

DUPLICATE

OFFICE LEASE

between

**Executive One Associates,
an Illinois limited partnership
(LANDLORD)**

and

**The City of San Diego,
a Municipal Corporation
(TENANT)**

Date: January 28, 1999

00-18636
DOCUMENT NO. _____
FILED **APR 12 1999**
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

EXECUTIVE ONE ASSOCIATES
[City of San Diego]

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1	DEFINITIONS.....1
ARTICLE 2	LEASE OF PREMISES.....7
ARTICLE 3	RENT.....12
ARTICLE 4	USE OF PREMISES.....15
ARTICLE 5	SERVICES AND UTILITIES.....18
ARTICLE 6	MAINTENANCE AND REPAIR.....19
ARTICLE 7	ALTERATIONS AND IMPROVEMENTS.....20
ARTICLE 8	RIGHTS OF LANDLORD.....22
ARTICLE 9	INSURANCE AND INDEMNITY.....23
ARTICLE 10	ASSIGNMENT AND SUBLETTING.....26
ARTICLE 11	DAMAGE OR DESTRUCTION.....27
ARTICLE 12	EMINENT DOMAIN.....29
ARTICLE 13	DEFAULT AND REMEDIES.....29
ARTICLE 14	ESTOPPEL CERTIFICATES.....31
ARTICLE 15	HOLDING OVER; SURRENDER OF PREMISES.....32
ARTICLE 16	QUIET ENJOYMENT.....33
ARTICLE 17	SUBORDINATION.....33
ARTICLE 18	LIENS.....33
ARTICLE 19	BANKRUPTCY.....34
ARTICLE 20	PROFESSIONAL FEES.....34
ARTICLE 21	PERFORMANCE BY TENANT.....34
ARTICLE 22	MORTGAGEE PROTECTION.....34
ARTICLE 23	DEFINITION OF LANDLORD.....35
ARTICLE 24	WAIVER.....35
ARTICLE 25	IDENTIFICATION OF TENANT.....35
ARTICLE 26	PARKING.....35
ARTICLE 27	FