the event that Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this lease, the security shall be returned to Tenant after the date fixed as the end of the Lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building or leasing of the building, of which the demised premises form a part, Owner shall have the right to transfer the security to the vendee or lessee and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant agrees to look to the new Owner solely for the return of said security and it is agreed that the provisions hereof shall apply to every transfer or assignment made of the security to a new Owner. Tenant further covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

**CAPTIONS:** 32. The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this lease nor the intent of any provision thereof.

**DEFINITIONS:** 33. The term "Owner" as used in this lease means only the Owner, or the mortgagee in possession, for the time being of the land and building (or the Owner of a lease of the building or of the land and building) of which the demised premises form a part, so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is entirely freed and relieved of all covenants and obligations of Owner hereunder, and it shall be deemed and construed without further agreement between the parties of their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner hereunder. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning. The term "business days" as used in this lease shall exclude Saturdays, Sundays and all days designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract with respect to HVAC service. Wherever it is expressly provided in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

**ADJACENT EXCAVATION-SHORING:** 34. If an excavation shall be made upon land adjacent to the demised premises, or shall be authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building of which demised premises form a part from injury or damage and to support the same by proper foundations without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

**RULES AND REGULATIONS:** 35. Tenant and Tenant's servants, employees, agents, visitors, and licenses shall observe faithfully, and comply strictly with the Rules and Regulations and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional rules or regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rule or Regulation hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rule of regulation for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rule or Regulation upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing upon Owner within (15) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease, as against any other tenant and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees.



**Pornographic Uses Prohibited:** 37. Tenant agrees that the value of the demised premises and the reputation of the Owner will be seriously injured if the premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material on the premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the premises, nor permit use of the premises for nude modeling, rap sessions, or as a so called rubber goods shops, or as a sex club of any sort, or as a "massage parlor." Tenant agrees further that Tenant will not permit any of these uses by any sublessee or assignee of the premises. This Article shall directly bind any successors in interest to the Tenant. Tenant agrees that if at any time Tenant violates any of the provisions of this Article, such violation shall be deemed a breach of a substantial obligation of the terms of this lease and objectionable conduct. Pornographic material is defined for purposes of this Article as any written or pictorial manner with prurient appeal or any objects of instrument that are primarily concerned with lewd or prurient sexual activity. Obscene material is defined here as it is in Penal law Section 235.00.

**Estoppel Certificate:** 38. Tenant, at any time, and from time to time, upon at least 10 days prior notice by Owner, shall execute, acknowledge and deliver to Owner, and/or to any other person, firm or corporation specified by Owner, a statement certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates which the rent and additional rent have been paid, and stating whether or not there exists any defaults by Owner under this lease, and, if so, specifying each such default.

**Successors and Assigns:** 39. The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

In Witness Whereof, Owner and Tenant have respectively signed and sealed this lease as of the day and year first above written.

Witness for Owner: /s/ JOHANNA MERSON

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Witness for Tenant: SYBARI SOFTWARE INC. BY

-----  
/s/ ROBERT WALLACE

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ROBERT WALLACE, PRES.

#### ACKNOWLEDGMENTS

CORPORATE OWNER CORPORATE TENANT

STATE OF NEW YORK, ss.: STATE OF NEW YORK, ss.:

County of County of Suffolk

On this [ ] day of [ ], 19\_\_ , On this 11th day of June, 2000, before me personally came before me personally came Robert Wallace to me known, who being by me duly sworn, did to me known, who being by me duly sworn, did depose and say that he resides in depose and say that he resides in Suffolk that he is the of County that he is the President of Sybari the corporation described in and which Software, Inc. the corporation described in executed the foregoing instrument, as OWNER; and which executed the foregoing instrument, that he knows the seal of said corporation; as TENANT; that he knows the seal of said the seal affixed to said instrument is such corporation; the seal affixed to said corporate seal; that it was so affixed by instrument is such corporate seal; that it was order of the Board of Directors of said so affixed by order of the Board of Directors corporation, and that he signed his name of said corporation, and that he signed his thereto by like order. name thereto by like order.

/s/ TOBIAS BERMAN

-----  
INDIVIDUAL OWNER INDIVIDUAL TENANT

STATE OF NEW YORK, ss.: STATE OF NEW YORK, ss.:

County of County of

On this day of , 19 , On this day of , 19 , before me personally came before me personally came to be known and known to me to be the to be known and known to me to be the individual individual described in and who, as OWNER, executed the described in and who, as TENANT, executed the foregoing instrument and acknowledged to me foregoing instrument and acknowledged to me that that he executed the same. he executed the same.

## ADDITIONAL GUARANTOR

### GUARANTY

The undersigned Guarantor guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the agreements to be performed and observed by Tenant in the attached Lease, including the "Rules and Regulation" as therein provided, without requiring any notice to Guarantor of nonpayment, or nonperformance, or proof, or notice of demand, to hold the undersigned responsible under this guaranty, all of which the undersigned hereby expressly waives and expressly agrees that the legality of this agreement and the agreements of the Guarantor under this agreement shall not be ended, or changed by reason of the claims to Owner against Tenant of any of the rights or remedies given to Owner as agreed in the attached Lease. The Guarantor further agrees that this guaranty shall remain and continue in full force and effect as to any renewal, change or extension of the Lease. As a further inducement to Owner to make the Lease Owner and Guarantor agree that in any action or proceeding brought by either Owner or the Guarantor against the other on any matters concerning the Lease or this guaranty Owner and the undersigned shall and do waive trial by jury.

Dated: June 16, 2000

/s/ ROBERT G. WALLACE

-----  
Guarantor

-----  
Witness

216 ASHAROKEN AVE, NORTHPORT, NY

-----  
Guarantor's Residence

353 LARKFIELD RD, E. NORTHPORT, NY

-----  
Business Address

SYBARI SOFTWARE INC.

-----  
Firm Name

STATE OF NEW YORK, ) ss.:

COUNTY OF SUFFOLK    )

On this 16th day of June 2000, before me personally came Robert Wallace to me known and known to me to be the individual described in, and who executed the foregoing Guaranty and acknowledged to me that he executed the same.

-----  
Notary

## GUARANTY

The undersigned Guarantor guarantees to Owner, Owner's successors and assigns, the full performance and observance of all the agreements to be performed and observed by Tenant in the attached Lease, including the "Rules and Regulation" as therein provided, without requiring any notice to Guarantor of nonpayment, or nonperformance, or proof, or notice of demand, to hold the undersigned responsible under this guaranty, all of which the undersigned hereby expressly waives and expressly agrees that the legality of this agreement and the agreements of the Guarantor under this agreement shall not be ended, or changed by reason of the claims to Owner against Tenant of any of the rights or remedies given to Owner as agreed in the attached Lease. The Guarantor further agrees that this guaranty shall remain and continue in full force and effect as to any renewal, change or extension of the Lease. As a further inducement to Owner to make the Lease Owner and Guarantor agree that in any action or proceeding brought by either Owner or the Guarantor agree that in any action or proceeding brought by either Owner or the Guarantor against the other on any matters concerning the Lease or of this guaranty that Owner and the undersigned shall and do waive trial by jury.

Dated: June 16, 2000

----- --

/s/ Tobias Berman

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Guarantor

-----

Witness

68-10 Dartmouth St., Forest Hills, NY 11375

-----

Guarantor's Residence

353 Lakefield Rd., E. Northport, NY

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Business Address

Sybari Software Inc.

-----

Firm Name

STATE OF NEW YORK ) ss.:

COUNTY OF SUFFOLK    )

On this 16th day of June, 2000, before me personally came Tobias Berman to me known and known to me to be the individual described in, and who executed the foregoing Guaranty and acknowledged to me that he executed the same.

-----  
Notary

---> IMPORTANT - PLEASE READ <---

RULES AND REGULATIONS ATTACHED TO AND  
MADE A PART OF THIS LEASE  
IN ACCORDANCE WITH ARTICLE 35.

1. The sidewalks, entrances, driveways, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by any Tenant or used for any purpose other than for ingress to and egress from the demised premises and for delivery of merchandise and equipment in a prompt and efficient manner using elevators and passageways designated for such delivery by Owner. There shall not be used in any space, or in the public hall of the building, either by any tenant or by jobbers, or others in the delivery or receipt of merchandise, any hand trucks except those equipped with rubber tires and safeguards.
2. If the premises are situated on the ground floor of the building, Tenant thereof shall further, at Tenant's expense, keep the sidewalks and curb in front of said premises clean and free from ice, snow, etc.
3. The water and wash closets and plumbing fixtures shall not be used for any purposes other than those for which they were designed or constructed.
4. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the demised premises, or permit or suffer the demised premises to be occupied or used in a manner offensive or objectionable to Owner or other occupants of the building by reason of noise, odors and/or vibrations or interfere in any way with other Tenants or those having business therein.
5. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Tenant on any part of the outside of the demised premises or the building or on the inside of the demised premises if the same is visible from the outside of the premises without the prior written consent of Owner, except that the name of Tenant may appear on the entrance door of the premises. In the event of the violation of the foregoing by any Tenant, Owner may remove same without any liability and may charge the expense incurred by such removal to Tenant or Tenants violating this rule. Signs on interior doors and directory tablet shall be inscribed, painted or affixed for each Tenant by Owner at the expense of such Tenant, and shall be of a size, color and style acceptable to Owner.
6. No Tenant shall mark, paint, drill into, or in any way deface any part of the demised premises or the building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Owner, and as Owner may direct. No Tenant shall lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the demised premises, and, if linoleum or other similar floor covering is desired to be used an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.

7. Freight, furniture, business equipment, merchandise and bulky matter of any description shall be delivered to and removed from the premises only on the freight elevators and through the service entrances and corridors, and only during hours and in a manner approved by Owner. Owner reserves the right to inspect all freight to be brought into the building and to exclude from the building all freight which violates any of these Rules and Regulations or the lease of which these Rules and Regulations are a part.

8. Owner reserves the right to exclude from the building between the hours of 6 P.M. and 8 A.M. and at all hours on Sundays, and holidays all persons who do not present a pass to the building signed by Owner. Owner will furnish passes to persons for whom any Tenant requests same in writing. Each Tenant shall be responsible for all persons for whom he requests such pass and shall be liable to Owner for all acts of such person.

9. Owner shall have the right to prohibit any advertising by any Tenant which, in Owner's opinion, tends to impair the reputation of Owner or its desirability as a building for stores or offices, and upon written notice from Owner, Tenant shall refrain from or discontinue such advertising.

10. Tenant shall not bring or permit to be brought or kept in or on the demised premises, any inflammable, combustible, or explosive, or hazardous fluid, material, chemical or substance, or cause or permit any odors of cooking or other processes, or any unusual or other objectionable odors to permeate in or emanate from the demised premises.

11. Tenant shall not place a load on any floor of the demised premises exceeding the floor load per square foot area which it was designated to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient in Owner's judgement to absorb and prevent vibration, noise and annoyance.

12. Refuse and Trash - Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards regarding the collection, sorting, separation and recycling of waste products, garbage, refuse and trash. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Owner or Tenant by reason of Tenant's failure to comply with the provisions of this Building Rule 12, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Owner harmless (including reasonable legal fees and expenses) from and against any actions, claims and suits arising from such non-compliance, utilizing counsel reasonably satisfactory to Owner.

Address

Premises

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TO



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STANDARD FORM OF

[SEAL] STORE [SEAL]  
LEASE

THE REAL ESTATE BOARD OF NEW YORK, INC.

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Dated 19

Rent Per Year

Rent Per Month

Term  
From  
To

Drawn by.....  
Checked by.....  
Entered by.....  
Approved by.....

=====

**JOHANNA MERSON/DIDIT LLC  
TO  
SYBARI SOFTWARE INC**

**RIDER I**

THIS LEASE IS FOR A PERIOD OF TEN YEARS. AS OF FEBRUARY 1, 2007 TENANT MAY GIVE WRITTEN NOTICE OF CANCELLATION OF THIS LEASE TO TAKE EFFECT SEPTEMBER 30, 2007, TOGETHER WITH PAYMENT OF TWO HUNDRED THOUSAND DOLLARS (\$200,000) TO THE LANDLORD. PROVIDED THESE CONDITIONS AND ALL OTHER OBLIGATIONS AND CONDITIONS OF THIS LEASE HAVE BEEN FULFILLED INCLUDING BUT NOT LIMITED TO PAYMENT OF ALL RENTS AND TAXES IN A TIMELY FASHION UP TO AND INCLUDING SEPTEMBER 30, 2007, THEN THE TENANT IS RELIEVED OF ALL FURTHER OBLIGATIONS UNDER THIS LEASE INCLUDING PERSONAL GUARANTEES.

**JOHANNA MERSON/DIDIT LLC  
TO  
SYBARI SOFTWARE INC**

**RIDER II**

THE ANNUAL RENTS PAYABLE IN EQUAL MONTHLY INSTALLMENTS IN ADVANCE OF THE FIRST DAY OF EACH CALENDAR MONTH DURING THE TERM OF THIS LEASE SHALL BE AS FOLLOWS: OCTOBER 1, 2000 TO MARCH 31, 2004 AT \$225,000.00 (TWO HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS) ANNUALLY, PAYABLE AT EIGHTEEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$18,750) MONTHLY. APRIL 1, 2004 TO SEPTEMBER 30, 2007 TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) ANNUALLY, PAYABLE AT TWENTY THOUSAND EIGHT HUNDRED THIRTY FOUR DOLLARS (\$20,834.00) MONTHLY OCTOBER 1, 2007 TO SEPTEMBER 30, 2010 (TWENTY THOUSAND TEN) AT A RENT OF \$275,000 PER ANNUM PAYABLE MONTHLY AT \$23,916.66 MONTHLY. IN ADDITION, TENANT WILL PAY ALL APPLICABLE TAXES ON THE BUILDING, LAND, PARKING LOTS AND ANY OTHER MUNICIPLE OR COUNTY TAXES CHARGEABLE TO THIS ENTIRE PROPERTY, TO THE LANDLORD IN EQUAL MONTHLY INSTALLMENTS OF ANNUAL TAXES AS DESCRIBED ABOVE, INCLUDING ANY ONE TIME CHARGES OR ASSESSMENTS.

**JOHANNA MERSON/DIDIT LLC  
TO  
SYBARI SOFTWARE, INC**

**RIDER III**

IT IS EXPRESSLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT LANDLORD, (OWNER) SHALL BE RESPONSIBLE FOR REPAIRS TO THE STRUCTURE (ROOF, WINDOWS, BUT NOT GLASS BREAKAGE) EXCEPT IF OTHERWISE PROVIDED HEREIN. ALL OTHER REPAIR AND MAINTENANCE IS THE TENANTS RESPONSIBILITY.

IN THE EVENT TENANT DESIRES TO MAKE ANY ALTERATIONS OR ADDITIONS, PLANS SHALL BE FIRST SUBMITTED TO LANDLORD FOR PERMISSION AND SAID PERMISSION SHALL NOT BE UNREASONABLY WITHHELD. LANDLORD MAKES NO REPRESENTATIONS AS TO ADDITIONS, ALTERATIONS OR USE OF THE PREMISES. ALL ALTERATIONS OR ADDITIONS SHALL BE IN CONFORMITY WITH THE ZONING AND OTHER RULES OF THE TOWN OF HUNTINGTON, COUNTY OF SUFFOLK AND STATE OF NEW YORK.

ALL DEMOLITION AND REMOVAL OF CONSTRUCTION DEBRIS AND OTHER MATERIALS IS THE TENANT'S RESPONSIBILITY AND AT THE TENANT'S OWN EXPENSE.

TENANTS SHALL BE RESPONSIBLE FOR ALL MAINTENANCE OF PREMISES, BOTH INSIDE AND OUT. MAINTENANCE SHALL INCLUDE, BUT NOT BE LIMITED TO TENANT PROVIDING, MAINTAINING AND PAYING FOR ALL GROUNDSKEEPING INCLUDING SWEEPING OF PARKING LOTS AND SIDEWALKS, CLEANING BUFFER AREAS, SNOW AND ICE REMOVAL AND WATERING AND TRIMMING OF LANDSCAPING.

TENANT SHALL PROVIDE ITS OWN GARBAGE DUMPSTER OR DUMPSTERS TO BE PLACED NEAR THE BUILDING AND SHALL PAY FOR ALL GARBAGE REMOVAL AND SHALL FOLLOW TOWN RULES OF SORTING AND RECYCLING.

AFTER THE INITIAL PERIOD OF GUARANTEE/WARRANTY OF AIR CONDITIONING AND HEATING UNITS IS OVER, TENANT WILL PAY ANNUAL SERVICE CONTRACTS TO MAINTAIN HEATING AND AIR CONDITIONING UNITS AND WILL EITHER PAY SERVICE COMPANY OR PROVIDE THEMSELVES FOR FILTERS TO BE CLEANED OR CHANGED ON A REGULAR BASIS.

**JOHANNA MERSON/DIDIT LLC  
TO  
SYBARI SOFTWARE, INC.**

**RIDER IV**

IN THE EVENT TENANT ELECTS TO CANCEL THIS LEASE BY GIVING SIX MONTHS WRITTEN NOTICE AND FULLFILLING ALL OTHER TERMS OF CANCELLATION LANDLORD HAS PERMISSION TO SHOW AT REASONABLE HOURS THE PREMISES TO FUTURE PROSPECTIVE OCCUPANTS OR PURCHASERS OR BROKERS.

**RIDER V**

THIS LEASE CONSISTS OF TENANTS OCCUPANCY OF THE PREMISES CURRENTLY OCCUPIED BY TENANT KNOWN AS 353 LARKFIELD RD, EAST NORTHPORT AND THE PREMISES CURRENTLY OCCUPIED UNDER LEASE TO CHANGING TIMES PUB AND KNOWN AS 355 LARKFIELD RD, EAST NORTHPORT.

UPON EXECUTION OF THIS LEASE AND PAYMENT OF ADDITIONAL SECURITY OF \$10,000, BRINGING TOTAL SECURITY TO \$30,000, LANDLORD WILL GIVE NOTICE TO CHANGING TIMES PUB TO VACATE THE PREMISES THEY OCCUPY BY SEPTEMBER 30th, 2000, OR SOONER.

FOR THE SPACE CURRENTLY OCCUPIED BY CHANGING TIMES PUB, THIS LEASE IS SUBJECT TO LANDLORD RECEIVING VACANT POSSESSION OF SAID PREMISES WHICH SHALL HEREAFTER BE REFERRED TO AS "ADDITIONAL SPACE".

ANY AND ALL ALTERATIONS, IMPROVEMENTS AND RE-MODELING SAID ADDITIONAL SPACE BOTH INTERIOR AND EXTERIOR SHALL:

- A) BE AT TENANTS SOLE EXPENSE
- B) BE PERFORMED IN COMPLIANCE WITH ALL RULES AND REGULATIONS AND ZONING OF THE TOWN OF HUNTINGTON, COUNTY OF SUFFOLK AND STATE OF NEW YORK.
- C) BE SUBJECT TO LANDLORDS APPROVAL OF EXTERIOR ALTERATIONS AND BE IN CONFORMITY WITH EXISTING EXTERIOR OF SPACE NOW OCCUPIED BY TENANT.

IN THE EVENT TENANT OF ADDITIONAL SPACE LEAVES EARLIER OR LATER THAN SEPTEMBER 30, 2000 RENT SHALL BE ADJUSTED BETWEEN LANDLORD AND TENANT SO THAT TENANT PAYS THE RENT UNDER THIS LEASE AS OF THE DATE OF VACANCY OF TENANTS CURRENTLY IN ADDITIONAL SPACE.

RENT UNDER PRIOR LEASE SHALL REMAIN IN EFFECT UNTIL ADDITIONAL SPACE IS VACATED BY CURRENT OCCUPANT.

TENANT SYBARI SOFTWARE AGREES TO RE-IMBURSE LANDLORD UP TO TWENTY THOUSAND DOLLARS (\$20,000) OF COSTS INCURRED BY LANDLORD TO ACHIEVE THE VACATING OF THE ADDITIONAL SPACE TO COVER EXPENSES OF LEGAL FEES, INCENTIVES ETC.

OFFICE LEASE  
BY AND BETWEEN  
TIFFANY M. GIN AND STANTON LOWE  
DBA SPEAR STREET SAPPHIRE  
AS LANDLORD  
AND  
QUOKKA SPORTS, INC.  
AS TENANT  
DATED FEBRUARY 18, 1999

PREMISES LOCATED AT:  
128 SPEAR STREET, SECOND AND THIRD FLOORS  
SAN FRANCISCO, CALIFORNIA

<PAGE> 2

TABLE OF CONTENTS

<TABLE>  
<CAPTION>

<S>	<C>
ARTICLE 1	REAL PROPERTY, BUILDING, AND PREMISES
ARTICLE 2	SUBSTITUTION OF OTHER PREMISES
ARTICLE 3	LEASE TERM
ARTICLE 4	BASE RENT
ARTICLE 5	ADDITIONAL RENT
ARTICLE 6	PREPAID RENT; AND LETTER OF CREDIT AS SECURITY DEPOSIT
ARTICLE 7	USE
ARTICLE 8	COMPLIANCE WITH LAWS
ARTICLE 9	HAZARDOUS MATERIAL
ARTICLE 10	UTILITIES AND SERVICES
ARTICLE 11	REPAIRS AND MAINTENANCE
ARTICLE 12	ALTERATIONS AND ADDITIONS
ARTICLE 13	COVENANT AGAINST LIENS
ARTICLE 14	EXCULPATION, INDEMNIFICATION, AND INSURANCE
ARTICLE 15	DAMAGE AND DESTRUCTION
ARTICLE 16	CONDEMNATION
ARTICLE 17	ASSIGNMENT AND SUBLEASING

ARTICLE 18	SURRENDER OF PREMISES
ARTICLE 19	HOLDING OVER
ARTICLE 20	ESTOPPEL CERTIFICATES
ARTICLE 21	SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT
ARTICLE 22	DEFAULTS AND REMEDIES
ARTICLE 23	LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS
ARTICLE 24	LATE PAYMENTS
ARTICLE 25	NONWAIVER
ARTICLE 26	WAIVER OF RIGHT TO JURY TRIAL; DISPUTE RESOLUTION
ARTICLE 27	ATTORNEY FEES AND COSTS
ARTICLE 28	LANDLORD'S ACCESS TO PREMISES
ARTICLE 29	SIGNS
ARTICLE 30	TENANT PARKING
ARTICLE 31	MISCELLANEOUS

Exhibit A	Diagram Of Premises
Exhibit B	Legal Description Of Real Property
Exhibit C	Omitted
Exhibit D	Omitted
Exhibit E	Rules And Regulations
Exhibit F	Estoppel Certificate
Exhibit G	Letter Of Credit
Exhibit H	Stock Grant Agreement

<PAGE> 3

#### TABLE OF DEFINED TERMS

DEFINED TERMS	LEASE SECTION
-----	-----
ACMs	9.3
Additional Rent Summary	Section 7
Additional Required Work	5.1
Affiliate	12.1.2
Alterations	17.7.3
Award	12.1
Base Building	16.5.1
Base Building Systems	Exhibit C
Base Rent	12.1.2
Base Year	Summary section 6
Brokers Summary	4.1
Building	Summary section 7(a)
Building Hours	5.2.1
	Section 14
	31.23
	Summary section 4(a)
	1.1
	Exhibit F
	10.1.1



Casualty	15.1
Claims	14.3.2
Comparable Buildings	1.7
Condemnation	16.1
Condemnation Notice	16.2
Condemnor	16.1
Control	17.8.2
Date of Lease	Summary section 1
Delivery Date	5.3.3
Excess	5.3.1
Exercise Notice	3.5.3.3
Expense Year	5.2.3
Extension Option	3.5
Fair Market Rental Value of the Premises	3.5.2.1
Hazardous Material	9.5
Holidays	10.1.1
Interest Notice	3.5.3.1
Landlord	Summary section 2
	Exhibit F
Landlord Parties	14.1
Landlord's Taking Termination Notice	16.3.3
Laws and Orders	8.1
Lease	Exhibit C
	Exhibit F
Lease Commencement Date	Summary section 5(b)
	3.1
Lease Expiration Date	Summary section 5(c)
	3.1
Lease Term	Summary section 5(a)
	3.1
<PAGE> 4	
Lease Year	Summary section 6
	3.3
Letter of Credit/Irrevocable	Summary section 8
	6.1
Market Notice	1.6.4
Monthly Base Rent	Summary section 6
Net Worth	17.7.2
OCP	14.5.2
Operating Expenses	5.2.4
Option Rent	3.5.2
Option Rent Notice	3.5.3.2
Option Term	3.5
Outside Agreement Date	26.3.1
Permitted Use	Summary section 9
	7.1
Premises	Summary section 4(c)
	1.1
	Exhibit F, section 1
Prepaid Rent/Irrevocable LC	Summary section 8
	6.1
Quoted Rent	17.3.1
Real Property	1.1
	Exhibit F, section 1
Recapture Notice	17.5.1
Rent	5.1
Rentable Area	Summary section 4(b)
	1.5.1
Rentable Square Feet	Summary section 4(b) (c)
	1.5.1
Rentable Square Footage	1.5.1
Repair Period Notice	15.2
Restoration Notice	16.3.4.2

Rules and Regulations	7.2
Statement	5.3.2
Subject Space	17.2.1
Substantial Completion	Exhibit C
Tax Expenses	5.2.5
Tenant	Summary section 3
	Exhibit F, section 1
Tenant Parties	14.1
Tenant Rent	17.4.2
Tenant's Share	Summary section 7
	5.2.6
Tenant's Termination Notice	15.4
Termination Date	16.3.1
Transfer	17.1.1
Transfer Fee	17.2.2
Transfer Notice	17.2.1
Transfer Premium	17.4.2
Transferee	17.1.1
Transferee Rent	17.4.2
Underlying Leases	21.1
Usable Area Summary	section 4(c) 1.5.1
Usable Square Feet	Summary section 4(c)
	1.5.1

<PAGE> 5

#### OFFICE LEASE

This Lease is made by the Landlord and Tenant named below, who agree as follows:

#### PART I

##### SUMMARY OF BASIC LEASE INFORMATION

The basic terms of this Lease are:

1. DATE OF LEASE: February 18, 1999
2. LANDLORD: TIFFANY M. GIN and STANTON LOWE, DBA SPEAR STREET SAPPHIRE
3. TENANT: QUOKKA SPORTS, INC., a Delaware Corporation
4. PREMISES AND BUILDING:
  - a) Building (section 1.1):  
The Magna Building  
Second and Third Floors  
128 Spear Street  
San Francisco, California 94105
  - b) Number of Rentable Sq. Ft. for Building  
(section 1.1): 22,000
  - c) Premises (section 1.1): 11,000 square feet; see  
Exhibit A
  - d) SPECIAL SECURE AREAS: [TO BE DETERMINED]
5. LEASE TERM:
  - a) Duration (section 3.1): 6 years and 0 months

- b) Lease Commencement Date (section 3.1); March 1, 1999
- c) Lease Expiration Date (section 3.1): The last day of the month in which the Sixth (6th) anniversary of the Lease Commencement Date occurs

6. BASE RENT (SECTION 4.1):

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LEASE YEAR BASE RENT	MONTHLY BASE RENT	ANNUAL BASE RENT PER RSF	ANNUALIZED
-----	-----	-----	
<S>	<C>	<C>	<C>
First	\$ 33,916.67	\$ 37.00	\$ 407,000
Second	\$ 34,833.33	\$ 38.00	\$ 418,000
Third	\$ 35,750.00	\$ 39.00	\$ 429,000
Fourth	\$ 36,666.67	\$ 40.00	\$ 440,000
Fifth	\$ 37,583.33	\$ 41.00	\$ 451,000
Sixth	\$ 38,500.00	\$ 42.00	\$ 462,000

</TABLE>

7. ADDITIONAL RENT (ARTICLE 5):

1

<PAGE> 6

- a) Base Year (subsection 5.2.1): The calendar year of 1999.
- b) Tenant's Share of Direct Expenses (subsection 5.2.6): 50 percent

8. PREPAID RENT; / LETTER OF CREDIT AS SECURITY DEPOSIT (SECTION 6.1):

- a) Prepaid Rent in cash in the amount of \$429,000;
- b) Irrevocable Letter of Credit (LOC) of \$434,500

9. PERMITTED USE (SECTION 7.1): General office use

10. LIABILITY INSURANCE (MINIMUM) (SUBSECTION 14.5.10):

- a) General aggregate limit (other than products-completed operations): \$3 Million
- b) Products-completed operations aggregate limit: \$3 Million
- c) Personal injury and advertising injury limit: \$2 Million
- d) Each occurrence limit: \$1 Million
- e) Fire damage liability limit (any one fire): \$1 Million
- f) Medical payments (or expenses) limit (any one person): \$25,000

11. LATE CHARGE AND INTEREST (ARTICLE 24):

- a) Late charge (section 24.1): \$2500 for Base Rent and seven and one half percent of any other amount due
  - b) Interest on delinquent Rent (section 24.2): one percent per month or any lower legal maximum
12. PARKING (SECTION 30.1): Not applicable
13. ADDRESSES FOR NOTICES:
- a) Landlord's address (subsection 31.11.3)  
Spear Street Sapphire  
128 Spear Street, 4th Floor  
San Francisco, CA 94105
  - b) Tenant's address (subsection 31.11.3)  
Quokka Sports, Inc.,  
525 Brannan Street  
San Francisco, CA 94107
- With copies to:
- Quokka Sports, Inc.  
128 Spear St., 2nd/3rd Flrs  
San Francisco, CA 94105  
Tel: (415)  
Attn: CEO or CFO
- And Paul Churchill  
Cooley Godward  
One Maritime Plaza, 20th Floor  
San Francisco, CA 94111
- c) Address of Landlord's lender (subsection 31.11.4):

2

<PAGE> 7

Mr. Allan Tan, Credit Administrator  
Citicorp Bank  
One Sansome Street, 23rd Flr.  
San Francisco, CA 94103

14. BROKERS (SECTION 31.23): Landlord and Tenant recognize James Sobel, Colliers International as Landlord's Broker and John Casey, Triton Commercial as Tenant's Broker for the basic lease transaction, no Broker will be recognized with respect to the exercise of any option or extension of the Lease.
15. EQUITY: In consideration of Landlord entering into this Lease, upon execution and delivery of the Stock Grant Agreement attached as Exhibit H by both Landlord and Tenant at the same time this Lease is executed, Tenant shall issue to Tiffany M. Gin and Stanton Lowe, together, 3077 shares of Tenant's common stock. Such shares shall be fully paid and nonassessable and shall have all of the rights and privileges of the common stock issued or issuable to Tenant's senior executives pursuant to its Equity Incentive Plan or other form of grant and related documentation, including voting and dividend rights as well as any antidilution and registration rights.

Each reference in this Lease to any provision in this Summary shall be construed to incorporate all the terms provided under that provision of the Summary. In the event of any conflict between a provision in this Summary and a provision in the balance of the Lease, the latter shall control.

Executed as of the date stated in section 1 of this Summary.

LANDLORD:

TIFFANY M. GIN and STANTON LOWE  
dba SPEAR STREET SAPPHIRE

By: /s/ TIFFANY M. GIN

By: /s/ STANTON LOWE

-----  
Tiffany M. Gin

-----  
Stanton Lowe

Its: Principal

Its: Principal

TENANT:

QUOKKA SPORTS, INC.,  
a Delaware Corporation

By: /s/ LES SCHMIDT

-----  
Les Schmidt

Its: Chief Financial Officer and Senior Vice President

3

<PAGE> 8

## PART II

### LEASE PROVISIONS

#### ARTICLE 1

##### REAL PROPERTY, BUILDING, AND PREMISES

1.1 LEASE OF PREMISES. Landlord leases to Tenant and Tenant leases from Landlord the premises described in Summary of Basic Lease Information section 4c) (Premises), which are located in the building described in Summary section 4(a) (Building), reserving to Landlord the rights described in Lease section 1.3. The outline of the Premises is set forth in Exhibit A. The Rentable Area or Usable Area of the Premises and the Rentable Area of the Building are set forth in Summary sections 4(b) and 4(c). The Building, the areas servicing the Building (including any adjacent parking structure and parking area), and the land on which the Building and those areas are located (as shown on the site plan attached to this Lease as Exhibit B) are sometimes collectively referred to as the "Real Property." Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Real Property except as specifically stated in this Lease.

1.2 APPURTENANT RIGHTS. Tenant is granted the right at all times during the Lease Term to the nonexclusive use of the main lobby of the Building, common corridors and hallways, stairwells, elevators, restrooms, and other public or common areas located on the Real Property. Landlord, however, has the sole discretion to determine the manner in which those public and common areas are maintained and operated, and the use of those areas shall be subject to the Rules and Regulations, as defined in section 7.2.

1.3 LANDLORD'S RESERVATION OF RIGHTS. The following rights are reserved to Landlord:

- (a) The right to all of the Building, except for the space within the Premises;

- (b) The right to change all elements of the Real Property, except for the space within the Premises;
- (c) The rights reserved to Landlord by provisions of this Lease or by operation of law;
- (d) The exclusive right to consent to the use or occupancy of the Premises by any person other than Tenant; and
- (e) All rights in the economic value of the leasehold estate in the Premises, as stated in Articles 16-17.

1.4 PREPARATION OF PREMISES; ACCEPTANCE. The rights and obligations of the parties regarding the construction of the Premises before the commencement of the Lease Term are stated in the Leasehold Improvement Agreement attached to this Lease as Exhibit C. If this Lease conflicts with the Leasehold Improvement Agreement, the Leasehold Improvement Agreement shall prevail.

1.5 RENTABLE AREA AND USABLE AREA.

1.5.1 ACCEPTANCE OF CALCULATION. For purposes of this Lease, Landlord and Tenant agree that both the "Rentable Area," and "Usable Area" for 2nd and 3rd floors as Premises is 11,000 SQ. FT.

## ARTICLE 2

### SUBSTITUTION OF OTHER PREMISES

[THIS ARTICLE WAS INTENTIONALLY DELETED FROM THIS LEASE.]

4

<PAGE> 9

## ARTICLE 3 LEASE TERM

3.1 LEASE TERM. The provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease (Lease Term) shall be the period stated in Summary of Basic Lease Information section 5(a). The Lease Term shall commence on the date (Lease Commencement Date) stated in Summary section 5(b) and shall expire on the date (Lease Expiration Date) stated in Summary section 5(c) unless this Lease is sooner terminated as provided in this Lease.

3.2 CONFIRMATION OF LEASE INFORMATION. At any time during the Lease Term, Landlord may deliver to Tenant a notice in the form set forth in Exhibit D, attached to this Lease, which Tenant shall execute and return to Landlord within five (5) days after receipt. Landlord can elect to reasonably modify the provisions of Exhibit D from time to time.

3.3 LEASE YEAR. For purposes of this Lease, the term "Lease Year" means each consecutive twelve- month (12-month) period during the Lease Term as long as:

- (a) The first Lease Year commences on the Lease Commencement Date and ends on twelve (12) months thereafter;
- (b) The second (2nd) and each succeeding Lease Year commences on the first day of the next calendar month; and
- (c) The last Lease Year ends on the Lease Expiration Date or earlier date of termination.

3.4 DELAY IN DELIVERY OF PREMISES. If Landlord is unable to deliver possession of the Premises to Tenant on or before the projected Lease

Commencement Date, Landlord shall not be subject to any liability for its failure to do so. This failure shall not affect the validity of this Lease, the Lease Expiration Date or the obligations of Tenant under it, but the Lease Term (and the obligation to pay Rent) shall commence on the date on which Landlord delivers possession of the Premises to Tenant.

3.5 OPTION TO EXTEND TERM. Landlord grants to Tenant one (1) option to extend the Lease Term (Extension Option) for a period of five (5) years (Option Term), subject to the conditions described in this section 3.5. Tenant shall have no other right to extend the term beyond the Option Term.

3.5.1 CONDITIONS OF OPTION. The Extension Option is subject to the following conditions:

- (a) The Extension Option may be exercised only by written notice delivered by Tenant to Landlord as provided in this section 3.5 and only if, as of the date of delivery of the notice, Tenant is not in default under this Lease.
- (b) The rights contained in this section 3.5 shall be personal to the originally named Tenant and may be exercised only by the originally named Tenant (and not any assignee, sublessee, or other transferee of Tenant's interest in this Lease) and only if the originally named Tenant occupies the entire Premises as of the date it exercises the Extension Option in accordance with the terms of this section 3.5.
- (c) Tenant properly exercises the Extension Option and is not in default under this Lease at the end of the initial Lease Term, the Lease Term, as it applies to the entire Premises then leased by Tenant, shall be extended for the Option Term.

3.5.2 OPTION RENT. The Rent payable by Tenant during the Option Term (Option Rent) shall be equal to the Fair Market Rental Value of the Premises as of the commencement date of the Option Term but shall not be less than the sum of Base Rent and Tenant's Share of Direct Expenses payable by Tenant immediately before the Option Term.

5

<PAGE> 10

3.5.2.1 FAIR MARKET RENTAL VALUE. For purposes of this section 3.5, Fair Market Rental Value of the Premises shall be the rental rate, determined in accordance with subsection 3.5.2, at which tenants lease comparable space as of the commencement of the Option Term. For this purpose, "comparable space" shall be office space that is:

- (a) Not subleased;
- (b) Not subject to another tenant's expansion rights;
- (c) Comparable in size, location, and quality to the Premises;
- (d) Leased for a term comparable to the Option Term; and
- (e) Located in Comparable Buildings.

3.5.2.2 RENTAL RATE OF COMPARABLE SPACE. In determining the rental rate of comparable space, the rate of comparable space, the parties shall include all escalations and take into consideration the following concessions:

- (a) Rental abatement concessions, if any, being granted to tenants in connection with the comparable space; and
- (b) Tenant improvements or allowances provided or to be provided

for the comparable space, taking into account the value of the existing improvements in the Premises, based on age, quality, and layout of the improvements.

3.5.2.3 ADJUSTMENT FOR TENANT IMPROVEMENT ALLOWANCE. If in determining the Fair Market Rental Value the parties determine that the economic terms of leases of comparable space include a tenant improvement allowance, Landlord may, at Landlord's sole option, elect to do the following:

- (a) Grant some or all of the value of the tenant improvement allowance as an allowance for the refurbishment of the Premises; and
- (b) Reduce the base rent component of the Fair Market Rental Value to be an effective rental rate that takes into consideration the total dollar value of that portion of the tenant improvement allowance that Landlord has elected not to grant to Tenant (in which case that portion of the tenant improvement allowance evidenced in the effective rental rate shall not be granted to Tenant).

3.5.2.4 SECURITY DEPOSIT DURING OPTION TERM. During the Option Term, Landlord may require that Tenant provide a security deposit in an appropriate amount based on Landlord's assessment of market conditions, Tenant's financial condition and net worth at the time it exercises the Extension Option and Tenant's reasonably expected profitability for the next twelve (12) months. Such amount shall not be more than one year of Base Rent or less than one month's Base Rent. If such amount exceeds two (2) months' Base Rent, then Tenant can elect to provide a letter of credit in lieu of cash as set forth in Section 6.2. Tenant will reasonably cooperate with Landlord's information requests in this regard provided Landlord maintains the confidentiality of such information.

3.5.3 EXERCISE OF OPTION. The Extension Option must be exercised by Tenant, if at all, only at the time and in the manner provided in this subsection 3.5.3.

3.5.3.1 INTEREST NOTICE. If Tenant wishes to exercise the Extension Option, Tenant shall deliver written notice (Interest Notice) to Landlord no less than twelve (12) months before the expiration of the initial Lease Term.

3.5.3.2 OPTION RENT AND SECURITY DEPOSIT NOTICE. After receipt of Tenant's Interest Notice, Landlord shall deliver notice (Option Rent and Security Deposit Notice) to Tenant no less than ten (10) months before the expiration of the initial Lease Term, stating the Option Rent based on Landlord's determination of the Fair Market Rental Value of the Premises as of the commencement date of the Option Term, and stating the amount of any Security Deposit required pursuant to Section 3.5.2.4, as reasonably determined by Landlord.

6

<PAGE> 11

3.5.3.3 EXERCISE NOTICE. If Tenant wishes to exercise the Extension Option, Tenant must, on or before the earlier of (a) the date occurring nine (9) months before the expiration of the initial Lease Term or (b) the date occurring thirty (30) days after Tenant's receipt of the Option Rent and Security Deposit Notice, exercise the Extension Option by delivering written notice (Exercise Notice) to Landlord.

3.5.3.4 OBJECTION TO OPTION RENT. If Tenant wishes to contest the Option Rent or the Security Deposit stated in the Option Rent and Security Deposit Notice, Tenant must provide, with the Exercise Notice, written notice to Landlord that Tenant objects to the stated Option Rent and/or Security Deposit. If Tenant provides such written objection, the parties shall follow the procedure described in Article 26, and the Option Rent and/or Security Deposit shall be determined as set forth in that section.



3.5.3.5 FAILURE TO DELIVER TIMELY NOTICE. If Tenant fails to deliver a timely Interest Notice or Exercise Notice, Tenant shall be considered to have elected not to exercise the Extension Option.

3.5.4 AMENDMENT TO LEASE. If Tenant timely exercises its Extension Option, Landlord and Tenant shall, within fifteen (15) days after the Option Rent is determined under this section 3.5 or Article 26, execute an amendment to this Lease extending the Lease Term on the terms and conditions set forth in this section 3.5.

#### ARTICLE 4 BASE RENT

4.1 DEFINITION OF "BASE RENT"--NO SETOFF. Tenant shall pay to Landlord base rent (Base Rent) in equal monthly installments as set forth in Summary of Basic Lease Information section 6 in advance on or before the first day of every calendar month during the Lease Term, without any setoff or deduction. Payment shall be made at the management office of the Building or at any other place that Landlord may from time to time designate in writing. Payment must be in United States dollars, either in the form of a check (drawn on a bank located in the State of California) or via electronically transmitted funds.

4.2 INITIAL PAYMENT; PRORATION. The Base Rent for the first full calendar month of the Lease Term shall be paid when Tenant executes this Lease. If any payment date (including the Lease Commencement Date) for "Rent," as defined in section 5.1, falls on a day other than the first day of that calendar month, or if any Rent payment is for a period shorter than one calendar month, the Rent for that fractional calendar month shall accrue on a daily basis for each day of that fractional month at a daily rate equal to 1/365 of the total annual Rent. All other payments or adjustments that are required to be made under the terms of this Lease and that require proration on a time basis shall be prorated on the same basis.

4.3 APPLICATION OF PAYMENTS. All payments received by Landlord from Tenant shall be applied to the oldest payment obligation owed by Tenant to Landlord, unless Landlord elects an alternative application. No designation by Tenant, either in a separate writing or on a check or money order, shall modify this clause or have any force or effect.

#### ARTICLE 5 ADDITIONAL RENT

5.1 ADDITIONAL RENT; RENT. In addition to paying the Base Rent specified in Article 4, Tenant shall pay as additional rent Tenant's Share of the annual Direct Expenses (as defined in subsections 5.2.2 and 5.2.6) that are in excess of the amount of Direct Expenses applicable to the Base Year (as defined in subsection 5.2.1). That additional rent, together with other amounts of any kind (other than Base Rent) payable by Tenant to Landlord under the terms of this Lease, shall be collectively referred to in this Lease as "Additional Rent." Base Rent and Additional Rent are collectively referred to in this Lease as "Rent." All amounts due under this Article 5 as Additional Rent are payable for the same periods and in the same manner, time, and place as the Base Rent. Without limitation on other obligations of Tenant that survive

7

<PAGE> 12

the expiration of the Lease Term, Tenant's obligations to pay the Additional Rent provided for in this Article 5 survive the expiration of the Lease Term.

5.2 DEFINITIONS. The following definitions apply in this Article 5:

5.2.1 BASE YEAR. "Base Year" means the period stated in Summary of Basic Lease Information section 7(a).

5.2.2 DIRECT EXPENSES. "Direct Expenses" mean Operating Expenses plus Tax Expenses.

5.2.3 EXPENSE YEAR: "Expense Year" means each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires.

5.2.4 OPERATING EXPENSES. "Operating Expenses" means all expenses, costs, and amounts of every kind that Landlord pays or incurs during any Expense Year because of or in connection with the ownership, operation, management, maintenance, repair, replacement, or restoration of the Real Property.

5.2.4.1 EXAMPLES OF OPERATING EXPENSES. The definition of "Operating Expenses" includes any amounts paid or incurred for:

- (a) The cost of supplying any utilities.
- (b) The cost of operating, managing, maintaining, and repairing the following systems: utility, mechanical, sanitary, storm drainage, escalator, and elevator.
- (c) The cost of supplies and tools and of equipment, maintenance, and service contracts in connection with those systems.
- (d) The cost of licenses, certificates, permits, and inspections.
- (e) The cost of contesting the validity or applicability of any government enactments that may affect the Operating Expenses.
- (f) The costs incurred in connection with the implementation and operation of a transportation system management program or similar program.
- (g) The cost of insurance carried by Landlord, in amounts reasonably determined by Landlord.
- (h) Fees, charges, and other costs including management fees (or amounts in lieu of such fees), consulting fees, legal fees, and accounting fees of all persons engaged by Landlord or otherwise reasonably incurred by Landlord in connection with the operation, management, repair and maintenance of the Real Property.
- (i) Wages, salaries, and other compensation and benefits of all persons engaged in the operation, maintenance, or security of the Building plus employer's Social Security taxes, unemployment taxes, insurance, and any other taxes imposed on Landlord that may be levied on those wages, salaries, and other compensation and benefits. If any of Landlord's employees provide services for more than one building of Landlord, only the prorated portion of those employees' wages, salaries, other compensation and benefits, and taxes reflecting the percentage of their working time devoted to the Real Property shall be included in Operating Expenses.
- (j) Payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument relating to the sharing of costs by the Building.
- (k) Amortization (including interest on the unamortized cost at a rate equal to the floating commercial loan rate announced from time to time by Bank of America's as its prime rate plus two (2) percentage points per annum) of the cost of acquiring or renting personal property used in the maintenance, repair, and operation of the Building and Real Property.

- (1) The cost of capital improvements or other costs incurred in connection with the Real Property that (1) are intended as a labor- saving device or to effect other economies in the maintenance or operation of all or part of the Real Property or (2) are required under any government law or regulation but that were not required in connection with the Real Property when permits for the construction of the Building were obtained. All permitted

<PAGE> 13

capital expenditures shall be amortized (including interest on the unamortized cost at the rate stated in subparagraph (1)) over their useful life, as reasonably determined by Landlord.

5.2.4.2 ADJUSTMENT OF OPERATING EXPENSES. Operating Expenses shall be adjusted as follows:

5.2.4.2.1 Gross-Up Adjustment When Building Is Less Than Fully Occupied. If the occupancy of the Building during any part of any Expense Year (including the Base Year) is less than 95 percent, Landlord shall make an appropriate adjustment of the variable components of Operating Expenses for that Expense Year, as reasonably determined by Landlord using sound accounting and management principles, to determine the amount of Operating Expenses that would have been incurred had the Building been 95 percent occupied. This amount shall be considered to have been the amount of Operating Expenses for that Expense Year. For purposes of this subsection 5.2.4.2.1, "variable components" include only those component expenses that are affected by variations in occupancy levels.

5.2.4.2.2 Adjustment When Landlord Does Not Furnish a Service to All Tenants. If, during any part of any Expense Year (including the Base Year), Landlord is not furnishing a particular service or work (the cost of which, if furnished by Landlord, would be included in Operating Expenses) to a tenant (other than Tenant) that has undertaken to perform such service or work in lieu of receiving it from Landlord, Operating Expenses for that Expense Year shall be considered to be increased by an amount equal to the additional Operating Expenses that Landlord would reasonably have incurred during this period if Landlord had furnished such service or work to that tenant.

5.2.4.3 EXCLUSIONS FROM OPERATING EXPENSES. Despite any other provision of subsection 5.2.4, Operating Expenses shall not include:

- (a) Depreciation on the Building, Premises and improvements, interest, or amortization on mortgages or ground lease payments.
- (b) Legal fees incurred in negotiating and enforcing tenant leases.
- (c) Real estate brokers' leasing commissions.
- (d) Improvements to tenant spaces.
- (e) The cost of providing any service directly to and paid directly by any tenant.
- (f) Any costs expressly excluded from Operating Expenses elsewhere in this Lease.
- (g) Costs of any items for which Landlord receives reimbursement from insurance proceeds or a third party. Insurance proceeds shall be excluded from Operating Expenses in the year in which they are received, except that any deductible amount under any

insurance policy shall be included within Operating Expenses.

- (h) Costs of capital improvements, except as otherwise stated in this section 5.2.
- (i) Payments to Landlord's subsidiaries or affiliates for management or other services on or to the Building, including insurance, or for supplies or other materials to the extent that the cost of the services, supplies, or materials exceeds the cost that would have been paid had the services, supplies, or materials been provided by unaffiliated parties on an arm's length basis.
- (j) All rental and other payments due under any ground or underlying lease, or any lease for any equipment ordinarily considered to be of a capital nature (except janitorial equipment which is not affixed to any Building and equipment leased in order to reduce operating expenses.)
- (k) Any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord.
- (l) Wages, salaries, or other compensation paid to any executive employees above the grade of building manager.
- (m) The cost of correcting any building code or other violations which were in effect on or prior to the Commencement Date, unless occasioned by Tenant's special use of the Premises or Alterations.
- (n) Increased or incremental costs caused by Landlord's breach of this Lease, gross negligence or willful misconduct, including any fines or penalties due to violation of law or regulation.

9

<PAGE> 14

- (o) Any costs in excess of 100% of actual Operating Expenses and any Gross Up Adjustments pursuant to Section 5.2.4.2.1 above.
- (p) Any costs billed to Tenant more than one year after Landlord incurred such cost and was invoiced for same.

5.2.5 TAX EXPENSES. "Tax Expenses" means all federal, state, county, or local government or municipal taxes, fees, charges, or other impositions of every kind (whether general, special, ordinary, or extraordinary) that are paid or incurred by Landlord during any Expense Year (without regard to any different fiscal year used by any government or municipal authority) because of or in connection with the ownership, leasing, and operation of the Real Property. These expenses include taxes, fees, and charges such as real property taxes, general and special assessments, transit taxes, leasehold taxes, and taxes based on the receipt of rent (including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant); personal property taxes imposed on the fixtures, machinery, equipment, apparatus, systems, and equipment; appurtenances; furniture; and other personal property used in connection with the Building.

5.2.5.1 ADJUSTMENT OF TAXES. For purposes of this Lease, Tax Expenses shall be calculated as if the tenant improvements in the Building were fully constructed and the Real Property, the Building, and all tenant improvements in the Building were fully assessed for real estate tax purposes. Landlord specifically agrees that the gross-receipts component of Tax Expenses for the Base Year and each subsequent year shall be calculated as if the Building were one-hundred-percent (100%) occupied with rent-paying tenants.

5.2.5.2 INCLUDED TAX EXPENSES. Tax Expenses shall include:

- (a) Any assessment, tax, fee, levy, or charge in addition to, or in partial or total substitution of, any assessment, tax, fee, levy, or charge previously included within the definition of "real property tax." Tenant and Landlord acknowledge that Proposition 13 was adopted by the voters of the State of California in June 1978 and that assessments, taxes, fees, levies, and charges may be imposed by government agencies for services such as fire protection; street, sidewalk, and road maintenance; conservation; refuse removal; and other government services formerly provided without charge to property owners or occupants. In further recognition of the decrease in the level and quality of government services and amenities as a result of Proposition 13 (or as a result of any other restriction on real property taxes whether by law or by choice of the applicable legislative or assessing body), Tax Expenses shall also include any government or private assessments (or the Building's contribution toward a government or private cost-sharing agreement) for the purpose of augmenting or improving the quality of services and amenities normally provided by government agencies. Tenant and Landlord intend that all new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies, and charges be included within the definition of "Tax Expenses" for purposes of this Lease.
- (b) Any assessment, tax, fee, levy, or charge allocable to, or measured by, the area of the Premises or the rent payable under this Lease, including any gross income tax with respect to the receipt of that rent, or on or relating to the possession, leasing, operating, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Premises or any portion of the Premises.
- (c) Any assessment, tax, fee, levy, or charge on this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises.
- (d) Any possessory taxes charged or levied in place of real property taxes.

10

<PAGE> 15

5.2.5.3 CONTEST COSTS; REFUNDS. Any expenses incurred by Landlord in attempting to protest, reduce, or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year in which those expenses are paid. Tax refunds shall be deducted from Tax Expenses. Such tax refunds shall be deducted from Tax Expenses in the Expense Year in which they are received by Landlord.

5.2.5.4 EXCLUDED TAXES. Despite any other provision of subsection 5.2.5 (except as provided in subsection 5.2.5.2 or levied entirely or partially in lieu of Tax Expenses), the following shall be excluded from Tax Expenses:

- (a) All excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes applied or measured by Landlord's general or net income (as opposed to rents, receipts, or income attributable to operations at the Building);
- (b) Any items included as Operating Expenses; and
- (c) Any items paid by Tenant under section 5.5.

5.2.6 TENANT'S SHARE. "Tenant's Share" means the percentage stated in Summary of Basic Lease Information section 7(b). Tenant's Share is calculated by dividing the number of Rentable Square Feet of the Premises by the total Rentable Square Feet in the Building and multiplying the result by 100. If either the Premises or the Building is expanded or reduced, Tenant's Share shall be appropriately adjusted. Tenant's Share for the Expense Year in which that change occurs shall be determined on the basis of the number of days during the Expense Year in which each such Tenant's Share was in effect.

5.3 CALCULATION AND PAYMENT OF ADDITIONAL RENT. Tenant's Share of any Direct Expenses for any Expense Year shall be calculated and paid as follows:

5.3.1 CALCULATION OF EXCESS. If Tenant's Share of Direct Expenses for any Expense Year ending or beginning within the Lease Term exceeds Tenant's Share of the amount of Direct Expenses applicable to the Base Year, Tenant shall pay as Additional Rent to Landlord an amount equal to that excess (Excess), in the manner stated in subsection 5.3.2.

5.3.2 STATEMENT OF ACTUAL DIRECT EXPENSES AND PAYMENT BY TENANT. Landlord shall endeavor to give to Tenant on or before the first day of April following the end of each Expense Year a statement (Statement) stating the Direct Expenses incurred or accrued for that preceding Expense Year and indicating the amount, if any, of any Excess. On receipt of the Statement for each Expense Year ending during the Lease Term for which an Excess exists, Tenant shall pay, with its next installment of Base Rent due, the full amount of that Excess, less the amounts (if any) paid during that Expense Year as Estimated Excess (as defined in subsection 5.3.3). Landlord's failure to furnish the Statement for any Expense Year in a timely manner shall not prejudice Landlord from enforcing its rights under this Article 5. Even if the Lease Term has expired and Tenant has vacated the Premises, if an Excess exists when the final determination is made of Tenant's Share of the Direct Expenses for the Expense Year in which this Lease terminates, Tenant shall immediately pay to Landlord the amount calculated under subsection 5.3.1. The provisions of this subsection 5.3.2 shall survive the expiration or earlier termination of the Lease Term.

5.3.3 STATEMENT OF ESTIMATED DIRECT EXPENSES. Landlord shall give Tenant a yearly expense estimate statement (Estimate Statement) stating:

- (a) Landlord's reasonable estimate (Estimate) of the total amount of Direct Expenses for the then-current Expense Year; and
- (b) The estimated excess (Estimated Excess). The Estimated Excess shall be calculated by comparing estimated Direct Expenses (which shall be based on the Estimate) to the amount of Direct Expenses applicable to the Base Year. Landlord's failure to furnish the Estimate Statement for any Expense Year in a timely manner shall not preclude Landlord from enforcing its rights to collect any Estimated Excess under this Article 5. If an Estimated Excess is calculated for the then-current Expense Year, Tenant shall pay, with

its next installment of Base Rent due, a fraction of that Estimated Excess for the then current Expense Year (reduced by any amounts paid as provided in the last sentence of this subsection 5.3.3). The numerator of that fraction shall be the number of months that have elapsed in that current Expense Year (including the month of the payment), and the denominator shall be twelve (12). Until a new Estimate Statement is furnished, Tenant shall pay monthly, along with the monthly Base Rent installments, an amount equal to one twelfth (1/12th) of the total Estimated Excess stated in the previous

Estimate Statement delivered by Landlord to Tenant.

5.4 ALLOCATION OF DIRECT EXPENSES. Despite any other provision of this Article 5, in the calculation of Direct Expenses for the Base Year:

- (a) Direct Expenses shall not include any increase in Tax Expenses attributable to (1) special assessments, charges, costs, or fees; or (2) modifications or changes in government laws or regulations, including institution of a split tax roll; and
- (b) Operating Expenses shall exclude (1) market-wide labor-rate increases arising from extraordinary circumstances (such as boycotts and strikes) and (2) utility rate increases arising from extraordinary circumstances (such as conservation surcharges, boycotts, embargoes, or other shortages).] [omit?]

5.5 TAXES AND OTHER CHARGES FOR WHICH TENANT IS DIRECTLY RESPONSIBLE. Tenant shall reimburse Landlord, on demand, as Additional Rent, for any taxes required to be paid by Landlord that are not already included in Tax Expenses, excluding state, local, and federal personal or corporate income taxes measured by the net income of Landlord from all sources and estate and inheritance taxes, regardless of whether such taxes are now customary or within the contemplation of the parties to this Lease, when those taxes are:

- (a) Measured by or reasonably attributable to: (1) The cost or value of Tenant's equipment, furniture, fixtures, and other personal property located in the Premises; or (2) The cost or value of any leasehold improvements made in or to the Premises by or for Tenant (to the extent that the cost or value of those leasehold improvements exceeds the cost or value of a building-standard build-out, as reasonably determined by Landlord, regardless of whether title to those improvements is vested in Tenant or Landlord);
- (b) Assessed on or related to the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of:
  - (1) The Premises;
  - (2) Any portion of the Real Property; or
  - (3) Any parking facility used by Tenant in connection with this Lease; or
- (c) Assessed either on this transaction or on any document to which Tenant is a party that creates or transfers an interest or an estate in the Premises.

5.6 LANDLORD'S BOOKS AND RECORDS. If Tenant disputes the amount of Additional Rent stated in the Statement, Tenant may designate, within forty-five days after receipt of that Statement, an independent certified public accountant to inspect Landlord's records. Tenant is not entitled to request that inspection, however, if Tenant is then in default under this Lease. The accountant must not charge a fee based on the amount of Additional Rent that the accountant is able to save Tenant by the inspection. Tenant must give reasonable notice to Landlord of the request for inspection, and the inspection must be conducted in Landlord's offices at a reasonable time or times. If, after that inspection, Tenant still disputes the Additional Rent, a certification of the proper amount shall be made by an independent certified public accountant selected by Landlord and who is a member of a nationally recognized accounting firm. That certification shall be final and conclusive. The cost of such certification shall be borne by Tenant, unless the certification determines that Tenant has overpaid Landlord by more than five percent of the sum actually due for the applicable time period. Landlord shall promptly remit the balance of any

overpayment to Tenant or credit such sum against the next due installments of Additional Rent.

12

<PAGE> 17

ARTICLE 6

PREPAID RENT; AND LETTER OF CREDIT AS SECURITY DEPOSIT

6.1 AMOUNT OF PREPAID RENT. Concurrently with Tenant's execution of this Lease, Tenant shall deliver to Landlord as prepaid rent for the third year of the Lease a cash sum of Four Hundred Twenty Nine Thousand Dollars or \$429,000 earning no interest for the Tenant, as property of Landlord, subject to Sections 31.16 and 31.17 hereof. Landlord shall apply such sum to Tenant's Base Rent obligation pursuant to Article 4.

6.2 LETTER OF CREDIT AS SECURITY DEPOSIT. Tenant shall also deliver to Landlord, concurrently with execution of this Lease, and cause to be in effect during the term of this Lease, as a security deposit in lieu of a cash security deposit for the full and faithful performance by Tenant of all of its obligations under this Lease, an irrevocable negotiable letter of credit, in the form and containing the terms required herein, running in favor of Landlord issued by a solvent bank under the supervision of the Superintendent of Banks of the State of California or a National Banking Association in the amount of Four Hundred Thirty Four Thousand Five Hundred Dollars (\$434,500) for the initial five (5) years of the Lease Term and thereafter in the amount of Two Hundred Seventeen Thousand Two Hundred Fifty Thousand Dollars (\$217,250); unless Tenant is in default under this Lease at the beginning of the sixth year of the Lease, in which case the amount shall remain \$434,500 for the balance of the Lease Term (the "Letter of Credit").

The Letter of Credit is intended to be utilized as a security deposit in the event of Tenant's monetary default and for the performance of Tenant's obligations under this Lease. If Tenant defaults on any provision of this Lease, Landlord may, after notice of breach and opportunity to cure as set forth in Article 22 and without prejudice to any other remedy it has, draw on the Letter of Credit and apply all or part of the Security Deposit to:

- (a) Any Rent or other sum in default;
- (b) Any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under Article 23; or
- (c) Any expense, loss, or damage that Landlord may suffer because of Tenant's default. Tenant waives the provisions of California Civil Code section 1950.7, and all other provisions of law now in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the Premises. Landlord and Tenant agree that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other reasonably foreseeable loss or damage caused by the act or omission of Tenant or Tenant's officers, agents, employees, independent contractors, or invitees.

6.3 FORM AND TERMS OF LETTER OF CREDIT. The Letter of Credit (and the bank issuing the same) below shall be acceptable to Landlord, in Landlord's reasonable discretion. The Letter of Credit shall be:

- (a) Drawable at sight and irrevocable.
- (b) Maintained in effect, whether through replacement, renewal or extension, for the entire Lease term and for thirty (30) days



thereafter (the "Letter of Credit Expiration Date") and Tenant shall deliver a new Letter of Credit or certificate of renewal or extension to Landlord at least thirty (30) days prior to the expiration of the Letter of Credit without any action whatsoever on the part of Landlord.

- (c) Subject to the Uniform Customs and Documentary Credits (1983-Rev) International Chamber of Commerce Publication #400.
- (d) Acceptable to Landlord in its reasonable discretion.
- (e) Tenant shall pay all expenses, points, or fees incurred by Tenant in obtaining the Letter of Credit.
- (f) Subject to partial draws.

13

<PAGE> 18

6.3.1 LANDLORD'S RIGHTS TO DRAW ON LETTER OF CREDIT:

- (1) Landlord, shall have the right to draw down in an amount necessary to cure Tenant's default pursuant to Section 6.2 up to the face amount of the Letter of Credit upon the presentation to the issuing bank of Landlord's statement under penalty of perjury, that Tenant is in default hereunder after written notice hereof and expiration of the application cure period and such amount is due to Landlord under the terms and conditions of this Lease, it being understood that if Landlord be a corporation, partnership or other entity, then such statement shall be signed by an officer (if a corporation), a general partner (if a partnership), or any authorized party (if another entity);
- (2) The Letter of Credit and draw request will be honored by the issuing bank without inquiry as to the accuracy thereof and regardless of whether the Tenant disputes the content of such statement;
- (3) In the event of a transfer of Landlord's interest in any of the Buildings of which the Premises are a part, Landlord shall have the right to transfer the Letter of Credit, in whole or in part (or cause a substitute letter of credit to be delivered, as applicable), to the transferee and thereupon the Landlord shall, without any further agreement between the parties, be released by Tenant from all liability therefor if such transferee assumes such obligations. If, as a result of any such application of all or any part of such security, the amount secured by the Letter of Credit shall be less than FOUR HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED DOLLARS (\$434,500), or any lesser amount required hereunder, Tenant shall forthwith provide Landlord with additional letter(s) of credit or cash in an amount equal to the deficiency and each such additional letter of credit shall comply with all the provisions of this section. In no event shall the total amount of the Letter of Credit exceed \$434,500, however.

6.3.2 TENANT'S COVENANTS AND WARRANTS ON LETTER OF CREDIT: Tenant further covenants and warrants that it will not assign nor encumber the Letter of Credit or any part thereof and that neither Landlord nor its successors or assigns will be bound by such an assignment, encumbrance, attempted assignment or attempted encumbrance.

6.3.3 EXPIRATION, RENEWAL, SUBSTITUTION OF ANOTHER LETTER OF CREDIT: If the Letter of Credit expires earlier than the Letter of Credit Expiration Date,

Landlord will accept a renewal thereof or substitute letter of credit (such renewal or substitute letter of credit to be in effect not later than thirty (30) days prior to the expiration thereof), irrevocable and automatically renewable as above provided through the Letter of Credit Expiration Date upon the same terms as the expiring letter of credit or such other terms as may be acceptable to Landlord.

However, if the Letter of Credit is not timely renewed or a substitute letter of credit or cash is not timely received, or if Tenant fails to maintain the Letter of Credit in the amount and terms set forth in this Section, Tenant, at least thirty (30) days prior to the expiration of the Letter of Credit, or immediately upon its failure to comply with each and every term of this Section, must deposit with Landlord cash security in the amounts required by, and to be held subject to and in accordance with, all of the terms and conditions set forth in this Section and all other applicable provisions of this Lease, failing which the Landlord may present such Letter of Credit to the bank in accordance with the terms of this Section, and the entire sum secured thereby shall be paid to Landlord, to be held by Landlord as provided in this Section.

If Tenant is in default beyond any applicable notice and cure period in the payment of Basic Rent or operating expenses or taxes due hereunder, Landlord may, but without obligation to do so, use the Security Deposit, or any portion thereof, to cure such default, in which case Tenant shall no longer be deemed to be in default hereunder, and this Lease shall continue in full force and effect. Tenant shall, immediately on demand, pay Landlord a sum equal to the portion of the Security Deposit so applied or used so as to replenish the amount of the Security Deposit held to increase such deposit to the amount required under this Lease.

14

<PAGE> 19

6.4 LANDLORD'S TRANSFER OF IRREVOCABLE LETTER OF CREDIT/SECURITY DEPOSIT ON TRANSFER OF REAL PROPERTY. If Landlord disposes of its interest in the Premises, Landlord may deliver or credit the Security Deposit to Landlord's successor in interest in the Premises and thereupon be relieved of further responsibility with respect to the Security Deposit, if such transferee assumes these obligations.

6.5 RESTORATION OF IRREVOCABLE LETTER OF CREDIT/SECURITY DEPOSIT:. If Landlord applies any portion of the Security Deposit, Tenant shall, within thirty days (30) after demand by Landlord, deposit with Landlord an amount sufficient to restore the Letter of Credit/Security Deposit to its original amount.

6.6 INTEREST ON PREPAID RENT/SECURITY DEPOSIT. Tenant is not entitled to any interest on the Security Deposit nor Prepaid Rent.

#### ARTICLE 7 USE

7.1 PERMITTED USE. Tenant shall use the Premises solely for the "Permitted Use," as defined in Summary of Basic Lease Information section 9. Tenant shall not use or permit the Premises to be used for any other purpose without Landlord's prior written consent, which may be granted or withheld in Landlord's sole discretion.

7.2 RULES AND REGULATIONS. Tenant shall comply with the rules attached to this Lease as Exhibit E and any reasonable amendments or additions promulgated by Landlord from time to time after reasonable notice and opportunity to comment by Tenant for the safety, care, and cleanliness of the Premises, Building, and Real Property or for the preservation of good order (Rules and Regulations). Such Rules and Regulations shall be applicable to all office tenants in the Building. Landlord shall not be responsible to Tenant for the failure of any other tenants or occupants of the Building to comply with the Rules and

Regulations.

7.3 ADDITIONAL RESTRICTIONS ON USE. In addition to complying with other provisions of this Lease concerning the use of the Premises:

- (a) Tenant shall not permit the occupancy of the Premises at any time during the Lease Term to exceed one person (including visitors) per 165 Usable Square Feet of space in the Premises;
- (b) Tenant shall not use or allow any person to use the Premises for any purpose that is contrary to the Rules and Regulations, that violates any Laws and Orders, that constitutes waste or nuisance, or that would unreasonably annoy other occupants of the Building or the owners or occupants of buildings adjacent to the Building; and
- (c) Tenant shall comply with all recorded covenants, conditions, and restrictions that now or later affect the Real Property.

#### ARTICLE 8 COMPLIANCE WITH LAWS

8.1 DEFINITION OF "LAWS AND ORDERS." For purposes of this Article 8, the term "Laws and Orders" includes all federal, state, county, city, or government agency laws, statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued. The term also includes government measures regulating or enforcing public access, occupational, health, or safety standards for employers, employees, landlords, or tenants.

8.2 REPAIRS, REPLACEMENTS, ALTERATIONS, AND IMPROVEMENTS. Tenant shall continuously and without exception repair and maintain the Premises, including Tenant Improvements, Alterations, fixtures, and furnishings, in an order and condition in compliance with all Laws and Orders. Tenant, at Tenant's

15

<PAGE> 20

sole expense, shall promptly make all repairs, replacements, alterations, or improvements needed to comply with all Laws and Orders to the extent that the Laws and Orders relate to or are triggered by (a) Tenant's particular use of the Premises, (b) improvements to the Premises by Tenant subsequent to the Lease Execution Date, or (b) any proposed Alterations located in the Premises. Tenant shall not otherwise be responsible to bring the Premises into compliance with Laws and Orders to the extent the Premises failed to comply with same as of the Commencement Date. Tenant shall not be required by Landlord to implement proposed Improvements or Alterations if Tenant determines that the additional costs associated with compliance with Laws and Orders are prohibitive, unless legally required to do so.

Landlord, at Landlord's sole expense, shall promptly make all repairs, replacements, alterations, or improvements needed to comply with all Laws and Orders to the extent that the Laws and Orders relate to the Base Building. If, however, such compliance work on the Base Building is triggered by the Tenant Improvements or Alterations requested by Tenant under Article 12, Tenant shall bear all expense of such work on the Base Building.

8.3 COLLATERAL ESTOPPEL. The judgment of any court of competent jurisdiction, or the admission of Tenant in any judicial or administrative action or proceeding that Tenant has violated any Laws and Orders shall be conclusive, between Landlord and Tenant, of that fact, whether or not Landlord is a party to that action or proceeding.

#### ARTICLE 9 HAZARDOUS MATERIAL

9.1 USE OF HAZARDOUS MATERIAL. Tenant shall not cause or permit any Hazardous Material, as defined in section 9.5, to be generated, brought onto, used, stored, or disposed of in or about the Premises or the Building by Tenant or its agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office and janitorial supplies containing chemicals categorized as Hazardous Material. Tenant shall:

- (a) Use, store, and dispose of all such Hazardous Material in strict compliance with all applicable statutes, ordinances, and regulations in effect during the Lease Term that relate to public health and safety and protection of the environment (Environmental Laws), including those Environmental Laws identified in section 9.5; and
- (b) Comply at all times during the Lease with all Environmental Laws. 9.2. NOTICE OF RELEASE OR INVESTIGATION. If during the Lease Term (including any extensions), Tenant becomes aware of (a) any actual or threatened release of any Hazardous Material on, under, or about the Premises or the Building or (b) any inquiry, investigation, proceeding, or claim by any government agency or other person regarding the presence of Hazardous Material on, under, or about the Premises or the Building, Tenant shall give Landlord written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to Landlord copies of any claims, notices of violation, reports, or other writings received by Tenant that concern the release or investigation.

9.2 INDEMNIFICATION. Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend, and hold harmless Landlord and Landlord's shareholders, directors, officers, employees, partners, affiliates, and agents with respect to all losses arising out of or resulting from the release of any Hazardous Material in or about the Premises or the Building, or the violation of any Environmental Law, by Tenant or Tenant's agents, contractors, or invitees. This indemnification includes:

- (a) Losses attributable to diminution in the value of the Premises or the Building;
- (b) Loss or restriction of use of rentable space in the Building;
- (c) Adverse effect on the marketing of any space in the Building; and
- (d) All other liabilities, obligations, penalties, fines, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders, or

16

<PAGE> 21

judgments), damages (including consequential and punitive damages), and costs (including attorney, consultant, and expert fees and expenses) resulting from the release or violation.

This indemnification shall survive the expiration or termination of this Lease.

9.3 REMEDIATION OBLIGATIONS. If the presence of any Hazardous Material brought onto the Premises or the Building by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination of the Building, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the Premises or the Building to the condition that existed before the introduction of such Hazardous Material. Tenant shall first obtain Landlord's

approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in section 9.3.

9.4 DEFINITION OF "HAZARDOUS MATERIAL." As used in this Article 9, the term "Hazardous Material" shall mean any hazardous or toxic substance, material, or waste that is or becomes regulated by the United States, the State of California, or any local government authority having jurisdiction over the Building. Hazardous Material includes:

- (a) Any "hazardous substance," as that term is defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 United States Code sections 9601-9675);
- (b) "Hazardous waste," as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA) (42 United States Code sections 6901-6992k);
- (c) Any pollutant, contaminant, or hazardous, dangerous, or toxic chemical, material, or substance, within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance, or material, now or hereafter in effect);
- (d) Petroleum products;
- (e) Radioactive material, including any source, special nuclear, or byproduct material as defined in 42 United States Code sections 2011-2297g-4;
- (f) Asbestos in any form or condition; and
- (g) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

#### ARTICLE 10

##### UTILITIES AND SERVICES

10.1 STANDARD UTILITIES AND SERVICES. Subject to applicable government rules, regulations, and guidelines and the rules or actions of the public utility furnishing the service, Tenant shall be responsible to pay for its usage on the 2nd and 3rd floors the following utilities and services on all days during the Lease Term, unless otherwise stated in the Lease:

10.1.1 HEATING AND AIR-CONDITIONING. Tenant shall pay the cost of heating and air conditioning in the Premises, as reasonably and solely determined by Tenant.

10.1.2 ELECTRICITY. Tenant shall pay electricity for lighting and power in the Premises. Landlord shall replace lamps, starters, and ballasts for Building standard lighting fixtures within the Premises on Tenant's request and at Tenant's expense. Tenant shall replace lamps, starters, and ballasts for non-Building standard lighting fixtures within the Premises at Tenant's expense.

10.1.3 WATER. Landlord shall provide city water from the regular Building outlets for drinking, lavatory, and toilet purposes.

10.1.4 JANITORIAL SERVICES. Tenant is to pay for its own janitorial services in and about the Premises on Mondays through Fridays, except on Holidays. Tenant is also responsible to provide janitorial services at

<PAGE> 22

its costs to any above-standard improvements installed in the Premises such as metallic trim, wood floor covering, glass panels, interior windows, kitchens, and executive workrooms.

10.2 OVERSTANDARD TENANT USE. Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal fractional horsepower office machines, or equipment or lighting other than building standard lights in the Premises that may affect the temperature otherwise maintained by the air-conditioning system or increase the water normally furnished to the Premises by Landlord under section 10.1. If such consent is given, Landlord shall have the right to install supplementary air-conditioning units or other facilities in the Premises, including supplementary or additional metering devices. On billing by Landlord, Tenant shall pay the cost for such supplementary facilities, including the cost of (a) installation, operation, and maintenance; (b) increased wear and tear on existing equipment; and (c) other similar charges. If Tenant uses water, electricity, heat, or air-conditioning in excess of that required to be supplied by Landlord under section 10.1, Tenant shall pay to Landlord, on billing, the cost of (a) the excess service; (b) installation, operation, and maintenance of equipment installed to supply the excess service; and (c) increased wear and tear on existing equipment caused by Tenant's excess consumption. Landlord may install devices to separately meter any increased use. On demand, Tenant shall pay the increased cost directly to Landlord, including the cost of the additional metering devices. Tenant's use of electricity shall never exceed the capacity of the feeders serving the Building and Premises or the risers or wiring installation. If Tenant wishes to use heat, ventilation, or air-conditioning during hours other than those for which Landlord is obligated to supply such utilities under section 10.1, Tenant shall give Landlord such prior notice as Landlord shall from time to time establish as appropriate, and Landlord shall supply such utilities to Tenant at an hourly cost to Tenant as Landlord shall from time to time establish. Amounts payable by Tenant to Landlord under this section 10.2 for use of additional utilities shall be considered Additional Rent under this Lease and shall be billed on a monthly basis.

10.3 INTERRUPTION OF UTILITIES. Except to the extent of Landlord's gross negligence or willful misconduct, Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services) or for diminution in the quality or quantity of any service when the failure, delay, or diminution is entirely or partially caused by:

- (a) Breakage, repairs, replacements, or improvements;
- (b) Strike, lockout, or other labor trouble;
- (c) Inability to secure electricity, gas, water, or other fuel at the Building after reasonable effort to do so;
- (d) Accident or casualty;
- (e) Act or default of Tenant or other parties; or
- (f) Any other cause beyond Landlord's reasonable control.

In any event, such failure, delay, or diminution shall not be considered to constitute an eviction or a disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease.

Landlord shall not be liable under any circumstances for a loss of or injury to property or for injury to or interference with Tenant's business, including loss of profits through, in connection with, or incidental to a failure to furnish any of the utilities or services under this Article 10.

Landlord may comply with mandatory or voluntary controls or guidelines promulgated by any government entity relating to the use or conservation of energy, water, gas, light, or electricity or the reduction of automobile or other emissions without creating any liability of Landlord to Tenant under this Lease as long as compliance with voluntary controls or guidelines does not materially and unreasonably interfere with Tenant's use of the Premises.

#### ARTICLE 11 REPAIRS AND MAINTENANCE

11.1 TENANT'S REPAIR AND MAINTENANCE OBLIGATIONS. Tenant shall, at Tenant's sole expense and in accordance with the terms of this Lease (including Article 12), keep the Premises (including all Tenant Improvements, Alterations, fixtures, and furnishings) in good order, repair, and condition at all times during the Lease Term. Under Landlord's supervision, subject to Landlord's prior approval, and within any reasonable period specified by Landlord, Tenant shall, at Tenant's sole expense and in accordance with the terms of this Lease (including Article 12) promptly and adequately repair all damage to the Premises and replace or repair all damaged or broken fixtures and appurtenances. At Landlord's option or if Tenant fails to make such repairs, Landlord may, but need not make the repairs and replacements. On receipt of an invoice from Landlord, Tenant shall pay Landlord Landlord's out-of-pocket costs incurred in connection with such repairs and replacements plus a percentage of such costs, to be uniformly established for the Building, sufficient to reimburse Landlord for all overhead, general conditions, fees, and other costs and expenses arising from Landlord's involvement with such repairs and replacements. Tenant waives and releases its rights, including its right to make repairs at Landlord's expense, under California Civil Code sections 1941-1942 or any similar law, statute, or ordinance now or hereafter in effect.

#### ARTICLE 12 ALTERATIONS AND ADDITIONS

12.1 LANDLORD'S CONSENT TO ALTERATIONS. Tenant may not make any improvements, alterations, additions, or changes to the Premises (Alterations) without obtaining Landlord's prior written consent.

12.1.1 CONSENT PROCEDURE; CONDITIONS. Tenant shall request such consent by written notice to Landlord, which must be accompanied by detailed and complete plans and specifications for the proposed work. As a condition of its consent to Alterations, Landlord may impose any requirements that Landlord considers desirable, including a requirement that Tenant provide Landlord with a surety bond, a letter of credit, or other financial assurance that the cost of the Alterations will be paid when due.

12.1.2 REASONABLE CONSENT. Landlord shall not unreasonably withhold its consent to proposed Alterations. The Alterations for which Landlord may reasonably withhold consent include those that would or could:

- (a) Affect the structure of the Building or any portion of the Building other than the interior of the Premises;
- (b) Affect the Base Building Systems (as defined below) of the Premises or Building;
- (c) Result in Landlord's being required under Laws and Orders to perform any work that Landlord could otherwise avoid or defer (Additional Required Work);
- (d) Result in an increase in the demand for utilities or services that Landlord is required to provide; or
- (e) Cause an increase in the premiums for hazard or liability insurance carried by Landlord. "Base Building Systems" means all systems and equipment (including plumbing; heating, ventilation, and air-conditioning; electrical; fire/life-safety; elevator; and security systems) that serve

all or part of the Building.

12.1.3 COSTS OF REVIEW. Tenant shall reimburse Landlord for the reasonable fees and costs of any architects, engineers, or other consultants retained by Landlord to review the proposed Alterations.

12.2 COMPLIANCE OF ALTERATIONS WITH LAWS AND INSURANCE REQUIREMENTS. Tenant shall cause all Alterations to comply with the following:

- (a) Applicable Laws and Orders;
- (b) Applicable requirements of a fire-rating bureau; or
- (c) Applicable requirements of Landlord's hazard insurance carrier to the extent that Tenant is informed of them.

19

<PAGE> 24

Tenant shall also comply with those requirements in the course of constructing the Alterations. Before beginning construction of any Alteration, Tenant shall obtain a valid building permit and any other permits required by any government entity having jurisdiction over the Premises. Tenant shall provide copies of those permits to Landlord before the work begins.

Tenant shall, at Tenant's sole expense, perform any Additional Required Work in the Premises, which shall be subject to the same requirements as any Alteration. If any Additional Required Work must be performed outside the Premises, Landlord may elect to perform that work at Tenant's expense. No consent by Landlord to any proposed work shall constitute a waiver of Tenant's obligations under this section 12.2.

12.3 MANNER OF CONSTRUCTION. Tenant shall build Alterations entirely within the Premises and in conformance with Landlord's construction rules and regulations, using only contractors and subcontractors approved in writing by Landlord. All work relating to any Alterations shall be done in a good and workmanlike manner, using new materials equivalent in quality to those used in the construction of the initial improvements to the Premises. All work shall be diligently prosecuted to completion.

Tenant shall ensure that all work is performed in a manner that does not obstruct access to or through the Building or its common areas and that does not interfere either with other tenants' use of their premises or with any other work being undertaken in the Building. Tenant shall take all measures necessary to ensure that labor peace is maintained at all times.

Within twenty (20) days after completion of any Alterations, Tenant shall deliver to Landlord a reproducible copy of the drawings of Alterations as built.

12.4 PAYMENT FOR ALTERATIONS. Tenant shall promptly pay all charges and costs incurred in connection with any Alteration, as and when required by the terms of any agreements with contractors, designers, or suppliers. At least seven (7) days before beginning construction of any Alteration, Tenant shall give Landlord written notice of the expected commencement date of that construction to permit Landlord to post and record a notice of nonresponsibility.

On completion of any Alteration, Tenant shall:

- (a) Cause a timely notice of completion to be recorded in the office of the recorder of the county in which the Building is located, in accordance with Civil Code section 3093 or any successor statute;
- (b) Deliver to Landlord evidence of full payment and unconditional



final waivers of all liens for labor, services, or materials;  
and

- (c) Pay to Landlord five percent (5% of the cost of constructing the Alteration to compensate Landlord for all overhead, costs, and expenses arising from Landlord's involvement with that work.

12.5 CONSTRUCTION INSURANCE. Before construction begins, Tenant shall deliver to Landlord reasonable evidence that damage to, or destruction of, the Alterations during construction will be covered either by the policies that Tenant is required to carry under Article 14 or by a policy of builder's all-risk insurance in an amount approved by Landlord.

If Landlord requires Tenant to provide builder's all-risk insurance for the proposed Alterations, Tenant shall provide a copy of the policy, any endorsements, and an original certificate of insurance that complies with subsection 14.9.2.

Tenant shall cause each contractor and subcontractor to maintain all workers' compensation insurance required by law and liability insurance (including property damage) in amounts reasonably required by Landlord. Tenant shall provide evidence of that insurance to Landlord before construction begins.

20

<PAGE> 25

12.6 LANDLORD'S PROPERTY. All Alterations, signs, fixtures, or equipment that may be installed or placed in or about the Premises from time to time shall be and become the property of Landlord on installation. Tenant may remove any trade fixtures or freestanding kitchen or office equipment that Tenant can substantiate to Landlord has not been paid for with any tenant improvement allowance funds provided to Tenant by Landlord. Tenant must repair any damage to the Premises and Building caused by that removal.

By written notice to Tenant either before expiration of the Lease Term or within a reasonable time after any earlier termination of this Lease, Landlord may require Tenant, at Tenant's sole expense, to remove any Alterations and restore the Premises to their configuration and condition before the Alterations were made provided that Landlord so conditioned its consent to such Alterations. If Tenant fails to complete that restoration before expiration of the Lease Term or, in the case of earlier termination, within fifteen (15) days after written notice from Landlord requesting the restoration, Landlord may do so and charge the cost of the restoration to Tenant.

12.7 INITIAL IMPROVEMENTS. The construction of any initial improvements to the Premises shall be governed by the terms of the Leasehold Improvement Agreement, attached to this Lease as Exhibit C, and not the terms of this Article 12.

### ARTICLE 13 COVENANT AGAINST LIENS

13.1 COVENANT AGAINST LIENS. Tenant shall not be the cause or object of any liens or allow such liens to exist, attach to, be placed on, or encumber Landlord's or Tenant's interest in the Premises, Building, or Real Property by operation of law or otherwise. Tenant shall not suffer or permit any lien of mechanics, material suppliers, or others to be placed against the Premises, Building, or Real Property with respect to work or services performed or claimed to have been performed for Tenant or materials furnished or claimed to have been furnished to Tenant or the Premises. Landlord has the right at all times to post and keep posted on the Premises any notice that it considers necessary for protection from such liens. At least seven (7) days before beginning construction of any Alteration or Tenant Improvements, Tenant shall give Landlord written notice of the expected commencement date of that construction

to permit Landlord to post and record a notice of nonresponsibility.

If any such lien attaches or Tenant receives notice of any such lien, Tenant shall cause the lien to be immediately released and removed of record. Despite any other provision of this Lease, if the lien is not released and removed within five (5) days after Landlord delivers notice of the lien to Tenant, Landlord may immediately take all action necessary to release and remove the lien, without any duty to investigate the validity of it. All expenses (including reasonable attorney fees) incurred by Landlord in connection with the lien shall be considered Additional Rent under this Lease and be immediately due and payable by Tenant.

ARTICLE 14  
EXCULPATION, INDEMNIFICATION, AND INSURANCE

14.1 DEFINITION OF "TENANT PARTIES" AND "LANDLORD PARTIES." For purposes of this Article 14, the term "Tenant Parties" refers singularly and collectively to Tenant and Tenant's officers, members, partners, agents, employees, and independent contractors as well as to all persons and entities claiming through any of these persons or entities. The term "Landlord Parties" refers singularly and collectively to Landlord and the partners, venturers, trustees, and ancillary trustees of Landlord and the respective officers, directors, shareholders, members, parents, subsidiaries, and any other affiliated entities, personal representatives, executors, heirs, assigns, licensees, invitees, beneficiaries, agents, servants, employees, lenders and independent contractors of these persons or entities.

14.2 EXCULPATION.

21

<PAGE> 26

14.2.1 EXCULPATION. To the fullest extent permitted by law, Tenant, on its behalf and on behalf of all Tenant Parties, waives all claims (in law, equity, or otherwise) against Landlord Parties arising out of, knowingly and voluntarily assumes the risk of, and agrees that Landlord Parties shall not be liable to Tenant Parties for any of the following:

- (a) Injury to or death of any person; or
- (b) Loss of, injury or damage to, or destruction of any tangible or intangible property, including the resulting loss of use, economic losses, and consequential or resulting damage of any kind from any cause. Landlord Parties shall not be liable under this clause regardless of whether the liability results from any active or passive act, error or omission, ; or is based on claims in which liability without fault or strict liability is imposed or sought to be imposed on any of the Landlord Parties. This exculpation clause shall not apply to claims against Landlord Parties to the extent that a final judgment of a court of competent jurisdiction establishes that the injury, loss, damage, or destruction was approximately caused by Landlord Parties' fraud, gross negligence, willful injury to person or property, or violation of law.

14.2.2 SURVIVAL OF EXCULPATION. The clauses of this section 14.2 shall survive the expiration or earlier termination of this Lease until all claims within the scope of this section 14.2 are fully, finally, and absolutely barred by the applicable statutes of limitations.

14.2.3 TENANT'S ACKNOWLEDGMENT OF FAIRNESS. Tenant acknowledges that this section 14.2 was negotiated with Landlord, that the consideration for it is fair and adequate, and that Tenant had a fair opportunity to negotiate, accept, reject, modify, or alter it.

14.2.4 NO EXCULPATION FOR NONDELEGABLE DUTIES. This exculpation clause may not be interpreted or construed as an attempt by Landlord to be relieved of liability arising out of a nondelegable duty on the part of Landlord.

14.2.5 WAIVER OF CIVIL CODE SECTION 1542. With respect to the exculpation provided in this Article 14, Tenant waives the benefits of Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

#### 14.3 INDEMNIFICATION.

14.3.1 TENANT'S INDEMNIFICATION OF LANDLORD PARTIES. To the fullest extent permitted by law, Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend, and hold harmless Landlord Parties from and against all Claims, as defined in subsection 14.3.2, from any cause, arising out of or relating (directly or indirectly) to this Lease, the tenancy created under this Lease, or the Premises, except to the extent caused by Landlord, including:

(a) The use or occupancy, or manner of use or occupancy, of the Premises or Building by Tenant Parties;

(b) Any act, error, omission, or negligence of Tenant Parties or of any invitee, guest, or licensee of Tenant in, on, or about the Real Property;

(c) Tenant's conducting of its business;

(d) Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Tenant Parties in, at, or about the Premises or Building, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Lease Commencement Date or enacted, promulgated, or issued after the date of this Lease; and

(e) Any breach or default in performance of any obligation on Tenant's part to be performed under this Lease, whether before or during the Lease Term or after its expiration or earlier termination.

14.3.2 DEFINITION OF CLAIMS. For purposes of this Lease, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, law or equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and attorney fees actually incurred).

14.3.3 TYPE OF INJURY OR LOSS. This indemnification extends to and includes Claims for:

(a) Injury to any persons (including death at any time resulting from that injury);

(b) Loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and

(c) All economic losses and consequential or resulting damage of any kind.

14.3.4 ACTIVE OR PASSIVE NEGLIGENCE; STRICT LIABILITY. Except as provided in this subsection 14.3.4, the indemnification in subsection 14.3.1 shall apply regardless of the active or passive negligence of Landlord Parties and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on Landlord Parties. The indemnification in subsection 14.3.1 shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against one Landlord Party was proximately caused by the willful misconduct of that Landlord Party. In that event, however, this indemnification shall remain valid for all other Landlord Parties.

14.3.5 INDEMNIFICATION INDEPENDENT OF INSURANCE OBLIGATIONS. The indemnification provided in this Article 14 may not be construed or interpreted as in any way restricting, limiting, or modifying Tenant's insurance or other obligations under this Lease and is independent of Tenant's insurance and other obligations. Tenant's compliance with the insurance requirements and other obligations under this Lease shall not in any way restrict, limit, or modify Tenant's indemnification obligations under this Lease.

14.3.6 ATTORNEY FEES. The prevailing party shall be entitled to recover its actual attorney fees and court costs incurred in enforcing the indemnification clauses set forth in this section 14.3.

14.3.7 SURVIVAL OF INDEMNIFICATION. The clauses of this section 14.3 shall survive the expiration or earlier termination of this Lease until all claims against Landlord Parties involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

14.3.8 DUTY TO DEFEND. Tenant's duty to defend Landlord Parties is separate and independent of Tenant's duty to indemnify Landlord Parties. The duty to defend includes claims for which Landlord Parties may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Tenant Parties have been determined. The duty to defend applies immediately, regardless of whether Landlord Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the parties that Landlord Parties be entitled to obtain summary adjudication or summary judgment regarding Tenant's duty to defend Landlord Parties at any stage of any claim or suit within the scope of this section 14.3.

14.4 COMPLIANCE WITH INSURER REQUIREMENTS. Tenant shall, at Tenant's sole expense, comply with all requirements, guidelines, rules, orders, and similar mandates and directives pertaining to the use of the Premises and the Building, whether imposed by Tenant's insurers, landlord's insurers, or both. If Tenant's business operations, conduct, or use of the Premises or the Building cause any increase in the premium for any insurance policies carried by Landlord, Tenant shall, within ten (10) business days after receipt of written notice from Landlord, reimburse Landlord for the increase. Tenant shall, at Tenant's sole expense, comply with all rules, orders, regulations, or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and of any similar body.

14.5 TENANT'S LIABILITY COVERAGE. Subject only to section 31.12, Tenant shall, at Tenant's sole expense, maintain the coverages set forth in this section 14.5.

14.5.1 COMMERCIAL GENERAL LIABILITY INSURANCE. Tenant shall obtain commercial general liability insurance written on an "occurrence" policy form, covering bodily injury, property damage, personal injury, and advertising injury arising out of or relating (directly or indirectly) to Tenant's business operations, conduct, assumed liabilities, or use or occupancy of the Premises or the Building.

14.5.2 BROAD FORM COVERAGE. Tenant's liability coverage shall include all the

coverages typically provided by the Broad Form Comprehensive General Liability Endorsement, including broad form property damage coverage (which shall include coverage for completed operations). Tenant's liability coverage shall further include premises-operations coverage, products-completed operations coverage, owners and contractors protective coverage (when reasonably required by landlord), and the broadest available form of contractual liability coverage. It is the parties' intent that Tenant's contractual liability coverage provide coverage to the maximum extent possible of Tenant's indemnification obligations under this Lease.

14.5.3 PRIMARY INSURED. Tenant shall be the first or primary named insured.

14.5.4 ADDITIONAL INSUREDS. Landlord Parties and any lender of Landlord shall be named by endorsement as additional insureds under Tenant's general liability coverage. The additional insured endorsement must be on ISO Form CG 20 11 11 85 or an equivalent acceptable to Landlord, with such modifications as Landlord may require.

14.5.5 CROSS-LIABILITY; SEVERABILITY OF INTERESTS. Tenant's general liability policies shall be endorsed as needed to provide cross-liability coverage for Tenant, Landlord, and any lender of Landlord and to provide severability of interests.

14.5.6 PRIMARY INSURANCE ENDORSEMENTS FOR ADDITIONAL INSUREDS. Tenant's general liability policies shall be endorsed as needed to provide that the insurance afforded by those policies to the additional insureds is primary and that all insurance carried by Landlord Parties is strictly excess and secondary and shall not contribute with Tenant's liability insurance.

14.5.7 SCOPE OF COVERAGE FOR ADDITIONAL INSUREDS. The coverage afforded to Landlord and any lender of Landlord must be at least as broad as that afforded to Tenant and may not contain any terms, conditions, exclusions, or limitations applicable to Landlord or any lender of Landlord that do not apply to Tenant.

14.5.8 DELIVERY OF CERTIFICATE, POLICY, AND ENDORSEMENTS. Before the Lease Commencement Date, Tenant shall deliver to Landlord the endorsements referred to in this section 14.5 as well as a certified copy of Tenant's liability policy or policies and an original certificate of insurance, executed by an authorized agent of the insurer or insurers, evidencing compliance with the liability insurance requirements. The certificate shall provide for no less than thirty (30) days' advance written notice to Landlord from the insurer or insurers of any cancellation, nonrenewal, or material change in coverage or available limits of liability and shall confirm compliance with the liability insurance requirements in this Lease.

The "endeavor to" and "failure to mail such notice shall impose no obligation or liability of any kind upon the Company" language and any similar language shall be stricken from the certificate.

14.5.9 CONCURRENCY OF PRIMARY, EXCESS, AND UMBRELLA POLICIES. Tenant's liability insurance coverage may be provided by a combination of primary, excess, and umbrella policies, but those policies must be absolutely concurrent in all respects regarding the coverage afforded by the policies. The coverage of any excess or umbrella policy must be at least as broad as the coverage of the primary policy.

14.5.10 LIABILITY LIMITS. The minimum acceptable limits of liability for Tenant's liability insurance are set forth in Summary of Basic Lease Information section 10.

14.5.11 "PER LOCATION" ENDORSEMENT. Tenant shall, at Tenant's sole expense, procure a "per location" endorsement or equivalent reasonably acceptable to Landlord so that the general aggregate and other limits apply separately and specifically to the Premises.

14.5.12 SURVIVAL OF INSURANCE REQUIREMENTS. Tenant shall, at Tenant's sole expense, maintain in full force and effect the liability insurance coverages required under this Lease and shall maintain Landlord Parties and any lender specified by Landlord as additional insureds, as required by subsection 14.5.4 of this lease, for a period of no less than two (2) years after expiration or earlier termination of this Lease.

14.6 TENANT'S WORKERS' COMPENSATION AND EMPLOYER LIABILITY COVERAGE. Tenant shall procure and maintain workers' compensation insurance as required by law and employer's liability insurance with limits of no less than ONE-MILLION DOLLARS (\$1,000,000).

14.7 TENANT'S FIRST PARTY INSURANCE. Tenant shall, at Tenant's sole expense, procure and maintain the first party insurance coverages described in this section 14.7.

14.7.1 TENANT'S PROPERTY INSURANCE. Tenant shall procure and maintain property insurance coverage for:

- (a) All office furniture, trade fixtures, office equipment, merchandise, and all other items of Tenant's property in, on, at, or about the Premises and the Building, including property installed by, for, or at the expense of Tenant;
- (b) "Tenant Improvements," as defined in the Leasehold Improvement Agreement; and
- (c) All other improvements, betterments, alterations, and additions to the Premises.

Tenant's property insurance must fulfill the following requirements:

- (a) It must be written on the broadest available "all-risk" (special-causes-of-loss) policy form or an equivalent form acceptable to Landlord;
- (b) It must include earthquakes as a covered cause of loss;
- (c) It must include an agreed-amount endorsement for no less than one-hundred (100) percent of the full replacement cost (new without deduction for depreciation) of the covered items and property; and
- (d) The amounts of coverage must meet any coinsurance requirements of the policy or policies.

It is the parties' intent that Tenant shall structure its property insurance program so that no coinsurance penalty shall be imposed and there shall be no valuation shortfalls or disputes with any insurer or with Landlord. The property insurance coverage shall include vandalism and malicious mischief coverage, sprinkler leakage coverage, and earthquake sprinkler leakage coverage.

14.7.2 BUSINESS INCOME AND EXTRA EXPENSE COVERAGE. Tenant shall further procure and maintain business income (business interruption) insurance and extra expense coverage with coverage amounts that shall reimburse Tenant for all direct or indirect loss of income and charges and costs incurred arising out of all perils insured against by Tenant's property insurance coverage, including prevention of, or denial of use of or access to, all or part of the Premises or the Building, as a result of those perils.

The business income and extra expense coverage shall provide coverage for no less than twelve (12) months of the loss of income, charges, and costs contemplated under the Lease and shall be carried in amounts necessary to avoid any coinsurance penalty that could apply. The business income and extra expense

coverage shall be issued by the insurer that issues Tenant's other first party coverage.

14.8 OTHER TENANT INSURANCE COVERAGE. Tenant shall, at Tenant's sole expense, procure and maintain any other and further insurance coverages that Landlord or Landlord's lender may reasonably require as a result of changing market conditions or additional risks to the extent such coverages are available on commercially reasonable terms.

14.9 FORM OF POLICIES AND ADDITIONAL REQUIREMENTS.

14.9.1 INSURANCE INDEPENDENT OF EXCULPATION AND INDEMNIFICATION. The insurance requirements set forth in sections 14.4-14.10 are independent of Tenant's exculpation, indemnification, and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit, or modify Tenant's exculpation, indemnification, and other obligations or to limit Tenant's liability under this Lease.

14.9.2 FORM OF POLICIES. In addition to the requirements set forth in subsection 14.5.8, the insurance required of Tenant under this Article 14 must:

- (a) Name Landlord and any other party Landlord specifies by endorsement as an additional insured;
- (b) Be issued by an insurance company with a rating of no less than A-VIII in the current Best's Insurance Guide, or that is otherwise acceptable to Landlord, and admitted to engage in the business of insurance in the State of California;
- (c) Be primary insurance for all claims under it and provide that any insurance carried by Landlord Parties and Landlord lenders is strictly excess, secondary, and noncontributing with any insurance carried by Tenant; and
- (d) Provide that insurance may not be canceled, nonrenewed, or the subject of material change in coverage or available limits of coverage, except on thirty (30) days' prior written notice to Landlord and Landlord's lenders.

14.9.3 TENANT'S DELIVERY OF POLICY, ENDORSEMENTS, AND CERTIFICATES. Tenant shall deliver the policy or policies, along with any endorsements to them and certificates required by this Article 14, to Landlord:

- (a) On or before the Lease Commencement Date;
- (b) At least thirty (30) days before the expiration date of any policy; and
- (c) On renewal of any policy.

14.9.4 DEDUCTIBLES AND SELF-INSURED RETENTIONS. All deductibles and self-insured retentions under Tenant's policies are subject to Landlord's prior written approval.

14.10 WAIVER OF SUBROGATION. Landlord and Tenant agree to cause the insurance companies issuing their respective property (first party) insurance to waive any subrogation rights that those companies may have against Tenant or Landlord, respectively, as long as the insurance is not invalidated by the waiver. If the waivers of subrogation are contained in their respective insurance policies, Landlord and Tenant waive any right that either may have against the other on account of any loss or damage to their respective property to the extent that the loss or damage is insured under their respective insurance policies.

ARTICLE 15

## DAMAGE AND DESTRUCTION

15.1 REPAIR OF DAMAGE BY LANDLORD. Tenant agrees to notify Landlord in writing promptly of any damage to the Premises resulting from fire, earthquake, or any other identifiable event of a sudden, unexpected, or unusual nature (Casualty). If the Premises are damaged by a Casualty or any common areas of the Building providing access to the Premises are damaged to the extent that Tenant does not have reasonable access to the Premises and if neither Landlord nor Tenant has elected to terminate this Lease under section 15.3 or 15.4, Landlord shall promptly and diligently restore at Landlord's sole cost and expense such common areas of the Base Building and the Tenant Improvements in place on the Lease Execution Date to substantially the same condition as existed before the Casualty, except for modifications required by building codes and other laws and except for any other reasonable modifications to the common areas considered desirable by Landlord. In making these modifications, Landlord shall not materially impair Tenant's access to the Premises. Landlord's obligation to restore is subject to reasonable delays for insurance adjustment and other matters beyond Landlord's reasonable control and subject to the other clauses of this Article 15. If Tenant requests that Landlord modify the Tenant Improvements in connection with the rebuilding, Landlord may condition its consent to those modifications on:

- (a) Tenant's payment to Landlord before construction is begun of any sums in excess of the amount of insurance proceeds received by Landlord that are needed to complete the Tenant Improvements; and
- (b) Confirmation by Landlord's architect or contractor that the modifications will not materially increase the scope of work or the time necessary to complete the Tenant Improvements.

15.2 REPAIR PERIOD NOTICE. Landlord shall, within the later of (a) sixty (60) days after the date on which Landlord determines the full extent of the damage caused by the Casualty or (b) thirty (30) days after Landlord has determined the extent of the insurance proceeds available to effectuate repairs, provide written notice to Tenant indicating the reasonably anticipated period for repairing the Casualty (Repair Period Notice). The Repair Period Notice shall also state, if applicable, Landlord's election either to repair or to terminate the Lease under section 15.3.

15.3 LANDLORD'S OPTION TO TERMINATE OR REPAIR. Landlord may elect either to terminate this Lease or to effectuate repairs if:

- (a) The Repair Period Notice reasonably estimates that the period for repairing the Casualty exceeds two-hundred and seventy (270) days from the date of the commencement of the repair;
- (b) The estimated repair cost exceeds the insurance proceeds, if any, available for such repair, plus any amount that Tenant is obligated or elects to pay for such repair;
- (c) The estimated repair cost of the Premises or the Building, even though covered by insurance, exceeds fifty percent (50%) of the full replacement cost; or
- (d) The Building cannot be restored except in a substantially different structural or architectural form than existed before the Casualty.

Landlord's election shall be stated in the Repair Period Notice.

15.4 TENANT'S OPTION TO TERMINATE. If the Repair Period Notice provided by Landlord indicates that the anticipated period for repairing the Casualty exceeds two-hundred and seventy (270) days, Tenant may elect to terminate this Lease by providing written notice (Tenant's Termination Notice) to Landlord within ten (10) days after receiving the Repair Period Notice. If Tenant does



not elect to terminate within this ten-day (10-day) period, Tenant shall be considered to have waived the option to terminate.

15.5 RENT ABATEMENT DUE TO CASUALTY. Landlord and Tenant agree that, if the Casualty was not the result of the gross negligence or willful misconduct of Tenant or Tenant's employees, contractors, licensees, or invitees, Tenant shall be provided with a proportionate abatement of Rent based on the Rentable Square Footage of the Premises rendered unusable (due to physical damage to the Premises or Base Building Systems or the unavailability of access to the Premises) and not used by Tenant, but only to the extent that Landlord is reimbursed from the proceeds of rental interruption insurance purchased by Landlord as a part of Operating Expenses. That proportional abatement, if any, shall be provided during the period beginning on the later of (a) the date of the Casualty or (b) the date on which Tenant ceases to occupy the Premises and ending on the date of Substantial Completion of Landlord's restoration obligations as provided in this Article 15. Subject to section 15.4, the Rent abatement provided in this section 15.5 is Tenant's sole remedy due to the occurrence of the Casualty. Landlord shall not be liable to Tenant or any other person or entity for any direct, indirect, or consequential damage (including but not limited to lost profits of Tenant or loss of or interference with Tenant's business), whether or not caused by the negligence of Landlord or Landlord's employees, contractors, licensees, or invitees, due to, arising out of, or as a result of the Casualty (including but not limited to the termination of the Lease in connection with the Casualty). Tenant agrees to maintain business interruption insurance in amounts and with coverage no less than that required by subsection 14.7.2 to provide coverage regarding such matters.

15.6 DAMAGE NEAR END OF TERM. Despite any other provision of this Article 15, if the Premises or the Building is destroyed or damaged by a Casualty during the last eighteen (18) months of the Lease Term and Landlord reasonably anticipates that the time to make repairs exceeds ninety days, then either Tenant or Landlord shall have the option to terminate this Lease by giving written notice to the other of the exercise of that option within thirty (30) days after that damage or destruction.

15.7 EFFECTIVE DATE OF TERMINATION; RENT APPORTIONMENT. If Landlord or Tenant elects to terminate this Lease under this Article 15 in connection with a Casualty, this termination shall be effective thirty (30) days after delivery of notice of such election. Tenant shall pay Rent, properly apportioned up to the date of the Casualty. After the effective date of the termination, Landlord and Tenant shall be discharged of all future obligations under this Lease, except for those provisions that, by their terms, survive the expiration or earlier termination of the Lease. . Any Prepaid Rent which has not been earned shall also be timely refunded and the Security Deposit shall be returned pursuant to Article 6.

15.8 WAIVER OF STATUTORY PROVISIONS. The provisions of this Lease, including those in this Article 15, constitute an express agreement between Landlord and Tenant that applies in the event of any Casualty to the Premises, Building, or Real Property. Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4), for any rights or obligations concerning a Casualty.

#### ARTICLE 16 CONDEMNATION

16.1 DEFINITION OF "CONDEMNATION." As used in this Lease, the term "Condemnation" means a permanent taking through (a) the exercise of any government power (by legal proceedings or otherwise) by any public or quasi-public authority or by any other party having the right of eminent domain (Condemnor) or (b) a voluntary sale or transfer by Landlord to any Condemnor, either under threat of exercise of eminent domain by a Condemnor or while legal proceedings for condemnation are pending.

16.2 EFFECT ON RIGHTS AND OBLIGATIONS. If during the Lease Term or the

period between the date of execution of this Lease and the date on which the Lease Term begins, there is any Condemnation of all or part of the Premises, Building, or Real Property on which the Premises and Building are constructed, the rights and obligations of the parties shall be determined under this Article 16, and Rent shall not be affected or abated except as expressly provided in this Article. Landlord shall notify Tenant in writing of any Condemnation within thirty (30) days after the later of (a) the filing of a complaint by Condemnor or (b) the final agreement and determination by Landlord and Condemnor of the extent of the taking (Condemnation Notice).

16.3 TERMINATION OF LEASE.

16.3.1 DEFINITION OF "TERMINATION DATE." The "Termination Date" shall be the earliest of:

- (a) The date on which Condemnor takes possession of the property that is subject to the Condemnation;
- (b) The date on which title to the property subject to the Condemnation is vested in Condemnor;
- (c) If Landlord has elected to terminate, the date on which Landlord requires possession of the property in connection with the Condemnation, as specified in written notice delivered to Tenant no less than thirty (30) days before that date; or
- (d) If Tenant has elected to terminate, thirty (30) days after Landlord's receipt of written notice of termination from Tenant. If both Landlord and Tenant have elected to terminate under

28

<PAGE> 33

this Article 16, the Termination Date shall be the earliest of the dates described in subparagraphs (a)-(c).

16.3.2 AUTOMATIC TERMINATION. If the Premises are totally taken by Condemnation, this Lease shall terminate as of the Termination Date, and the Condemnation Award shall be allocated between Landlord and Tenant in accordance with section 16.5.

16.3.3 LANDLORD'S RIGHT TO TERMINATE. Landlord shall have the option to terminate this Lease if:

- (a) Ten percent (10%) or more of the Rentable Square Feet of the Building or the Premises is taken through Condemnation;
- (b) Any portion of the Building or Real Property necessary for Landlord to operate the Building efficiently is taken through Condemnation; or
- (c) Any other areas providing access to the Premises or Building are taken through Condemnation. To elect to terminate the Lease under this subsection 16.3.3, Landlord must provide written notice of its election (Landlord's Taking Termination Notice) to Tenant within thirty (30) days after the later of (a) the filing of a complaint by Condemnor or (b) the final agreement and determination by Landlord and Condemnor of the extent of the taking. In that event, this Lease shall be terminated on the Termination Date, and all Rent shall be prorated to that date. If Landlord does not elect to terminate under this subsection 16.3.3, Landlord shall, subject to subsection 16.3.4, be obligated to the extent of severance

damages received by Landlord to reasonably restore (to the extent feasible) the Premises or access to the Premises, subject to Landlord's obtaining all necessary approvals, permits, and authorizations relating to such work.

16.3.4 TENANT'S RIGHT TO TERMINATE.

16.3.4.1 GROUNDS; TERMINATION NOTICE. Tenant shall have the option to terminate this Lease by providing thirty (30) days' written notice to Landlord if one or both of the following are taken through Condemnation:

- (a) Twenty-five percent (25%) or more of the Usable Square Feet of the Premises; or
- (b) Any portion of the Building that provides Tenant with its access to the Premises and that, if taken, would eliminate Tenant's access to the Premises. Tenant's notice must be given within thirty (30) days after Tenant's receipt of the Condemnation Notice required by section 16.2.

16.3.4.2 LANDLORD'S RESTORATION NOTICE. Despite Tenant's termination right, this Lease shall continue in full force and effect if Landlord gives Tenant written notice (Restoration Notice) within thirty (30) days after the date on which the nature and extent of the Condemnation are finally determined, stating that:

- (a) Landlord shall, at Landlord's sole expense, reconfigure the remaining Premises or provide alternative, reasonable access to Tenant so that the area of the Premises shall be substantially the same after the Condemnation and Tenant shall have reasonable access to the Premises after the Condemnation;
- (b) Landlord shall begin the restoration as soon as reasonably practicable; and
- (c) Landlord has reasonably determined that such restoration can be completed within ninety (90) days after the date of the notice.

16.3.5 TENANT'S WAIVER. Tenant agrees that its rights to terminate this Lease due to partial Condemnation are governed by this Article 16. Tenant waives all rights it may have under California Code of Civil Procedure section 1265.130, or otherwise, to terminate this Lease based on a partial Condemnation.

29

<PAGE> 34

16.3.6 PRORATION OF RENT. If this Lease is terminated under this Article 16, the termination shall be effective on the Termination Date, and Landlord shall prorate Rent to that date. Tenant shall be obligated to pay Rent for the period up to, but not including, the Termination Date as prorated by Landlord. Landlord shall return to Tenant prepaid Rent allocable to any period on or after the Termination Date. Any Prepaid Rent which has not been earned shall also be timely refunded and the Security Deposit shall be returned pursuant to Article 6.

16.4 EFFECT OF CONDEMNATION IF LEASE IS NOT TERMINATED. If any part of the Premises is taken by Condemnation and this Lease is not terminated, Rent shall be proportionately reduced based on the Rentable Square Footage of the Premises taken. Landlord and Tenant agree to enter into an amendment to this Lease within thirty (30) days after the partial taking, confirming the reduction in Rentable Square Footage of the Premises and the reduction in Rent. If Landlord gives Tenant a timely Restoration Notice under subsection 16.3.4.2, this Lease shall continue in full force and effect without any reduction of Rent (unless the Premises as restored are smaller than the existing Premises, in which case Rent shall be proportionately reduced based on the reduced Rentable Square Footage),

except that Rent shall be abated for the portion of the Premises not usable by Tenant until Landlord completes the restoration as provided in the Restoration Notice.

16.5 ALLOCATION OF AWARD.

16.5.1 LANDLORD'S RIGHT TO AWARD. Except as provided in subsection 16.5.2 in connection with a Condemnation:

- (a) Landlord shall be entitled to receive all compensation and anything of value awarded, paid, or received in settlement or otherwise (Award); and
- (b) Tenant irrevocably assigns and transfers to Landlord all rights to and interests in the Award and fully releases and relinquishes any claim to, right to make a claim on, or interest in the Award, including any amount attributable to any excess of the market value of the Premises for the remainder of the Lease Term over the present value as of the Termination Date of the Rent payable for the remainder of the Term (commonly referred to as the "bonus value" of the Lease).

16.5.2 TENANT'S RIGHT TO COMPENSATION. Despite subsection 16.5.1, Tenant shall have the right to make a separate claim in the Condemnation proceeding, as long as the Award payable to Landlord is not reduced thereby, for:

- (a) The taking of the unamortized or undepreciated value of any leasehold improvements owned by Tenant that Tenant has the right to remove at the end of the Lease Term and that Tenant elects not to remove;
- (b) Reasonable removal and relocation costs for any leasehold improvements that Tenant has the right to remove and elects to remove (if Condemnor approves of the removal); and
- (c) Relocation costs under Government Code section 7262, the claim for which Tenant may pursue by separate action independent of this Lease.

16.6 TEMPORARY TAKING. If a temporary taking of part of the Premises occurs through (a) the exercise of any government power (by legal proceedings or otherwise) by Condemnor or (b) a voluntary sale or transfer by Landlord to any Condemnor, either under threat of exercise of eminent domain by a Condemnor or while legal proceedings for condemnation are pending, Rent shall abate during the time of such taking in proportion to the portion of the Premises taken. The entire Award relating to the temporary taking shall be and remain the property of Landlord. Tenant irrevocably assigns and transfers to Landlord all rights to and interest in the Award and fully releases and relinquishes any claim to, right to make a claim on, and any other interest in the Award.

ARTICLE 17

ASSIGNMENT AND SUBLEASING

17.1 RESTRICTED TRANSFERS.

17.1.1 CONSENT REQUIRED; DEFINITION OF "TRANSFER." Tenant shall obtain Landlord's written consent before entering into or permitting any Transfer. A "Transfer" consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law, or otherwise:

- (a) Any assignment, mortgage, pledge, encumbrance, or other

transfer of any interest in this Lease;

- (b) Any sublease or occupancy of any portion of the Premises by any persons other than Tenant and its employees; and
- (c) Any of the changes (e.g., a change of ownership or reorganization) included in the definition of Transfer in section 17.7.

Any person to whom any Transfer is made or sought to be made is a "Transferee."

17.1.2 LANDLORD'S REMEDIES. If a Transfer fails to comply with this Article 17, Landlord may, at its option, do either or both of the following: (a) void the Transfer or (b) declare Tenant in material and incurable default under section 22.1 notwithstanding any cure period specified in section 22.1.

#### 17.2 TRANSFER PROCEDURE.

17.2.1 TRANSFER NOTICE. Before entering into or permitting any transfer, Tenant shall provide to Landlord a written "Transfer Notice" at least thirty days before the proposed effective date of the Transfer. The Transfer Notice shall include all of the following:

- (a) Information regarding the proposed Transferee, including the name, address, and ownership of Transferee; the nature of Transferee's business; Transferee's character and reputation; and Transferee's current financial statements (certified by an officer, a partner, or an owner of Transferee);
- (b) All the terms of the proposed Transfer, including the consideration payable by Transferee; the portion of the Premises that is subject to the Transfer (Subject Space); a general description of any planned alterations or improvements to the Subject Space; the proposed use of the Subject Space; the effective date of the Transfer; a calculation of the "Transfer Premium," as defined in subsection 17.4.2, payable in connection with the Transfer; and a copy of all documentation concerning the proposed Transfer;
- (c) Any other information or documentation reasonably requested by Landlord; and
- (d) An executed estoppel certificate from Tenant in the form attached to this Lease as Exhibit F.

17.2.2 APPLICATION FEE; TRANSFER FEE. As a condition to the effectiveness of the Transfer Notice, Tenant shall, when providing a Transfer Notice, pay an application fee of \$1,000.00 toward Landlord's administrative and other costs in reviewing and processing the Transfer Notice. In addition, within thirty (30) days after Landlord's written request, Tenant shall pay as Additional Rent any reasonable legal fees that Landlord incurs in reviewing and processing the Transfer Notice (Transfer Fee). Such reasonable legal fees shall not exceed \$1,500 for such counsel's initial review of the request. Tenant shall pay the application fee whether or not Landlord consents to the Transfer.

17.2.3 LIMITS OF CONSENT. If Landlord consents to any Transfer and does not exercise its rights under section 17.5, the following limits apply:

- (a) Landlord does not agree to waive or modify the terms and conditions of this Lease.
- (b) Landlord does not consent to any further Transfer by either Tenant or Transferee.

&lt;PAGE&gt; 36

- (c) Tenant remains liable under this Lease, and any guarantor of the Lease remains liable under the guaranty.
- (d) Tenant may enter into that Transfer in accordance with this Article 17 if:
  - (1) The Transfer occurs within six (6) months after Landlord's consent;
  - (2) The Transfer is on substantially the same terms as specified in the Transfer Notice;
  - (3) Tenant delivers to Landlord, promptly after execution, an original, executed copy of all documentation pertaining to the Transfer in a form reasonably acceptable to Landlord (including in the case of a sublease Transferee's agreement to be subject and subordinate to the Lease and to assume Tenant's obligations under the Lease to the extent applicable to the Subject Space).
- (e) If the Transfer occurs after six (6) months or the terms of the Transfer have materially changed from those in the Transfer Notice, Tenant shall submit a new Transfer Notice under subsection 17.2.1, requesting Landlord's consent, and the Subject Space shall again be subject to Landlord's rights, if any, under section 17.5. A material change is one the terms or which would have entitled Landlord to refuse to consent to the Transfer initially or would cause the proposed Transfer to be more favorable to Transferee than the terms in the original Transfer Notice.

### 17.3 LANDLORD'S CONSENT.

17.3.1 REASONABLE CONSENT. Landlord may not unreasonably withhold its consent to any proposed Transfer that complies with this Article 17. Reasonable grounds for denying consent include any of the following:

- (a) Transferee's character, reputation, credit history, or business is not consistent with the character or quality of the Building;
- (b) Transferee would significantly detract from the prestige of the Building than Tenant;
- (c) Transferee is either a government agency or an instrumentality of one;
- (d) Transferee's intended use of the Premises is inconsistent with the Permitted Use or will materially and adversely affect Landlord's interest;
- (e) Transferee's financial condition is or may be inadequate to support the Lease obligations of Transferee under the Transfer documents;
- (f) The Transfer would cause Landlord to violate another lease or agreement to which Landlord is a party or would give a Building tenant the right to cancel its lease;
- (g) Transferee occupies space in the Building and such space is not contiguous to the Premises, is negotiating with Landlord

to lease space in the Building, or has negotiated with Landlord during the six (6) months immediately preceding the Transfer Notice;

- (h) Transferee does not intend to occupy the entire Premises and conduct business there for a substantial portion of the term of the Transfer; or
- (i) The rent charged by Tenant to Transferee during the term of that Transfer, using a present-value analysis, is less than ninety percent (90%) of the rent then being quoted by Landlord for comparable space in the Building for a comparable term (Quoted Rent), using a present value analysis.

17.3.2 LANDLORD'S WRITTEN RESPONSE. Within twenty days after receipt of a Transfer Notice that complies with subsection 17.2.1, Landlord shall approve or disapprove the proposed Transfer in writing.

17.3.3 [Omitted]

17.3.4 TENANT'S INDEMNITY. Tenant shall indemnify, defend, and hold harmless Landlord from and against all Claims by any proposed Transferee and its agents and brokers arising out of or relating (directly or indirectly) to a proposed Transfer.

17.4 TRANSFER PREMIUM.

32

<PAGE> 37

17.4.1 TRANSFER PREMIUM PAYMENT. As a reasonable condition to Landlord's consent to any Transfer, Tenant shall pay to Landlord sixty percent (60%) of any Transfer Premium, as defined in subsection 17.4.2.

17.4.2 DEFINITION OF "TRANSFER PREMIUM." "Transfer Premium" means all base rent, additional rent, and other consideration payable by Transferee to Tenant (including key money and bonus money and any payment in excess of fair market value for services rendered by Tenant to Transferee or assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with the Transfer (Transferee Rent)), after deducting the Rent payable by Tenant under this Lease (excluding the Transfer Premium) for the Subject Space (Tenant Rent) and Tenant's reasonable costs of reletting, including legal fees, advertising costs and the amortization over the remaining Lease Term of any brokerage commissions and tenant improvement allowance. If part of the Transfer Premium is payable by Transferee other than in cash, Landlord's share of that noncash consideration shall be in a form reasonably satisfactory to Landlord.

17.4.3 MONTHLY PAYMENT OF TRANSFER PREMIUM; CALCULATION. Tenant shall pay the Transfer Premium on a monthly basis, together with its payment of Additional Rent under Article 5. In calculating the Transfer Premium, Tenant Rent, Transferee Rent, and Quoted Rent, the parties shall first adjust the rent to the actual effective rent to be paid, taking into consideration any and all leasehold concessions, including any rent credit and tenant improvement allowance. For purposes of calculating the effective rent, all those concessions shall be amortized on a straight-line basis over the relevant term.

17.4.4 AUDIT OF TRANSFER PREMIUM. On Landlord's request, Tenant shall furnish a complete statement, certified by an independent certified public accountant or Tenant's chief financial officer, describing in detail the computation of any Transfer Premium that Tenant has derived or will derive from the Transfer. If Landlord's independent certified public accountant finds that the Transfer Premium for any Transfer has been understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, the Late Charge and interest and Landlord's costs of that audit.

17.5 LANDLORD'S OPTION TO RECAPTURE SPACE.

17.5.1 LANDLORD'S RECAPTURE RIGHT. Despite any other provision of this Article 17, Landlord has the option, by written notice to Tenant (Recapture Notice) within twenty days after receiving any Transfer Notice, to recapture the Subject Space by terminating this Lease for the Subject Space or taking an assignment or a sublease of the Subject Space from Tenant. Landlord shall not have the right to Recapture where the proposed Transfer is for an undemised and small portion of the Premises for less than one year, however. A timely Recapture Notice terminates this Lease or creates an assignment or a sublease for the Subject Space for the same term as the proposed Transfer, effective as of the date specified in the Transfer Notice. If Landlord declines or fails timely to deliver a Recapture Notice, Landlord shall have no further right under this section 17.5 to the Subject Space unless it becomes available again after Transfer by Tenant.

17.5.2 CONSEQUENCES OF RECAPTURE. To determine the new Base Rent under this Lease if Landlord recaptures the Subject Space, the original Base Rent under the Lease shall be multiplied by a fraction, the numerator of which is the Rentable Square Feet of the Premises retained by Tenant after Landlord's recapture and the denominator of which is the total Rentable Square Feet of the Premises before Landlord's recapture. The Additional Rent, to the extent that it is calculated on the basis of the Rentable Square Feet within the Premises, shall be reduced to reflect Tenant's proportionate share based on the Rentable Square Feet of the Premises retained by Tenant after Landlord's recapture. This Lease as so amended shall continue thereafter in full force and effect. Either party may require written confirmation of the amendments to this Lease necessitated by Landlord's recapture of the Subject Space. If Landlord recaptures the Subject Space, Landlord shall, at Landlord's sole expense, construct any partitions required to segregate the Subject Space from the remaining Premises retained by Tenant.

33

<PAGE> 38

Tenant shall, however, pay for painting, covering, or otherwise decorating the surfaces of the partitions facing the remaining Premises retained by Tenant.

17.6 RIGHT TO COLLECT RENT. If this Lease is assigned, Landlord may collect Rent directly from Transferee. If all or part of the Premises is subleased and Tenant defaults, Landlord may collect Rent directly from Transferee. Landlord may then apply the amount collected from Transferee to Tenant's monetary obligations under this Lease. Collecting Rent from a Transferee or applying that Rent to Tenant's monetary obligations does not waive any provisions of this Article 17.

17.7 TRANSFERS OF OWNERSHIP INTERESTS AND OTHER ORGANIZATIONAL CHANGES.

17.7.1 CHANGE OF OWNERSHIP; REORGANIZATION. For purposes of this Article 17, "Transfer" also includes:

- (a) If Tenant is a partnership or limited liability company:
  - (1) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a twelve-month (12-month) period of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or
  - (2) The dissolution of the partnership or limited liability company without its immediate reconstitution.



(b) If Tenant is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

- (1) The sale or other transfer, within a twelve-month (12-month) period, of more than an aggregate of twenty-five percent (25%) of the voting shares of Tenant (other than to immediate family members by reason of gift or death) except in connection with an initial public offering of shares in Tenant or other financing of Tenant in which additional shares are sold to Accredited Investors;
- (2) The sale, mortgage, hypothecation, or pledge, within a twelve-month (12-month) period, of more than an aggregate of twenty-five percent (25%) of the value of Tenant's unencumbered assets; or
- (3) The dissolution, merger, consolidation, or other reorganization of Tenant.

17.7.2 TRANSFER TO AFFILIATE. Despite any other provision of this Lease, Landlord's consent is not required for any Transfer to an Affiliate, as defined in subsection 17.7.3, as long as the following conditions are met:

- (a) At least ten (10) business days before the Transfer, Landlord receives written notice of the Transfer (as well as any documents or information reasonably requested by Landlord regarding the Transfer or Transferee);
- (b) The Transfer is not a subterfuge by Tenant to avoid its obligations under the Lease;
- (c) If the Transfer is an assignment, Transferee assumes in writing all of Tenant's obligations under this Lease relating to the Subject Space; and
- (d) Transferee has a tangible net worth, as evidenced by financial statements delivered to Landlord and certified by an independent certified public accountant in accordance with generally accepted accounting principles that are consistently applied (Net Worth), at least equal to Tenant's Net Worth either immediately before the Transfer or as of the date of this Lease, whichever is greater.

34

<PAGE> 39

17.7.3 DEFINITION OF "AFFILIATE." An "Affiliate" means any entity that controls, is controlled by, or is under common control with Tenant. "Control" means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the entity's affairs.

17.7.4 SALES OF SHARES IN TENANT. In the event that Tenant offers for sale in a private placement prior to its initial public offering, shares of its preferred stock (a "Private Financing"), Tenant shall use commercially reasonable efforts to provide Landlord with the opportunity to participate as a purchaser in such Private Financing at a level to be determined by the Tenant, provided that Landlord is an accredited investor at such time.

17.8 RESTRICTIONS ON MARKETING THE SPACE. Tenant may not enter into any listing agreement for marketing the Subject Space other than through the

exclusive leasing agent designated by Landlord for the Building, if any. Tenant may not promote or advertise the availability of the Subject Space unless Landlord has approved Tenant's advertising or promotional materials in writing. Tenant shall use reasonable efforts to lease the available space on terms comparable to the market rents then applicable for primary office space (rather than sublease market rates).

ARTICLE 18  
SURRENDER OF PREMISES

18.1 SURRENDER OF PREMISES. No act of Landlord or its authorized representatives shall constitute Landlord's acceptance of a surrender of the Premises by Tenant unless that intent is specifically acknowledged in a writing signed by Landlord. At the option of Landlord, a surrender and termination of this Lease shall operate as an assignment to Landlord of all subleases or subtenancies. Landlord shall exercise this option by giving notice of that assignment to all subtenants within ten (10) days after the effective date of the surrender and termination.

18.2 REMOVAL OF TENANT PROPERTY BY TENANT. Subject to Articles 15 and 16, on the expiration or earlier termination of the Lease Term, Tenant shall quit the Premises and surrender possession to Landlord in accordance with this section 18.2. Tenant shall leave the Premises in as good order and condition as when Tenant took possession of the Premises, except for reasonable wear and tear and repairs that are specifically made the responsibility of Landlord. Subject to Articles 15 and 16, on expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises:

- (a) All debris and rubbish;
- (b) Any items of furniture, equipment, freestanding cabinet work, and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises;
- (c) Any similar articles of any other persons claiming under Tenant that Landlord, in Landlord's sole discretion, requires to be removed; and
- (d) Any Alterations that Tenant is required to remove under Article 12.

Tenant shall, at Tenant's sole expense, repair all damage or injury that may occur to the Premises or the Building caused by Tenant's removal of those items and shall restore the Premises and Building to their original condition.

ARTICLE 19  
HOLDING OVER

19.1 HOLDOVER RENT. If Tenant remains in possession of the Premises after expiration or earlier termination of this Lease with Landlord's express written consent, Tenant's occupancy shall be a month-to-month tenancy at a rent agreed on by Landlord and Tenant but in no event less than the Base Rent and Additional Rent payable under this Lease during the last full month before the date of expiration or earlier termination of this Lease. The month-to-month tenancy shall be on the terms and conditions of this Lease except as provided in (a) the preceding sentence and (b) the lease clauses concerning lease term, and extension rights. Landlord's acceptance of rent after such holding over with Landlord's written consent shall not result in any other tenancy or in a renewal of the original term of this Lease. If Tenant remains in possession of the Premises after expiration or earlier termination of this Lease without Landlord's consent, Tenant's continued possession shall be on the basis of a tenancy at sufferance and Tenant shall pay as rent during the holdover period an amount equal to the greater of:

- (a) One-hundred and fifty percent (150%) of the fair market rental (as reasonably determined by Landlord) for the Premises; or
- (b) Two-hundred percent (200%) of the Base Rent and Additional Rent payable under this Lease for the last full month before the date of expiration or termination.

19.2 NO CONSENT OR WAIVER IMPLIED. Nothing in this Article 19 shall be construed as implied consent by Landlord to any holding over by Tenant. Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease on expiration or other termination of this Lease. The provisions of this Article 19 shall not be considered to limit or constitute a waiver of any other rights or remedies of Landlord provided in this Lease or at law.

#### ARTICLE 20 ESTOPPEL CERTIFICATES

20.1 TENANT'S OBLIGATION TO PROVIDE ESTOPPEL CERTIFICATES. Within ten (10) days after a written request by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, substantially in the form of Exhibit F (or other form required by any existing or prospective lender, mortgagee, or purchaser of all or part of the Building), indicating in the certificate any exceptions to the statements in the certificate that may exist at that time. The certificate shall also contain any other information reasonably requested by Landlord or any existing or prospective lender, mortgagee, or purchaser.

20.2 ADDITIONAL REQUESTED DOCUMENTS OR INSTRUMENTS. Within ten (10) days after a written request by Landlord, Tenant shall execute and deliver whatever other documents or instruments may be reasonably required for sale or financing purposes, including (if requested by Landlord) a current financial statement and financial statements for the two (2) years preceding the current financial statement year. In addition, in connection with Landlord's determination of the security deposit requirements during the Option Term pursuant to Section 3.5, Landlord may require that Tenant provide financial statements for the two (2) years preceding the current financial statement year. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited by an independent certified public accountant.

20.3 FAILURE TO DELIVER. Tenant's failure to execute or deliver an estoppel certificate in the required time period shall constitute an acknowledgment by Tenant that the statements included in the estoppel certificate are true and correct, without exception. Tenant's failure to execute or deliver an estoppel certificate or other document or instrument required under this Article 20 in a timely manner shall be a material breach of this Lease.

#### ARTICLE 21 SUBORDINATION, NONDISTURBANCE, AND ATTORNMEN

21.1 AUTOMATIC SUBORDINATION. This Lease is subject and subordinate to:

- (a) The lien of any mortgages, deeds of trust, or other encumbrances (Encumbrances) of the Building and Real Property;

36

<PAGE> 41

- (b) All present and future ground or underlying leases (Underlying Leases) of the Building and Real Property now or hereafter in force against the Building and Real Property;
- (c) All renewals, extensions, modifications, consolidations, and replacements of the items described in subparagraphs (a)-(b); and

- (d) All advances made or hereafter to be made on the security of the Encumbrances.

Despite any other provision of this Article 21, any Encumbrance holder or lessor may elect that this Lease shall be senior to (or be junior to) and have priority over that Encumbrance or Underlying Lease whether this Lease is dated before or after the date of the Encumbrance or Underlying Lease.

21.2 SUBORDINATION AGREEMENT; AGENCY. This subordination is self-operative, and no further instrument of subordination shall be required to make it effective. To confirm this subordination, however, Tenant shall, within five (5) days after Landlord's request, execute any further instruments or assurances in recordable form that Landlord reasonably considers necessary to evidence or confirm the subordination or superiority of this Lease to any such Encumbrances or Underlying Leases; provided, however, that with respect to any Encumbrances and Underlying Leases entered into after the Lease Commencement Date, Tenant shall enter into such third party's proposed subordination documentation on the condition that such third party agree not to disturb Tenant while Tenant is not in default of this Lease. Tenant irrevocably appoints Trina L. Yun, Asset Manager of Landlord, (or any replacement asset manager) as Tenant's agent to execute and deliver in the name of Tenant any such instrument(s) if Tenant fails to do so. This authorization shall in no way relieve Tenant of the obligation to execute such instrument(s) of subordination or superiority. Tenant's failure to execute and deliver such instrument(s) shall constitute a default under this Lease. Landlord agrees to use reasonable efforts to cause the holders of Encumbrances and Underlying Leases existing on the Lease Commencement Date to enter into subordination and nondisturbance documentation with Tenant in a form reasonably acceptable to such holders.

21.3 ATTORNMENT. Tenant covenants and agrees to attorn to the transferee of Landlord's interest in the Real Property by foreclosure, deed in lieu of foreclosure, exercise of any remedy provided in any Encumbrance or Underlying Lease, or operation of law (without any deductions or setoffs), if requested to do so by the transferee, and to recognize the transferee as the lessor under this Lease; provided that such transferee agrees not to disturb Tenant while Tenant is not in default of this Lease. Unless the transferee expressly assumes the following obligations, the transferee shall not be liable for:

- (a) Any acts, omissions, or defaults of Landlord that occurred before the sale or conveyance; or
- (b) The return of any prepaid rent or security deposit except for rent and deposits actually paid to the transferee.

21.4 NOTICE OF DEFAULT; RIGHT TO CURE. Tenant agrees to give written notice of any default by Landlord to the holder of any prior Encumbrance or Underlying Lease. Tenant agrees that, before it exercises any rights or remedies under the Lease, the lienholder or lessor shall have the right, but not the obligation, to cure the default within the same time, if any, given to Landlord to cure the default, plus an additional thirty (30) days. Tenant agrees that this cure period shall be extended by the time necessary for the lienholder to begin foreclosure proceedings and to obtain possession of the Building or Real Property, as applicable, but not beyond an additional thirty days if the default materially interferes with Tenant's use of the Premises.

DEFAULTS AND REMEDIES

22.1 TENANT'S DEFAULT. The occurrence of any of the following shall constitute a default by Tenant under this Lease:

- (a) Tenant's failure to pay when due any Rent required to be paid under this Lease if the failure continues for three (3) days after written notice of the failure from Landlord to Tenant;
- (b) Tenant's failure to provide any instrument or assurance as required by section 21.2 or estoppel certificate as required by section 20.1 if the failure continues for five (5) days after written notice of the failure from Landlord to Tenant;
- (c) Tenant's failure to perform any other obligation under this Lease if the failure continues for thirty days after written notice of the failure from Landlord to Tenant; or such longer reasonable period necessary to cure such default if Tenant promptly commences and diligently pursues cure after notice from Landlord not to exceed an additional sixty days if the default materially interferes with Landlord's ability to use, finance or transfer the Real Property.
- (d) Tenant's abandonment of the Premises, including Tenant's absence from the Premises for seven consecutive days (excluding Saturdays, Sundays, and California legal holidays) while in default of any material provision of this Lease, including the obligation to pay Rent;
- (e) To the extent permitted by law:
  - (1) A general assignment by Tenant or any guarantor of the Lease for the benefit of creditors;
  - (2) The filing by or against Tenant, or any guarantor, of any proceeding under an insolvency or bankruptcy law, unless (in the case of an involuntary proceeding) the proceeding is dismissed within sixty (60) days;
  - (3) The appointment of a trustee or receiver to take possession of all or substantially all the assets of Tenant or any guarantor, unless possession is unconditionally restored to Tenant or that guarantor within thirty (30) days and the trusteeship or receivership is dissolved;
  - (4) Any execution or other judicially authorized seizure of all or substantially all the assets of Tenant located on the Premises, or of Tenant's interest in this Lease, unless that seizure is discharged within thirty (30) days;
- (f) The committing of waste on the Premises; or
- (g) Tenant's failure to occupy the Premises within ten (10) business days after the Premises are ready for occupancy.

22.2 [OMITTED]

22.3 LANDLORD'S REMEDIES ON TENANT'S DEFAULT. On the occurrence of a default by Tenant, Landlord shall have the right to pursue any one or more of the following remedies in addition to any other remedies now or later available to Landlord at law or in equity. These remedies are not exclusive but cumulative.

22.3.1 TERMINATION OF LEASE. Landlord may terminate this Lease and recover possession of the Premises. Once Landlord has terminated this Lease, Tenant shall immediately surrender the Premises to Landlord. On termination of this

Lease, Landlord may recover from Tenant all of the following:

- (a) The worth at the time of the award of any unpaid Rent that had been earned at the time of the termination, to be computed by allowing interest at the rate set forth in Article 24 but in no case greater than the maximum amount of interest permitted by law;
- (b) The worth at the time of the award of the amount by which the unpaid Rent that would have been earned between the time of the termination and the time of the award exceeds the amount of unpaid Rent that Tenant proves could reasonably have been avoided, to be computed by allowing interest at the rate set forth in Article 24 but in no case greater than the maximum amount of interest permitted by law;
- (c) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of the award exceeds the amount of unpaid Rent that Tenant proves could reasonably have been avoided, to be computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%);
- (d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform obligations under this Lease, including brokerage commissions and advertising expenses, expenses of remodeling the Premises for a new tenant (whether for the same or a different use), and any special concessions made to obtain a new tenant; and
- (e) Any other amounts, in addition to or in lieu of those listed above, that may be permitted by applicable law.

22.3.2 CONTINUATION OF LEASE IN EFFECT. Landlord shall have the remedy described in Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign (subject only to reasonable limitations), the landlord may continue the lease in effect after the tenant's breach and abandonment and recover Rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

22.3.3 TENANT'S SUBLEASES. Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, Landlord may:

- (a) Terminate any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Premises.
- (b) Choose to succeed to Tenant's interest in such an arrangement. If Landlord elects to succeed to Tenant's interest in such an arrangement, Tenant shall, as of the date of notice by Landlord of that election, have no further right to, or interest in, the Rent or other consideration receivable under that arrangement.

22.4 FORM OF PAYMENT AFTER DEFAULT. If Tenant fails to pay any amount due under this Lease within three (3) days after the due date or if Tenant draws a check on an account with insufficient funds, Landlord shall have the right to require that any subsequent amounts paid by Tenant to Landlord under this Lease (to cure a default or otherwise) be paid in the form of cash, money order, cashier's or certified check drawn on an institution acceptable to Landlord, or other form approved by Landlord despite any prior practice of accepting payments in a different form.

22.5 EFFORTS TO RELET. For purposes of this Article 22, Tenant's right to possession shall not be considered to have been terminated by Landlord's efforts to relet the Premises, by Landlord's acts of

39

<PAGE> 44

maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests under this Lease. This list is merely illustrative of acts that may be performed by Landlord without terminating Tenant's right to possession.

22.6 ACCEPTANCE OF RENT WITHOUT WAIVING RIGHTS. Under Article 25, Landlord may accept Tenant's payments without waiving any rights under this Lease, including rights under a previously served notice of default. If Landlord accepts payments after serving a notice of default, Landlord may nevertheless commence and pursue an action to enforce rights and remedies under the previously served notice of default without giving Tenant any further notice or demand.

22.7 TENANT'S REMEDIES ON LANDLORD'S DEFAULT. Tenant waives any right to terminate this Lease on Landlord's default under this Lease. Tenant's sole remedy on Landlord's default is an action for damages or injunctive or declaratory relief.

#### ARTICLE 23 LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS

23.1 LANDLORD'S RIGHT TO PERFORM TENANT'S OBLIGATIONS. All obligations to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's expense and without any reduction of Rent. If Tenant's failure to perform an obligation continues for five (5) days after notice to Tenant, Landlord may perform the obligation on Tenant's behalf, without waiving Landlord's rights for Tenant's failure to perform any obligations under this Lease and without releasing Tenant from such obligations.

23.2 REIMBURSEMENT BY TENANT. Within fifteen (15) days after receiving a statement from Landlord, Tenant shall pay to Landlord the amount of expense reasonably incurred by Landlord, under section 23.1, in performing Tenant's obligation.

#### ARTICLE 24 LATE PAYMENTS

24.1 LATE CHARGES. If any Rent payment is not received by Landlord or Landlord's designee within five (5) days after that Rent is due, Tenant shall pay to Landlord a late charge of \$2500 for Base Rent and seven and one half of any other sum due as liquidated damages, in lieu of actual damages (other than interest under section 24.2 and attorney fees and costs under section 27.1). Tenant shall pay this amount for the first month in which all or any part of any Rent payment remains delinquent for more than five (5) days after the due date. The parties agree that this late charge represents a reasonable estimate of the expenses that Landlord will incur because of any late payment of Rent (other than interest and attorney fees and costs). Landlord's acceptance of any liquidated damages shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the rights and remedies available to Landlord under this Lease. Tenant shall pay the late charge as Additional Rent with the next installment of Rent.

24.2 INTEREST. If any Rent payment is not received by Landlord or Landlord's designee within five (5) days after that Rent is due, Tenant shall pay to Landlord interest on the past-due amount, from the date due until paid, at the rate of ONE PERCENT PER MONTH (OR ANY LOWER LEGAL MAXIMUM). Despite any other provision of this Lease, the total liability for interest payments shall not

exceed the limits, if any, imposed by the usury laws of the State of California. Any interest paid in excess of those limits shall be refunded to Tenant by application of the amount of excess interest paid against any sums outstanding in any order that Landlord requires. If the amount of excess interest paid exceeds the sums outstanding, the portion exceeding those sums shall be refunded in cash to Tenant by Landlord. To ascertain whether any interest payable exceeds the limits imposed, any nonprincipal payment (including late charges) shall be considered to the extent permitted by law to be an expense or a fee, premium, or penalty rather than interest.

40

<PAGE> 45

ARTICLE 25  
NONWAIVER

25.1 NONWAIVER. No waiver of any provision of this Lease shall be implied by any failure of Landlord to enforce any remedy for the violation of that provision, even if that violation continues or is repeated. Any waiver by Landlord of any provision of this Lease must be in writing. Such written waiver shall affect only the provision specified and only for the time and in the manner stated in the writing.

25.2 ACCEPTANCE AND APPLICATION OF PAYMENT; NOT ACCORD AND SATISFACTION. No receipt by Landlord of a lesser payment than the Rent required under this Lease shall be considered to be other than on account of the earliest amount due, and no endorsement or statement on any check or letter accompanying a payment or check shall be considered an accord and satisfaction. Landlord may accept checks or payments without prejudice to Landlord's right to recover all amounts due and pursue all other remedies provided for in this Lease. Landlord's receipt of monies from Tenant after giving notice to Tenant terminating this Lease shall in no way reinstate, continue, or extend the Lease Term or affect the Termination Notice given by Landlord before the receipt of those monies. After serving notice terminating this Lease, filing an action, or obtaining final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of that Rent shall not waive or affect such prior notice, action, or judgment.

ARTICLE 26  
WAIVER OF RIGHT TO JURY TRIAL;  
DISPUTE RESOLUTION

26.1 WAIVER OF RIGHT TO JURY TRIAL. Landlord and Tenant waive their respective rights to trial by jury of any contract or tort claim, counterclaim, cross-complaint, or cause of action in any action, proceeding, or hearing brought by either party against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises, including any claim of injury or damage or the enforcement of any remedy under any current or future law, statute, regulation, code, or ordinance.

\_\_\_\_\_[Landlord's initials]      \_\_\_\_\_[Tenant's initials]

26.2 RESOLVING DISAGREEMENT OVER FAIR MARKET RENTAL VALUE. If Tenant timely and effectively objects to Landlord's determination of Fair Market Rental Value or to Landlord's determination of the Security Deposit for the Option Term, under subsection 1.6.4 or 3.5.2.4, the disagreement shall be resolved under this section 26.2. For purposes of this Section 26.2, references to "Fair Market Rental Value" shall also refer to the Security Deposit during the Option Period, if the amount of the Security Deposit is disputed.

26.2.1 NEGOTIATED AGREEMENT. Landlord and Tenant shall diligently attempt in good faith to agree on the Fair Market Rental Value on or before the tenth (10th) day after Tenant's objection to the Fair Market Rental Value (Outside Agreement Date).



26.2.2 PARTIES' SEPARATE DETERMINATIONS. If Landlord and Tenant fail to reach agreement on or before the Outside Agreement Date, Landlord and Tenant shall each make a separate determination of the Fair Market Rental Value and notify the other party of this determination within five (5) days after the Outside Agreement Date.

26.2.2.1 TWO DETERMINATIONS. If each party makes a timely determination of the Fair Market Rental Value, those determinations shall be submitted to arbitration in accordance with subsections 26.2.3.1-26.2.3.9.

26.2.2.2 ONE DETERMINATION. If Landlord or Tenant fails to make a determination of the Fair Market Rental Value within the five-day (5-day) period, that failure shall be conclusively considered to

41

<PAGE> 46

be that party's approval of the Fair Market Rental Value submitted within the five-day (5-day) period by the other party.

26.2.3 ARBITRATION. If both parties make timely individual determinations of the Fair Market Rental Value under subsection 26.2.2, the Fair Market Rental Value shall be determined by arbitration under this subsection 26.2.3.

26.2.3.1 SCOPE OF ARBITRATION. The determination of the arbitrator(s) shall be limited to the sole issue of whether Landlord's or Tenant's submitted Fair Market Rental Value is the closest to the actual Fair Market Rental Value as determined by the arbitrator(s), taking into account the requirements of section 1.7 or subsection 3.5.2.

26.2.3.2 QUALIFICATIONS OF ARBITRATOR(S). The arbitrator(s) must be a licensed real estate broker/a licensed real estate appraiser who has been active in the leasing/appraisal of commercial high-rise properties in the San Francisco Downtown Financial District area over the five-year (5-year) period ending on the date of appointment as arbitrator(s).

26.2.3.3 PARTIES' APPOINTMENT OF ARBITRATORS. Within fifteen (15) days after the Outside Agreement Date, Landlord and Tenant shall each appoint one arbitrator and notify the other party of the arbitrator's name and business address.

26.2.3.4 APPOINTMENT OF THIRD ARBITRATOR. If each party timely appoints an arbitrator, the two (2) arbitrators shall, within ten (10) days after the appointment of the second arbitrator, agree on and appoint a third arbitrator (who shall be qualified under the same criteria set forth above for qualification of the initial two (2) arbitrators) and provide notice to Landlord and Tenant of the arbitrator's name and business address.

26.2.3.5 ARBITRATORS' DECISION. Within thirty (30) days after the appointment of the third arbitrator, the three (3) arbitrators shall decide whether the parties will use Landlord's or Tenant's submitted Fair Market Rental Value and shall notify Landlord and Tenant of their decision. The decision of the majority of the three (3) arbitrators shall be binding on Landlord and Tenant.

26.2.3.6 IF ONLY ONE ARBITRATOR IS APPOINTED. If either Landlord or Tenant fails to appoint an arbitrator within fifteen (15) days after the Outside Agreement Date, the arbitrator timely appointed by one of them shall reach a decision and notify Landlord and Tenant of that decision within thirty (30) days after the arbitrator's appointment. The arbitrator's decision shall be binding on Landlord and Tenant.

26.2.3.7 IF ONLY TWO ARBITRATORS ARE APPOINTED. If each party appoints an arbitrator in a timely manner, but the two (2) arbitrators fail to agree on and appoint a third arbitrator within the required period, the arbitrators shall be dismissed without delay and the issue of Fair Market Rental Value shall be

submitted to binding arbitration under the commercial/real estate arbitration rules of arbitration service to be determined, subject to the provisions of this section 26.2.

26.2.3.8 IF NO ARBITRATOR IS APPOINTED. If Landlord and Tenant each fail to appoint an arbitrator in a timely manner, the matter to be decided shall be submitted without delay to binding arbitration under the commercial/real estate arbitration rules of the American Arbitration Association subject to the provisions of this section 26.2.

26.2.3.9 COST OF ARBITRATION. The cost of the arbitration shall be paid by the losing party.

## ARTICLE 27

### ATTORNEY FEES AND COSTS

27.1 ATTORNEY FEES AND COSTS. If either party undertakes litigation or arbitration against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to recover from the

42

<PAGE> 47

other party all reasonable attorney fees, arbitration costs, and court costs incurred. The prevailing party shall be determined under Civil Code section 1717(b) (1) or any successor statute.

## ARTICLE 28

### LANDLORD'S ACCESS TO PREMISES

28.1 LANDLORD'S ACCESS TO PREMISES. Landlord and its agents shall have the right at all reasonable times after reasonable notice to enter the Premises to:

- (a) Inspect the Premises;
- (b) Show the Premises to prospective purchasers, mortgagees, or tenants or to ground lessors or underlying lessors;
- (c) Serve, post, and keep posted notices required by law or that Landlord considers necessary for the protection of Landlord or the Building; or
- (d) Make repairs, replacements, alterations, or improvements to the Premises or Building that Landlord considers necessary or desirable.

Despite any other provision of this Article 28, Landlord may enter the Premises at any time to:

- (a) Perform services required of Landlord on an emergency basis;
- (b) Take possession due to any breach of this Lease; or
- (c) Perform any covenants of Tenant that Tenant fails to perform.

Tenant shall reasonably cooperate with Landlord during such access.

28.2 TENANT'S WAIVER. Landlord may enter the Premises without the abatement of Rent and may take steps to accomplish the stated purposes. Tenant waives any claims for damages caused by Landlord's entry, including damage claims for:

- (a) Injuries;

- (b) Inconvenience to or interference with Tenant's business;
- (c) Lost profits; and
- (d) Loss of occupancy or quiet enjoyment of the Premises.

28.3 METHOD OF ENTRY. For entry as permitted by this Article 28, Landlord shall at all times have a key or, if applicable, a card key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes, and special security areas designated in Summary of Basic Lease Information section 4(d). In an emergency situation, Landlord shall have the right to use any means that Landlord considers proper to open the doors in and to the Premises. Any such entry into the Premises by Landlord shall not be considered a forcible or unlawful entry into, or a detainer of, the Premises or an actual or constructive eviction of Tenant from any portion of the Premises.

#### ARTICLE 29 SIGNS

29.1 BUILDING NAME; LANDLORD'S SIGNAGE RIGHTS. Landlord may at any time change the name of the Building and install, affix, and maintain all signs on the exterior and interior of the Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not have or acquire any property right or interest in the name of the Building. Tenant may use the name of the Building or pictures or illustrations of the Building in advertising or other publicity during the Lease Term.

29.2 TENANT'S SIGNAGE RIGHTS WITHIN BUILDING.

29.2.1 SINGLE-TENANT FLOOR. If the Premises comprise an entire floor of the Building, Tenant may, at Tenant's sole expense, install identification signs (including its logo) anywhere in the Premises, including the elevator lobby of the Premises, subject to the following requirements:

43

<PAGE> 48

- (a) Tenant must obtain Landlord's prior written approval for such signs, which Landlord may, in Landlord's sole discretion, grant or deny;
- (b) All signs must be in keeping with the quality, design, and style of the Building; and
- (c) No sign may be visible from the exterior of the Building.

29.2.2 MULTI-TENANT FLOOR. If other tenants occupy space on the floor on which the Premises are located, Tenant's identifying signs shall be provided by Landlord at Tenant's expense. The signs shall be comparable to those used by Landlord for other similar floors in the Building and shall comply with Landlord's Building standard signage program.

29.2.3 PROHIBITED SIGNS AND OTHER ITEMS. Tenant may not display any signs on the exterior or roof of the Building or in the common areas of the Building or the Real Property. Tenant may not install or display any signs, window coverings, blinds (even if located behind the Landlord-approved window coverings for the Building), or other items visible from the exterior of the Premises without Landlord's prior written approval, which Landlord may, in Landlord's sole discretion, grant or withhold. Any signs, notices, logos, pictures, names, or advertisements that are installed by or for Tenant without Landlord's approval may be removed without notice by Landlord at Tenant's expense.

#### ARTICLE 30

#### TENANT PARKING

This Article was intentionally deleted from this Lease. No parking rights or privileges are included in this Lease.

#### ARTICLE 31 MISCELLANEOUS

31.1 CAPTIONS. The captions of articles and sections and the table of contents of this Lease are for convenience only and have no effect on the interpretation of the provisions of this Lease.

31.2 WORD USAGE. Unless the context clearly requires otherwise:

- (a) The plural and singular numbers shall each be considered to include the other;
- (b) The masculine, feminine, and neuter genders shall each be considered to include the others;
- (c) "Shall," "will," "must," "agrees," and "covenants" are each mandatory;
- (d) "May" is permissive;
- (e) "Or" is not exclusive; and
- (f) "Includes" and "including" are not limiting.

31.3 COUNTING DAYS. Days shall be counted by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or legal holiday as described in Government Code sections 6700-6701, the time for performance of that obligation shall be extended to 5 p.m. of the first following date that is not a Saturday, Sunday or legal holiday. Any act required by this Lease to be performed by a certain day shall be timely performed if completed before 5 p.m. local time on that date. If the day for performance of any obligation under this Lease is a Saturday, Sunday, or legal holiday, the time for performance of that obligation shall be extended to 5 p.m. local time on the first following date that is not a Saturday, Sunday, or legal holiday.

31.4 ENTIRE AGREEMENT; AMENDMENTS. This Lease and all exhibits , addenda, schedules, and agreements referred to in this Lease constitute the final, complete, and exclusive statement of the terms of the agreement between Landlord and Tenant pertaining to Tenant's lease of 2nd and 3rd floors in the Building and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Lease by, and neither party is relying on, any

44

<PAGE> 49

representation or warranty outside those expressly set forth in this Lease. This Lease may be amended only by an agreement in writing signed by Landlord and Tenant.

31.5 EXHIBITS. The Exhibits and Addendum, if applicable, attached to this Lease are a part of this Lease and incorporated into this Lease by reference.

31.6 REASONABLENESS AND GOOD FAITH. Except as limited elsewhere in this Lease, whenever this Lease requires Landlord or Tenant to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed.

31.7 PARTIAL INVALIDITY. If a court or arbitrator of competent jurisdiction holds any Lease clause to be invalid or unenforceable in whole or in part for

any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected .

31.8 BINDING EFFECT. Subject to Article 17 and sections 31.16-31.17, this Lease shall bind and benefit the parties to this Lease and their legal representatives and successors in interest.

31.9 INDEPENDENT COVENANTS. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations under this Lease, Tenant shall not be entitled:

- (a) To make any repairs or perform any acts at Landlord's expense;  
or
- (b) To any setoff of the Rent or other amounts owing under this Lease against Landlord.

The foregoing, however, shall in no way impair Tenant's right to bring a separate action against Landlord for any violation by Landlord of the provisions of this Lease if notice is first given to Landlord and any lender of whose address Tenant has been notified, and an opportunity is granted to Landlord and that lender to correct those violations as provided in section 21.4 and subsection 22.7.1.

31.10 GOVERNING LAW. This Lease shall be construed and enforced in accordance with the laws of the State of California.

31.11 NOTICES. All notices (including requests, demands, approvals, or other communications) under this Lease shall be in writing.

31.11.1 METHOD OF DELIVERY. Notice shall be sufficiently given at the addresses specified in section 13 of the Basic Lease Provisions for all purposes as follows:

- (a) When personally delivered to the recipient, notice is effective on delivery.
- (b) When mailed first class to the last address of the recipient known to the party giving notice, notice is effective on delivery.
- (c) When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- (d) When delivered by overnight delivery Federal Express/Airborne/United Parcel Service/DHL WorldWide Express with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- (e) When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice, notice is effective on receipt as long as (1) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery or (2) the receiving party delivers a written

day if it is received after 5 p.m. (recipient's time) or on a nonbusiness day.

31.11.2 REFUSED, UNCLAIMED, OR UNDELIVERABLE NOTICES. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service.

31.11.3 ADDRESSES. Addresses for purposes of giving notice are set forth in section 13 of the Summary of Basic Lease Information. Either party may change its address or telex or fax number by giving the other party notice of the change in any manner permitted by this section 31.11.

31.11.4 LENDERS AND GROUND LESSOR. If Tenant is notified of the identity and address of Landlord's lender or ground or underlying lessor and requested to provide notice to same, Tenant shall give that lender or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease.

31.12 FORCE MAJEURE. If performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor, or materials or reasonable substitutes for those items; government actions; civil commotions; fire or other casualty; or other causes beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused but not beyond one hundred eighty days. Tenant's obligation to pay Rent, however, is not excused by this section 31.12.

31.13 TIME OF THE ESSENCE. Time is of the essence of this Lease and each of its provisions.

31.14 MODIFICATIONS REQUIRED BY LANDLORD'S LENDER. If any lender of Landlord or ground lessor of the Real Property requires a modification of this Lease that will not increase Tenant's cost or expense or materially or adversely change Tenant's rights and obligations, this Lease shall be so modified and Tenant shall execute whatever documents are required and deliver them to Landlord within ten (10) days after the request.

31.15 RECORDING; MEMORANDUM OF LEASE. Except as provided in this section 31.15, neither this Lease nor any memorandum, affidavit, or other writing relating to this Lease may be recorded by Tenant or anyone acting through, under, or on behalf of Tenant. Recordation in violation of this provision constitutes an act of default by Tenant. On request by Landlord or any lender or ground lessor, Tenant shall execute a short form of Lease for recordation, containing (among other customary provisions) the names of the parties and a description of the Premises and the Lease Term. Tenant shall execute, acknowledge before a notary public, and deliver that form to Landlord within ten (10) days after the request.

31.16 LIABILITY OF LANDLORD. Except as otherwise provided in this Lease or applicable law, for any breach of this Lease the liability of Landlord (including all persons and entities that comprise Landlord, and any successor landlord) and any recourse by Tenant against Landlord shall be limited to the interest of Landlord and Landlord's successors in interest in and to the Building and Real Property. On behalf of itself and all persons claiming by, through, or under Tenant, Tenant expressly waives and releases Landlord from any personal liability for breach of this Lease. Notwithstanding any other provision of this Lease (i) Landlord shall be personally liable for the return of any portion of the Prepaid Rent not yet due upon the early termination of the Lease for any reason other than Tenant's default, less any offsets or credits to which Landlord is entitled hereunder and (ii) Landlord shall be personally liable for the return of any funds drawn by Landlord on the Letter of Credit in violation of this Lease to the extent required under this Lease, unless drawn in good

faith and in reasonable reliance upon the advice of legal counsel.

31.17 TRANSFER OF LANDLORD'S INTEREST. Landlord has the right to transfer all or part of its interest in the Building and Real Property and in this Lease. On such a transfer, Landlord shall automatically be released

46

<PAGE> 51

from all liability accruing thereafter under this Lease, and Tenant shall look solely to that transferee for the performance of Landlord's obligations under this Lease after the date of transfer, subject to section 6.2. . Landlord shall remain liable for any unamortized Prepaid Rent and any portion of the Security Deposit that was drawn and not applied by Landlord in accordance with the terms of this Lease, unless the transferee assumes liability for such sums. Landlord may assign its interest in this Lease to a mortgage lender as additional security. This assignment shall not release Landlord from its obligations under this Lease, and Tenant shall continue to look to Landlord for the performance of its obligations under this Lease

31.18 JOINT AND SEVERAL OBLIGATIONS OF TENANT. If more than one individual or entity comprises Tenant, the obligations imposed on each individual or entity that comprises Tenant under this Lease shall be joint and several. Landlord and Tenant acknowledge that a corporation is a single entity.

31.19 SUBMISSION OF LEASE. Submission of this document for examination or signature by the parties does not constitute an option or offer to lease the Premises on the terms in this document or a reservation of the Premises in favor of Tenant. This document is not effective as a lease or otherwise until executed and delivered by both Landlord and Tenant.

31.20 LEGAL AUTHORITY.

31.20.1 CORPORATE AUTHORITY. If Tenant is a corporation, each individual executing this Lease on behalf of that corporation represents and warrants that:

- (a) The individual is authorized to execute and deliver this Lease on behalf of that corporation in accordance with a duly adopted resolution of the corporation's board of directors and in accordance with that corporation's articles of incorporation or charter and bylaws;
- (b) This Lease is binding on that corporation in accordance with its terms;
- (c) The corporation is a duly organized and legally existing corporation in good standing in the State of Delaware; and
- (d) The execution and delivery of this Lease by that corporation shall not result in any breach of or constitute a default under any mortgage, deed of trust, lease loan, credit agreement, partnership agreement, or other contract or instrument to which that corporation is a party or by which that corporation may be bound.

If Tenant is a corporation, Tenant shall, within fifteen (15) days after the date of this Lease, deliver to Landlord a copy of a resolution of Tenant's board of directors (or other sufficient evidence of corporate authority) authorizing or ratifying the execution and delivery of this Lease. That resolution or submission of other evidence must be duly certified by the secretary or assistant secretary of the corporation.

31.20.2 PARTNERSHIP AUTHORITY. If Tenant is a partnership, each individual executing this Lease on behalf of the partnership represents and warrants that:

- (a) The individual is duly authorized to execute and deliver this Lease on behalf of the partnership in accordance with the partnership agreement, or an amendment to the partnership agreement, now in effect;
- (b) This Lease is binding on that partnership;
- (c) The partnership is a duly organized and legally existing partnership and has filed all certificates required by law; and

47

<PAGE> 52

- (d) The execution and delivery of this Lease shall not result in any breach of or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement, or other contract or instrument to which the partnership is a party or by which the partnership may be bound.

31.20.3 LIMITED LIABILITY COMPANY AUTHORITY. If Tenant is a limited liability company, each individual executing this Lease on behalf of that company represents and warrants that:

- (a) The individual(s) executing this Lease on behalf of the company has full power and authority under the company's governing documents to execute and deliver this Lease in the name of and on behalf of the company and to cause the company to perform its obligations under this Lease;
- (b) The company is a limited liability company duly organized and validly existing under the laws of the State of California and is duly qualified and validly existing as a foreign limited liability company in California; and
- (c) The company has the power and authority under applicable law and its governing documents to execute and deliver this Lease and to perform its obligations under this Lease.

31.21 RIGHT TO LEASE. Landlord reserves the absolute right to contract with any other person or entity to be a tenant in the Building as Landlord, in Landlord's sole business judgment, determines best to promote the interests of the Building. Tenant does not rely on the expectation, and Landlord does not represent, that any specific tenant or type or number of tenants will, during the Lease Term, occupy any space in the Building.

31.22 NO AIR RIGHTS. No rights to any view from the Premises or to exterior light or air to the Premises are created under this Lease.

31.23 BROKERS. Landlord and Tenant each represents to the other that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, except for the real estate brokers or agents specified in Summary of Basic Lease Information section 14 (Brokers) and that they know of no other real estate broker or agent who is entitled to a commission or finder's fee in connection with this Lease. Each party shall indemnify, protect, defend, and hold harmless the other party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any leasing commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the Brokers. Landlord shall pay its Broker a commission in connection with this Lease pursuant to separate agreement. The terms of this section 31.23 shall survive the expiration or earlier termination of the Lease Term.



31.24 TRANSPORTATION MANAGEMENT. Tenant shall fully comply with all current or future compulsory programs imposed by any public authority, intended to manage parking, transportation, or traffic in and around the Building. In connection with this compliance, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any government transportation management organization, or other transportation-related committees or entities. This provision includes programs such as the following:

- (a) Restrictions on the number of peak-hour vehicle trips generated by Tenant;
- (b) Encouragement of increased vehicle occupancy through employer-sponsored financial or in-kind incentives;
- (c) Implementation of an in-house or area-wide ridesharing program and appointment of an employee transportation coordinator; and
- (d) Flexible work shifts for employees.

48

<PAGE> 53

Executed as of the date stated in Summary of Basic Lease Information section 1.

LANDLORD:

TENANT:

TIFFANY M. GIN AND STANTON LOWE  
DBA: SPEAR STREET SAPPHIRE,

QUOKKA SPORTS, INC.,

/s/ TIFFANY M. GIN

By: /s/ LES SCHMIDT

-----  
Tiffany M. Gin

-----  
Les Schmidt

Its: Chief Financial Officer and Senior  
Vice President

/s/ STANTON LOWE

-----  
Stanton Lowe

49

<PAGE> 54

EXHIBIT A

DIAGRAM OF PREMISES

128 SPEAR STREET

[DIAGRAM OF 2ND FLOOR]

[DIAGRAM OF 3RD FLOOR]

<PAGE> 55

EXHIBIT B

LEGAL DESCRIPTION OF REAL PROPERTY

[FIDELITY LOGO] FIDELITY NATIONAL TITLE COMPANY  
1844 Market Street o San Francisco, CA 94102  
(415) 552-3646 o FAX (415) 552-3640

PRELIMINARY REPORT

ESCROW OFFICER: CATHY GARIBALDI  
TITLE OFFICER: ANY ROLLINS

ORDER NO.: 1006515-B  
AMENDMENT

TO: Magna Capital Group  
310 Townsend #408  
San Francisco, CA 94107

ATTN: Bob Stark  
YOUR REFERENCE: Gin and Low

SHORT TERM RATE: YES

PROPERTY ADDRESS: 124-134 Spear Street, San Francisco, California

EFFECTIVE DATE: October 17, 1996, 7:30 a.m.

The form of Policy or Policies of title insurance contemplated by this report is:

American Land Title Association Loan Policy (10-17-92)-Form 1

1. THE ESTATE OR INTEREST IN THE LAND HEREINAFTER DESCRIBED OR REFERRED TO COVERED BY THIS REPORT IS:

A Fee

2. TITLE TO SAID ESTATE OR INTEREST AT THE DATE HEREOF IS VESTED IN:

Stanton Lowe and Tiffany M. Gin, husband and wife, as Joint Tenants.

3. THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Beginning at a point on the Southwesterly line of Spear Street, distant thereon 137 feet and 6 inches Southeasterly from the Southeasterly line of Mission Street running thence Southeasterly along said line of Spear Street 45 feet and 10 inches; thence at a right angle Southwesterly 137 feet and 6 inches; thence at a right angle Northwesterly 45 feet and 10 inches; thence at a right angle Northeasterly 137 feet and 6 inches to the point of beginning.

Being a part of 100 Vara Block No. 325.

A.P.N: LOT 2, BLOCK 3717

Assessor's Parcel No: Lot 2, Block 3717

<PAGE> 56

EXHIBIT E

RULES AND REGULATIONS

THE MAGNA BUILDING

#### RULES AND REGULATIONS

1. Except as provided or required by Landlord, no sign, placard, picture, advertisement, name, notice or other graphics shall be inscribed, displayed printed or affixed by Tenant on or to any part of the Building or exterior of the Premises or to the windows or doors thereof without Landlord's prior written consent, which shall not be unreasonably withheld and Landlord shall have the right to remove any such sign, placard, picture, advertisement name or notice without notice to Tenant and at Tenant's sole expertise.
2. Except as consented to in writing by Landlord, no draperies, curtains, blinds, shades, screens or other devices shall be hung at or used by Tenant in connection with any window or door or doors of the Premises.
3. The bulletin board or directory of the Building shall be used primarily for display of the name and location of tenants and Landlord reserves the right to exclude any other names therefrom. to limit the number of names associated with Tenant to be placed thereon and to charge for names associated with Tenant to be placed thereon at rates applicable to all tenants and to charge for changes or substitutions thereto.
4. The sidewalks, halls, passages, exits, entrances, elevators and stairways of the Building shall not be obstructed by Tenant or used by Tenant for any purpose other than for ingress to and egress from the Premises. The halls, passages, exits, entrances, elevators and stairways of the Building are not for the use of the general public and Landlord in all cases reserves the right to control the same and prevent access thereto by all persons, other than Tenant its employees and invitees, whose presence, in the judgment of Landlord, is or may be prejudicial to the safety, character, reputation or interest of the Building and its tenants. No person shall go upon the balconies or roof of the Building unless expressly so authorized by Landlord.
5. Tenant shall not alter any lock nor install any new or additional locks or any bolts on any interior or exterior door of the Premises.
6. The doors, windows, light fixtures and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substances of any kind whatsoever shall be thrown or placed therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whom employees or invitees, cause such expense.
7. Tenant shall not mark, drive nails, screw or drill into the walls, floors, ceilings, woodwork or plaster of or in any way deface the Building or the Premises, except that within the Premises Tenant may affix to non-supporting partitions pictures, paintings and other similar solely decorative items, subject to Tenant's right to make alterations; under the lease.
8. Furniture, freight or equipment of every kind shall be moved into or out of the building only at such times and in such manner as Landlord shall designate. Landlord may prescribe and limit the weight, size and position of all equipment to be used by Tenant, other than standard office desks, chairs and tables and portable office machines. Safes and other heavy equipment shall be adequately supported as Landlord or Landlord's engineer reasonably deems necessary. All damage to the Building or the Premises caused by moving or maintaining any property of Tenant shall be repaired at the expense of Tenant.

&lt;PAGE&gt; 57

9. Tenant shall not employ any person, other than the janitor provided by Landlord, for the purpose of cleaning the Premises unless otherwise agreed to in writing by Landlord. Except with the written consent of Landlord no person shall be permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by carelessness or indifference in the preservation of good order and cleanliness. Janitor service shall include ordinary dusting and cleaning, and removal of trash which shall be placed in typical office waste containers, and shall not include shampooing carpets or rugs, moving of furniture or other special services. Janitor service will not be furnished when rooms are occupied during the regular hours when janitor service is provided. Window cleaning shall be done only at the regular and customary times determined by Landlord for such services.
10. Tenant shall not place any refuse or waste or sweep or throw or permit to be swept or thrown any dirt or other substance into any of the corridors, halls or elevators or out of the doors or stairways, of the Building; use or keep or permit to be used or kept any foul or noxious gas or substance; permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other tenants by reason of noise, odors or vibrations; interfere in any way with other than or persons having business in the Building, or bring or keep or permit to be brought or kept in the Building any animal life form, other than human, except seeing eye dogs when in the company of their masters.
11. No cooking, except for the use of a microwave by tenants and its employees, shall be done or permitted in the Premises, nor shall the Premises be used for the storage of merchandise, washing clothes, lodging, or any unlawful purposes.
12. Tenant shall not use or keep in the Building any paint, kerosene gasoline or flammable or combustible fluid or material at use any method of heating or air-conditioning other than that supplied by Landlord.
13. No boring or cutting for telephone, telegraph or electric wires shall be allowed without the prior written consent of Landlord and any such wires permitted shall be introduced at the place and in the manner described by Landlord. The location of telephones, speakers, fire extinguishers and all other office equipment affixed to the Premises shall be subject to Landlord's approval. Tenant shall pay all expenses incurred in connection with the installation and removal of its equipment, including any telephone, telegraph, data and electricity distribution equipment.
14. Upon termination of occupancy of the Building, Tenant shall deliver to Landlord all keys and access cards furnished by Landlord or in tenant's possession to all locks on the Premises or in the Building.
15. Tenant shall not affix any floor covering in any manner except as approved by the Landlord. The expense of repairing any damage caused by removal of any non-approved floor covering shall be borne by Tenant.
16. No mail, furniture, packages, supplies, equipment, merchandise or deliveries of any kind will be received in the Building or carried up or down in the elevators except between such hours and in such elevators as shall be designated by Landlord.
17. The Normal Business Hours, for the Building are 8:00 a.m. to 6:00 p.m. Monday through Friday, holidays excluded. Access to the Building may be refused outside of Normal Business Hours unless the person seeking

access shows proper identification in no case shall Landlord be liable for any loss or damage for any error with respect to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement or other commotion and at such times as Landlord deems necessary for the safety and protection of the Building, its tenants and all property located therein, Landlord may prohibit and prevent access to the Building by all persons by any means Landlord deems appropriate.

18. Tenants shall be solely responsible to see that the exterior doors of its Premises are closed and securely locked when they are unattended. Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off each day before the Premises are left unoccupied and that

2

Initials: \_\_\_\_\_ Tenants:

<PAGE> 58

all electricity or gas shall likewise be carefully shut off to a to prevent waste or damage to Landlord or to other tenants of the Building.

19. Landlord may exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or shall in any manner do any act in violation of any of the rules and regulations of the Building.
20. Tenant's service and maintenance requirements will be attended to only in accordance with the terms of the Law and upon application to Landlord at the office of the Building or such other place as Landlord may designate. Employees of Landlord shall not perform any work outside of their regular duties unless under special instructions from Landlord, and no employee of Landlord shall be required to admit any person (tenant or otherwise) to any premises in the Building.
21. No vending or food or beverage dispensing machine or machine of any description shall be installed, maintained, or operated upon the Premises or in the Building without Landlord's prior written permission.
22. Landlord, without notice and without liability to any tenant, at any time may change the name or the street address of the Building.
23. Tenant shall be liable to Landlord and to each other tenant of the Building for any loss, cost, expense, damage or liability, including attorney's fees, caused or occasioned by the failure of Tenant to comply with these rules, but Landlord shall have no liability for failure or for failing or being unable to enforce compliance therewith by any tenant and such failure by Landlord or non-compliance by any other tenant shall not be a ground for termination by Tenant of the Law to which these rules and regulations are attached.
24. Landlord shall have the right to prohibit any advertising which uses the Building's name by any tenant which, in Landlord's opinion, tends to impair the reputation of the Building or its desirability as a building for offices, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
25. Tenant shall not install or operate any phonograph, musical instrument, radio receiver or similar device in the Building in such manner as to disturb or annoy other tenants of the Building or the neighborhood. Tenant shall not install any antennae, aerial wires or other equipment outside the Building without the prior written approval of Landlord.
26. Tenant shall not allow anything to be placed on the outside window

ledges of the Premises or to be thrown out of the windows of the Building. No bicycle or other. vehicle shall be brought into the offices, halls, corridors, elevators or any other part of the Building by Tenant or the agents, employees or invitees or Tenant.

27. Tenant shall give Landlord prompt notice of any accidents to or defects in the Building, including, but not limited to, water pipes, gas pipes, electric lights mod fixtures heating apparatus, or any other service equipment.
28. Landlord, in order to comply with the requirements of California Assembly Bill Number 13 of 1994, has designated the Building a "No Smoking" building which prohibits smoking in the tenants' promises and all common areas. Tenant agrees to make reasonable efforts to enforce this regulation with its employees and invitees, and to utilize the ash urns at the rear entrance to the Building, the designated smoking area.
29. Tenant shall abide by all reasonable energy conservation measures employed by Landlord, including but not limited to requirements that lights be extinguished upon leaving the Premises.
30. Tenant may not use the fire escape area nor the. roof was as its "outside smoking space.

3

Initials: \_\_\_\_\_ Tenants:

<PAGE> 59

EXHIBIT F

TENANT ESTOPPEL CERTIFICATE

Date:

Citicorp Bank  
@Mr. Allan Tan, Credit Administrator  
One Sansome St., 23rd Flr.,  
San Francisco, CA 94103

The undersigned, \_\_\_\_\_ Tenant ("Tenant", as tenant under a lease (the "Lease") of certain premises dated \_\_\_\_\_, Lease Date executed by Tenant and SPEAK STREET SAPPHIRE ("Landlord"), does hereby, state, declared, represent and warrant as follows:

1. The copy of the Lean attached hereto as Exhibit I is a true and correct copy of the Lease and the Lease is in full force and effect and has not been amended, supplemented or changed, except as follows (if none, state so): \_\_\_\_\_.

2. Tenant has accepted possession of the promises demised under the Lease, and all items of an executory nature have bow completed under the term of the Lease, including, but not limited to, completion of Construction of the demised premises (and all other improvements required under the Lease) in accordance with applicable plans and specifications and within the time periods set forth in the Lease and otherwise in accordance with the Lease, and payments of any improvements allowance, passthroughs or other funds owing by Landlord to Tenant. Tenant further acknowledges that the term commenced on \_\_\_\_\_ and shall expire on \_\_\_\_\_ unless sooner terminated or extended in accordance with the term of the Lease.

3. No default or event that with the passage of time or the giving of notice, or both, would constitute a default (referred to herein collectively as a "default") an the part of the undersigned exists under the Lease in the performance of the terms, covenants and conditions of Lease

required to be performed an the part of the undersigned.

4. To the knowledge of the undersigned, no default an the part of Landlord exist under the Lease in the performance of the term, covenants and conditions of the Lease required to be performed an the part of Landlord.

5. Tenant has no option or right to purchase the property of which the premises are a pan, or any part thereof.

6. No rentals are accrued and unpaid under the Lease.

7. No prepayment of rentals due under the Lease have been nude and no security or deposits as security have bow made thereunder, except as set forth in the Lease.

<PAGE> 60

8. The undersigned has no defense as to its obligations under the Lease and claims no setoff or counterclaims against Landlord.

9. The undersigned has not received notice of an assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other amounts payable thereunder.

10. The undersigned agrees to notify you of any default on the part of the Landlord under the Lease which would entitle the undersigned to cancel the Low or to abate the rent payable thereunder, and further agrees that, notwithstanding any provisions of the Lease, no notice or cancellation thereof shall be effective unless you have received said notice and have failed within thirty (30) days after the expiration of the cure period provided to Landlord under the Lease to cure or commence to cure the default which give rise to the notice of cancellation.

11. The undersigned understands and acknowledges that you are about to make a loan to Landlord and receive as part of the security for such loan (i) a Deed of Trust, Security Agreement and fixture Filing encumbering Landlord's fee interest in the property of which the leased premises are a portion and the rents, issues and profits of the Lease and (ii) an Assignment warranties contained herein in making such loan.

TENANT:

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

<PAGE> 61

EXHIBIT G

LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVB98IS12XX

DATE: FEBRUARY \_\_\_\_\_, 1999

BENEFICIARY:

TIFFINY M. GIN & STANTON LOWE  
SPEAR STREET SAPPHIRE  
C/O THE MAGNA BUILDING  
128 SPEAR STREET, 4TH FLOOR  
SAN FRANCISCO, CA 94105  
AS "LANDLORD"

APPLICANT:  
QUOKKA SPORTS, INC.  
525 BRENNAN ST., GROUND FLOOR  
SAN FRANCISCO, CA 94107  
AS "TENANT"

AMOUNT: US\$434,500.00 (FOUR HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED AND  
00/100 U.S. DOLLARS)

EXPIRATION DATE/LOCATION: MARCH 31, 2000/AT OUR COUNTERS AT THE ABOVE ADDRESS.

GENTLEMAN:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVB99IS12XX IN  
YOUR FAVOR AVAILABLE BY YOUR DRAFTS DRAWN ON US AT SIGHT AND ACCOMPANIED BY THE  
FOLLOWING DOCUMENTS:

1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENT(S), IF ANY.

2. A SIGNED AND DATED CERTIFICATION FROM THE BENEFICIARY STATING THE  
FOLLOWING:

(a) "APPLICANT IS IN DEFAULT UNDER THAT CERTAIN OFFICE LEASE  
BETWEEN BENEFICIARY AS LANDLORD AND APPLICANT AS TENANT, DATED  
FEBRUARY --, 1999, (BEYOND ANY NOTICE AND CURE PERIODS  
REQUIRED PURSUANT TO SECTION 22.1 OF THE LEASE) AND THE TERMS  
AND CONDITIONS OF THE LEASE AUTHORIZE THE LANDLORD TO NOW DRAW  
DOWN ON THE LETTER OF CREDIT."

OR

(b) "WITHIN THIRTY (30) DAYS PRIOR TO EXPIRY DATE OF THIS LETTER  
OF CREDIT BENEFICIARY HAS NOT RECEIVED AN EXTENSION AT LEAST  
FOR ONE YEAR TO THE EXISTING LETTER OF CREDIT OR A REPLACEMENT  
LETTER OF CREDIT SATISFACTORY TO THE BENEFICIARY.

- PAGE 1 OF 2 -

<PAGE> 62

PARTIAL DRAWINGS ARE ALLOWED. THE ORIGINAL OF THIS LETTER OF CREDIT MUST  
ACCOMPANY ANY DRAWINGS HEREUNDER FOR ENDORSEMENT OF THE DRAWING AMOUNT AND WILL  
BE RETURNED TO THE BENEFICIARY UNLESS IT IS FULLY UTILIZED.

THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY EXTENDED FOR AN ADDITIONAL PERIOD  
OF ONE YEAR, WITHOUT AMENDMENT, FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE,  
BUT IN ANY EVENT NOT BEYOND MARCH 31, 2005 WHICH SHALL BE THE FINAL EXPIRATION  
DATE OF THIS LETTER OF CREDIT, UNLESS AT LEAST 30 DAYS PRIOR TO THE THEN CURRENT  
EXPIRATION DATE WE NOTIFY YOU BY REGISTERED MAIL/OVERNIGHT COURIER SERVICE AT  
THE ABOVE ADDRESS, THAT WE ELECT NOT TO RENEW THIS LETTER OF CREDIT FOR ANY  
ADDITIONAL PERIOD.

ON MARCH 1, 2004 THE AMOUNT OF THIS LETTER OF CREDIT SHALL BE AUTOMATICALLY  
REDUCED TO US\$217,250.00 WITHOUT AMENDMENT, PROVIDED THE UNUTILIZED BALANCE IS  
NOT LESS THAN US\$217,250.00.

THIS LETTER OF CREDIT MAY ONLY BE TRANSFERRED IN ITS ENTIRETY BY THE ISSUING  
BANK UPON OUR RECEIPT OF THE ATTACHED "EXHIBIT A" DULY COMPLETED AND EXECUTED BY  
THE BENEFICIARY AND ACCOMPANIED BY THE ORIGINAL LETTER OF CREDIT TOGETHER WITH  
THE PAYMENT OF OUR TRANSFER FEE OF 1/4 OF 1% OF THE TRANSFER AMOUNT (MINIMUM  
USD250.00)

DRAFT(S) AND DOCUMENTS MUST INDICATE THE NUMBER AND DATE OF THIS LETTER OF  
CREDIT.

DOCUMENTS MUST BE FORWARDED TO US BY OVERNIGHT DELIVERY SERVICE TO: SILICON

- □□□ -



VALLEY BANK, 3003 TASMAN DRIVE, SANTA CLARA, CA 95054, ATTN: INTERNATIONAL DIVISION.

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS THAT THE DRAFTS DRAWN UNDER AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE, IF NEGOTIATED ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMERS AND PRACTICE FOR DOCUMENTARY CREDITS (1933 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 500.

-----  
AUTHORIZED SIGNATURE

/s/ LES SCHMIDT  
-----  
AUTHORIZED SIGNATURE

- PAGE 2 OF 2 -

<PAGE> 63

"EXHIBIT A"

DATE:

TO: SILICON VALLEY BANK  
3003 TASMAN DRIVE  
SANTA CLARA, CA 95054  
ATTN: INTERNATIONAL DIVISION  
STANDBY LETTERS OF CREDIT

RE: STANDBY LETTER OF CREDIT  
NO. \_\_\_\_\_ ISSUED BY  
SILICON VALLEY BANK, SANTA CLARA  
L/C AMOUNT:

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

(NAME OF TRANSFEREE)  
(ADDRESS)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT UP TO ITS AVAILABLE AMOUNT AS SHOWN ABOVE AS OF THE DATE OF THIS TRANSFER.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE. TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE ALL AMENDMENTS ARE TO BE ADVISED DIRECT TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HERewith, AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECT TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

SINCERELY,

-----  
(BENEFICIARY NAME)

-----  
SIGNATURE OF BENEFICIARY

-----  
SIGNATURE AUTHENTICATED

-----  
(NAME OF BANK)

-----  
AUTHORIZED SIGNATURE

<PAGE> 64

EXHIBIT H

QUOKKA SPORTS, INC.

STOCK GRANT AGREEMENT

THIS STOCK GRANT AGREEMENT (the "Agreement") is made as of the \_\_\_\_ day of February, 1999, by and among QUOKKA SPORTS, INC., a Delaware corporation (the "Company"), and TIFFANY M. GIN AND STANTON LOWE (each individually and together, the "Landlord").

WHEREAS, in connection with the Office Lease dated of even date herewith among the Company and Landlord (the "Lease"), the Company desires to issue, and Landlord desires to acquire, stock of the Company as herein described, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, IT IS AGREED among the parties as follows:

1. ISSUANCE OF STOCK. The Company hereby issues to Tiffany M. Gin and Stanton Lowe an aggregate of Three Thousand and Seventy Seven (3,077) shares of the Company's Voting Common Stock (the "Stock") in consideration of Landlord entering into the Lease. The closing hereunder, including delivery of the Stock, shall occur at the offices of the Company immediately following the execution of this Agreement, or at such other time and place as the parties may mutually agree.

2. LIMITATIONS ON TRANSFER. Landlord shall not assign, hypothecate, donate, encumber or otherwise dispose of any interest in the Stock except in compliance with the provisions herein and applicable securities laws. The Company acknowledges that the Stock may be subject to a pledge in favor of Citibank, Federal Savings Bank ("Citibank") pursuant to loan #2496198 among Citibank and Landlord dated August 29, 1997, which pledge shall be deemed permitted hereunder, and Landlord agrees to use commercially reasonable efforts to enter into an agreement with Citibank releasing the Stock from such pledge. Furthermore, the Stock shall be subject to any right of first refusal in favor of the Company or its assignees that may be contained in the Company's Bylaws. The Company shall not be required (a) to transfer on its books any shares of Stock of the Company which shall have been transferred in violation of any of the provisions set forth in this Agreement or (b) to treat as owner of such shares or to accord the right to vote as such owner or to pay dividends to any transferee to whom such shares shall have been so transferred.

3. RESTRICTIVE LEGENDS. All certificates representing the Stock shall have endorsed thereon legends in substantially the following forms (in addition to any other legend which may be required by other agreements between the parties hereto):

(a) "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AS AMENDED. THEY

1.

<PAGE> 65

MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED."

(b) "THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE COMPANY AND/OR ITS ASSIGNEE(S) AS PROVIDED IN THE BYLAWS OF THE COMPANY."

(c) Any legend required by appropriate blue sky officials.

4. INVESTMENT REPRESENTATIONS. In connection its acquisition of the Stock, Landlord represents to the Company the following:

(a) Landlord is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Stock. Landlord is acquiring the Stock for investment for Landlord's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933 (the "Act"). Landlord is an accredited investor within the meaning of Regulation D under the Act.

(b) Landlord understands that the Stock has not been registered under the Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Landlord's investment intent as expressed herein.

(c) Landlord further acknowledges and understands that the Stock must be held indefinitely unless the Stock is subsequently registered under the Act or an exemption from such registration is available. Landlord further acknowledges and understands that the Company is under no obligation to register the Stock. Landlord understands that the certificate evidencing the Stock will be imprinted with a legend which prohibits the transfer of the Stock unless the Stock is registered or such registration is not required in the opinion of counsel for the Company.

Landlord is familiar with the provisions of Rule 144, under the Act, as in effect from time to time, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly, from the issuer thereof (or from an affiliate of such issuer), in a non-public offering subject to the satisfaction of certain conditions. Rule 144 requires, among other things: (i) the availability of certain public information about the Company and (ii) the resale occurring following the required holding period under Rule 144 after the Landlord has purchased, and made full payment of (within the meaning of Rule 144), the securities to be sold. The Company acknowledges that full payment of (within the meaning of Rule 144) the Stock occurred upon the date hereof and the Company shall not require from Landlord an opinion of counsel with respect to whether full payment of (within the meaning of Rule 144) the Stock has occurred.

(d) Landlord further understands that at the time Landlord wishes to sell the Stock there may be no public market upon which to make such a sale, and that, even if such a public market then exists, the Company may not be satisfying the current public information

2.

<PAGE> 66

requirements of Rule 144, and that, in such event, Landlord would be precluded from selling the Stock under Rule 144 even if the minimum holding period requirement had been satisfied.

(e) Landlord further warrants and represents that Landlord has either (i) preexisting personal or business relationships, with the

Company or any of its officers, directors or controlling persons, or (ii) the capacity to protect their own interests in connection with its acquisition of the Stock by virtue of the business or financial expertise of Landlord or of professional advisors to Landlord who are unaffiliated with and who are not compensated by the Company or any of its affiliates, directly or indirectly.

5. MARKET STAND-OFF AGREEMENT. Landlord shall not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Common Stock of the Company held by Landlord, including the Stock (the "Restricted Securities"), for a period of time specified by the underwriter(s) (not to exceed one hundred eighty (180) days) following the effective date of a registration statement of the Company filed under the Act. Landlord agrees to execute and deliver such other agreements as may be reasonably requested by the Company and/or the underwriter(s) which are consistent with the foregoing or which are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to Landlord's Restricted Securities until the end of such period.

6. MISCELLANEOUS.

(a) NOTICES. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or sent by telegram or fax or upon deposit in the United States Post Office, by registered or certified mail with postage and fees prepaid, addressed to the other party hereto at his address hereinafter shown below its signature or at such other address as such party may designate by ten (10) days' advance written notice to the other party hereto.

(b) SUCCESSORS AND ASSIGNS. This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, be binding upon Landlord, Landlord's successors, and assigns.

(c) ATTORNEYS' FEES; SPECIFIC PERFORMANCE. Landlord shall reimburse the Company for all costs incurred by the Company in enforcing the performance of, or protecting its rights under, any part of this Agreement, including reasonable costs of investigation and attorneys' fees, in the event of any breach of this Agreement by Landlord or in connection with any transfer or proposed transfer of the Stock. The Company shall reimburse Landlord for all costs incurred by Landlord in enforcing the performance of, or protecting its rights under, any part of this Agreement, including reasonable costs of investigation and attorneys' fees of a single counsel to Landlord, in the event of any breach of this Agreement by the Company.

(d) GOVERNING LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of California as such laws are applied to agreements between California residents entered into and performed entirely in California. The parties agree that any action brought by either party to interpret or enforce any provision of this Agreement shall be brought in, and each party agrees to, and does hereby, submit to the jurisdiction and venue of, the appropriate state or federal court for the district encompassing the Company's principal place of business.

(e) FURTHER EXECUTION. The parties agree to take all such further action(s) as may reasonably be necessary to carry out and consummate this Agreement as soon as practicable, and to take whatever steps may be necessary to obtain any governmental approval in connection with or otherwise qualify the issuance of the securities that are the subject of this Agreement.

(f) ENTIRE AGREEMENT; AMENDMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and merges all prior agreements or understandings, whether written or oral. This Agreement may not be amended, modified or revoked,

in whole or in part, except by an agreement in writing signed by each of the parties hereto.

(g) SEVERABILITY. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(h) COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

4.

<PAGE> 68

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

QUOKKA SPORTS, INC.

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

LANDLORD:

\_\_\_\_\_  
TIFFANY M. GIN

\_\_\_\_\_  
STANTON LOWE

Address: \_\_\_\_\_  
\_\_\_\_\_

5.

**BUILD TO SUIT LEASE**

**BY AND BETWEEN**

**MARTIN/CAMPUS ASSOCIATES, L.P.**

**“LANDLORD”**

**AND**

**AT HOME CORPORATION**

**“TENANT”**

**For the approximately 86,904 sq. ft. Premises at 430 Broadway Redwood City, CA  
94063**

## LEASE SUMMARY

Lease Date: \_\_\_\_\_

Landlord: Martin/Campus Associates, L.P.

Address of Landlord: 100 Bush Street, 26th Floor San Francisco, CA 94104

Tenant: At Home Corporation

Address of Tenant: 425 Broadway Redwood City, CA

Contact: Kenneth Goldman

Telephone: (650) 569-5353

Building Address: 430 Broadway Redwood City, California

Total Building Square Footage: Approximately 86,904 square feet

Term: Fifteen years from the Commencement Date under the 450 Broadway Lease (see Paragraph 4.A.)

Monthly Rent: As provided under Paragraph 5.A, and subject to adjustment pursuant to Paragraph 4.C and 5.B

Security Deposit: An amount equal to three (3) payments of the initial Monthly Rent (see Paragraph 7)

Exhibit A: Premises Exhibit B: Work Letter Agreement Exhibit C: Site Plan for Project  
Exhibit D: Commencement Date Memorandum Exhibit E: Subordination, Nondisturbance  
and Attornment Agreement Exhibit F: Option to Purchase Terms

## TABLE OF CONTENTS -----

1. Parties.....	2
2. Premises.....	2
3. Definitions.....	2
A. Affiliate.....	2
B. Alterations.....	2
C. Broadway Lease.....	2
D. Capital Improvements.....	3
E. CC&Rs.....	3
F. Collateral Agreements.....	3
G. Commencement Date.....	3
H. Common Area.....	3
I. Common Area Maintenance Costs.....	3
J. Final Plans.....	5
K. HVAC.....	5
L. Impositions.....	6
M. Improvements.....	6
N. Index.....	6
O. Interest Rate.....	6
P. INTENTIONALLY DELETED.....	6
Q. Landlord's Agents.....	6
R. Lease Year.....	7
S. Monthly Rent.....	7
T. Parking Area.....	7
U. Person.....	7
V. Project.....	7
W. Real Property Taxes.....	7
X. Rent.....	8
Y. Rentable Area.....	8
AA. Security Deposit.....	8
BB. Sublet.....	8
CC. Subrent.....	9
DD. Subtenant.....	9
EE. Tenant Delay.....	9
FF. Tenant Improvements.....	9
GG. Tenant's Percentage Share.....	9
HH. Tenant's Personal Property.....	9
II. Term.....	10
JJ. Fixed Charge Ratio.....	10
4. Lease Term.....	10
A. Term.....	10



B.	Delays in Completion.....	10
C.	Option to Extend.....	10
5.	Rent and Additional Charges.....	13
A.	Monthly Rent.....	13
B.	Adjustments to Monthly Rent.....	14
C.	Management Fee.....	14
D.	Common Area Maintenance Costs.....	15
E.	Additional Rent.....	16
F.	Prorations.....	16
G.	Interest.....	16
6.	Late Payment Charges.....	16
7.	Security Deposit.....	17
A.	Deposit Required.....	17
8.	Holding Over.....	18
9.	Tenant Improvements.....	19
10.	Condition of Premises.....	19
A.	Capital Improvements.....	19
B.	Acceptance of Premises.....	19
11.	Use of the Premises and Common Area.....	19
A.	Tenant's Use.....	20
B.	Hazardous Materials.....	20
C.	Special Provisions Relating to The Americans With Disabilities Act of 1990.....	24
D.	Use and Maintenance of Common Area.....	25
12.	Quiet Enjoyment.....	25
13.	Alterations.....	26
A.	Alteration Rights.....	26
B.	Performance of Alterations.....	26
C.	Trade Fixtures.....	26
14.	Surrender of the Premises.....	27
15.	Impositions and Real Property Taxes.....	27
A.	Payment by Tenant.....	27
B.	Taxes on Tenant Improvements and Personal Property.....	28
C.	Proration.....	29

16. Utilities and Services.....	29
---------------------------------	----

5

17. Repair and Maintenance.....	29
A. Landlord's Obligations.....	29
B. Tenant's Obligations.....	30
C. Conditions Applicable to Repairs.....	31
D. Landlord's Rights.....	31
E. Compliance with Governmental Regulations.....	31
18. Liens.....	31
19. Landlord's Right to Enter the Premises.....	32
20. Signs.....	32
21. Insurance.....	32
A. Indemnification.....	32
B. Tenant's Insurance.....	33
C. Premises Insurance.....	34
D. Increased Coverage.....	34
E. Failure to Maintain.....	34
F. Insurance Requirements.....	35
G. Waiver and Release.....	35
22. Waiver of Subrogation.....	35
23. Damage or Destruction.....	36
A. Landlord's Obligation to Rebuild.....	36
B. Right to Terminate.....	36
C. Limited Obligation to Repair.....	37
D. Abatement of Rent.....	37
E. Damage Near End of Term.....	37
24. Condemnation.....	37
25. Assignment and Subletting.....	38
A. Landlord's Consent.....	38
B. Tenant's Notice.....	38
C. Information to be Furnished.....	38
D. Landlord's Alternatives.....	39
E. Proration.....	39
F. Parameters of Landlord's Consent.....	39
G. Permitted Transfers.....	40
26. Default.....	40

A. Tenant's Default.....	40
B. Remedies.....	41
6	
C. Landlord's Default.....	42
27. Subordination.....	42
A. Subordination.....	42
B. Attornment.....	43
C. Non-Disturbance.....	43
28. Notices.....	43
29. Attorneys' Fees.....	44
30. Estoppel Certificates.....	44
31. Transfer of the Premises by Landlord.....	45
32. Landlord's Right to Perform Tenant's Covenants.....	45
33. Tenant's Remedy.....	45
34. Mortgagee Protection.....	45
35. Brokers.....	46
36. Acceptance.....	46
37. Parking.....	46
38. Right of First Offer to Purchase.....	46
A. Notice of Sale.....	47
B. Acceptance.....	47
C. Rejection.....	47
D. Offered Terms.....	48
E. Acceptance of Tenant's Offer.....	48
F. Conditions.....	48
G. Process.....	48
H. Rights Personal.....	49
39. General.....	49
A. Captions.....	49
B. Executed Copy.....	49
C. Time.....	49
D. Separability.....	49
E. Choice of Law.....	49
F. Gender; Singular, Plural.....	49
G. Binding Effect.....	49
H. Waiver.....	50

I. Entire Agreement.....	50
J. Authority.....	50
K. Exhibits.....	50
L. Lease Summary.....	50
M. Memorandum of Lease.....	50

## BUILD TO SUIT LEASE

### 1. Parties.

THIS BUILD TO SUIT LEASE (the “Lease”), dated as of \_\_\_\_\_ 1998, is entered into by and between MARTIN/CAMPUS ASSOCIATES, L.P., a Delaware limited partnership (“Landlord”), whose address is 100 Bush Street, San Francisco, CA 94104, and AT HOME CORPORATION, a Delaware corporation (“Tenant”), whose address is 425 Broadway, Redwood City, CA.

### 2. Premises.

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord those certain premises to situated in a building to be constructed by Landlord pursuant to the terms of this Lease which shall be commonly known as 430 Broadway (the “Building”), in the City of Redwood City, County of San Mateo, State of California, as more particularly shown on Exhibit A (the “Premises”), which Premises shall consist of a total area of approximately 86,904 square feet. On or before the Commencement Date, Landlord shall measure the Rentable Area of the Premises in accordance with BOMA Standard (ANSI Z65.1 1980) for full floor office occupancy, and Landlord and Tenant shall amend this Lease if necessary to reflect any discrepancy in the size of the Premises disclosed by Landlord’s measurement of the Premises by Landlord’s architect. The Premises also includes the appurtenant right to use in common with other tenants of the Project (as defined below) the Common Area (as defined below) of the Project owned by Landlord.

### 3. Definitions.

The following terms shall have the following meanings in this Lease:

A. Affiliate. Any Person that controls, or is controlled by or is under common control with, Landlord or Tenant. No Person shall be deemed in control of another simply by virtue of being a partner, director, officer or holder of voting securities of any Person. For purposes of this Paragraph 3.A, “control” shall mean the ownership of, and/or the right to vote, stock, partnership interests, membership interests, or other indicia of ownership possessing at least fifty-one percent (51%) of either the total combined interests in a Person, or the voting power of all classes of a Person’s capital stock, partnership interests, membership interests, or other indicia of ownership, that have been issued, outstanding, and (if applicable) are

entitled to vote.

B. Alterations. Any alterations, additions or improvements made in, on or about the Premises after the substantial completion of the Improvements, including, but not limited to, lighting, heating, ventilating, air conditioning, electrical, partitioning, drapery and carpentry installations.

C. Broadway Lease. That certain lease dated as of October 18, 1996, by and between Landlord and Tenant, for those certain premises commonly known as 425 Broadway,

2 9

situated in the City of Redwood City, County of San Mateo, State of California.

D. Capital Improvements. Those certain improvements to the Building to be constructed by Landlord pursuant to Paragraph 10.A and the Work Letter Agreement attached to this Lease as Exhibit B (the "Work Letter").

E. CC&Rs. Any declaration of conditions, covenants and/or restrictions, or similar instrument, that now encumbers, or may in the future encumber the Project or the Premises, as adopted by Landlord or its successors in interest from time to time, and any modifications or amendments thereto.

F. Collateral Agreements. The following agreements: (i) the Broadway Lease, (ii) that certain Build to Suit Option Agreement by and between Landlord and Tenant, dated as of October 25, 1996 (the "Build to Suit Agreement"), (iii) that certain Agreement Granting Rights of First Offer, by and between Landlord and Tenant, dated as of October 25, 1996, (iv) that certain Warrant to Purchase Series A Common Stock of At Home Corporation and that certain Second Amended and Restated Registration Rights Agreement, executed by Landlord, Tenant and certain other parties, each dated as of October 18, 1996 (collectively, the "Warrant Agreement"), and (v) any leases at any time executed by Tenant arising out of Tenant's exercise of any of its rights set forth in the agreements described in items (ii) and (iii) above. The "450 Broadway Lease" shall mean that certain lease between Landlord and Tenant with respect to the premises commonly known as 450 Broadway, Redwood City, California.

G. Commencement Date. The Commencement Date of this Lease shall be the first day of the Term determined in accordance with Paragraph 4.A.

H. Common Area. All areas and facilities within the Project not appropriated to the exclusive occupancy of tenants, including the Parking Area, the sidewalks, pedestrian ways, driveways, signs, pools, ponds, service delivery facilities, common storage areas, common utility facilities and all other areas in the Project established by Landlord and/or its successors for non-exclusive use. Landlord may, by written notice to Tenant, elect in its sole discretion to increase and/or decrease the Common Area from time to time during the Term for any reason whatsoever (including without limitation an election by Landlord and/or its successors in their sole discretion to make changes to the buildings situated in the

Project, and/or to subdivide, sell, exchange, dispose of, transfer, or change the configuration of all or any portion of the Common Area from time to time), so long as Landlord neither unreasonably interferes with ingress to or egress from the Building, nor permanently reduces the number of parking spaces available for Tenant's use below the minimum requirements set forth in Paragraph 37. No such subdivision, sale, exchange, disposition, transfer, or change to the configuration of all or any portion of the Common Area shall cause the Common Area to be increased or decreased unless and until Landlord has given Tenant written notice of such increase or decrease.

I. Common Area Maintenance Costs. The total of all costs and expenses paid or incurred by Landlord in connection with the operation, maintenance, ownership and repair of the Common Area, and the performance of Landlord's obligations under Paragraphs 17.A and 17.E. Without limiting the generality of the foregoing, Common Area Maintenance

3 10

Costs include all costs of and expense for: (i) maintenance and repairs of the Common Area; (ii) resurfacing, resealing, remarking, painting, repainting, striping or restriping the Parking Area; (iii) maintenance and repair of all public or common facilities; (iv) maintenance, repair and replacement of sidewalks, curbs, paving, walkways, Parking Area, Project signs, landscaping, planting and irrigation systems, trash facilities, loading and delivery areas, lighting, drainage and common utility facilities, directional or other signs, markers and bumpers, and any fixtures, equipment and personal property located on the Common Area; (v) wages, salaries, benefits, payroll burden fees and charges of personnel employed by Landlord and the charges of all independent contractors retained by Landlord (to the extent that such personnel and contractors are utilized by Landlord) for the maintenance, repair, management and/or supervision of the Project, and of any security personnel retained by Landlord in connection with the operation and maintenance of the Common Area (although Landlord shall not be required to obtain security services); (vi) maintenance, repair and replacement of security systems and alarms installed by Landlord (if any); (vii) depreciation or amortization (or in lieu thereof, rental payments) on all tools, equipment and machinery used in the operation and maintenance of the Common Area; (viii) premiums for Comprehensive General Liability Insurance or Commercial General Liability Insurance, casualty insurance, workers compensation insurance or other insurance on the Common Area, or any portion thereof or interest therein, and any deductibles payable with respect to such insurance policies; (ix) all personal property or real property taxes and assessments levied or assessed on the Project, or any portion thereof or interest therein, including without limitation the Real Property Taxes for the Project, if applicable under Paragraph 15.A; (x) cleaning, collection, storage and removal of trash, rubbish, dirt and debris, and sweeping and cleaning the Common Area; (xi) legal, accounting and other professional services for the Project, including costs, fees and expenses of contesting the validity or applicability of any law, ordinance, rule, regulation or order relating to the Building, and of contesting, appealing or otherwise attempting to reduce any Real Property Taxes assessed against the Project; (xii) any alterations, additions or improvements required to be made to the Common Area in order to reduce Common Area Maintenance Costs or to protect the health or safety of occupants of the Project, provided that the cost of any such alterations, additions, improvements or capital improvements, together with interest at the

Interest Rate, shall be amortized over the useful life of the alteration, addition, improvement or capital improvement in question and included in Common Area Maintenance Costs for each year over which such costs are amortized; (xiii) all costs and expenses of providing, creating, maintaining, repairing, managing, operating, and supervising an amenity center for the Project, which may include without limitation a dining facility (provided, however, that Landlord shall not be required to provide or create such an amenity center), which costs and expenses may include without limitation rent charged by Landlord for the space occupied by such amenity center; (xiv) all costs and expenses incurred by Landlord in performing its obligations under Paragraphs 17.A or 17.E, including without limitation all costs and expenses incurred in performing any

4 11

alterations, additions or improvements required to be made to the Building in order to comply with applicable laws, ordinances, rules, regulations and orders and all capital improvements required to be made in connection with the operation, maintenance and repair of the Building, provided that the cost of any such alterations, additions, improvements or capital improvements, together with interest at the Interest Rate, shall be amortized over the useful life of the alteration, addition, improvement or capital improvement in question and included in Common Area Maintenance Costs for each year over which such costs are amortized; (xv) all costs and expenses incurred in performing any alterations, additions or improvements required to be made to the Common Area in order to comply with applicable laws, ordinances, rules, regulations and orders and all capital improvements required to be made in connection with the operation, maintenance and repair of the Common Area, provided that the cost of any such alterations, additions, improvements or capital improvements, together with interest at the Interest Rate, shall be amortized over the useful life of the alteration, addition, improvement or capital improvement in question and included in Common Area Maintenance Costs for each year over which such costs are amortized; (xvi) any and all payments due and owing on behalf of the Project or any portion thereof with respect to any CC&Rs, including without limitation any and all assessments and association dues; (xvii) any other cost or expense which this Lease expressly characterizes as a Common Area Maintenance Cost, and (xviii) all costs and expenses related to the adoption and maintenance of a portion of Highway 101. However, notwithstanding the foregoing or anything to the contrary in this Lease, Common Area Maintenance Costs shall not include the cost of or expenses for the following: (A) leasing commissions, attorneys' fees or other costs or expenses incurred in connection with negotiations or disputes with other tenants of the Project; (B) depreciation of buildings in the Project; (C) payments of principal, interest, late fees, prepayment fees or other charges on any debt secured by a mortgage covering the Project, or rental payments under any ground lease or underlying lease; (D) any penalties incurred due to Landlord's violation of any governmental rule or authority (but not excluding the cost of compliance therewith, if such cost is chargeable to Tenant pursuant to this Lease); (E) any Real Property Taxes or costs for which Landlord is separately and directly reimbursed by Tenant or any other tenant of the Project which are assessed against the Premises or the premises leased by such other tenant(s); (F) items for which Landlord is reimbursed by insurance; (G) all costs arising from monitoring, cleaning up and otherwise remediating any release of Hazardous Materials at the Premises that has been specifically identified by Landlord and Tenant in

writing as of the date of the Lease; (H) all costs associated with the operation of the business of the entity which constitutes "Landlord", as distinguished from the costs of operations, including, but not limited to, costs of partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be in issue), costs of selling, syndicating, financing, mortgaging, or hypothecating any of the Landlord's interest in the Project and/or Common Area, or any portion thereof, costs of any disputes between Landlord and its employees, costs of disputes of Landlord with Building management or costs paid in connection with disputes with Tenant or any other tenants; (I) all costs (including permit, license and inspection fees) incurred in renovating or otherwise improving or decorating, painting or redecorating space for other tenants in the Project; (J) the creation of any reserves for equipment or capital replacement (but not the expenditure of any funds from such reserves); and (K) all costs arising from monitoring, cleaning up and otherwise remediating any release of Hazardous Materials at the Premises to the extent that Landlord (who shall use reasonable efforts to obtain reimbursement) is actually reimbursed by third parties for such costs (but not the costs of collection incurred by Landlord, unless such costs of collection are also reimbursed by third parties).

J. Final Plans. As defined in the Work Letter.

K. HVAC. Heating, ventilating and air conditioning.

L. Impositions. Taxes, assessments, charges, excises and levies, business

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taxes, license, permit, inspection and other authorization fees, transit development fees, assessments or charges for housing funds, service payments in lieu of taxes and any other fees or charges of any kind at any time levied, assessed, charged or imposed by any federal, state or local entity, (i) upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures or other personal property located in the Premises, or the cost or value of any Alterations; (ii) upon, or measured by, any Rent payable hereunder, including any gross receipts tax; (iii) upon, with respect to or by reason of the development, possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; or (iv) upon this Lease transaction, or any document to which Tenant is a party creating or transferring any interest or estate in the Premises. Impositions do not include franchise, transfer, inheritance or capital stock taxes, or income taxes measured by the net income of Landlord from all sources, except to the extent any such taxes are levied or assessed against Landlord as a substitute for, in whole or in part, any item that would otherwise be deemed an Imposition under this paragraph.

M. Improvements. Collectively, the Tenant Improvements and the Capital Improvements.

N. Index. The Consumer Price Index, All Urban Consumers, All Items, published by the U.S. Department of Labor, Bureau of Labor Statistics for the San Francisco- Oakland-San Jose Metropolitan Area (1982-84=100). If the Base Year of the Index is changed, then all calculations pursuant to this Lease which require the use of the Index shall be made by



using the appropriate conversion factor published by the Bureau of Labor Statistics (or successor agency) to correlate to the Base Year of the Index herein specified. If no such conversion factor is published, then Landlord shall, if possible, make the necessary calculation to achieve such conversion. If such conversion is not in Landlord's good-faith, business judgment possible, or if publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the term "Index" shall mean comparable statistics on the cost of living, as computed either (i) by an agency of the United States Government performing a function similar to the Bureau of Labor Statistics, or (ii) if no such agency performs such function, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index, as may be determined by Landlord in the exercise of its reasonable good faith business judgment.

O. Interest Rate. Either (i) the greater of (a) twelve percent (12%) per annum, or (b) the reference rate, or succeeding similar index, announced from time to time by the Bank of America's main San Francisco office, plus three percent (3%) per annum; or (ii) the maximum rate of interest permitted by law, whichever is less.

P. INTENTIONALLY DELETED

Q. Landlord's Agents. Landlord's authorized agents, partners, subsidiaries, directors, officers, and employees.

R. Lease Year. A period of twelve (12) consecutive calendar months during the Term, commencing with the Commencement Date if the Commencement Date is the first day

6 13

of a calendar month, or commencing with the first day of the month following the Commencement Date if the Commencement Date is not the first day of a calendar month. The first Lease Year shall include the period between the Commencement Date and the first day of the month following the Commencement Date if the Commencement Date is not the first day of a calendar month. The last Lease Year shall consist of the period between the date on which the Term expires or terminates and the day after the last day of the preceding Lease Year.

S. Monthly Rent. The rent payable pursuant to Paragraph 5.A., as adjusted from time to time pursuant to the terms of this Lease.

T. Parking Area. All Common Area (except sidewalks and service delivery facilities) now or hereafter designated by Landlord for the parking or access of motor vehicles, including roads, traffic lanes, vehicular parking spaces, landscaped areas and walkways, and including any parking structure constructed during the Term. Landlord and/or its successors may, by written notice to Tenant, elect in their sole discretion to increase and/or decrease the Parking Area from time to time during the Term for any reason whatsoever (including without limitation an election by Landlord and/or its successors in their sole discretion to make changes to the buildings situated in the Project, and/or to subdivide, sell, exchange,

dispose of, transfer, or change the configuration of all or any portion of the Parking Area from time to time), so long as such changes to the Parking Area do not permanently reduce the number of parking spaces available for Tenant's use below the minimum requirements set forth in Paragraph 37. No such subdivision, sale, exchange, disposition, transfer, or change to the configuration of all or any portion of the Parking Area shall cause the Parking Area to be increased or decreased unless and until Landlord has given Tenant written notice of such increase or decrease.

U. Person. Any individual, partnership, firm, association, corporation, limited liability company, trust, or other form of business or legal entity.

V. Project. That certain real property shown on Exhibit C. Landlord and/or its successors may, by written notice to Tenant, elect in their sole discretion to increase and/or decrease the number of buildings and/or the amount of Rentable Area situated in the Project from time to time during the Term for any reason whatsoever.

W. Real Property Taxes. Taxes, assessments and charges now or hereafter levied or assessed upon, or with respect to, the Project, or any personal property of Landlord used in the operation thereof or located therein, or Landlord's interest in the Project or such personal property, by any federal, state or local entity, including: (i) all real property taxes and general and special assessments; (ii) charges, fees or assessments for transit, housing, day care, open space, art, police, fire or other governmental services or benefits to the Project, including assessments, taxes, fees, levies and charges imposed by governmental agencies for such purposes as street, sidewalk, road, utility construction and maintenance, refuse removal and for other governmental services; (iii) service payments in lieu of taxes; (iv) any tax, fee or excise on the use or occupancy of any part of the Project, or on rent for space in the Project; (v) any other tax, fee or excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Property Taxes; and (vi) reasonable consultants, and attorneys' fees and expenses incurred in connection with proceedings to contest, determine or reduce Real

7 14

Property Taxes. Real Property Taxes do not include: (A) franchise, transfer, inheritance or capital stock taxes, or income taxes measured by the net income of Landlord from all sources, unless any such taxes are levied or assessed against Landlord as a substitute for, in whole or in part, any Real Property Tax; (B) Impositions and all similar amounts payable by tenants of the Project under their leases; and (C) penalties, fines, interest or charges due for late payment of Real Property Taxes by Landlord. If any Real Property Taxes are payable, or may at the option of the taxpayer be paid, in installments, such Real Property Taxes shall, together with any interest that would otherwise be payable with such installment, be deemed to have been paid in installments, amortized over the maximum time period allowed by applicable law. If the tax statement from a taxing authority does not allocate Real Property Taxes to the Building, Landlord shall make the determination of the proper allocation of such Real Property Taxes based, to the extent possible, upon records of the taxing authority and, if not so available, then on an equitable basis.

X. Rent. Monthly Rent plus the Additional Rent as defined in Paragraph 5.E.

Y. Rentable Area. The aggregate square footage in any one or more buildings in the Project, as appropriate, as reasonably determined by Landlord's architect from time to time in accordance with BOMA Standard (ANSI Z65.1 1980) for full floor office occupancy.

AA. Security Deposit. That amount paid by Tenant pursuant to Paragraph 7.

BB. Sublet. Any transfer, sublet, assignment, license or concession agreement, change of ownership, mortgage, or hypothecation of this Lease or the Tenant's interest in the Lease or in and to all or a portion of the Premises. As used herein, a Sublet includes the following: (i) if Tenant is a partnership or a limited liability company, a transfer, voluntary or involuntary, of all or any part of any interest in such partnership or limited liability company, or the dissolution of the partnership or limited liability company, whether voluntary or involuntary; (ii) if Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or the transfer, either by a single transaction or in a series of transactions, of a controlling percentage of the stock of Tenant (except that a Sublet shall not include any such transfer of a controlling percentage of the stock of Tenant occurring at a time when the stock of Tenant is publicly traded on a nationally recognized stock exchange or over the counter), or the sale, by a single transaction or series of transaction, within any one (1) year period, of corporate assets equaling or exceeding twenty percent (20%) of the total value of Tenant's assets (except in connection with an initial public offering of the stock of Tenant on a nationally recognized stock exchange or over the counter); (iii) if Tenant is a trust, the transfer, voluntarily or involuntarily, of all or any part of the controlling interest in such trust; and (iv) if Tenant is any other form of entity, a transfer, voluntary or involuntary, of all or any part of any interest in such entity. As used herein, the phrases "controlling percentage" and "controlling interest" means the ownership of, and/or the right to vote, stock, partnership interests, membership interests, or other indicia of ownership possessing at least fifty-one percent (51%) of either the total combined interests in Tenant, or the voting power of all classes of Tenant's capital stock, partnership interests, membership interests, or other indicia of ownership, that have been issued, outstanding, and (if applicable) are entitled to vote.

8 15

CC. Subrent. Any consideration of any kind received, or to be received, by Tenant from a subtenant if such sums are related to Tenant's interest in this Lease or in the Premises, including without limitation bonus money and payments (in excess of book value) for Tenant's assets, including without limitation its trade fixtures, equipment and other personal property, goodwill, general intangibles, and any capital stock or other equity ownership of Tenant.

DD. Subtenant. The person or entity with whom a Sublet agreement is proposed to be or is made.

EE. Tenant Delay. Any delay that Landlord may encounter in the performance of

Landlord's obligations under the Lease because of any act or omission of any nature by Tenant or its agents or contractors, including without limitation any (i) delay attributable to the postponement of any Improvements at the request of Tenant; (ii) delay by Tenant in the submission of information or the giving of authorizations or approvals within the time limits set forth in the Lease or the Work Letter; (iii) delay attributable to the failure of Tenant to pay, when due, any amounts required to be paid by Tenant pursuant to the Lease or the Work Letter; and (iv) delay resulting from any change order request initiated or requested by Tenant.

FF. Tenant Improvements. Those certain improvements to the Premises to be constructed by Landlord pursuant to Exhibit B, other than the Capital Improvements. The Tenant Improvements shall at all times be the property of Landlord and shall not be deemed Tenant's Personal Property.

GG. Tenant's Percentage Share. The ratio (expressed as a percentage) of the total Rentable Area of the Premises to the total Rentable Area of all of the buildings at the Project owned by Landlord from time to time, which as of the Commencement Date shall equal \_\_\_\_\_% (i.e., the Rentable Area of the Premises divided by the Rentable Area of the buildings at the Project owned by Landlord as of the date of this Lease). Tenant's Percentage Share shall be recalculated each and every time that the amount of Rentable Area contained in Premises is adjusted, or the Premises is expanded, buildings are added to or removed from the Project, or there is a change in the total Rentable Area of those buildings in the Project owned by Landlord, or Landlord sells, exchanges, or otherwise transfers any or all of the buildings situated in the Project (including without limitation the Building). The parties acknowledge and agree that the total Rentable Area of all of the buildings in the Project owned by Landlord may increase and/or decrease from time to time during the Term, since Landlord may elect in its sole discretion to sell a building or buildings or to make changes to the buildings it owns in the Project (so long as Landlord does not unreasonably interfere with ingress to or egress from the Premises).

HH. Tenant's Personal Property. Tenant's trade fixtures, furniture, equipment and other personal property in the Premises.

II. Term. The Term of this Lease set forth in Paragraph 4.A., as it may be extended hereunder pursuant to any options to extend granted herein.

9 16

JJ. Fixed Charge Ratio. Tenant's consolidated earnings before income taxes, depreciation and amortization during the fiscal year in question, divided by the sum of (i) all interest charges occurring during the fiscal year in question, and (ii) all of Tenant's scheduled debt amortization payable during the fiscal year in question.

#### 4. Lease Term.

A. Term. Subject to adjustment for Tenant Delays pursuant to Paragraph 4.B below, the Term shall commence on the date of substantial completion of the Improvements to be

constructed by Landlord (the “Commencement Date”), and terminate on the date that is fifteen (15) years after the “Commencement Date” under the 450 Broadway Lease. For the purposes of this Lease, substantial completion shall mean that the Improvements have been completed in accordance with the Final Plans approved by Landlord and Tenant, subject only to minor punch-list items, and the City of Redwood City has issued a final building inspection approval for such Improvements.

B. Delays in Completion. Tenant agrees that if Landlord, for any reason whatsoever, is unable to substantially complete the Improvements on or before Landlord’s initial estimate of the Commencement Date, Landlord shall not be liable to Tenant for any loss or damage therefrom, nor shall this Lease be void or voidable. Upon the establishment of the actual Commencement Date, Landlord and Tenant shall execute a Commencement Date Memorandum in the form set forth in Exhibit D. Notwithstanding any provision of this Lease to the contrary, if at any time after the date of this Lease a Tenant Delay occurs, then the Commencement Date shall be moved earlier two (2) days for each one (1) day of Tenant Delay that delays the substantial completion of the Improvements. In addition, Tenant shall pay any and all costs and expenses incurred by Landlord which result from any Tenant Delay, including, without limitation, any and all costs and expenses attributable to increases in the cost of labor or materials.

C. Option to Extend.

(i) Grant of Option. Landlord hereby grants to Tenant one (1) option (the “Option to Extend”) to extend the Term of this Lease, for an additional term of five (5) years. The option term (the “Extended Term”) shall commence upon the expiration of the initial Term. The Option to Extend is expressly conditioned upon Tenant’s not being in default under any term or condition of this Lease after the expiration of any applicable cure period granted by this Lease, either at the time the Option to Extend is exercised or at the time the applicable Extended Term would commence. The Option to Extend shall be personal to the Tenant originally named in this Lease, and shall not be assigned, sold, conveyed or otherwise transferred to any other party (including without limitation any assignee or sublessee of such Tenant) without the prior written consent of Landlord, which consent may be withheld in Landlord’s sole discretion; provided, however, that the Option to Extend may be transferred to the transferee pursuant to a Permitted Transfer without Landlord’s consent. The Option to Extend shall be exercisable only so long as the Lease remains in full force and effect and shall be an interest appurtenant to and not separable from Tenant’s estate under the Lease. Under no circumstances shall Landlord be required to pay any real estate commission to any party with respect to Tenant’s exercise of the Option to Extend.

10 17

(ii) Manner of Exercise. Tenant may exercise the Option to Extend the Lease only by giving Landlord written notice not less than one (1) year prior to the expiration of the Term. If Tenant fails to exercise the Option to Extend prior to such 1-year period, then the Option to Extend automatically shall lapse and thereafter Tenant shall have no right to exercise the Option to Extend.

(iii) Terms and Rent. The initial Monthly Rent for the Premises for the Extended Term shall be equal to the greater of (w) ninety-five percent (95%) of the fair market rent, as determined below, for the Premises as of the commencement of the Extended Term, or (x) an amount equal to the Monthly Rent payable during the fourteenth (14th) Lease Year of the initial Term, multiplied by the greater of (A) the lesser of (I) a fraction, the numerator of which is the Index published most recently before the first day of the fourteenth (14th) Lease Year of the initial Term, and the denominator of which is the Index published most recently before the first day of the thirteenth (13th) Lease Year of the initial Term, or (II) one hundred sixteen percent (116%), or (B) one hundred seven percent (107%). During the Extended Term the Monthly Rent shall continue to be subject to adjustment in accordance with the provisions of Paragraph 5.B below. All other terms and conditions of the Lease, as amended from time to time by the parties in accordance with the provisions of the Lease, shall remain in full force and effect and shall apply during the Extended Term; provided, however, that neither the Option to Extend nor Landlord's obligations under the Work Letter shall be of any force or effect during the Extended Term.

(iv) Determination of Rent. For the purposes of calculating the Monthly Rent for the Extended Term, the fair market rent shall be equal to the net effective rent per rentable square foot being charged for leases executed within the preceding twelve (12) months for comparable space (in buildings with 2 - 4 stories) at either the Project (if any), or if there are none, for comparable space (in buildings with 2 - 4 stories) in office and research and development complexes located in the Redwood Shores area or the Menlo Oaks Business Park (located in Menlo Park, California), with terms comparable to the terms contained in this Lease, taking into consideration relevant factors such as the presence or absence of tenant improvement contributions by the lessor, and the fact that the Monthly Rent during the Extended Term shall be subject to adjustment under Paragraph 5.B. Any value added to the Premises by the Tenant Improvements and any Alterations paid for by Tenant shall not be considered or included in the determination of the fair market rent. The fair market rent shall be determined by mutual agreement of the parties or, if the parties are unable to agree within thirty (30) days after Tenant's exercise of an Option, then fair market rent shall be determined pursuant to the procedure set forth in Paragraphs 4.C.(v) and 4.C.(vi).

(v) Landlord's Initial Determination. If the parties are unable mutually to agree upon the fair market rent pursuant to Paragraph 4.C.(iv), then the fair market rent initially shall be determined by Landlord by written notice ("Landlord's Notice") given to Tenant promptly following the expiration of the 30-day period set forth in Paragraph 4.C.(iv). If Tenant disputes the amount of fair market rent set forth in Landlord's Notice, then, within thirty (30) days after the date of Landlord's Notice, Tenant shall send Landlord a written notice ("Tenant's Notice") which specifically (a) disputes the fair market rent set forth in Landlord's Notice, (b) demands arbitration pursuant to Paragraph 4.C.(vi), and (c) states the name and address of the person who shall act as arbitrator on Tenant's behalf. Tenant's Notice shall be deemed defective,

11 18

and not given to Landlord, if it fails strictly to comply with the Requirements and time period set forth above. If Tenant does not send Tenant's Notice within thirty (30) days after the date of Landlord's Notice, or if Tenant's Notice fails to contain all of the required

information, then the Monthly Rent for the Extended Term shall equal ninety-five percent (95%) of the fair market rent specified in Landlord's Notice. If Tenant sends Tenant's Notice in the proper form within thirty (30) days after the date of Landlord's Notice, then the Monthly Rent for the Extended Term shall be determined by arbitration pursuant to Paragraph 4.C(vi) below. If the arbitration is not concluded prior to the commencement of the Extended Term, then Tenant shall pay Monthly Rent equal to one hundred twenty-five percent (125%) of the Monthly Rent payable immediately prior to the commencement of the Extended Term. If the fair market rent determined by arbitration differs from that paid by Tenant pending the results of arbitration, then any adjustment required to adjust the amount previously paid shall be made by payment by the appropriate party within ten (10) days after the determination of fair market rent.

(vi) Arbitration. The arbitration shall be conducted in the City of San Francisco in accordance with the then prevailing rules of the American Arbitration Association (or its successor) for the arbitration of commercial disputes, except that the procedures mandated by such rules shall be modified as follows:

(a) Each arbitrator must be a real estate appraiser with at least five (5) years of full-time commercial appraisal experience who is familiar with the fair market rent of office and research and development complexes located in the vicinity of the Premises. Within ten (10) business days after receipt of Tenant's Notice, Landlord shall notify Tenant of the name and address of the person designated by Landlord to act as arbitrator on Landlord's behalf.

(b) The two arbitrators chosen pursuant to Paragraph 4.C.(vi)(a) shall meet within ten (10) business days after the second arbitrator is appointed and shall either agree upon the fair market rent or appoint a third arbitrator possessing the qualifications set forth in Paragraph 4.C.(vi)(a). If the two arbitrators agree upon the fair market rent within such ten (10) business day period, the Monthly Rent for the Extended Term shall equal ninety-five percent (95%) of such fair market rent. If the two arbitrators are unable to agree upon the fair market rent and are unable to agree upon the third arbitrator within five (5) business days after the expiration of such ten (10) business day period, the third arbitrator shall be selected by the parties themselves. If the parties do not agree on the third arbitrator within five (5) business days after the expiration of such five (5) business day period, then either party, on behalf of both, may request appointment of the third arbitrator by the Association of South Bay Brokers. The three arbitrators shall decide the dispute, if it has not been previously resolved, by following the procedures set forth in Paragraph 4.C.(vi)(c). Each party shall pay the fees and expenses of its respective arbitrator and both shall share the fees and expenses of the third arbitrator. Each party shall pay its own attorneys' fees and costs of witnesses.

(c) The three arbitrators shall determine the fair market rent in accordance with the following procedures. Each of Landlord's arbitrator and Tenant's arbitrator shall state, in writing, his or her determination of the fair market rent, supported by the reasons therefor, and shall make counterpart copies for the other arbitrators. All of the arbitrators shall arrange for a simultaneous exchange of the proposed resolutions within ten (10) business days

after appointment of the third arbitrator. If any arbitrator fails to deliver his or her own determination to the other arbitrators within such ten (10) business day period, then the fair market rent shall equal the average of the resolutions submitted by the other arbitrators. If all three (3) arbitrators deliver their determinations to the other arbitrators within such ten (10) business day period, then the two (2) closest determinations of the arbitrators shall be averaged, and the resulting quotient shall be the fair market rent, and the Monthly Rent for the Extended Term shall equal ninety-five percent (95%) of such fair market rent; provided, however, that if the determination of one (1) of the arbitrators (the "Average Determination") is equal to the average of the determinations of the other two (2) arbitrators, then the Average Determination shall be the fair market rent. However, the arbitrators shall not attempt to reach a mutual agreement of the fair market rent; each arbitrator shall independently arrive at his or her proposed resolution.

(d) The arbitrators shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of fair market rent, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The arbitrators shall render the decision and award in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease. In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator, his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

## 5. Rent and Additional Charges.

A. Monthly Rent. Tenant shall pay to Landlord, in lawful money of the United States, Monthly Rent as follows: commencing on the Commencement Date, and continuing through the balance of the Term (subject to adjustment pursuant to Paragraph 5.B), the initial Monthly Rent shall equal that amount calculated pursuant to the Build to Suit Agreement as the Monthly Rent for the Building. Tenant shall have no obligation to pay Monthly Rent before the Commencement Date. Until the Monthly Rent is established under the Build to Suit Agreement, the Monthly Rent shall be deemed to equal that amount designated from time to time in writing by Landlord to Tenant as Landlord's reasonable estimate of the amount of Monthly Rent that will be established under the Build to Suit Agreement upon completion of the construction of the Building (collectively, the "Estimated Monthly Rent"), based upon Landlord's estimate of the Development Costs (as defined in the Build to Suit Agreement) that have been or will be incurred in constructing the Building. Upon the final establishment of the initial Monthly Rent in accordance with the Build to Suit Agreement, Landlord and Tenant shall each execute an addendum to this Lease setting forth the initial Monthly Rent under this Lease. If as of the date the initial Monthly Rent under this Lease is established (the "Rent Establishment Date"), the aggregate amount of Estimated Monthly Rent previously paid by Tenant exceeds the aggregate amount of Monthly Rent payable under this Lease from the Commencement Date to the Rent Establishment Date, then Landlord may elect, in its sole discretion, to either refund such excess to Tenant within thirty (30) days after the Rent Establishment Date, or offset such overpayment against Rent due or remaining due under this Lease. If as of the



Rent Establishment Date the aggregate amount of Estimated Monthly Rent previously paid by Tenant is less than the

13 20

aggregate amount of Monthly Rent payable under this Lease from the Commencement Date to the Rent Establishment Date, then Tenant shall pay the deficiency to Landlord within thirty (30) days after the Rent Establishment Date.

Monthly Rent shall be paid in advance, on the first day of each calendar month during the Term, without abatement, deduction, claim, offset, prior notice or demand. Tenant shall pay to Landlord an amount equal to one (1) month's advance payment of Monthly Rent for the Premises upon the execution of this Lease by Landlord and Tenant. Additionally, Tenant shall pay, as and with the Monthly Rent, the management fee described in Paragraph 5.C., Tenant's Percentage Share of Common Area Maintenance Costs pursuant to Paragraph 5.D, the Real Property Taxes and Impositions payable by Tenant pursuant to Paragraph 15, and the monthly cost of insurance premiums required pursuant to Paragraph 21.C.

B. Adjustments to Monthly Rent. The Monthly Rent may be adjusted at any time during the Term in accordance with the provisions of Paragraph 2.1.1 of Exhibit D to the Build to Suit Agreement. In addition, the Monthly Rent shall be increased, but not decreased, as of the first day of the month which is twenty-five (25) months from the Commencement Date and every twenty-four (24) months thereafter during the Term (including without limitation the Extended Term) (each, an "Adjustment Date") by the greater of (i) the percentage increase in the Index from the previous Adjustment Date (or, for the first Adjustment Date, from the Commencement Date), up to a maximum of sixteen percent (16%), or (ii) seven percent (7%). If, however, the last Adjustment Date occurs at any time after the first day of a calendar month, the first Adjustment Date shall be the first day of the immediately following calendar month. On each Adjustment Date, the total aggregate amount of Monthly Rent then in effect shall be multiplied by the greater of (x) the lesser of (A) a fraction, the numerator of which is the Index published most recently before the applicable Adjustment Date, and the denominator of which is the Index published most recently before the prior Adjustment Date (or, in the case of the first Adjustment Date, the Index published most recently before the Commencement Date), or (B) one hundred sixteen percent (116%), or (y) one hundred seven percent (107%); and the corresponding product shall be the Monthly Rent in effect until the next Adjustment Date. In no event shall the Monthly Rent in effect after an Adjustment Date be less than one hundred seven percent (107%) of the Monthly Rent in effect immediately prior to such Adjustment Date. If no Index is published for either of the months set forth above, the Index for the next preceding month shall be used.

C. Management Fee. Tenant shall pay to Landlord monthly, as Additional Rent, a management fee equal to three and one-half percent (3.5%) of the then Monthly Rent.

D. Common Area Maintenance Costs.

(i) Estimated Payments. Commencing on the Commencement Date and continuing throughout the entire Term, Tenant shall pay Tenant's Percentage Share of all Common

Area Maintenance Costs paid or payable by Landlord in each year; provided, however, that Tenant shall pay one hundred percent (100%) of those Common Area Maintenance Costs arising from Landlord's performance of its obligations under Paragraphs 17.A and Tenant's obligations under Paragraph 17.D. Before commencement of the Term and during December of

14 21

each calendar year or as soon thereafter as practicable, Landlord shall give Tenant notice of its estimate of amounts payable under this Paragraph 5.D.(i) for the ensuing calendar year. Such notice shall show in reasonable detail the basis on which the estimate was determined. On or before the first day of each month during the ensuing calendar year, Tenant shall pay to Landlord one-twelfth (1/12th) of such estimated amounts, provided that if such notice is not given in December, Tenant shall continue to pay on the basis of the prior year's estimate until the month after such notice is given. If at any time or times it appears to Landlord, in its reasonable judgment, that the amounts payable under this Paragraph 5.D.(i) for the current calendar year will vary from its then-current estimate by more than five percent (5%), Landlord may, in its sole discretion, by notice to Tenant, showing in reasonable detail the basis for such variance, revise its estimate for such year, in which case subsequent payments by Tenant for such year shall be based upon such revised estimate. Landlord's election not to give the notice described in the foregoing sentence shall not affect Landlord's ability to charge Tenant for, nor Tenant's liability to pay for, any shortfall in the estimated payments for such calendar year previously made by Tenant, as set forth in Paragraph 5.D.(ii).

(ii) Adjustment. Within one hundred twenty (120) days after the close of each calendar year or as soon after such 120-day period as reasonably practicable, Landlord shall deliver to Tenant a reasonably detailed statement of Common Area Maintenance Costs for such calendar year, certified by Landlord or its property manager, subject to Tenant's right to audit as hereinafter provided. At that time, Landlord shall also deliver to Tenant a statement, certified as correct by Landlord, of the adjustments to be made pursuant to Paragraph 5.D.(i) above. If Landlord's statement shows that Tenant owes an amount that is less than the estimated payments for such calendar year previously made by Tenant, Landlord may elect, in its sole discretion, to either refund such excess to Tenant within thirty (30) days after delivery of the statement, or offset such overpayment against Rent due or remaining due under this Lease; provided that if no Rent remains due, Landlord shall refund such excess to Tenant within thirty (30) days after delivery of the statement. If such statement shows that Tenant owes an amount that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of the statement.

(iii) Last Year. If this Lease shall terminate on a day other than the last day of a calendar year, the adjustment in Rent applicable to the calendar year in which such termination shall occur shall be prorated on the basis which the number of days from the commencement of such calendar year to and including such termination date bears to three hundred sixty (360). The termination of this Lease shall not affect the obligations of Landlord and Tenant pursuant to Paragraph 5.D.(ii) to be performed after such termination.

(iv) Audit. Within one hundred eighty (180) days after receipt of Landlord's statement of Common Area Maintenance Costs as provided in Paragraph 5.D.(ii), Tenant or its designee, on not less than five (5) days' prior written notice to Landlord, shall have the right to, at Tenant's sole cost and expense, audit, examine and copy Landlord's books and records with respect to the Common Area Maintenance Costs for the calendar year pertaining to the year for which the Landlord's statement pertains. Landlord shall cooperate with Tenant in any such examination of its books and records.

15 22

E. Additional Rent. All monies required to be paid by Tenant under this Lease, including, without limitation, the Tenant Improvement costs pursuant to Exhibit B, the management fee described in Paragraph 5.D, Tenant's Percentage Share of Common Area Maintenance Costs pursuant to Paragraph 5.D, Real Property Taxes and Impositions pursuant to Paragraph 15, and the monthly cost of insurance premiums required pursuant to Paragraph 21.C, shall be deemed Additional Rent.

F. Prorations. If the Commencement Date or the Second Half Commencement Date is not the first (1st) day of a month, or if the termination date of this Lease is not the last day of a month, a prorated installment of Monthly Rent based on a 30-day month shall be paid for the fractional month during which such date occurs or the Lease terminates.

G. Interest. Any amount of Rent or other charges provided for under this Lease due and payable to Landlord which is not paid when due shall bear interest at the Interest Rate from the date that is (i) five (5) days after the date such Rent is due until such Rent is paid, or (ii) ten (10) days after Tenant receives written notice from Landlord that any other charge provided for under this Lease (other than Rent) is due and payable, until such other charge is paid.

#### 6. Late Payment Charges.

Tenant acknowledges that late payment by Tenant to Landlord of Rent and other charges provided for under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult or impracticable to fix. Therefore, if any installment of Rent or any other charge due from Tenant (excluding late release of the Set-Aside Funds pursuant to the Work Letter) is not received by Landlord within three (3) days after the date such Rent or other charge is due, Tenant shall pay to Landlord an additional sum equal to seven percent (7%) of the amount overdue as a late charge for every month or portion thereof that the Rent or other charges remain unpaid. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment by Tenant.

Initials:

/s/ /s/ - ----- Landlord Tenant

#### 7. Security Deposit.

A. Deposit Required. Tenant shall deposit with Landlord upon the execution of this Lease by Landlord and Tenant, an amount equal to three (3) payments of the Estimated Monthly Rent under this Lease, as the "Security Deposit" for the full and faithful performance of every provision of this Lease to be performed by Tenant. Effective as of the Rent Establishment Date, the Security Deposit shall be adjusted (if necessary) to equal three (3) payments of the initial Monthly Rent under this Lease. If as of the Rent Establishment Date the Estimated

16 23

Monthly Rent exceeds the initial Monthly Rent as determined under Paragraph 5.A above, then Landlord shall refund to Tenant, within thirty (30) days after the Rent Establishment Date, any overpayment of the Security Deposit. If as of the Rent Establishment Date the Estimated Monthly Rent is less than the initial Monthly Rent as determined under Paragraph 5.A above, then Tenant shall increase the Security Deposit by paying the deficiency in the Security Deposit to Landlord within thirty (30) days after the Rent Establishment Date. For the purposes of this Lease, the term "Security Deposit" shall include the initial sum deposited by Tenant as the Security Deposit and any other sum deposited by Tenant as the Security Deposit and any other sum deposited by Tenant towards the Security Deposit pursuant to this Paragraph 7.A. At Tenant's option, the Security Deposit may be in the form of an irrevocable standby letter of credit ("L-C"). Landlord shall not be required to segregate the Security Deposit from Landlord's general funds; Landlord's obligations with respect to the Security Deposit shall be those of a debtor and not a trustee, and Tenant shall not be entitled to any interest on the Security Deposit. Invocation by Landlord of its rights hereunder shall not constitute a waiver of nor relieve Tenant from any liability or obligation for any default by Tenant under this Lease.

(i) Reduction or Replacement. So long as Tenant has not committed any default under this Lease, then if Tenant can demonstrate to the reasonable satisfaction of Landlord that Tenant has maintained a Fixed Charge Ratio of at least 1.25 to 1 for a period of four (4) consecutive fiscal years at any time after the Commencement Date, then Tenant may elect to reduce the Security Deposit to a sum equal to the then-current amount of Monthly Rent. For the purposes of this Paragraph 7, in order for Tenant to demonstrate that it has maintained the required Fixed Charge Ratio for the fiscal year or years in question, Tenant must at a minimum deliver to Landlord an audited financial statement of Tenant, showing that Tenant has maintained the required Fixed Charge Ratio for the fiscal year or years in question.

If Tenant is entitled to and does elect to reduce the amount of the Security Deposit pursuant to this Paragraph 7.A.(i), and Tenant delivers to Landlord written notice of its election to so reduce the amount of the Security Deposit and the financial statement described in the foregoing grammatical paragraph, then either (x) if the Security Deposit is in the form of cash, Landlord shall pay to Tenant the excess amount of the Security Deposit, without interest, within thirty (30) days after Landlord's receipt of such notice and statement; or (y) if the Security Deposit is in the form of an L-C, then Tenant may, not less than ten (10) days after Landlord's receipt of such notice and statement, replace the L-C with an L-C in an amount equal to the reduced amount of the Security Deposit.

(ii) Consequences of Default. If Tenant defaults with respect to any provision of this Lease, after the expiration of any applicable cure or grace periods expressly provided for in this Lease, Landlord may apply all or any part of the Security Deposit for the payment of any Rent or other sum in default, the repair of such damage to the Premises or the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default to the full extent permitted by law. If any portion of a cash Security Deposit is so applied, or any portion of an L-C posted as the Security Deposit, if applicable, is drawn upon, by Landlord for such purposes, Tenant shall either, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore

17 24

the Security Deposit to its original amount or deposit a replacement L-C with Landlord in the amount of the original L-C. If Tenant is not otherwise in default, the Security Deposit or any balance thereof shall be returned to Tenant within thirty (30) days of termination of the Lease.

(ii) Form of L-C. If at any time Tenant elects to deposit an L-C as the Security Deposit, the L-C shall be issued by a bank reasonably acceptable to Landlord, shall be issued for a term of at least twelve (12) months and shall be in a form and with such content reasonably acceptable to Landlord. Tenant shall either replace the expiring L-C with an L-C in an amount equal to the original L-C or renew the expiring L-C, in any event no later than thirty (30) days prior to the expiration of the term of the L-C then in effect. If Tenant fails to deposit a replacement L-C or renew the expiring L-C, Landlord shall have the right to draw upon the expiring L-C for the full amount thereof and hold the same as the Security Deposit; provided, however, that if Tenant provides a replacement L-C that meets the requirements of this Paragraph, then Landlord shall return to Tenant promptly in cash that amount of the L-C that had been drawn upon by Landlord. Drawing upon the L-C shall be conditioned upon the presentation to the issuer of the L-C of a certified statement executed by a general partner of Landlord that (i) Tenant is in default under the Lease and Landlord is exercising its right to draw upon so much of the L-C as is necessary to cure Tenant's default, or (ii) Tenant has not renewed or replaced an expiring L-C as required by this Lease and Landlord is authorized to draw upon the L-C prior to its expiration. The L-C shall not be mortgaged, assigned or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord. The use, application or retention of the L-C, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by law, it being intended that Landlord shall not first be required to proceed against the L-C, and such use, application or retention shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled.

#### 8. Holding Over.

If Tenant remains in possession of all or any part of the Premises after the expiration of the Term, with the express or implied consent of Landlord, such tenancy shall be at sufferance only, and shall not constitute a renewal or extension for any further term. If Tenant remains in possession after the expiration of the Term, either with or without Landlord's consent,

Rent shall be payable at a rental equal to one hundred thirty percent (130%) of the Monthly Rent payable during the last month of the Term (which rental shall be due and payable at the same time as Monthly Rent is due under this Lease), and any other sums due under this Lease shall be payable in the amount and at the times specified in this Lease. Such holdover tenancy shall be subject to every other term, condition, and covenant contained herein; provided, however, that neither the Holdover Option (as defined below) nor Landlord's obligations under the Work Letter shall be of any force or effect during any such holdover tenancy.

#### 9. Tenant Improvements.

Landlord agrees to construct the Tenant Improvements pursuant to the terms of Exhibit B.

18 25

#### 10. Condition of Premises.

A. Capital Improvements. Landlord shall complete the Capital Improvements in accordance with the terms of Exhibit B; provided, however, that the construction of the shell and core of the Building shall be governed by the terms of the Build to Suit Agreement. Except for its obligation to perform the Capital Improvements and the Tenant Improvements as set forth in this Lease and the Work Letter, Landlord shall have no obligation whatsoever to do any work or perform any improvements whatsoever to any portion of the Premises or the Building.

B. Acceptance of Premises. Within ten (10) days after completion of the Tenant Improvements Tenant shall conduct a walk-through inspection of the Premises with Landlord and complete a punch list of items needing additional work. Other than the items specified in the punch list, if any, and subject to Landlord's representations and warranties described below, by taking possession of the Premises, Tenant shall be deemed to have accepted the Premises in good, clean and completed condition and repair, subject to all applicable laws, codes and ordinances. Any damage to the Premises caused by Tenant's move-in shall be repaired or corrected by Tenant, at its sole cost and expense, which repair or corrective work shall not be paid for out of the Tenant Improvements Allowance. Tenant acknowledges that neither Landlord nor Landlord's Agents have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business or for any other purpose, nor has Landlord or Landlord's Agents agreed to undertake any Alterations or construct any Improvements to the Premises except as expressly provided in this Lease. If Tenant fails to submit a punch-list to Landlord within such 10-day period, it shall be deemed that there are no Improvement items needing additional work or repair. Landlord's contractor shall complete all reasonable punch-list items within thirty (30) days after the walk-through inspection or as soon as practicable thereafter. Upon completion of such punch-list items, Tenant shall approve such completed items in writing to Landlord. If Tenant fails to approve such items within fourteen (14) days of completion, such items shall be deemed approved by Tenant.

#### 11. Use of the Premises and Common Area.

A. Tenant's Use. Tenant shall use the Premises only for general office, research and development, marketing, sales, and storage related to such activities, and any other legal use consistent with any CC&Rs. Tenant shall not use the Premises or suffer or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance or governmental law, rule, regulation or requirement of public authorities now in force or which may hereafter be in force, relating to or affecting the condition, use or occupancy of the Premises. Tenant shall not commit any public or private nuisance or any other act or thing which might or would disturb the quiet enjoyment of any other tenant of Landlord or any occupant of nearby property. Tenant shall place no loads upon the floors, walls or ceilings in excess of the maximum designed load determined by a licensed structural engineer or which endanger the structure; nor place any harmful liquids in the drainage systems; nor dump or store waste materials or refuse or allow waste materials or refuse to remain outside the Building proper, except in the enclosed trash areas provided. Tenant shall not store or permit to be stored or otherwise placed any other material of any nature whatsoever outside the Building, except on a temporary basis.

19 26

B. Hazardous Materials.

(i) Hazardous Materials Defined. As used herein, the term "Hazardous Materials" shall mean any wastes, materials or substances (whether in the form of liquids, solids or gases, and whether or not air-borne), which are or are deemed to be (a) pollutants or contaminants, or which are or are deemed to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious, or which present a risk to public health or to the environment, or which are or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions, guidelines or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto, including, without limitation, any such items or substances which are or may become regulated by any of the Environmental Laws (as hereinafter defined); (b) listed as a chemical known to the State of California to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code, Division 20, Chapter 6.6 (Safe Drinking Water and Toxic Enforcement Act of 1986); or (c) a pesticide, petroleum, including crude oil or any fraction thereof, asbestos or any asbestos- containing material, a polychlorinated biphenyl, radioactive material, or urea formaldehyde.

(ii) Environmental Laws Defined. In addition to the laws referred to in Paragraph 11.B.(i) above, the term "Environmental Laws" shall be deemed to include, without limitation, 33 U.S.C. Section 1251 et seq., 42 U.S.C. Section 6901 et seq., 42 U.S.C. Section 7401 et seq., 42 U.S.C. Section 9601 et seq., and California Health and Safety Code Section 25100 et seq., and 25300 et seq., California Water Code, Section 13020 et seq., or any successor(s) thereto, all local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other governmental restrictions, guidelines and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant thereto, which deal with or otherwise in any manner relate to, air or water quality, air emissions, soil or ground conditions or other environmental matters of any kind.

(iii) Use of Hazardous Materials. Tenant agrees that during the Term of this Lease, Tenant shall not use, or permit the use of, nor store, generate, treat, manufacture or dispose of Hazardous Materials on, from or under the Premises (individually and collectively, "Hazardous Use") except to the extent that, and in accordance with such conditions as, Landlord may have previously approved in writing in its sole and absolute discretion. Notwithstanding the foregoing, Tenant shall be entitled to use and store only those Hazardous Materials which are (a) set forth in a list prepared by Tenant and approved in writing by Landlord, which shall be deemed given with respect to the Approved Hazardous Materials (hereinafter defined), (b) necessary for Tenant's business, but then only in the amounts and for the purposes previously disclosed in writing to and approved in writing by Landlord, and (c) in full compliance with Environmental Laws, and all judicial and administrative decisions pertaining thereto. All Hazardous Materials approved in writing by Landlord as provided in the preceding sentence shall collectively be referred to as the "Approved Hazardous Materials". Within thirty (30) days after request by Landlord, Tenant shall deliver to Landlord a list of the Approved Hazardous Materials. Tenant shall not be entitled to install any tanks under, on or about the Premises for the storage of Hazardous Materials without the express written consent of Landlord, which may be given or withheld in Landlord's sole discretion. For the purposes of this Paragraph 11.B.(iii), the

20 27

term Hazardous Use shall include Hazardous Use(s) on, from or under the Premises by Tenant, any Subtenant occupying all or any portion of the Premises during the Term, or any of their directors, officers, employees, shareholders, partners, invitees, agents, contractors or occupants (collectively, "Tenants Parties"), whether known or unknown to Tenant, occurring during the Term of this Lease. The term "Tenant's Parties" shall not include any tenants of the Project other than Tenant, except that the term "Tenant's Parties" shall include any Subtenant occupying all or any portion of the Premises during the Term.

(iv) Hazardous Materials Report; When Required. Tenant shall submit to Landlord a written report with respect to Hazardous Materials ("Report") in the form prescribed in Paragraph 11.B.(v) below on the following dates:

(a) At any time within ten (10) days after written request by Landlord, and

(b) At any time when there has been a violation of any Environmental Law, or in connection with any proposed request for Landlord's consent to any change in the list of Approved Hazardous Materials or for an increase in the intensity of usage or storage of such Approved Hazardous Materials.

(v) Hazardous Materials Report; Contents. The Report shall contain, without limitation, the following information:

(a) Whether on the date of the Report and (if applicable) during the period since the last Report there has been any Hazardous Use on, from or under the Premises, other than the use of Approved Hazardous Materials.



(b) If there was such Hazardous Use, the exact identity of the Hazardous Materials (other than the Approved Hazardous Materials), the dates upon which such materials were brought upon the Premises, the dates upon which such Hazardous Materials were removed therefrom, and the quantity, location, use and purpose thereof.

(c) If there was such Hazardous Use, any governmental permits maintained by Tenant with respect to such Hazardous Materials, the issuing agency, original date of issue, renewal dates (if any) and expiration date. Copies of any such permits and applications therefor shall be attached.

(d) If there was such Hazardous Use, any governmental reporting or inspection requirements with respect to such Hazardous Materials, the governmental agency to which reports are made and/or which conducts inspections, and the dates of all such reports and/or inspections (if applicable) since the last Report. Copies of any such Reports shall be attached.

(e) If there was such Hazardous Use, identification of any operation or business plan prepared for any government agency with respect to Hazardous Use.

21 28

(f) Any liability insurance carried by Tenant with respect to Hazardous Materials, if any, the insurer, policy number, date of issue, coverage amounts, and date of expiration. Copies of any such policies or certificates of coverage shall be attached.

(g) Any notices of violation of Environmental Laws, written or oral, received by Tenant from any governmental agency since the last Report, the date, name of agency, and description of violation. Copies of any such written notices shall be attached.

(h) Any knowledge, information or communication which Tenant has acquired or received relating to (x) any enforcement, cleanup, removal or other governmental or regulatory action threatened or commenced against Tenant or with respect to the Premises pursuant to any Environmental Laws; (y) any claim made or threatened by any person or entity against Tenant or the Premises on account of any alleged loss or injury claimed to result from any alleged Hazardous Use on or about the Premises; or (z) any report, notice or complaint made to or filed with any governmental agency concerning any Hazardous Use on or about the Premises. The Report shall be accompanied by copies of any such claim, report, complaint, notice, warning or other communication that is in the possession of or is available to Tenant.

(i) Such other pertinent information or documents as are reasonably requested by Landlord in writing.

(vi) Release of Hazardous Materials; Notification and Cleanup.

(a) At any time during the Term, if Tenant knows or believes that any release of any Hazardous Materials has come or will come to be located upon, about or beneath the Premises, then Tenant shall immediately, either prior to the release or following the

discovery thereof by Tenant, give verbal and follow-up written notice of that condition to Landlord.

(b) At its sole cost and expense, Tenant covenants to investigate, clean up and otherwise remediate any release of Hazardous Materials which were caused or created by Tenant or any of Tenant's Parties. Such investigation, clean-up and remediation shall be performed only after Tenant has obtained, if practicable, Landlord's written consent, which shall not be unreasonably withheld; provided, however, that Tenant shall be entitled to respond immediately to an emergency without first obtaining Landlord's written consent. All clean-up and remediation shall be done in compliance with Environmental Laws and to the reasonable satisfaction of Landlord.

(c) Notwithstanding the foregoing, Landlord shall have the right, but not the obligation, in Landlord's sole and absolute discretion, exercisable by written notice to Tenant, to undertake within or outside the Premises all or any portion of any reasonable investigation, clean-up or remediation with respect to any Hazardous Use of such Hazardous Materials by Tenant or any of Tenant's Parties (or, once having undertaken any of such work, to cease same, in which case Tenant shall perform the work), all at Tenant's sole cost and expense, which shall be paid by Tenant as Additional Rent within ten (10) days after receipt of written request therefor by Landlord (and which Landlord may require to be paid prior to commencement

22 29

of any work by Landlord); provided, however, that Tenant's obligation to pay for such work shall only be applicable if Tenant fails to perform its obligations under this Paragraph 11 (including without limitation the obligations described in Paragraph 11.B.(vi)(b)). No such work by Landlord shall create any liability on the part of Landlord to Tenant or any other party in connection with such Hazardous Materials by Tenant or any of Tenant's Parties or constitute an admission by Landlord of any responsibility with respect to such Hazardous Materials.

(d) It is the express intention of the parties hereto that Tenant shall be liable under this Paragraph 11.B.(vi) for any and all conditions covered hereby which were or are caused or created by Tenant or any of Tenant's Parties, whether occurring prior to, on, or after the Commencement Date. Tenant shall not enter into any settlement agreement, consent decree or other compromise with respect to any claims relating to any Hazardous Materials in any way connected to the Premises without first (x) notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to participate in any such proceedings, and (y) obtaining Landlord's written consent, which shall not be unreasonably withheld.

(vii) Inspection and Testing by Landlord. Landlord shall have the right at all times during the Term of this Lease to (a) inspect the Premises, as well as such of Tenant's books and records pertaining to the Premises and the conduct of Tenant's business therein, and to (b) conduct tests and investigations to determine whether Tenant is in compliance with the provisions of this Paragraph 11.B. Except in case of emergency, Landlord shall give reasonable notice to Tenant before conducting any inspections, tests, or investigations in accordance with Paragraph 19, shall provide Tenant with a work plan describing any testing

that shall be performed at the Premises, and shall use reasonable efforts to minimize interference with the conduct of Tenant's business at the Premises caused by any such inspections, tests, or investigations. The cost of all such inspections, tests and investigations shall be borne by Tenant. Neither any action nor inaction on the part of Landlord pursuant to this Paragraph 11.B.(vii) shall be deemed in any way to release Tenant from, or in any way modify or alter, Tenant's responsibilities, obligations, and liabilities incurred pursuant to Paragraph 11.B hereof.

(viii) Indemnity. Tenant shall indemnify, defend, protect, hold harmless, and, at Landlord's option (with such attorneys as Landlord may approve in advance and in writing), defend Landlord, Landlord's Agents, and Landlord's officers, directors, shareholders, partners, employees, contractors, property managers, agents and mortgagees and other lien holders, from and against any and all Losses (as defined below), whenever such Losses arise, arising from or related to: (a) any violation or alleged violation by Tenant or any of Tenant's Parties of any of the requirements, ordinances, statutes, regulations or other laws referred to in this Paragraph 11.b, including, without limitation, the Environmental Laws, whether such violation or alleged violation occurred prior to, on, or after the Commencement Date; (b) any breach of the provisions of this Paragraph 11.b by Tenant or any of Tenant's Parties; or (c) any Hazardous Use on, about or from the Premises by Tenant or any of Tenant's Parties of any Hazardous Materials (whether or not approved by Landlord under this Lease), whether such Hazardous Use occurred prior to, on, or after the Commencement Date. The term "Losses" shall mean all claims, demands, expenses, actions, judgments, damages (whether consequential, direct or indirect, known or unknown, foreseen or unforeseen), penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, diminution in value of

23 30

Landlord's interest in the Premises, damages for the loss of restriction on use of any space or amenity within the Premises, damages arising from any adverse impact on marketing space in the Premises, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, but not limited to, attorneys' and consultants' fees and expenses, and the costs of cleanup, remediation, removal and restoration, that are in any way related to any matter covered by the foregoing indemnity.

(ix) Survival. The provisions of this Paragraph 11.b shall survive the expiration or earlier termination of this Lease.

#### C. Special Provisions Relating to The Americans With Disabilities Act of 1990.

(i) Allocation of Responsibility to Landlord. As between Landlord and Tenant, Landlord shall be responsible that the Common Area owned by Landlord complies with the requirements of Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181, et seq., The Provisions Governing Public Accommodations and Services Operated by Private Entities), and all regulations promulgated thereunder, and all amendments, revisions or modifications thereto now or hereafter adopted or in effect in connection therewith (hereinafter collectively referred to as the "ADA"), and to take such actions and make such

alterations and improvements as are necessary for such compliance; provided, however, that to the extent such requirements arise from the construction of any Alterations to the Premises made by or on behalf of Tenant, then as between Landlord and Tenant, Tenant shall be responsible that the Common Area complies with the requirements of the ADA, and to take such actions and make such alterations and improvements as are necessary for such compliance.

(ii) Allocation of Responsibility to Tenant. Except as expressly provided in the Work Letter, as between Landlord and Tenant, Tenant, at its sole cost and expense, shall be responsible that the Premises (and all modifications made by Tenant of access to the Premises from the street), and all alterations and improvements in the Premises (including without limitation the Tenant Improvements), and Tenant's use and occupancy of the Premises, and Tenant's performance of its obligations under this Lease, comply with the requirements of the ADA, and to take such actions and make such alterations and improvements as are necessary for such compliance; provided, however, that Tenant shall not make any such alterations or improvements except upon Landlord's prior written consent (which shall not be unreasonably withheld) pursuant to the terms and conditions of this Lease. If Tenant fails diligently to take such actions or make such alterations or improvements as are necessary for such compliance, Landlord may, but shall not be obligated to, take such actions and make such alterations and improvements and may recover all of the costs and expenses of such actions, alterations and improvements from Tenant as Additional Rent. Tenant shall be entitled to utilize the Tenant Improvements Allowance to pay for the cost of any improvements required by ADA that are triggered by the construction of the Tenant Improvements.

(iii) General. Notwithstanding anything in this Lease contained to the contrary, no act or omission of either party, including any approval, consent or acceptance by it

24 31

or its agents, employees or other representatives, shall be deemed an agreement, acknowledgment, warranty, or other representation by it that the other party has complied with the ADA as provided under Paragraphs 11.C.(i) or 11.c.(ii) or that any action, alteration or improvement by it complies or will comply with the ADA as provided under Paragraphs 11.c.(i) or 11.c.(ii) or constitutes a waiver by it of the other party's obligations to comply with the ADA under Paragraphs 11.c.(i) or 11.c.(ii) of this Lease or otherwise. Any failure of either party to comply with its obligations of the ADA under Paragraphs 11.c.(i) or 11.c.(ii) shall not relieve such party from any obligations under this Lease or in the case of Landlord's failure to comply under Paragraph 11.c.(i), constitute or be construed as a constructive or other eviction of Tenant or disturbance of Tenant's use and possession of the Premises.

D. Use and Maintenance of Common Area. Tenant and its employees and invitees shall have the non-exclusive right to use the Common Area in common with other persons during the Term of this Lease, subject to the CC&Rs and such reasonable rules and regulations as may from time to time be deemed necessary or advisable in Landlord's reasonable discretion for the proper and efficient operation and maintenance of the Common Area. Such rules and regulations may include, among other things, the hours

during which the Common Area shall be open for use. Landlord shall maintain and operate the Common Area from time to time owned by Landlord in good condition, provided that any damage thereto, other than normal wear and tear, occasioned by the act of Tenant or its employees or invitees shall be paid by Tenant upon demand by Landlord.

## 12. Quiet Enjoyment.

Landlord covenants that Tenant, upon performing the terms, conditions and covenants of this Lease, shall have quiet and peaceful possession of the Premises as against any person claiming the same by, through or under Landlord.

## 13. Alterations.

A. Alteration Rights. After the Commencement Date, Tenant shall not make or permit any Alterations in, on or about the Premises, except for nonstructural Alterations (which shall not include any modifications to the mechanical or electrical systems of the Building, nor any penetration of the Building's roof) not exceeding Ten Thousand Dollars (\$10,000.00) in aggregate cost during any period of twelve (12) consecutive months, without the prior written consent of Landlord, and according to plans and specifications approved in writing by Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing Tenant shall not, without the prior written consent of Landlord, make any:

(i) Alterations to the exterior of the Building;

(ii) Alterations to the roof of the Building; and

(iii) Alterations visible from outside the Building, to which Landlord may withhold Landlord's consent on wholly aesthetic grounds.

25 32

B. Performance of Alterations. All Alterations shall be installed at Tenant's sole expense, in compliance with all applicable laws, by a licensed contractor, shall be done in a good and workmanlike manner conforming in quality and design with the Premises existing as of the Commencement Date, and shall not diminish the value of either the Building or the Premises. All Alterations made by Tenant shall be and become the property of Landlord upon installation and shall not be deemed Tenant's Personal Property, and Tenant shall not remove any Alterations from the Premises unless Tenant has first obtained Landlord's written consent to such removal. Landlord may require Tenant to remove, at Tenant's expense, any Alterations from the Premises at the expiration or earlier termination of this Lease; provided, however, that at the time any Alterations are constructed, Tenant shall have the right to request Landlord's written approval (which shall not be unreasonably withheld or delayed) that Landlord will not require the removal of such Alterations at the expiration or earlier termination of this Lease. Notwithstanding Alterations made by it to the Premises. Tenant shall give Landlord written notice of Tenant's intention to perform work on the Premises at least ten (10) days prior to the commencement of such work to enable Landlord to post and record a Notice of Nonresponsibility or other notice deemed proper before the commencement of any such work.

C. Trade Fixtures. Landlord acknowledges that Tenant may lease from or finance with a third party (collectively, a "Trade Fixture Lessor") all or a portion of Tenant's Personal Property. Landlord shall duly execute and properly deliver any waivers or consents which may reasonably be required by any proposed Trade Fixture Lessor in connection with the leasing or financing of such Tenant's Personal Property, so long as such waivers and consents shall include the following: (i) the Trade Fixture Lessor shall agree to repair any damage to the Premises caused by the Trade Fixtures Lessor's removal of Tenant's Personal Property from the Premises, and (ii) Landlord's waiver and consent shall be of no force or effect after the thirtieth (30th) day following the end of the Term or earlier termination of this Lease.

#### 14. Surrender of the Premises.

Upon the expiration or earlier termination of the Term, Tenant shall surrender the Premises to Landlord in its condition existing as of the date of substantial completion of the Improvements, normal wear and tear and fire or other casualty excepted, with all interior walls repaired if damaged, all broken, marred or nonconforming acoustical ceiling tiles replaced, all windows washed, the plumbing and electrical systems and lighting in good order and repair, including replacement of any burned out or broken light bulbs or ballasts, the HVAC equipment serviced and repaired by a reputable and licensed service firm, and all floors cleaned, all to the reasonable satisfaction of Landlord. Tenant shall remove from the Premises all of Tenant's Alterations required to be removed pursuant to Paragraph 13, and all Tenant's Personal Property, and repair any damage and perform any restoration work caused by such removal. If Tenant fails to remove such Alterations and Tenant's Personal Property, and such failure continues after the expiration or earlier termination of this Lease, Landlord may retain such Alterations and Tenant's Property and all rights of Tenant with respect to it shall cease, or Landlord may place all or any portion of such Alterations and Tenant's Property in public storage for Tenant's account. Tenant shall be liable to Landlord for costs of removal of any such Alterations and Tenant's Personal Property and storage and transportation costs of same, and the cost of repairing and restoring the Premises, together with interest at the Interest Rate from the date of expenditure by Landlord. If

26 33

the Premises are not so surrendered at the expiration or earlier termination of this Lease, Tenant shall indemnify Landlord and Landlord's Agents against all loss or liability, including reasonable attorneys' fees and costs, resulting from delay by Tenant in so surrendering the Premises.

Normal wear and tear, for the purposes of this Lease, shall be construed to mean wear and tear caused to the Premises by a natural aging process which occurs in spite of prudent application of the best standards for maintenance, repair and janitorial practices. It is not intended, nor shall it be construed, to include items of neglected or deferred maintenance which would have or should have been attended to during the Term of the Lease if the best standards had been applied to properly maintain and keep the Premises at all times in good condition and repair.

## 15. Impositions and Real Property Taxes.

A. Payment by Tenant. Tenant shall pay all Impositions prior to delinquency. If billed directly, Tenant shall pay such Impositions and concurrently present to Landlord satisfactory evidence of such payments. If any Impositions are billed to Landlord or included in bills to Landlord for Real Property Taxes, then Tenant shall pay to Landlord all such amounts within fifteen (15) days after receipt of Landlord's invoice therefor. If applicable law prohibits Tenant from reimbursing Landlord for an Imposition, but Landlord may lawfully increase the Monthly Rent to account for Landlord's payment of such Imposition, the Monthly Rent payable to Landlord shall be increased so that the amount of such increased Monthly Rent, together with any accompanying increases in the Real Property Taxes payable by Tenant with respect to such Imposition, are sufficient to net to Landlord the same return without reimbursement of such Imposition as would have been received by Landlord with reimbursement of such Imposition. In addition, on or before April 10 and December 10 of each year of the Term, Tenant shall pay directly to the San Mateo County assessor the Real Property Taxes for the Premises as set forth on the assessors tax bill for the Premises. If, however, the Premises are not a separate parcel for tax purposes but constitute a portion of a larger tax parcel or parcels, the Real Property Taxes payable by Tenant under this Lease shall be a percentage of the Real Property Taxes payable for such parcel or parcels, which percentage shall be determined by dividing the Rentable Area of the Building by the total Rentable Area of all buildings on such parcel or parcels and multiplying the result by 100, which Real Property Taxes shall be payable by Tenant to Landlord monthly as part of the Common Area Maintenance Costs.

(i) Tax Parcels. If Landlord determines in its reasonable discretion that the configuration of tax parcels within the Project (including without limitation the tax parcel on which the Premises is situated) causes the allocation of Real Property Taxes between the affected tax parcels to be unfair or inequitable, Landlord reserves the right to internally reallocate the Real Property Taxes assessed against such affected tax parcels in a manner that reasonably addresses such unfairness or inequity. If Landlord effects any such reallocation, then the Real Property Taxes payable by Tenant under this Lease shall be those Real Property Taxes allocated to the Premises pursuant to this Paragraph 15.A.(i).

(ii) Payment. Promptly following payment of the Real Property Taxes, Tenant shall provide Landlord with copies of paid receipts or other documentary evidence that

27 34

the Real Property Taxes have been paid by Tenant. If Tenant fails to pay the Real Property Taxes on or before April 10 and December 10, respectively, or if Tenant fails to pay its share of Real Property Taxes as part of the Common Area Maintenance Costs, Tenant shall pay to Landlord any penalty incurred by such late payment. In addition, Tenant shall pay any Real Property Tax not included within the county tax assessor's tax bill within ten (10) days after being billed for same by Landlord. The foregoing dates are based on the dates established by the county as the dates on which Real Property Taxes become delinquent if not paid. If such delinquency dates change, the dates on which Tenant must pay the Real Property Taxes for the Premises shall be at least ten (10) days prior to the new delinquency

dates. Assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such purposes as fire protection, street, sidewalk, road, utility construction and maintenance, refuse removal and for other governmental services which may formerly have been provided without charge to property owners or occupants. It is the intention of the parties that all new and increased assessments, taxes, fees, levies and charges are to be included within the definition of Real Property Taxes for the purposes of this Lease.

B. Taxes on Tenant Improvements and Personal Property. Tenant shall pay any increase in Real Property Taxes resulting from any and all Alterations and Tenant Improvements of any kind whatsoever placed in, on or about the Premises for the benefit of, at the request of, or by Tenant. Tenant shall pay prior to delinquency all taxes assessed or levied against Tenant's Personal Property in, on or about the Premises or elsewhere. When possible, Tenant shall cause its Personal Property to be assessed and billed separately from the Premises and the real property or Personal Property of Landlord.

C. Proration. Tenant's liability to pay Real Property Taxes shall be prorated on the basis of a 360-day year to account for any fractional portion of a fiscal tax year included at the commencement or expiration of the Term. With respect to any assessments which may be levied against or upon the Premises on all or any portion of the Project, or which under the laws then in force may be evidenced by improvements or other bonds or may be paid in annual installments, only the amount of such annual installment (with appropriate proration for any partial year) and interest due thereon shall be included within the computation of the annual Real Property Taxes levied against the Premises or such portion of the Project, as applicable.

#### 16. Utilities and Services.

Tenant shall be responsible for and shall pay promptly all charges for water, gas, electricity, telephone, refuse pick-up, janitorial service and all other utilities, materials and services furnished directly to or used by Tenant in, on or about the Premises during the Term, together with any taxes thereon. If any utility, material or service is not separately charged or metered to any portion of the Premises, Tenant shall pay to Landlord, within ten (10) days after written demand therefor, Tenant's pro rata share of the total cost thereof as may be determined by Landlord. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service or other service furnished to the Premises, except that resulting from the gross negligence or willful misconduct of Landlord. Tenant shall have the right to contract directly with vendors for janitorial and maintenance services, provided such vendors must be approved in advance by Landlord, which approval shall not be unreasonably withheld; and provided further,

28 35

that Tenant shall have no right to contract with any vendor to maintain the Building's HVAC system, which shall be the sole responsibility of Landlord as set forth in Paragraph 17.A.

#### 17. Repair and Maintenance.



A. Landlord's Obligations. Landlord shall keep in good order, condition and repair the structural parts of the Building, which structural parts consist only of the foundation, subflooring, exterior walls (excluding the interior of all walls and the exterior and interior of all windows, doors, ceilings, and plate glass), and roof of the Building, and all plumbing and electrical facilities leading up to (but not situated within) the Building, except for any damage thereto caused by the negligence or willful acts or omissions of Tenant or of Tenant's agents, employees or invitees, or by reason of the failure of Tenant to perform or comply with any terms of this Lease, or caused by Alterations made by Tenant or by Tenant's agents, employees or contractors. It is an express condition precedent to all obligations of Landlord to repair and maintain that Tenant shall have notified Landlord of the need for such repairs or maintenance. Tenant waives the provisions of Sections 1941 and 1942 of the California Civil Code and any similar or successor law regarding Tenant's right to make repairs and deduct the expenses of such repairs from the Rent due under this Lease. Landlord shall keep in good order, condition, repair and maintenance the Building's HVAC system and roof, and shall maintain an HVAC system preventive maintenance service contract from a qualified vendor for the purpose of maintaining the Building's HVAC system, and a roof maintenance service contract from a qualified vendor for the purpose of maintaining the Building's roof. Landlord shall determine in its sole discretion whether any such vendor is qualified. Any and all costs of any maintenance or repair of the HVAC system or the roof (including without limitation the cost of maintaining HVAC system preventative maintenance contracts and roof maintenance service contracts) shall be included in the Common Area Maintenance Costs payable solely by Tenant for the year in which such cost is incurred. Landlord may elect, in its sole discretion, to paint the exterior of the Building and/or to replace or perform capital improvements to any area or aspect of the Building which Landlord is required keep in good order, condition and repair. If Landlord decides, in its sole discretion, to replace the roof of the Building during the Term, then the cost of so replacing the roof, together with interest at the Interest Rate, shall be amortized on a straight-line basis over the useful life of the roof (as determined by Landlord in its sole discretion) (the "Useful Life"), and the entire amount of such amortized costs and interest shall be included in the monthly Common Area Maintenance Costs payable solely by Tenant during the entire period over which such costs are amortized, until Tenant has paid to Landlord that proportion of the total amount of such amortized costs equal to (a) the number of months remaining during the Term as of the date such roof replacement was completed, divided by (b) the number of months of the Useful Life; provided that in no event shall such proportion exceed one hundred percent (100%). For the purposes of example only and not by way of limitation, if the Building's roof is replaced twenty-four (24) months before the end of the Term, at a cost of Fifty Thousand Dollars (\$50,000.00), and the Useful Life is one hundred twenty (120) months, then (a) the cost of such replacement shall be amortized at the rate of Four Hundred Sixteen and 67/100ths Dollars (\$416.67) per month, with interest at the Interest Rate, and (b) the amount to be included in the monthly Common Area Maintenance Costs payable solely by Tenant for the balance of the Term shall equal Four Hundred Sixteen and 67/100ths Dollars (\$416.67), with interest at the Interest Rate, until Tenant has paid to Landlord a total aggregate amount of Ten Thousand Dollars

29 36

(\$10,000.00), together with interest at the Interest Rate, towards such amortized costs (i.e.,

Fifty Thousand Dollars (\$50,000.00) multiplied by [Twenty-Four (24) months divided by One Hundred Twenty (120) months]). If Tenant exercises an Option to Extend, the total length of the Term (i.e., the initial Term and each Extended Term) shall be utilized to calculate the maximum amount of such amortized costs that shall be includable in the monthly Common Area Maintenance Costs payable solely by Tenant pursuant to this Paragraph 17.A.

It is the express intent of the parties that except as specifically set forth in this Paragraph 17.A, Landlord shall have no obligation whatsoever to repair or maintain the Building, and that Tenant shall be responsible for performing all repair, operation, and maintenance of the Building except for those tasks specifically described in this Paragraph 17.A.

B. Tenant's Obligations. Tenant shall at all times and at its sole cost and expense clean, keep and maintain in good order, condition and repair (and replace, if necessary) every part of the Premises which is not within Landlord's obligation pursuant to Paragraph 17.A. Tenant's repair and maintenance obligations shall include without limitation all plumbing and electrical facilities situated within the Building, fixtures, interior walls and ceiling, floors, windows, window frames, doors, entrances, plate glass, showcases, skylights, all lighting fixtures, lamps, fans and any exhaust equipment and systems, all mechanical systems (but not the HVAC system), any automatic fire extinguisher equipment within the Building, all security systems and alarms, all electrical motors and all other appliances and equipment of every kind and nature located in, upon or about the Building or the Premises. Tenant shall also be responsible for all pest control within the Premises.

C. Conditions Applicable to Repairs. All repairs, replacements and reconstruction made by or on behalf of Tenant or any person claiming through or under Tenant shall be made and performed (i) at Tenant's sole cost and expense, in a good and workmanlike manner and at such time and in such manner as Landlord may reasonably designate, (ii) by contractors approved in advance by Landlord, (iii) so that the repairs, replacements or reconstruction shall be at least equal in quality, value and utility to the original work or installation, (iv) in accordance with such reasonable requirements as Landlord may impose with respect to insurance and bonds to be obtained by Tenant in connection with the proposed work, and (v) in accordance with any rules and regulations for the Building as may be adopted by Landlord from time to time and in accordance with all applicable laws and regulations of governmental authorities having jurisdiction over the Premises.

D. Landlord's Rights. If Tenant fails to perform Tenant's obligations under Paragraph 17.B, Landlord may in its sole discretion give Tenant notice of such work as is reasonably required to fulfill such obligations. If Tenant fails to commence the work within thirty (30) days after receipt of such notice and diligently prosecute the work to completion, then Landlord shall have the right (but not the obligation) to do such acts or 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 to Landlord promptly after demand with interest at the Interest Rate. Landlord shall have no liability to Tenant for any damage to, or interference with Tenant's use of, the Premises, or inconvenience to Tenant as a result of performing any such work.

E. Compliance with Governmental Regulations. Tenant shall, at its sole cost and expense, comply with, including the making by Tenant of any Alteration to the Premises, all present and future regulations, rules, laws, ordinances, and requirements of all governmental authorities (including, without limitation state, municipal, county and federal governments and their departments, bureaus, boards and officials) applicable to the Premises or the Building.

#### 18. Liens.

Tenant shall keep the Building and the Premises free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant and hereby agrees to indemnify, defend, protect and hold Landlord and Landlord's Agents harmless from and against any and all loss, claim, damage, liability, cost and expense, including attorneys' fees and costs, in connection with or arising out of any such lien or claim of lien. Tenant shall cause any such lien imposed to be released of record by payment or posting of a proper bond acceptable to Landlord within ten (10) days after written request by Landlord. Tenant shall give Landlord written notice of Tenant's intention to perform work on the Premises which might result in any claim of lien at least ten (10) days prior to the commencement of such work to enable Landlord to post and record a Notice of Nonresponsibility or any such other notice(s) as Landlord may deem appropriate. If Tenant fails to so remove any such lien within the prescribed ten 10-day period, then Landlord may do so at Tenant's expense and Tenant shall reimburse Landlord for such amounts upon demand. Such reimbursement shall include all costs incurred by Landlord including Landlord's reasonable attorneys' fees with interest thereon at the Interest Rate.

#### 19. Landlord's Right to Enter the Premises.

Tenant shall permit Landlord and Landlord's Agents to enter the Premises at all reasonable times with reasonable notice, except for emergencies in which case no notice shall be required, to inspect the same, to post Notices of Nonresponsibility and similar notices, and real estate "For Sale" signs, to show the Premises to interested parties such as prospective lenders and purchasers, to make necessary repairs, to discharge Landlord's obligations under this Lease, to discharge Tenant's obligations under this Lease when Tenant has failed to do so within a reasonable time after written notice from Landlord, and at any reasonable time within one hundred and eighty (180) days prior to the expiration of the Term, to place upon the Building ordinary "For Lease" signs and to show the Premises to prospective tenants.

#### 20. Signs.

Subject to Tenant obtaining all necessary approvals from the City of Redwood City and subject to Landlord's review and approval of plans and specifications for any proposed signage, which approval may be withheld only in Landlord's commercially reasonable judgment, Tenant shall have the exclusive right to install identification signage on the exterior of the Building, so long as such signage complies with Landlord's project sign program. Tenant shall have no right to maintain any Tenant identification sign in any other location in, on or about the Building or the Premises and shall not display or erect any other

Tenant identification sign, display or other advertising material that is visible from the exterior of the Building. Any changes to the size, design, color or other physical aspects of Tenant's identification sign(s) shall be

31 38

subject to the Landlord's prior written approval, which shall not be unreasonably withheld, and any appropriate municipal or other governmental approvals. The cost of Tenant's sign(s) and their installation, maintenance and removal shall be Tenant's sole cost and expense. If Tenant fails to maintain its sign(s), or, if Tenant fails to remove its sign(s) upon termination of this Lease, Landlord may do so at Tenant's expense and the amounts expended by Landlord in doing so shall be immediately payable by Tenant to Landlord as Additional Rent.

## 21. Insurance.

A. Indemnification. Tenant shall indemnify, defend, protect and hold Landlord harmless of and from any and all loss, liens, liability, claims, causes of action, damage, injury, cost or expense arising out of or in connection with, or related to (i) the making of Alterations, or (ii) injury to or death of persons or damage to property occurring or resulting directly or indirectly from: (A) the use or occupancy of, or the conduct of business in, the Premises; (B) the use, storage, release or disposal by Tenant or Tenant's employees, agents, contractors, licensees or invitees, of any Hazardous Materials in or about the Premises or any other portion of the Project; (C) any other occurrence or condition in or on the Premises; and (D) acts, neglect or omissions of Tenant, its officers, directors, agents, employees, invitees or licensees in or about any portion of the Project. Tenant's indemnity obligation includes reasonable attorneys' fees and costs, investigation costs and all other reasonable costs and expenses incurred by Landlord. If Landlord disapproves the legal counsel proposed by Tenant for the defense of any claim indemnified against hereunder, Landlord shall have the right to appoint its own legal counsel, the reasonable fees, costs and expenses of which shall be included as part of Tenant's indemnity obligation hereunder. The indemnification contained in this Section 21.A shall extend to the officers, directors, shareholders, partners, employees, agents and representatives of Landlord. The obligations assumed by Tenant herein shall survive this Lease. Notwithstanding the foregoing, Landlord shall have the right, in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against Landlord arising out of or in connection with the matters covered by the foregoing indemnity and, in such event, Tenant shall reimburse Landlord for all reasonable charges and expenses incurred by Landlord in connection therewith, including reasonable attorneys' fees; provided, however, that Landlord shall not undertake any unilateral action or settlement so long as Tenant or an insurance company, at its or their sole expense, is contesting in good faith, diligently and with continuity such claim, action, obligation, demand or suit, and so long as such claim, action, obligation, demand or suit does not have or threaten to have a material adverse impact on Landlord's assets, reputation or business affairs.

B. Tenant's Insurance. Tenant agrees to maintain in full force and effect at all times during the Term, at its sole cost and expense, for the protection of Tenant and Landlord, as their

interests may appear, policies of insurance issued by a responsible carrier or carriers acceptable to Landlord which afford the following coverages:

(i) Commercial general liability insurance in an amount not less than Three Million and no/100ths Dollars (\$3,000,000.00) combined single limit for both bodily injury and property damage which includes blanket contractual liability broad form property damage, personal injury, completed operations, and products liability, which policy shall name

32 39

Landlord and Landlord's Agents as additional insureds and shall contain a provision that "the insurance provided Landlord hereunder shall be primary and non-contributing with any other insurance available to Landlord with respect to any damage, loss, liability or expense covered by Tenant's indemnity obligations under Paragraph 21.A of the Lease."

(ii) Causes of loss-special form property insurance (including, without limitation, vandalism, malicious mischief, inflation endorsement, and sprinkler leakage endorsement) on Tenant's Personal Property located on or in the Premises. Such insurance shall be in the full amount of the replacement cost, as the same may from time to time increase as a result of inflation or otherwise. As long as this Lease is in effect, the proceeds of such policy shall be used for the repair and replacement of such items so insured. Landlord shall have no interest in the insurance proceeds on Tenant's Personal Property. Notwithstanding the foregoing, Tenant shall have the right, at its election, to self-insure with respect to any loss or damage to Tenant's Personal Property.

(iii) Boiler and machinery insurance, including steam pipes, pressure pipes, condensation return pipes and other pressure vessels and HVAC equipment, including miscellaneous electrical apparatus, in an amount satisfactory to Landlord.

(iv) Workers compensation insurance in the manner and to the extent required by applicable law and with limits of liability not less than the minimum required under applicable law, covering all employees of Tenant having any duties or responsibilities in or about the Premises.

C. Premises Insurance. During the Term Landlord shall maintain causes of loss-special form property insurance (including inflation endorsement, sprinkler leakage endorsement, and, at Landlord's option, earthquake and flood coverage) on the Building, excluding coverage of all Tenant's Personal Property located on or in the Premises, but including the Tenant Improvements. Such insurance shall also include insurance against loss of rents, including, at Landlord's option, coverage for earthquake and flood, in an amount equal to the Monthly Rent and Additional Rent, and any other sums payable under the Lease, for a period of at least twelve (12) months commencing on the date of loss. Such insurance shall name Landlord and Landlord's Agents as named insureds and include a lender's loss payable endorsement in favor of Landlord's lender (Form 438 BFU Endorsement). Tenant shall reimburse Landlord monthly, as Additional Rent, for one-twelfth (12th) of the annual cost of such insurance on the first day of each calendar month of the Term, prorated for any partial month, or on such other periodic basis as Landlord shall elect. If the insurance premiums are increased after the Commencement Date for any reason, including without

limitation due to an increase in the value of the Building or its replacement cost, or due to Tenant's use of the Premises or any improvements installed by Tenant, Tenant shall pay such increase within ten (10) days of notice of such increase. Landlord may, in its sole discretion, maintain the insurance coverage described in this Paragraph 21.C as part of an umbrella insurance policy covering other properties owned by Landlord. Notwithstanding the foregoing, so long as the original Landlord under this Lease continues to be the Landlord under this Lease, and subject to the following conditions, Tenant may elect to carry the insurance required by this Paragraph 21.C if Tenant is able to obtain the coverage required hereunder at a cost less than that charged by Landlord's insurer. Tenant's right

33 40

to carry such insurance shall be subject to the following conditions: (i) all Holders, defined below, shall have approved Tenant's right to carry such insurance, (ii) such insurance shall name Landlord, and all parties designated by Landlord, as additional insureds, and (iii) such insurance shall provide Landlord with at least the same coverage and rights as Landlord would be entitled to receive if Landlord had obtained such insurance.

D. Increased Coverage. Upon demand, Tenant shall provide Landlord, at Tenant's expense, with such increased amount of existing insurance, and such other insurance as Landlord or Landlord's lender may reasonably require to afford Landlord and Landlord's lender adequate protection.

E. Failure to Maintain. If Tenant fails to maintain any insurance coverage that Tenant is required to maintain under this Paragraph 21, and Landlord incurs any liability to its insurance carrier arising out of Tenant's failure to so maintain such insurance coverage, then any and all loss or damage Landlord shall sustain by reason thereof, including attorneys' fees and costs, shall be borne by Tenant and shall be immediately paid by Tenant upon its receipt of a bill therefor and evidence of such loss. Nothing contained in this Paragraph 21.E shall be deemed to limit or affect any other remedies or rights available to Landlord under this Lease that arise from Tenant's failure to so maintain such insurance coverage.

F. Insurance Requirements. All insurance shall be in a form satisfactory to Landlord and shall be carried in companies that have a general policy holder's rating of not less than "A" and a financial rating of not less than Class "X" in the most current edition of Best's Insurance Reports; and shall provide that such policies shall not be subject to material alteration or cancellation except after at least thirty (30) days' prior written notice to Landlord. The policy or policies, or duly executed certificates for them, together with satisfactory evidence of payment of the premiums thereon shall be deposited with Landlord prior to the Commencement Date, and upon renewal of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage. If Tenant fails to procure and maintain the insurance it is required to maintain under this Paragraph 21, Landlord may, but shall not be required to, order such insurance at Tenant's expense and Tenant shall reimburse Landlord therefor. Such reimbursement shall include all costs incurred by Landlord in obtaining such insurance including Landlord's reasonable attorneys' fees, with interest thereon at the Interest Rate.

G. Waiver and Release. Except to the extent due to the negligence or willful misconduct of Landlord, Landlord shall not be liable to Tenant or Tenant's employees, agents, contractors, licenses or invitees for, and Tenant waives as against and releases Landlord and Landlord's Agents from, all claims for loss or damage to any property or injury, illness or death of any person in, upon or about the Premises and/or any other portion of the Project, arising at any time and from any cause whatsoever (including without limitation any claim caused in whole or in part by the act, omission, or neglect of other tenants, contractors, licensees, invitees or other occupants of the Project or their agents or employees; and any claim arising from any construction activities taking place in, upon or about the Premises and/or any other portion of the Project). Landlord and Landlord's Agents shall not be liable for any latent defect in the Premises.

22. Waiver of Subrogation.

34 41

Landlord and Tenant each hereby waive all rights of recovery against the other on account of loss or damage occasioned by such waiving party to its property or the property of others under its control, to the extent that such loss or damage would be covered by any causes of loss-special form policy of insurance or its equivalent required to be or actually carried under Paragraph 21. Tenant and Landlord shall, upon obtaining policies of insurance required hereunder, give notice to the insurance carrier that the foregoing mutual waiver of subrogation is contained in this Lease and Tenant and Landlord shall cause each insurance policy obtained by such party to provide that the insurance company waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any damage covered by such policy.

23. Damage or Destruction.

A. Landlord's Obligation to Rebuild. If all or any part of the Building is damaged or destroyed, Landlord shall promptly and diligently repair the same unless it has the right to terminate this Lease as provided herein and it elects to so terminate.

B. Right to Terminate. Landlord shall have the right to terminate this Lease in the event any of the following events occur:

(i) insurance proceeds from the insurance Landlord is required to carry pursuant to Paragraph 21.C, or that Landlord actually carries, are not available to pay one hundred percent (100%) of the cost of such repair, excluding the deductible for which Tenant shall be responsible; provided, however, that if Tenant pays to Landlord, in immediately available funds, within thirty (30) days after such casualty, any shortfall in such insurance proceeds, as reasonably determined by Landlord, then Landlord shall have no right to terminate the Lease pursuant to this item (i);

(ii) the Building cannot, with reasonable diligence, be fully repaired by Landlord within three hundred sixty (360) days after the date of the damage or destruction; or

(iii) the Building cannot be safely repaired because of the presence of hazardous factors,

including, but not limited to, earthquake faults, radiation, Hazardous Materials and other similar dangers.

If Landlord elects to terminate this Lease, Landlord may give Tenant written notice of its election to terminate within thirty (30) days after such damage or destruction, and this Lease shall terminate fifteen (15) days after the date Tenant receives such notice and both Landlord and Tenant shall be released of all further liability under this Lease (except to the extent any provision of this Lease expressly survives termination and except that Landlord shall return to Tenant the Security Deposit). If Landlord elects not to terminate the Lease, subject to Tenant's termination right set forth below, Landlord shall promptly commence the process of obtaining necessary permits and approvals and repair of the Building as soon as practicable, and this Lease will continue in full force and affect. All insurance proceeds from insurance under Paragraph 21, excluding proceeds for Tenant's Personal Property, shall be disbursed and paid to Landlord. Tenant shall be required to pay to Landlord the amount of any deductibles payable in connection

35 42

with any insured casualties, unless the casualty was caused by the sole negligence or willful misconduct of Landlord.

Tenant shall have the right to terminate this Lease if the Building cannot, with reasonable diligence, be fully repaired within three hundred sixty (360) days from the date of damage or destruction. The determination of the estimated repair periods in this Paragraph 23 shall be made by an independent, licensed contractor or engineer within thirty (30) days after such damage or destruction. Landlord shall deliver written notice of the repair period to Tenant after such determination has been made and Tenant shall exercise its right to terminate this Lease, if at all, within ten (10) days of receipt of such notice from Landlord. Upon such termination both Landlord and Tenant shall be released of all further liability under this Lease (except to the extent any provision of this Lease expressly survives termination).

C. Limited Obligation to Repair. Landlord's obligation, should it elect or be obligated to repair or rebuild, shall be limited to the basic Building and the Tenant Improvements and shall not include any Alterations made by Tenant.

D. Abatement of Rent. Rent shall be temporarily abated proportionately, during any period when, by reason of such damage or destruction there is substantial interference with Tenant's use of the Premises, having regard to the extent to which Tenant may be required to discontinue Tenant's use of the Premises. Such abatement of Rent shall be proportional to the extent of such interference with Tenant's use of the Premises reasonably attributable to such damage or destruction (with the extent of such interference to be reasonably determined by Landlord), and shall commence upon such damage or destruction and end upon substantial completion by Landlord of the repair or reconstruction which Landlord is obligated or undertakes to perform. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the Premises, damage to Tenant's Personal Property or any inconvenience occasioned by such damage, repair or restoration. Tenant hereby waives the provisions of Section 1932, Subdivision 2, and Section 1933,



Subdivision 4, of the California Civil Code, and the provisions of any similar law hereinafter enacted.

E. Damage Near End of Term. Anything herein to the contrary notwithstanding, if the Building is destroyed or materially damaged during the last twelve (12) months of the Term (unless Tenant has properly exercised an Option to Extend), then either Landlord or Tenant may, at its option, cancel and terminate this Lease as of the date of the occurrence of such damage, by delivery of written notice to the other party and, in such event, upon such termination both Landlord and Tenant shall be released of all further liability under this Lease (except to the extent any provision of this Lease expressly survives termination). If neither Landlord nor Tenant elects to terminate this Lease, the repair of such damage shall be governed by Paragraphs 23.A and 23.B.

#### 24. Condemnation.

If title to all of the Premises is taken for any public or quasi-public use under any statute or by right of eminent domain, or so much thereof is so taken so that reconstruction of the Premises will not, in Landlord's sole discretion, result in the Premises being reasonably suitable

36 43

for Tenant's continued occupancy for the uses and purposes permitted by this Lease, this Lease shall terminate as of the date that possession of the Premises or part thereof is taken, and upon such termination both Landlord and Tenant shall be released of all further liability under this Lease (except to the extent any provision of this Lease expressly survives termination). A sale by Landlord to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes of this Paragraph 24.

If any part of the Premises is taken and the remaining part is reasonably suitable for Tenant's continued occupancy for the purposes and uses permitted by this Lease, this Lease shall, as to the part so taken, terminate as of the date that possession of such part of the Premises is taken, and upon such termination both Landlord and Tenant shall be released of all further liability under this Lease with respect to that portion of the Premises that is taken (except to the extent any provision of this Lease expressly survives termination and except that Landlord shall return to Tenant the Security Deposit). The Rent and other sums payable hereunder shall be reduced in the same proportion that Tenant's use and occupancy of the Premises is reduced. If any portion of the Common Area is taken, Tenant's Rent shall be reduced only if such taking materially interferes with Tenant's use of the Common Area and then only to the extent that the fair market rental value of the Premises is diminished by such partial taking. If the parties disagree as to the amount of Rent reduction, the matter shall be resolved by arbitration and such arbitration shall comply with and be governed by the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure. Each party hereby waives the provisions of Section 1265.130 of the California Code of Civil Procedure allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

All compensation or damages awarded or paid for any taking hereunder shall belong to and be the property of Landlord, whether such compensation or damages are awarded or paid as compensation for diminution in value of the leasehold, the fee or otherwise, except that Tenant shall be entitled to any award allowed to Tenant for the taking of Tenant's Personal Property, for the interruption of Tenant's business, for its moving costs, or for the loss of its good will. Except for the foregoing allocation, no award for any partial or entire taking of the Premises shall be apportioned between Landlord and Tenant, and Tenant assigns to Landlord its interest in the balance of any award which may be made for the taking or condemnation of the Premises, together with any and all rights of Tenant arising in or to the same or any part thereof.

## 25. Assignment and Subletting.

A. Landlord's Consent. Subject to the provisions of Paragraph 25.G below, Tenant shall not enter into a Sublet without Landlord's prior written consent, which consent shall not be unreasonably withheld. Any attempted or purported Sublet without Landlord's prior written consent shall be void and confer no rights upon any third person and, at Landlord's election, shall terminate this Lease. Each Subtenant shall agree in writing, for the benefit of Landlord, to assume, to be bound by, and to perform the terms, conditions and covenants of this Lease to be performed by Tenant, as such terms, conditions and covenants apply to the Sublet premises. Notwithstanding anything contained herein, Tenant shall not be released from liability for the performance of each term, condition and covenant of this Lease by reason of Landlord's

37 44

consent to a Sublet unless Landlord specifically grants such release in writing.

B. Tenant's Notice. If Tenant desires at any time to Sublet all or any portion of the Premises, Tenant shall first notify Landlord in writing of its desire to do so.

C. Information to be Furnished. If Tenant desires at any time to Sublet all or any portion of the Premises, then Tenant shall submit in writing to Landlord: (i) the name of the proposed Subtenant; (ii) the nature of the proposed Subtenant's business to be carried on in the Premises; (iii) the terms and provisions of the proposed Sublet and a copy of the proposed form of Sublet agreement containing a description of the subject premises; and (iv) such financial information, including financial statements, as Landlord may reasonably request concerning the proposed Subtenant.

D. Landlord's Alternatives. At any time within ten (10) days after Landlord's receipt of the information specified in Paragraph 25.C., Landlord may, by written notice to Tenant, elect: (i) to consent to the Sublet by Tenant; or (ii) to refuse its consent to the Sublet. If Landlord consents to the Sublet, Tenant may thereafter enter into a valid Sublet of the Premises or applicable portion thereof, upon the terms and conditions and with the proposed Subtenant set forth in the information furnished by Tenant to Landlord, subject, however, at Landlord's election, to the condition that the following percentages of any excess of the Subrent (the "Excess Subrent") over the Rent required to be paid by Tenant under this

Lease (or, if only a portion of the Premises is Sublet, the pro rata share of the Rent attributable to the portion of the Premises being Sublet) less reasonable attorneys' fees, leasing commissions, improvement costs required for such Sublet (which shall not include the cost of any trade fixtures, equipment or personal property) and other reasonable subletting costs paid by Tenant on the Sublet, shall be paid to Landlord. Tenant shall pay the following percentages of Excess Subrent to Landlord in the following circumstances: (i) to the extent the Excess Subrent (for the entire term of the applicable Sublet) is payable on a monthly basis (as opposed to one or more lump sums) and to the extent the Excess Subrent is less than or equal to \$0.25/month/square foot of Rentable Area of the portion of the Premises being Sublet, then Tenant shall pay to Landlord one-third (1/3) of the Excess Subrent; (ii) to the extent the Excess Subrent (for the entire term of the applicable Sublet) is payable on a monthly basis (as opposed to one or more lump sums) and to the extent the Excess Subrent is greater than \$0.25/month/square foot of Rentable Area of the portion of the Premises being Sublet, then Tenant shall pay to Landlord fifty percent (50%) of the Excess Subrent; (iii) to the extent the Excess Subrent (for the entire term of the applicable Sublet) is not payable on a monthly basis, then Tenant shall pay to Landlord fifty percent (50%) of the Excess Subrent; and (iv) to the extent the Excess Subrent is applicable to any period during an Extended Term, then Tenant shall pay to Landlord fifty percent (50%) of the Excess Subrent.

E. Proration. If a portion of the Premises is Sublet, the pro rata share of the Rent attributable to such partial area of the Premises shall be determined by Landlord by dividing the Rent payable by Tenant hereunder by the total square footage of the Premises and multiplying the resulting quotient (the per square foot rent) by the number of square feet of the Premises which are Sublet.

F. Parameters of Landlord's Consent. Landlord shall have the right to base its

38 45

consent to any Sublet hereunder upon such factors and considerations as Landlord reasonably deems relevant or material to the proposed Sublet and the best interests of the Project's operations. Without limiting the generality of the foregoing, Tenant acknowledges that it shall be reasonable for Landlord to withhold its consent to any Sublet hereunder if Tenant has not demonstrated that: (i) the proposed Subtenant is financially responsible, with sufficient net worth and net current assets, properly and successfully to operate its business in the Premises and meet the financial and other obligations of this Lease; (ii) the proposed Subtenant possesses sound and good business judgment, reputation and experience, and proven management skills in the operation of a business or businesses substantially similar to the uses permitted in the Premises under Paragraph 11.A; and (iii) the use of the Premises proposed by such Subtenant conforms to the permitted uses specified under Paragraph 11.a, and involves either no Hazardous Use or only such Hazardous Use as shall be acceptable to Landlord in its sole discretion.

G. Permitted Transfers. Notwithstanding the provisions of Paragraph 25.A above, Tenant shall have the right to enter into a Sublet, and Landlord shall not withhold its consent thereto (provided that all of the conditions set forth in clauses (A) and (B) below shall be met), if such Sublet is one of the following "Permitted Transfers": (i) a Sublet to the

surviving entity of a merger or consolidation involving the corporate entity constituting the Tenant under this Lease; or (ii) a Sublet to any subsidiary or Affiliate of the Tenant originally named in this Lease. However, the foregoing Permitted Transfers shall be exempt from the requirement of Landlord's consent only if all of the following conditions shall be met: (A) there shall be no change in the use or operation of the Premises; (B) Tenant shall have provided to Landlord all information to allow Landlord to determine, and Landlord shall have determined, that the proposed transfer is a Permitted Transfer which is exempt from the requirement of Landlord's consent; and (C) as of the effective date of such Sublet, the proposed Subtenant has a net worth and net current assets equal to or greater than those of the original Tenant under this Lease as of the date of this Lease. No Sublet of the type described in this Paragraph 25.G, nor any other transfer of all or any portion of Tenant's interest in the Lease or the Premises, shall release Tenant of its obligations under this Lease.

## 26. Default.

A. Tenant's Default. A default under this Lease by Tenant shall exist if any of the following occurs:

(i) If Tenant fails to pay within five (5) days after written notice from Landlord any Rent or any other sum required to be paid hereunder when due, including, without limitation, any Tenant Improvement costs payable by Tenant under Exhibit B; or

(ii) If Tenant fails to perform any term, covenant or condition of this Lease except those requiring the payment of money, and Tenant fails to cure such breach within thirty (30) days after written notice from Landlord where such breach could reasonably be cured within such 30-day period; provided, however, that where such failure could not reasonably be cured within the 30-day period, that Tenant shall not be in default if it commences such performance within the 30-day period and diligently thereafter prosecutes the same to completion; or

39 46

(iii) If Tenant assigns its assets for the benefit of its creditors; or

(iv) If the sequestration or attachment of or execution on any material part of Tenant's Personal Property essential to the conduct of Tenant's business occurs, and Tenant fails to obtain a return or release of such Tenant's Personal Property within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier; or

(v) If Tenant vacates or abandons the Premises; or

(vi) If a court makes or enters any decree or order other than under the bankruptcy laws of the United States adjudging Tenant to be insolvent; or approving as properly filed a petition seeking reorganization of Tenant; or directing the winding up or liquidation of Tenant and such decree or order shall have continued for a period of sixty (60) days; or

(vii) If Tenant fails to cure within any applicable grace period any default by Tenant under any of the Collateral Agreements.

B. Remedies. Upon a default, Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease, to which Landlord may resort cumulatively or in the alternative:

(i) Landlord may continue this Lease in full force and effect, and this Lease shall continue in full force and effect as long as Landlord does not terminate this Lease, and Landlord shall have the right to collect Rent when due. Without limiting the foregoing, Landlord has the remedy set forth in Section 1951.4 of the California Civil Code.

(ii) Landlord may terminate Tenant's right to possession of the Premises at any time by giving written notice to that effect, and relet the Premises or any part thereof. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises or any part thereof, including, without limitation, broker's commissions, expenses of cleaning and redecorating the Premises required by the reletting and like costs. Reletting may be for a period shorter or longer than the remaining Term of this Lease. No act by Landlord other than giving written notice of termination to Tenant shall terminate this Lease. Neither acts of maintenance, nor efforts to relet the Premises, nor the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to remove all Tenant's Personal Property and store the same at Tenant's sole cost and expense and to recover from Tenant as damages:

(a) The worth at the time of award of the unpaid Rent and other sums due and payable which had been earned at the time of termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent and other sums due and payable which would have been payable after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus

40 47

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

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which, in the ordinary course of things, would be likely to result therefrom, including, without limitation, any costs or expenses incurred by Landlord: (i) in retaking possession of the Premises; (ii) in maintaining, repairing, preserving, restoring, replacing, cleaning, altering or rehabilitating the Premises or any portion thereof, including such acts for reletting to a new tenant or tenants; (iii) for leasing commissions; or (iv) for any other costs necessary or appropriate to relet the Premises; plus

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of California.

The "worth at the time of award" of the amounts referred to in Paragraphs 26.B.(ii)(a) and 26.B.(ii)(b) is computed by allowing interest at the Interest Rate on the unpaid rent and other sums due and payable from the termination date through the date of award. The "worth at the time of award" of the amount referred to in Paragraph 26.B.(ii)(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). Tenant waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future law, in the event Tenant is evicted or Landlord takes possession of the Premises by reason of any default of Tenant hereunder.

(iii) Landlord may, with or without terminating this Lease, re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. No reentry or taking possession of the Premises by Landlord pursuant to this Paragraph 26.B.(iii) shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant.

C. Landlord's Default. Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice by Tenant to Landlord specifying the nature of such default; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such 30-day period and thereafter diligently prosecute the same to completion.

## 27. Subordination.

A. Subordination. This Lease is or may become subject and subordinate to underlying leases, mortgages, deeds of trust, easements, and CC&Rs (collectively, "Encumbrances") which may now or hereafter affect the Premises, and to all renewals,

41 48

amendments, modifications, consolidations, replacements and extensions thereof; provided, however, if the holder or holders of any such Encumbrance (collectively, "Holder") shall require that this Lease be prior and superior thereto, within fifteen (15) days of written request of Landlord to Tenant, Tenant shall execute, have acknowledged and deliver any and all documents or instruments, in the form presented to Tenant, which Landlord or Holder deems reasonably necessary or desirable for such purposes. Subject to Paragraph 27.C below, Landlord shall have the right to cause this Lease to be and become and remain subject and subordinate to any and all Encumbrances which are now or may hereafter be executed covering the Premises or any renewals, modifications, consolidations, replacements or extensions thereof, for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advances, together with

interest thereon and subject to all the terms and provisions thereof; provided only, that in the event of termination of any such lease or upon the foreclosure of any such mortgage or deed of trust, so long as Tenant is not in default, Holder agrees to recognize Tenant's rights under this Lease as long as Tenant shall pay the Rent and observe and perform all the provisions of this Lease to be observed and performed by Tenant. Within fifteen (15) days after Landlord's written request, Tenant shall execute any and all documents reasonably required by Landlord or the Holder to make this Lease subordinate to any lien of the Encumbrance (including, without limitation, subordination to all CC&Rs), including without limitation a Subordination, Non-Disturbance and Attornment Agreement in the form attached hereto as Exhibit E ("SNDA"). Subject to Paragraph 27.C below, if Tenant fails to do so, such failure shall constitute a default under this Lease, and it shall be deemed that this Lease is subordinated to such Encumbrance.

B. Attornment. Notwithstanding anything to the contrary set forth in this Paragraph 27, Tenant hereby attorns and agrees to attorn to any entity purchasing or otherwise acquiring the Premises at any sale or other proceeding or pursuant to the exercise of any other rights, powers or remedies under such Encumbrance; provided only, that so long as Tenant is not in default, any such purchasing or acquiring entity agrees to recognize Tenant's rights under this Lease as long as Tenant shall pay the Rent and observe and perform all the provisions of this Lease to be observed and performed by Tenant.

C. Non-Disturbance. Notwithstanding anything to the contrary in this Lease, if an Encumbrance, other than any CC&R's or Landlord's construction loan, is created after the execution of this Lease, as a condition to the subordination of this Lease thereto under Paragraph 27.A above, Landlord shall obtain from the Holder of such Encumbrance, other than CC&R's or the Holder of the construction loan, a SNDA in a form reasonably requested by such Holder. Without in any way limiting the type or form of SNDA that may be required by such Holder, Tenant hereby agrees that a SNDA in the form attached to this Lease as Exhibit G shall be reasonable. Only upon Landlord's delivery of a SNDA in the form of Exhibit G or in a form reasonably requested by the Holder, shall this Lease be automatically subject and subordinate to such Encumbrance, other than CC&R's or the construction loan.

## 28. Notices.

Any notice or demand required or desired to be given under this Lease shall be in writing and shall be personally served or in lieu of personal service may be given by certified

42 49

mail, facsimile, or overnight courier service. All notices or demands under this Lease shall be deemed given, received, made or communicated on the date personal delivery is effected; or, if sent by certified mail, on the delivery date or attempted delivery date shown on the return receipt; or, if sent by facsimile, on the date sent by the sender; or, if sent by overnight courier service, on the delivery date or attempted delivery date shown on such service's records. At the date of execution of this Lease, the addresses of Landlord and Tenant are as set forth in Paragraph 1. Either party may change its address by giving notice of same in accordance with this Paragraph 28.

## 29. Attorneys' Fees.

If either party brings any action or legal proceeding for damages for an alleged breach of any provision of this Lease, to recover Rent, or other sums due, to terminate the tenancy of the Premises or to enforce, protect or establish any term, condition or covenant of this Lease or right of either party, the prevailing party shall be entitled to recover as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, including without limitation any and all costs and expenses arising from (i) collection efforts, (ii) any appellate proceedings, and (iii) any bankruptcy, insolvency or arbitration proceedings.

## 30. Estoppel Certificates.

Tenant shall within fifteen (15) days following written request by Landlord:

(i) Execute and deliver to Landlord any documents, including estoppel certificates, in the form prepared by Landlord (a) 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 (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord, or, if there are uncured defaults on the part of the Landlord, stating the nature of such uncured defaults, (c) evidencing the status of the Lease as may be required either by a lender making a loan to Landlord to be secured by deed of trust or mortgage covering the Premises or a purchaser of the Premises from Landlord, and (d) such other matters as may be reasonably requested by Landlord. Tenant's failure to deliver an estoppel certificate within fifteen (15) days after delivery of Landlord's written request therefor shall be conclusive upon Tenant (a) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) that there are now no uncured defaults in Landlord's performance, and (c) that no Rent has been paid in advance.

If Tenant fails to so deliver a requested estoppel certificate within the prescribed time it shall be conclusively presumed that this Lease is unmodified and in full force and effect except as represented by Landlord.

(ii) Deliver to Landlord the current financial statements of Tenant, and financial statements of the two (2) years prior to the current financial statements year, with an opinion of a certified public accountant, including a balance sheet and profit and loss statement

43 50

for the most recent prior year, all prepared in accordance with generally accepted accounting principles consistently applied.

## 31. Transfer of the Premises by Landlord.

In the event of any conveyance of the Premises and assignment by Landlord of this Lease,



Landlord shall be and is hereby entirely released from all liability under any and all of its covenants and obligations contained in or derived from this Lease occurring after the date of such conveyance and assignment, and Tenant agrees to attorn to such transferee provided such transferee assumes Landlord's obligations under this Lease.

### 32. Landlord's Right to Perform Tenant's Covenants.

If Tenant shall at any time fail to make any payment or perform any other act on its part to be made or performed under this Lease, and such failure shall continue after the expiration of any applicable grace or cure periods provided in this Lease, Landlord may, but shall not be obligated to (and without waiving or releasing Tenant from any obligation of Tenant under this Lease), make such payment or perform such other act to the extent Landlord may deem desirable, and in connection therewith, pay expenses and employ counsel. All sums so paid by Landlord and all penalties, interest, expenses and costs in connection therewith shall be due and payable by Tenant on the next day after any such payment by Landlord, together with interest thereon at the Interest Rate from such date to the date of payment by Tenant to Landlord, plus collection costs and attorneys' fees. Landlord shall have the same rights and remedies for the nonpayment thereof as in the case of default in the payment of Rent.

### 33. Tenant's Remedy.

Landlord shall never be personally liable under this Lease, and Tenant shall look solely to the net cash flow received by Landlord from its ownership of the Building, for recovery of any damages for breach of this Lease by Landlord or on any judgment in connection therewith. None of the persons or entities comprising or representing Landlord (whether partners, shareholders, officers, directors, trustees, employees, beneficiaries, agents or otherwise) shall ever be personally liable under this Lease or for any such damages or judgment, and Tenant shall have no right to effect any levy of execution against any assets of such persons or entities on account of any such liability or judgment. Any lien obtained by Tenant to enforce any such judgment, and any levy of execution thereon, shall be subject and subordinate to all Encumbrances as specified in Paragraph 27 above.

### 34. Mortgagee Protection.

If Landlord defaults under this Lease, Tenant shall give written notice of such default to any beneficiary of a deed of trust or mortgagee of a mortgage covering the Premises, and offer such beneficiary or mortgagee a reasonable opportunity to cure the default, including time to obtain possession of the Premises by power of sale or a judicial foreclosure, if such should prove necessary to effect a cure.

### 44 51 35. Brokers.

Landlord and Tenant acknowledge and agree that they have utilized the services of real estate brokers (with AMB Corporate Real Estate Advisors and Colliers Parrish representing Tenant, and BT Commercial representing Landlord) with respect to the transactions between Landlord and Tenant that are represented by this Lease. Tenant warrants and represents that it has had no dealings with any other real estate broker or agent in

connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, causes of action, liability or costs, including reasonable attorney's fees, arising as a result of a breach of the foregoing warranty and representation. Nothing contained in this Paragraph 35 shall be deemed to obligate or require Landlord to pay any commission whatsoever to any real estate broker (including without limitation AMB and BT) with respect to this Lease; the payment of any such commission (if any) shall be governed by a separate written agreement between Landlord and the real estate broker or brokers in question. Tenant shall separately compensate AMB and Colliers Parrish for its services and no commission shall be payable to AMB and Colliers Parrish in connection with this Lease.

36. Acceptance.

This Lease shall only become effective and binding upon full execution hereof by Landlord and delivery of a signed copy to Tenant. Neither party shall record this Lease nor a short form memorandum thereof.

37. Parking.

Tenant shall have the non-exclusive right, in common with any other tenants or occupants of the Project, to use up to 3.33 unassigned parking spaces per each one thousand (1,000) square feet of Rentable Area in the Premises, upon terms and conditions, as may from time to time be reasonably established by Landlord; provided, however, that Tenant acknowledges and agrees that during the construction of the Parking Structure (as defined in the Build to Suit Agreement), the parking ratio for the Building may from time to time be less than 3.33 spaces per 1,000 square feet of Rentable Area. Should parking charges or surcharges of any kind be imposed on the parking facilities by a governmental agency, Tenant shall reimburse Landlord for such charges and/or surcharges or, if possible, shall pay such charges and/or surcharges directly to the governmental agency and, in such event, Tenant shall provide Landlord with proof that such charges and/or surcharges have been paid by Tenant. Parking on that portion of the Project cross-hatched on Exhibit C shall be subject such reciprocal easement agreements affecting the such portion of the Project as Landlord may adopt from time to time.

38. Right of First Offer to Purchase.

During the term of this Lease, Landlord shall not sell fee title to the Building to any unaffiliated third party or parties, without first offering to sell the Building to Tenant upon the terms, covenants and conditions set forth in this Paragraph 38; provided, however, that as

45

52

provided below this Paragraph 38 may cease to be of any force or effect prior to the expiration or earlier termination of the term of this Lease. Notwithstanding any provision of

this Lease to the contrary, the provisions of this Paragraph 38 shall not apply to, and Tenant shall have absolutely no rights in connection with, any of the following: (i) any and all transfers of all or any portion of the Building, or any interest therein, by means of judicial foreclosure, trustee's sale, deed in lieu of foreclosure or similar conveyance, (ii) any and all transfers or conveyances of any ownership interests in Landlord or any of the parties or entities comprising Landlord (including without limitation transfers of partnership interests, membership interests, and shares of common and/or preferred stock), (iii) any and all transfers of tenancy-in-common interests in the Building by Landlord to, or by and among, the parties or entities comprising Landlord, (iv) the creation of any liens, encumbrances or security interests or the transfer of any interest in the Building for security purposes, and (v) the transfer of all or any portion of the Building, or any interest in the Building, to any Affiliate of Landlord or any partner, member or shareholder of Landlord.

A. Notice of Sale. If at any time during the term of this Lease Landlord desires to sell fee title to the Building to an unaffiliated third party, Landlord shall give written notice to Tenant specifying the terms, covenants and conditions upon which Landlord is willing to sell the Building (the "Acceptable Sale Terms"). The notice shall constitute an irrevocable offer on the part of Landlord (subject to the conditions described in Paragraph 38.F below) to sell the Building to Tenant upon the Acceptable Sale Terms, and Landlord and Tenant shall have a period of thirty (30) days after Landlord's delivery of the notice within which to negotiate and agree upon the terms and conditions for the sale to Tenant of the Building (the "Sale Negotiation Period").

B. Acceptance. If Tenant is interested in acquiring the Building, Tenant shall give Landlord written notice of such interest ("Notice of Interest I") within ten (10) days of Tenant's receipt of Landlord's notice (the "Purchase Response Period"), and Landlord and Tenant shall proceed to negotiate Tenant's purchase of the Building and the terms and conditions of purchase during the Sale Negotiation Period. Should the parties reach agreement on the terms and conditions of Tenant's acquisition of the Building within the Sale Negotiation Period, then Tenant shall acquire, on an all cash basis, in the manner set forth in Paragraph 38.G, fee title to the Building, together with any and all improvements situated thereon. Failure on the part of Tenant either to deliver a Notice of Interest to Landlord within the Purchase Response Period or to accept Landlord's offer to sell the Building within the Sale Negotiation Period shall each constitute Tenant's rejection of Landlord's offer to sell the Building.

C. Rejection. If (i) Tenant informs Landlord within the Sale Response Period that Tenant does not desire to negotiate the acquisition of the Building, or (ii) after commencing negotiations, Landlord and Tenant do not reach agreement upon the terms and conditions of Tenant's purchase of the Building within the Sale Negotiation Period, or (iii) Tenant otherwise rejects Landlord's offer to sell the Building, then, in any such event (except as provided to the contrary in Paragraphs 38.D and 38.E), this Paragraph 38 shall no longer apply to the Building, and Landlord (and each and every subsequent owner of the Building) shall be free to offer to sell all or any portion of the Building (separately or together with any other parcel or parcels) to any third party or parties upon any terms whatsoever, including without limitation terms less favorable to Landlord than the Acceptable Sale Terms, without first offering the Building to

Tenant.

D. Offered Terms. If Tenant does not accept Landlord's offer as set forth above, but Tenant does deliver to Landlord within the Sale Negotiation Period a written offer ("Tenant's Purchase Offer") to acquire the Building for a purchase price ("Tenant's Offered Price") less than the price contained in the Acceptable Sale Terms, then Tenant shall be deemed to have made an irrevocable offer to acquire the Building at Tenant's Offered Price. Tenant's Purchase Offer shall be deemed to include all of the Acceptable Sale Terms, except that to the extent there is any discrepancy between the Acceptable Sale Terms and the terms set forth in Tenant's Purchase Offer, Tenant's Purchase Offer shall be controlling (except as otherwise provided in Paragraph 38.G below).

E. Acceptance of Tenant's Offer. If Tenant rejects or otherwise fails to accept Landlord's offer pursuant to this Paragraph 38 but delivers Tenant's Purchase Offer to Landlord in accordance with Paragraph 38.D, then Landlord may at any time within sixty (60) days after Landlord's receipt of Tenant's Purchase Offer, accept Tenant's Purchase Offer and sell the Building to Tenant in accordance with the terms thereof and the other terms and conditions set forth in this Paragraph 38. If Landlord thus accepts Tenant's Purchase Offer, then Tenant shall acquire, on an all cash basis, in accordance with the provisions of Paragraph 38.G, fee title to the Building, together with the improvements situated thereon. If Landlord does not accept Tenant's Purchase Offer within such 60-day period, then upon the expiration of such 60-day period this Paragraph 38 shall terminate and shall no longer apply to the Building, and Landlord (and each and every subsequent owner of the Building) shall be free to sell all or any portion of the Building (separately or together with any other parcel or parcels) to a third party or parties upon any terms whatsoever, including without limitation terms less favorable to Landlord than the terms contained in Tenant's Purchase Offer, without first offering to sell the Building to Tenant.

F. Conditions. The effectiveness of Tenant's right to offer to acquire any Building, as set forth in this Paragraph 38, is conditioned on the following: (i) Tenant has not previously entered into a Sublet of this Lease (other than a Permitted Transfer); and (ii) no monetary or other material default by Tenant exists under this Lease which remains uncured after the giving of any applicable notice and the expiration of any applicable cure period. In addition, if any of the conditions specified under clauses (i) and (ii) above do not continue to be satisfied as of the date on which the escrow for the sale of the Building to Tenant is scheduled to close, then unless Landlord waives in writing any such conditions, Tenant's exercise of its right to acquire the Building under this Paragraph 38 shall be null and void, and this Lease shall terminate effective as of the date on which the escrow for the sale of the Building to Tenant was scheduled to close.

G. Process. In the event that Landlord and Tenant reach agreement on the terms and conditions of the sale of the Building within the applicable period of time set forth in this Paragraph 38, Tenant's acquisition of the Building shall be carried out on (i) the terms and conditions described in this Paragraph 38 and/or to which Landlord and Tenant have

otherwise specifically agreed pursuant to this Paragraph 38 (collectively, the “Agreed Terms”), and (ii) the terms and conditions set forth on Exhibit F attached to this Lease (the “Standard Terms for Purchase”). To the extent there is any discrepancy between the Agreed Terms and the Standard

47

54

Terms, the Agreed Terms shall be controlling; provided, however, that notwithstanding the foregoing, Tenant shall be required to make an earnest money deposit equal to five percent (5%) of the purchase price for the Building, pursuant to the Standard Terms.

H. Rights Personal. The rights granted to Tenant under this Paragraph 38 shall be personal to Tenant, and shall not be assigned, sold, conveyed or otherwise transferred to any other party (including without limitation any assignee or sublessee of Tenant) without the prior written consent of Landlord, which consent may be withheld in Landlord’s sole discretion; provided, however, that the rights granted to Tenant under this Paragraphs 38 may be transferred without Landlord’s consent to the transferee of Tenant’s interest in this Lease pursuant to a Permitted Transfer.

### 39. General.

A. Captions. The captions and headings used in this Lease are for the purpose of convenience only and shall not be construed to limit or extend the meaning of any part of this Lease.

B. Executed Copy. Any fully executed copy of this Lease shall be deemed an original for all purposes.

C. Time. Time is of the essence for the performance of each term, condition and covenant of this Lease.

D. Separability. If one or more of the provisions contained herein, except for the payment of Rent, is for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

E. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of California. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant.

F. Gender; Singular, Plural. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural.

G. Binding Effect. The covenants and agreement contained in this Lease shall be binding on the parties hereto and on their respective successors and assigns to the extent this Lease is assignable.

H. Waiver. The waiver by Landlord of any breach of any term, condition or covenant, of this Lease shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other term, condition or covenant of this Lease. The subsequent

48

55

acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach at the time of acceptance of such payment. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord.

I. Entire Agreement. This Lease is the entire agreement between the parties, and there are no agreements or representations between the parties except as expressed herein. Except as otherwise provided herein, no subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

J. Authority. If Tenant is a corporation or a partnership, each individual executing this Lease on behalf of said corporation or partnership, as the case may be, represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with its corporate bylaws, statement of partnership or certificate of limited partnership, as the case may be, and that this Lease is binding upon said entity in accordance with its terms. Landlord, at its option, may require a copy of such written authorization to enter into this Lease.

K. Exhibits. All exhibits, amendments, riders and addenda attached hereto are hereby incorporated herein and made a part hereof.

L. Lease Summary. The Lease Summary attached to this Lease is intended to provide general information only. In the event of any inconsistency between the Lease Summary and the specific provisions of this Lease, the specific provisions of this Lease shall prevail.

M. Memorandum of Lease. This Lease shall not be recorded without the prior consent of both Landlord and Tenant; provided, however, that upon the written request of Tenant, Landlord and Tenant shall execute and acknowledge, in recordable form, a memorandum of this Lease in form reasonably acceptable to both Landlord and Tenant, and shall cause such memorandum to be recorded in the Official Records of the County of San Mateo, State of California. Upon expiration of the term of this Lease or earlier termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord an appropriate instrument prepared by Landlord which Landlord may then record in the Official Records of San Mateo County to expunge this Lease and any memorandum thereof from the public record with respect to the Premises. In addition, Tenant hereby irrevocably constitutes and appoints Landlord as its true and lawful attorney in fact, in its name and in its behalf, to

make, execute, acknowledge, deliver, and file any and all such instruments that Tenant so fails or refuses to execute. Tenant expressly understands and acknowledges that the foregoing special power of attorney is coupled with an interest, is irrevocable, and shall survive the dissolution or insolvency of Tenant, or the transfer by Tenant of the whole or any portion of its interest in this Lease (provided that any such transfer shall be subject to the restrictions set forth in this Lease).

49

56

THIS LEASE is effective as of the date the last signatory necessary to execute the Lease shall have executed this Lease.

TENANT:

Dated: ,1998 AT HOME CORPORATION, ----- a Delaware corporation

By: /s/ KENNETH A. GOLDMAN ----- Its: -----

By: ----- Its: -----

LANDLORD:

Dated: MARTIN/CAMPUS ASSOCIATES, L.P., ----- a Delaware limited partnership

By: Martin/Redwood Partners, L.P., a California limited partnership, its General Partner

By: TMG Redwood LLC, A California limited liability Company Its: General Partner

By: The Martin Group of Companies, Inc., a California corporation, Its General Partner

By: /s/ ----- Its: Vice President -----

50

57

EXHIBIT A -----

PREMISES -----

58

EXHIBIT B -----

## WORK LETTER AGREEMENT -----

THIS WORK LETTER ("Agreement") is made and entered into by and between Landlord and Tenant as of the date of the Lease. This Agreement shall be deemed a part of the Lease to which it is attached. Capitalized terms which are used herein and defined in the Lease shall have the meanings given in the Lease.

### 1. General.

1.1 Capital Improvements. Pursuant to the Build to Suit Agreement, Landlord shall construct the Shell and Core and applicable site work (as defined in the Build to Suit Agreement) (collectively, the "Capital Improvements"). Except for its obligation to perform the Capital Improvements and the Tenant Improvements as set forth in this Lease and the Work Letter, Landlord shall have no obligation whatsoever to do any work or perform any improvements whatsoever to any portion of the Premises or the Building; provided, however, that the Tenant Improvements shall be performed at the sole cost and expense of Tenant (subject to the provisions of Paragraph 1.4). Landlord shall cause Contractor (as defined below) to perform all initial leasehold improvements, in accordance with the approved Final Plans and as otherwise may be required to comply with applicable law (collectively, the "Tenant Improvements"). The parties acknowledge and agree that the Capital Improvements and the Tenant Improvements constitute all of the work required to enable Tenant to occupy, and operate its business in, the Premises.

1.2 Tenant Improvement Costs. The cost of performing the Tenant Improvements, including without limitation the costs described in Paragraph 6 below (collectively, the "Tenant Improvement Costs") shall be paid by Tenant in the manner set forth in Paragraph 5 below, subject to the provisions of Paragraph 1.4.

1.3 Tenant Improvements Allowance. If the lender for the Construction Financing (as defined in the Build to Suit Agreement) is willing to increase the amount of such Construction Financing to cover all or any portion of the Tenant Improvement Costs, then Landlord shall provide an allowance for the Tenant Improvement Costs in an amount equal to that portion of the Construction Financing budgeted for payment of such costs (the "Tenant Improvements Allowance"); provided, however, that in no event shall the Tenant Improvements Allowance exceed Thirty Dollars (\$30.00) per square foot of Rentable Area to be situated in the Building.

### 2. Approval of Plans for Tenant Improvements.

2.1 Architect. Within five (5) days after execution of the Lease, Tenant shall notify Landlord in writing of the name and address of the licensed architect which Tenant desires to engage for the preparation of plans for Tenant's Work ("Architect"). Tenant's proposed architect shall be subject to Landlord's prior written approval. Tenant shall retain Architect's administrative services throughout the performance of Tenant's Work. Designers who are not



licensed architects will not be acceptable.

## 2.2 Submittal of Plans.

2.2.1. Preliminary Plans. Tenant shall cause Architect to prepare preliminary plans (the "Preliminary Plans") for the Tenant Improvements to be performed at the Premises. Tenant shall cause Architect to deliver the Preliminary Plans to Landlord within thirty (30) days after the date on which the Lease has been signed by Landlord and Tenant. Within five (5) days after Landlord's receipt of the Preliminary Plans, Landlord shall either approve or disapprove the Preliminary Plans, which approval shall not be unreasonably withheld. If Landlord disapproves the Preliminary Plans, then Landlord shall state in reasonable detail the changes which Landlord requires to be made thereto. Tenant shall submit to Landlord revised Preliminary Plans within five (5) days after Tenant's receipt of Landlord's disapproval notice. Following Landlord's receipt of the revised Preliminary Plans from Tenant, Landlord shall have the right to review and approve the revised Preliminary Plans pursuant to this Paragraph 2.2.1. Landlord shall give Tenant written notice of its approval or disapproval of the revised Preliminary Plans within five (5) days after the date of Landlord's receipt thereof. If Landlord reasonably disapproves the revised Preliminary Plans, then the following shall occur: (i) Landlord and Tenant shall continue to follow the procedures set forth in this Paragraph 2.2.1 until Landlord and Tenant reasonably approve the Preliminary Plans in accordance with this Paragraph 2.2.1, and (ii) the period between the date of Landlord's reasonable disapproval and the eventual mutual approval of such Preliminary Plans shall constitute a Tenant Delay.

2.2.2. Preliminary Budget. Landlord shall retain a contractor ("Contractor") as the general contractor for the construction of the Tenant Improvements. Tenant shall have the right to approve the construction contract between Landlord and Contractor for the construction of the Tenant Improvements, which approval shall not be unreasonably withheld or delayed; provided, however, that Tenant shall have no right to disapprove such construction contract if such construction contract substantially conforms with the applicable AIA form contract and general conditions. Ten (10) days after approval by Landlord and Tenant of the Preliminary Plans, Contractor shall prepare a preliminary budget for the Tenant Improvements based upon the approved Preliminary Plans, which Contractor shall submit to Tenant for its review and approval. Within three (3) days after Tenant's receipt of the preliminary budget, Tenant shall either approve or disapprove the preliminary budget. If Tenant reasonably rejects such preliminary budget, Tenant shall, within five (5) days of Tenant's delivery of a written rejection notice to Landlord, require Architect to revise the Preliminary Plans to reduce the cost of the Tenant Improvements. Following Tenant's instructions to the Architect, Landlord and Tenant shall again follow the procedures set forth in Paragraph 2.2.1 and this Paragraph 2.2.2 with respect to the approval of the Preliminary Plans and to the submission and approval of the preliminary budget from Contractor.

2.2.3. Final Plans. Within three (3) days after approval by Landlord and Tenant of the preliminary budget for the Tenant Improvements, Tenant shall cause Architect to commence preparing complete plans, specifications and working drawings which incorporate and are consistent with the approved Preliminary Plans and preliminary budget, and which show in detail the intended design, construction and finishing of all portions of

the Tenant

60

Improvements described in the Preliminary Plans (collectively, the “Final Plans”). Tenant shall cause Architect to deliver the Final Plans to Landlord, for Landlord’s review and approval, no later than ninety (90) days after the date on which the Lease has been signed by Landlord and Tenant. Within five (5) days after Landlord’s receipt of the Final Plans, Landlord shall either approve or disapprove the Final Plans, which approval shall not be unreasonably withheld. If Landlord disapproves the Final Plans, then Landlord shall state in reasonable detail the changes which Landlord requires to be made thereto. Tenant shall submit to Landlord revised Final Plans within five (5) days after Tenant’s receipt of Landlord’s disapproval notice. Following Landlord’s receipt of the revised Final Plans from Tenant, Landlord shall have the right to review and approve the revised Final Plans pursuant to this Paragraph 2.2.3. Landlord shall give Tenant written notice of its approval or disapproval of the revised Final Plans within five (5) days after the date of Landlord’s receipt thereof. If Landlord reasonably disapproves the revised Final Plans, then the following shall occur: (i) Landlord and Tenant shall continue to follow the procedures set forth in this Paragraph 2.2.3 until Landlord and Tenant reasonably approve such Final Plans in accordance with this Paragraph 2.2.3, and (ii) the period between the date of Landlord’s reasonable disapproval and the eventual mutual approval of such Final Plans shall constitute a Tenant Delay.

3. Construction Budget. Upon approval by Landlord and Tenant of the Final Plans, Landlord shall instruct Contractor to obtain competitive bids for the Tenant Improvements from at least three (3) qualified subcontractors for each of the major subtrades (excluding the mechanical and electrical trades, which shall be on a design/build basis, unless Landlord elects to competitively bid these trades) and to submit the same to Landlord and Tenant for their review and approval. Upon selection of the subcontractors and approval of the bids, Contractor shall prepare a cost estimate for the Tenant Improvements described in such Final Plans, based upon the bids submitted by the subcontractors selected. Contractor shall submit such cost estimate to Landlord and Tenant for their review and approval. Within five (5) days after their receipt of the cost estimate, Landlord and Tenant shall each either approve or disapprove the cost estimate, which approval shall not be unreasonably withheld. Tenant’s failure to approve or disapprove the cost estimate within such 5-day period shall constitute Grounds for the assertion of a Tenant Delay. Landlord or Tenant may each approve or reject such cost estimate in their reasonable sole discretion. If either Landlord or Tenant rejects such cost estimate, Landlord shall resolicit bids based on such Final Plans, in accordance with the procedures specified above. Following any resolicitation of bids by Landlord pursuant to this Paragraph 3, Landlord and Tenant shall again follow the procedures set forth in this Paragraph 3 with respect to the submission and reasonable approval of the cost estimate from Contractor; provided, however that the period between Tenant’s disapproval of the first revised cost estimate and the eventual mutual approval of a cost estimate shall constitute a Tenant Delay.

4. Landlord to Construct. Landlord shall cause Contractor to construct the Tenant Improvements in a good and workmanlike manner, in accordance with the approved Final Plans and in compliance with all applicable laws. Architect shall be responsible for

obtaining all necessary building permits and approvals and other authorizations from governmental agencies required in connection with the Tenant Improvements. The cost of all such permits and approvals, including inspection and other building fees required to obtain the permits for the Tenant Improvements, shall be included as part of the Tenant Improvement Costs. Tenant shall have the benefit of any warranties provided by Contractor, the subcontractors and suppliers in

61

connection with the Tenant Improvements.

5. Payment for Tenant Improvements. The Tenant Improvement Costs shall be paid solely by Tenant as follows:

5.1 Method of Payment. If Landlord provides a Tenant Improvements Allowance for the Building pursuant to Paragraph 1.4 above, Landlord shall bear the Tenant Improvement Costs up to the amount of such Tenant Improvements Allowance; and Tenant shall be responsible for paying any excess in the Tenant Improvement Costs over the amount of such Tenant Improvements Allowance. If Landlord does not provide a Tenant Improvements Allowance, Tenant shall be solely responsible for the payment of any and all Tenant Improvement Costs. For the purposes of this Exhibit B, the term "Tenant's Share of Tenant Improvement Costs" shall mean the entire amount of all Tenant Improvement Costs, less any Tenant Improvements Allowance provided by Landlord; provided, however, that if Landlord does not provide a Tenant Improvements Allowance, then "Tenant's Share of Tenant Improvement Costs" shall mean the entire amount of all Tenant Improvement Costs. If required by any lender holding a security interest encumbering the land on which the Building will be situated, Tenant shall provide the Set-Aside Funds (as defined in Paragraph 5.1.1) in accordance with the provisions of Paragraph 5.1.1. If at the time construction of the Building is scheduled to commence no such lender exists, or if there is such a lender but such lender does not at any time during the construction of the Building require Landlord to obtain the Set-Aside Funds from Tenant, then Tenant shall not be required to provide the Set-Aside Funds for the construction of the Building.

5.1.1. Set-Aside Funds. If Tenant is required to deposit the Set-Aside Funds pursuant to Paragraph 5.1, then within five (5) days after the parties have mutually agreed upon a cost estimate for the Tenant Improvements as provided above, Tenant shall deposit into a separate account with any financial institution designated by Landlord, in Tenant's name, subject to restrictions in favor of such financial institution, an amount (the "Set-Aside Funds") equal to (a) the entire amount of Tenant's Share of Tenant Improvement Costs, based on the assumption that the Tenant Improvement Costs shall equal such cost estimate, and (b) all other amounts to be deposited by Tenant in such account pursuant to the terms of the Build to Suit Option Agreement. Landlord shall instruct such financial institution to hold the Set-Aside Funds in a separate interestbearing account with interest to accrue for Tenant's account, and shall utilize the Set-Aside Funds to pay for Tenant's Share of Tenant Improvement Costs and any other obligations of Tenant pursuant to the Build to Suit Option Agreement. Before commencement of construction of any subsequent portion of the Tenant Improvements, Tenant shall deposit in such account an additional amount equal to Tenant's Share of Tenant Improvement Costs for such subsequent Tenant Improvements.

5.1.2. Payment. If Landlord provides a Tenant Improvements Allowance pursuant to Paragraph 1.4 above, then within twenty (20) days after Landlord's receipt of reasonably satisfactory invoices for costs of labor and materials incurred in connection with the Tenant Improvements, together with such supporting documentation and lien waivers as Landlord may reasonably require in order to review the costs covered by the billing, Landlord shall pay the Tenant Improvement Costs represented by such invoices first coming due for

62

payment, up to an aggregate amount equal to the Tenant Improvements Allowance. As and when any amount of Tenant's Share of Tenant Improvement Costs or any amounts payable by Tenant pursuant to the Build to Suit Option Agreement become due and payable, Landlord shall request such financial institution to utilize the remaining SetAside Funds to pay such amounts; provided, however, that if at any time there are insufficient Set-Aside Funds to pay any amount of Tenant's Share of Tenant Improvement Costs and/or any other amounts payable by Tenant pursuant to the Build to Suit Option Agreement, Tenant shall pay any and all such excess Shell and Core Costs and Tenant Improvement Costs to Landlord within ten (10) days after the date of Tenant's receipt of Landlord's written request therefor, together with such supporting documentation and lien waivers as Tenant may reasonably require in order to review the costs covered by the billing. Any failure by Tenant to pay any amount of Tenant's Share of Tenant Improvement Costs or any other amounts payable by Tenant pursuant to the Build to Suit Option Agreement as and when required under this Exhibit B shall constitute a default by Tenant under the Lease.

5.1.3. Penalties. To the extent that any contractor or subcontractor working on the Tenant Improvements imposes upon Landlord any penalty or late charge due to Tenant's failure to pay to Landlord any amount due under this Paragraph 5.1 as and when such amount is due, Tenant shall be solely responsible for paying such penalty or late charge; provided, however, that if Tenant disputes the imposition of such penalty or late charge, Tenant shall not be required to pay the penalty or late charge until the dispute has been settled or otherwise resolved; provided further, that if any penalty or late charge is imposed due to Tenant's exercise of its rights under this Paragraph 5.1.3, Tenant shall pay such penalty or late charge as provided in this Paragraph 5.1.3.

5.2 Extra Work. Tenant shall be solely responsible for any and all costs and expenses arising from any improvements to or installations in the Building desired by Tenant and approved by Landlord that are outside the scope of the Final Plans.

6. Tenant Improvement Costs. The Tenant Improvement Costs shall include all reasonable costs incurred in connection with the Tenant Improvements (but not the Capital Improvements), as determined by Landlord in its reasonable discretion, including the following:

(a) All costs of space plans and other architectural and engineering plans and specifications for the Tenant Improvements, including engineering costs associated with completion of the State of California energy utilization calculations under Title 24 legislation required in connection with the Tenant Improvements;

(b) All costs of obtaining building permits and other necessary authorizations from the City of Redwood City;

(c) All costs of interior design and finish schedule plans and specifications, including as-built drawings by Architect;

(d) All direct and indirect costs of procuring, constructing and installing the Tenant Improvements in the Premises, including, but not limited to, the construction fee payable to the Contractor for overhead and profit, and the cost of all on-site supervisory and

63

administrative staff, office, equipment and temporary services rendered by Contractor in connection with construction of the Tenant Improvements;

(e) All fees payable to Architect and Landlord's engineering firm if they are required by Tenant to redesign any portion of the Tenant Improvements following Tenant's approval of the Final Plans;

(f) Sewer connection fees (if any);

(g) All costs of installing an emergency power supply systems in each of the Buildings, which emergency power supply shall include emergency HVAC for Tenant's computer rooms;

(h) All direct and indirect construction costs associated with complying with Title 24 legislation and ADA compliance for all interior improvements (including the reconstruction of all restrooms); and

(i) A construction management fee payable to Landlord equal to three percent (3%) of the total Tenant Improvement Costs. (Landlord shall either provide, or cause a third party to provide, construction management services in connection with the construction of the Tenant Improvements, and the foregoing fee shall be the sole compensation for such services).

7. Chance Requests. No revisions to the approved Final Plans shall be made by either Landlord or Tenant unless approved in writing by both parties. Landlord agrees to make all changes (i) required by any public agency to conform with governmental regulations, or (ii) requested in writing by Tenant and approved in writing by Landlord, which approval shall not be unreasonably withheld. Any costs related to such changes shall be added to the Tenant Improvement Costs and shall be paid for in accordance with Paragraph 5. The billing for such additional costs shall be accompanied by evidence of the amounts billed as is customarily used in the business. Costs related to changes shall include, without limitation, any architectural, structural engineering, or design fees, and the Contractor's price for effecting the change. Any change order which may extend the date of substantial completion of the Tenant Improvements may be disapproved by Landlord unless Tenant agrees that for all purposes under this Lease, the Tenant Improvements shall be deemed to

have been substantially completed on that date on which such Tenant Improvements would have been substantially completed without giving effect to the change order in question.

8. Early Access. So long as such entry does not in any way interfere with or delay Landlord's construction of the Improvements, Tenant shall have the right to enter the Premises before the Commencement Date for the purpose of installing cable T.V., telephones, telecommunications cabling, furniture and other similar items. Such entry shall be subject to all of the terms and conditions of the Lease, other than the obligation to pay Rent.

9. Acceptance of Building. Within thirty (30) days after completion of the Tenant Improvements, Tenant shall conduct a walk-through inspection of the Building with Landlord and complete a punch-list of items needing additional work. Other than the items specified in the

64

punch list, if any, by taking possession of the Building, Tenant shall be deemed to have accepted the Building in good, clean and completed condition and repair, subject to all applicable laws, codes and ordinances. Any damage to the Building caused by Tenant's move-in shall be repaired or corrected by Tenant, at its sole cost and expense, which repair or corrective work shall not be paid for out of any Tenant Improvements Allowance. Tenant acknowledges that neither Landlord nor Landlord's agents shall be deemed to have made any representations or warranties as to the suitability or fitness of the Building for the conduct of Tenant's business or for any other purpose, nor shall Landlord or Landlord's agents be deemed to have agreed to undertake any alterations or construct any improvements to the Building except as expressly provided in the Lease, this Exhibit B, and the Build to Suit Option Agreement. If Tenant fails to submit a punch-list to Landlord within such 30-day period, it shall be deemed that there are no items needing additional work or repair. Contractor shall complete all reasonable punch-list items within thirty (30) days after the walk-through inspection or as soon as practicable thereafter. Upon completion of such punch-list items, Tenant shall approve such completed items in writing to Landlord. If Tenant fails to approve such items within fourteen (14) days of completion, such items shall be deemed approved by Tenant. Landlord shall, upon Tenant's written request, assign and transfer to Tenant, to the extent reasonably requested by Tenant and consistent with Landlord's position as the owner of the Building, Landlord's rights and claims against Contractor arising from Contractor's warranties (express and implied) with respect to the Building. Nothing contained in this Paragraph 10 shall limit, restrict, or terminate any right of Landlord or Tenant to make any claim against Contractor based upon the condition of the Building or any and all of Contractor's warranties (express and implied) with respect to the Building.

LANDLORD: TENANT:

MARTIN/CAMPUS ASSOCIATES, L.P., AT HOME CORPORATION, a Delaware limited partnership a Delaware corporation

By: Martin/Redwood Partners, By: /s/ KENNETH A. GOLDMAN L.P., a California

limited ----- partnership, its General Its: Partner  
----- By: ----- Its: ----- By:  
The Martin Group of Companies, Inc., a California corporation, its General Partner

By: /s/ -----

Its: Vice President -----

65

EXHIBIT C -----

SITE PLAN FOR PROJECT -----

This Exhibit will either be (i) the North Expansion Parcel (see Exhibit C-1), or (ii) the south campus (see Exhibit C-2), as applicable.

66

EXHIBIT D

COMMENCEMENT DATE MEMORANDUM

LANDLORD: Martin/Campus Associates, L.P.

TENANT: -----

LEASE DATE: -----

PREMISES: -----

Pursuant to Paragraph 4.A. of the above referenced Lease, the commencement date is hereby established as \_\_\_\_\_ for \_\_\_\_\_, Redwood City, CA 94063. The Commencement Date as defined in Paragraph 4.A. shall be \_\_\_\_\_.

TENANT:

Dated: ,1998 AT HOME CORPORATION, ----- a Delaware corporation

By: /s/ KENNETH A. GOLDMAN ----- Its:  
-----

By: ----- Its: -----

LANDLORD:

Dated: MARTIN/CAMPUS ASSOCIATES, L.P., ----- a Delaware limited

partnership

By: Martin/Redwood Partners, L.P., a California limited partnership, its General Partner

By: TMG Redwood LLC, A California limited liability Company Its: General Partner

By: The Martin Group of Companies, Inc., a California corporation, Its General Partner

By: ----- Its: -----

67

EXHIBIT E -----

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT  
-----

68

EXHIBIT F -----

STANDARD TERMS FOR OPTION TO PURCHASE -----

This Exhibit F sets forth certain standard terms that shall be applicable to the purchase of the Building pursuant Paragraph 38 of the Lease. This Exhibit shall be deemed a part of the Lease to which it is attached. Capitalized terms which are used herein and defined in the Lease shall have the meanings given in the Lease.

1. Sale and Purchase; Title Company.

1.1 General. In the event Tenant acquires the Building, (the “Option Property”), Landlord shall sell to Tenant, and Tenant shall purchase from Landlord, all of the “Property” (as defined below).

1.2 The Property. As used in this Agreement, the term “Property” includes the Option Property and all of the items referred to in Paragraphs 1.2.1 through 1.2.4.

1.2.1. Personal Property. All of Landlord’s right, title and interest in and to any and all personal property located at the Option Property which is owned by Landlord and which is used in the operation and maintenance of the Option Property (the “Personal Property”).

1.2.2. Rights and Privileges. All of Landlord’s right, title and interest, if any, in and to all rights, privileges, tenements, hereditaments, rights-of-way, easements, appurtenances, mineral rights, development rights, air rights and riparian or littoral rights belonging or appertaining to the Option Property.

1.2.3. Contracts and Leases. All of Landlord’s right, title and interest in and to (i) all service, maintenance, construction, management and other contracts relating to the Option



Property (collectively, “Contracts”), and (ii) all leases, tenancy and occupancy agreements for all or any portion of the Option Property (collectively, “Leases”).

1.2.4. Permits and Warranties. All of Landlord’s right, title and interest in and to (i) all licenses, permits and approvals, if any, affecting or pertaining to the Option Property which, if assignable, are to be assigned to Tenant at the Closing (as defined below), and (ii) all warranties, if any, affecting or pertaining to the Option Property which, if assignable, are to be assigned to Tenant at the Closing.

1.3 Title Company. The purchase and sale of the Property shall be accomplished through an escrow which Landlord has established or will establish with Chicago Title Insurance Company, One Kaiser Plaza, Oakland, California (the “Title Company”).

2. Title. Title to the Property shall be conveyed from Landlord to Tenant by grant deed (the “Deed”), subject to: (i) liens to secure payment of real estate taxes and assessments not delinquent; (ii) applicable zoning and use laws, ordinances, rules and regulations of any municipality, township, county, state or other governmental agency or authority; (iii) all matters

69

that would be disclosed by a physical inspection or survey of the Option Property or that are actually known to Tenant; (iv) any exceptions or matters created by Tenant, its agents, employees or representatives; (v) all exceptions of record that were in existence as of the date of the Lease and all CC&Rs recorded by Landlord; (vi) all Leases and Contracts; and (vii) such other exceptions as Tenant may approve in writing.

The foregoing exceptions to title are referred to collectively as the “Conditions of Title”. Conclusive evidence of delivery of title in accordance with the foregoing shall be the willingness of Title Company to issue to Tenant, upon payment of its regularly scheduled premium, its CLTA owner’s policy of title insurance, in the amount of the Purchase Price, showing title to the Option Property vested of record in Tenant, subject only to the Conditions of Title (and the standard printed exceptions and conditions in the policy of title insurance). If Landlord for any reason is unable to deliver title to the Property subject only to the Conditions of Title, then Tenant’s sole remedy shall be to terminate this Agreement and receive a return of any Deposit, and neither Landlord nor Tenant shall thereafter have any further rights or obligations under this Agreement, except Tenant’s obligation to perform the Continuing Obligations (as defined below). Tenant shall have no right to commence any action for damages, specific performance or other relief as a result of Landlord’s inability to deliver title to the Property subject only to the Conditions of Title; provided, however, that if Landlord intentionally fails to consummate the conveyance of the Option Property to Tenant in accordance with the terms of the Lease, then Tenant shall have the right to commence any actions for damages, specific performance or other relief as a result of Landlord’s intentional breach.

3. Damage, Destruction or Taking. If at any time prior to the Closing, Landlord determines that the Option Property has been destroyed or damaged by earthquake, flood or other casualty and that such damage will require more than One Million Dollars (\$1,000,000.00)

to repair (a "Casualty"), or if a proceeding is instituted for the taking of all or any material portion of the Option Property under the power of eminent domain (a "Taking"), then Tenant shall have the right by giving written notice to Landlord and Title Company within fifteen (15) days after the date of receipt of written notice of any such Casualty or Taking, either to: (i) consummate the purchase of the Property in accordance with the Lease, in which event Landlord shall assign to Tenant at the Closing (A) any insurance proceeds payable to Landlord on account of such Casualty, or (B) any award payable to Landlord by reason of the Taking, as the case may be; or (ii) terminate Landlord's obligations under Paragraph 38 of the Lease and this Exhibit F, effective as of the date such notice of termination is given. If Tenant fails to give such notice within such 15-day period, then Tenant shall be deemed to have elected to terminate Landlord's obligations under Paragraph 38 of the Lease and this Exhibit F, pursuant to this Paragraph 3. The Closing Date shall be deferred, if necessary, to permit Tenant to have the 15-day period following receipt of notice of a Casualty or a Taking to make the election specified hereinabove. If Tenant terminates Landlord's obligations under Paragraph 38 of the Lease and this Exhibit F, pursuant to this Paragraph 3, then any Deposit shall be returned to Tenant, and neither Landlord nor Tenant shall have any further obligations under Paragraph 38 of the Lease or this Exhibit F. Nothing herein shall be deemed to constitute an obligation on the part of Landlord to carry or maintain any insurance of any kind whatsoever pertaining to the Property.

#### 4. Landlord's Disclaimer; Release and Indemnification of Landlord.

70

4.1 Landlord's Disclaimer. Tenant acknowledges and agrees that the sale of the Property to Tenant is made without any warranty or representation of any kind by Landlord, either express or implied, with respect to any aspect, portion or component of the Property, including: (i) the physical condition, nature or quality of the Property, including the quality of the soils on and under the Property and the quality of the labor and materials included in any buildings or other improvements, fixtures, equipment or personal property comprising a portion of the Property; (ii) the fitness of the Property for any particular purpose; (iii) the presence or suspected presence of hazardous materials on, in, under or about the Property (including the soils and groundwater on and under the Property); or (iv) existing or proposed governmental laws or regulations applicable to the Property, or the further development or change in use thereof, including environmental laws and laws or regulations dealing with zoning or land use. Tenant further agrees and acknowledges that, as of the Closing, Tenant shall have made such feasibility studies, investigations, environmental studies, engineering studies, inquiries of governmental officials, and all other inquiries and investigations, which Tenant shall deem necessary to satisfy itself as to the condition, nature and quality of the Property and as to the suitability of the Property for Tenant's purposes. Tenant further agrees and acknowledges that, in purchasing the Property, Tenant shall rely entirely on its own investigation, examination and inspection of the Property, and not upon any representation or warranty of Landlord, or any agent or representative of Landlord. Tenant further agrees and acknowledges that Tenant has leased and occupied the Option Property prior to the Closing, by reason of such tenancy, possession and occupancy, Tenant is fully aware of the condition of the Option Property. THEREFORE, TENANT AGREES THAT, IN CONSUMMATING THE PURCHASE OF

THE PROPERTY PURSUANT TO THIS LEASE, TENANT SHALL ACQUIRE THE PROPERTY IN ITS THEN CONDITION, "AS IS, WHERE IS" AND WITH ALL FAULTS, AND SOLELY IN RELIANCE ON TENANT'S OWN INVESTIGATION, EXAMINATION, INSPECTION, ANALYSIS AND EVALUATION OF THE PROPERTY. The agreements and acknowledgments contained in this Paragraph 4.1 constitute a conclusive admission that Tenant, as a sophisticated, knowledgeable investor in real property, shall acquire the Property solely upon its own judgment as to any matter germane to the Property or to Tenant's contemplated use of the Property, and not upon any statement, representation or warranty by Landlord, or any agent or representative of Landlord, which is not expressly set forth in this Agreement. At the Closing, upon the request of Landlord, Tenant shall execute and deliver to Landlord a certificate of Tenant reaffirming the foregoing.

4.2 Tenant's Release of Landlord. Tenant hereby waives, releases and forever discharges Landlord and its officers, directors, employees and agents from any and all claims, actions, causes of action, demands, liabilities, damages, costs, expenses or compensation whatsoever, whether direct or indirect, known or unknown, foreseeable or unforeseeable, which Tenant may have at the Closing or which may arise in the future on account of or in any way arising out of or connected with the Property, including: (i) the physical condition, nature or quality of the Property (including the soils and groundwater on and under the Option Property); (ii) the presence or release in, under, on or about the Property (including the soils and groundwater on and under the Option Property) of any hazardous materials; and (iii) the ownership, management or operation of the Property, but excluding claims to the extent based on Landlord's fraud or intentional misrepresentation. At the Closing, upon the request of Landlord, Tenant shall deliver to Landlord a certificate of Tenant reaffirming the foregoing. Tenant hereby waives the protection of California Civil Code Paragraph 1542, which reads as follows:

71

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Tenant's Initials: /s/ ----- 4.3 Tenant's Indemnification of Landlord. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all claims, actions, causes of action, demands, liabilities, damages, costs and expenses (including attorneys' fees), whether direct or indirect, known or unknown, foreseeable or unforeseeable, which may be asserted against or suffered by Landlord at any time after the Closing on account of or in any way arising out of or connected with the Property, including: (i) the physical condition, nature or quality of the Property (including the soils and groundwater on and under the Option Property); (ii) the presence or release in, under, on or about the Property (including the soils and groundwater on and under the Option Property) of any hazardous materials; and (iii) the ownership, management or operation of the Property, including any claim or demand by any tenant for the refund or return of any security deposit or other deposit, but excluding claims to the extent based on Landlord's fraud or intentional misrepresentation. At the Closing, upon the request of Landlord, Tenant shall deliver to Landlord a certificate reaffirming the foregoing.

4.4 Flood Hazard Zone. Tenant acknowledges that if the Option Property is located in an area which the Secretary of HUD has found to have special flood hazards, then pursuant to the National Flood Insurance Program, Tenant will be required to purchase flood insurance in order to obtain any loan secured by the Option Property from any federally regulated financial institution or a loan insured or guaranteed by an agency of the United States government. Tenant shall have sole responsibility to determine whether the Option Property is located in an area which is subject to the National Flood Insurance Program.

4.5 Inspections. Subject to obtaining Landlord's prior written consent, which shall not be unreasonably withheld or delayed, Tenant shall have the right to conduct such inspections, investigations, borings, samplings and other tests of the Property that Tenant deems to be useful or necessary for the conduct of Tenant's due diligence in connection with the acquisition of the Property. Upon request by Tenant, Landlord shall make available to Tenant for inspection all material documents and reports in Landlord's possession relating to the condition of the Property. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all loss, cost, damage, injury, claim (including claims of lien for work or labor performed or materials or supplies furnished), liability or expense (including attorneys' fees) as a result of, arising out of, or in any way connected with the exercise of Tenant's (or its agents', contractors', employees' or authorized representatives') inspection rights pursuant to this Paragraph 4.5 or the performance of Tenant's due diligence. Tenant shall promptly repair any damage to the Property caused by its due diligence.

## 5. Closing.

72

5.1. Closing. The transaction contemplated by this Exhibit F shall be consummated through escrow at the office of Title Company on the date described in Paragraph 5.1.1 below, or on such other date as shall be mutually agreed upon by Landlord and Tenant (each, a "Closing Date"). For purposes of this Exhibit F, the term "Closing" shall mean the consummation of the sale and conveyance of the Property to Tenant as evidenced by recordation of the Deed (as defined below).

5.1.1. Closing Date. The Closing Date shall be no later than the date specified in the Agreed Terms.

5.2. Landlord's Delivery Into Escrow. Landlord shall deliver the following items into escrow:

5.2.1. Deed. The Deed, duly executed and acknowledged by Landlord, except that the amount of any transfer tax shall not be shown on the Deed, but shall be set forth on a separate affidavit or instrument which, after recordation of the Deed, shall be attached thereto so that the amount of such transfer tax shall not be of record.

5.2.2. Other Documents. Such other documents or instruments as may be reasonably required to consummate this transaction in accordance with the terms and conditions herein

contained, such as appropriate escrow instructions to Title Company.

5.3. Tenant's Delivery Into Escrow. Tenant shall deliver the following items into escrow:

5.3.1. Cash. Immediately available funds in the following amounts: (i) the balance of the Purchase Price, less the amount of the Deposit; (ii) such amount, if any, as is necessary for Tenant to pay Tenant's share of the closing costs and prorations specified in Paragraphs 5.5 and 5.6; and (iii) any other amounts required to close escrow in accordance with the terms of this Exhibit F.

5.3.2. Other Documents. Such other documents and instruments as may be reasonably required in order to consummate this transaction in accordance with the terms and conditions of this Exhibit F and the Lease, such as appropriate escrow instructions to Title Company.

5.3.3. Evidence of Authorization. Such evidence as shall reasonably establish that Tenant's performance of its obligations under the Lease and this Exhibit F have been duly authorized and that the person or persons executing all documents on behalf of Tenant have been duly authorized and empowered to do so.

5.4. Landlord's and Tenant's Joint Delivery Into Escrow. Landlord and Tenant jointly shall deliver the following items into escrow:

5.4.1. Assignment and Assumption Agreements. A document by which

73

Landlord assigns to Tenant, and Tenant assumes, the Leases, Contracts, permits and warranties which will survive the Closing.

5.4.2. Other Documents. Such other documents and instruments as may be reasonably required to consummate this transaction in accordance with the terms and conditions of this Agreement.

5.5. Closing Prorations. At the Closing, all items of income and expense of the Property shall be prorated as provided in this Paragraph 5.5 on the basis of a 360-day year, actual days elapsed for the month in which the Closing occurs, as of midnight on the day immediately preceding the Closing Date. Except as provided in this Paragraph 5.5, income and expenses attributable to the period prior to the Closing Date shall be for the account of Landlord, and income and expenses attributable to the period on and after the Closing Date shall be for the account of Tenant. Property taxes and assessments shall be prorated through escrow, and all other items of income and expense shall be prorated outside of escrow on the Closing Date by the parties. Without limiting the generality of the foregoing, the following items shall be prorated through escrow as described above:

(a) Current rents collected by Landlord under the Leases. With respect to any rent receivables carried by Landlord under the Leases as of the Closing, Tenant shall pay Landlord full value in immediately available funds at the Closing and Landlord shall

execute and deliver to Tenant at the Closing an assignment of all of Landlord's right, title and interest with respect thereto.

(b) Amounts paid or payable in respect of the Contracts which Tenant assumes at the Closing.

5.6. Closing Costs. Landlord shall pay the following closing costs: (i) all fees and costs for releasing all encumbrances, liens and security interests of record which are not Conditions of Title; and (ii) county documentary or other transfer taxes payable upon recordation of the Deed. Tenant shall pay the following closing costs: (a) the premium for Tenant's policy of title insurance; (b) any and all costs, fees, title insurance premiums and other charges payable in connection with any financing obtained by Tenant to acquire the Property, including all escrow fees relating to the funding and/or recordation of such financing; and (c) all escrow fees. Each party shall pay one-half of any escrow cancellation fee charged by Title Company in connection with the purchase and sale of the Property in accordance with this Exhibit F. All other closing costs shall be paid by the parties in accordance with the custom then prevailing in San Mateo County.

5.7. Security Deposits. With respect to all Leases which are in effect at the Closing, Landlord shall give Tenant at the Closing, through Escrow, a credit in the amount of all security deposits and other deposits then held by Landlord under such Leases.

5.8. Possession. Subject to the rights of tenants under the Leases, Landlord shall deliver exclusive possession of the Property to Tenant at the Closing.

74

5.9. Closing Procedure. Title Company shall close escrow when it is in a position to: (i) pay to Landlord, in immediately available funds, the amount of the Purchase Price, as such amount may be increased or decreased as a result of the allocation of the closing costs and prorations as specified in Paragraphs 5.5 and 5.6 and Landlord's obligations with respect to security deposits as specified in Paragraph 5.7; and (ii) issue to Tenant the policy of title insurance referred to in Paragraph 2.

5.10. Escrow. Within five (5) days after Landlord and Tenant have agreed upon the Agreed Terms, Tenant and Landlord shall deposit an executed counterpart of this Exhibit F with the Title Company and this Exhibit F shall serve as instructions to the Title Company for consummation of the purchase and sale contemplated hereby. Landlord and Tenant shall execute such supplemental escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Exhibit F, provided such supplemental escrow instructions are not in conflict with this Exhibit F. In the event of any conflict between the provisions of this Exhibit F and any supplementary escrow instructions signed by Tenant and Landlord, the terms of this Exhibit F shall control.

5.11. Compliance. The Title Company shall comply with all applicable federal, state and local reporting and withholding requirements relating to the close of the transactions contemplated herein. Without limiting the generality of the foregoing, to the extent the transactions contemplated by this Exhibit F involve a real estate transaction within the

purview of Section 6045 of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), Title Company shall have sole responsibility to comply with the requirements of Section 6045 of the Internal Revenue Code (and any similar requirements imposed by state or local law). For purposes of this Paragraph 5.11, Landlord's tax identification number is 94-3236971. Title Company shall hold Tenant, Landlord and their counsel free and harmless from and against any and all liability, claims, demands, damages and costs, including reasonable attorney's fees and other litigation expenses, arising or resulting from the failure or refusal of Title Company to comply with such reporting requirements.

6. Survival of Provisions. Notwithstanding any other provision of this Exhibit F to the contrary, each representation, warranty, covenant or agreement contained in this Exhibit F (including Tenant's obligations pursuant to Paragraph 4.3) shall survive and be binding and enforceable following the Closing and shall not be deemed to be merged into, or waived by delivery or recordation of, the Deed or any other instruments delivered at the Closing.

7. Exchange. At the option of either party, such party may elect to consummate the transaction hereunder in whole or in part as a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. If either party (the "Exchanging Party") so elects, the other party (the "Cooperating Party") shall cooperate with the Exchanging Party, executing such documents and taking such action as may be reasonably necessary in order to effectuate this transaction as a like-kind exchange; provided, however, that (i) the Cooperating Party's cooperation hereunder shall be without cost, expense or liability to the Cooperating Party of any kind or character, including, without limitation, any attorneys' fees, costs or expense incurred in connection with the review or preparation of documentation in order to effectuate such like-kind exchange, and the Cooperating Party shall have no obligation to take title to any real property;

75

(ii) the Exchanging Party shall assume all risks in connection with the designation, selection and setting of terms of the purchase or sale of any exchange property; (iii) the Exchanging Party shall bear all costs and expenses in connection with any such exchange transaction in excess of the costs and expenses which would have otherwise been incurred in acquiring or selling the Property by means of a straight purchase, so that the net effect to the Cooperating Party shall be identical to that which would have resulted had this Exhibit F closed on a purchase and sale; (iv) any documents to effectuate such exchange transaction are consistent with the terms and conditions contained in this Exhibit F; and (v) the Exchanging Party shall indemnify, defend and hold the Cooperating Party harmless from any and all claims, demands, penalties, loss, causes of action, suits, risks, liability, costs or expenses of any kind or nature (including, without limitation, reasonable attorneys' fees) which the Cooperating Party may incur or sustain, directly or indirectly, related to or in connection with, or arising out of, the consummation of this transaction as a like-kind exchange as contemplated hereunder.

8. Deposit. Notwithstanding anything to the contrary set forth in the Agreed Terms or this Exhibit F, within one (1) day after Landlord and Tenant reach agreement on the Agreed Terms for Tenant's purchase of the Property from Landlord, Tenant shall deliver to Title

Company a cashier's check in the amount of five percent (5%) of the Purchase Price (the "Deposit"), as an earnest money deposit on account of the Purchase Price. Title Company shall deposit the Deposit in an interest-bearing account, and the term "Deposit" as used in this Exhibit F shall include any interest earned thereon.

9. Liquidated Damages. TENANT ACKNOWLEDGES THAT THE CLOSING OF THE SALE OF THE PROPERTY TO TENANT, ON THE TERMS AND CONDITIONS AND WITHIN THE TIME PERIOD SET FORTH IN THIS EXHIBIT F AND THE LEASE, IS MATERIAL TO LANDLORD. TENANT ALSO ACKNOWLEDGES THAT SUBSTANTIAL DAMAGES WILL BE SUFFERED BY LANDLORD IF SUCH TRANSACTION IS NOT SO CONSUMMATED DUE TO TENANT'S DEFAULT. TENANT FURTHER ACKNOWLEDGES THAT, AS OF THE DATE THE PARTIES REACH AGREEMENT ON THE AGREED TERMS, LANDLORD'S DAMAGES WOULD BE EXTREMELY DIFFICULT OR IMPOSSIBLE TO COMPUTE IN LIGHT OF THE UNPREDICTABLE STATE OF THE ECONOMY AND OF GOVERNMENTAL REGULATIONS, THE FLUCTUATING MARKET FOR REAL ESTATE AND REAL ESTATE LOANS OF ALL TYPES, AND OTHER FACTORS WHICH DIRECTLY AFFECT THE VALUE AND MARKETABILITY OF THE PROPERTY. IN LIGHT OF THE FOREGOING AND ALL OF THE OTHER FACTS AND CIRCUMSTANCES SURROUNDING THIS TRANSACTION, AND FOLLOWING NEGOTIATIONS BETWEEN THE PARTIES, TENANT AND LANDLORD AGREE THAT THE AMOUNT OF THE DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH LANDLORD WOULD SUFFER BY REASON OF TENANT'S DEFAULT HEREUNDER. ACCORDINGLY, TENANT AND LANDLORD HEREBY AGREE THAT, IN THE EVENT OF SUCH DEFAULT BY TENANT, LANDLORD MAY TERMINATE ITS OBLIGATIONS UNDER PARAGRAPH 38 OF THE LEASE AND THIS EXHIBIT F BY GIVING NOTICE TO TENANT. IN THE EVENT OF SUCH TERMINATION, LANDLORD SHALL RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES IN LIEU OF ANY OTHER CLAIM LANDLORD MAY HAVE AT LAW OR IN EQUITY (INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE) ARISING

76

BY REASON OF TENANT'S FAILURE TO PURCHASE THE PROPERTY PURSUANT TO THIS EXHIBIT F. LANDLORD'S RETENTION OF THE DEPOSIT PURSUANT TO THIS PARAGRAPH 9 SHALL IN NO WAY LIMIT ANY OF LANDLORD'S RIGHTS OR REMEDIES UNDER THE LEASE WITH RESPECT TO ANY DEFAULT BY TENANT UNDER THE LEASE. THE PARTIES HAVE INITIALED THIS PARAGRAPH 9 TO ESTABLISH THEIR INTENT SO TO LIQUIDATE DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THIS PARAGRAPH 9 SHALL BE DEEMED TO LIMIT: (i) TENANT'S OBLIGATIONS UNDER THE LEASE; OR (ii) TENANT'S INDEMNIFICATION OBLIGATIONS CONTAINED IN THIS EXHIBIT F.

Landlord's    Tenant's Initials: \_\_\_\_\_ Initials /s/

TENANT:



Dated: ,1998 AT HOME CORPORATION, ----- a Delaware corporation

By: /s/ KENNETH A. GOLDMAN ----- Its:  
-----

By: ----- Its: -----

LANDLORD:

Dated: MARTIN/CAMPUS ASSOCIATES, L.P., ----- a Delaware limited partnership

By: Martin/Redwood Partners, L.P., a California limited partnership, its General Partner

By: TMG Redwood LLC, A California limited liability Company Its: General Partner

By: The Martin Group of Companies, Inc., a California corporation, Its General Partner

By: ----- Its: -----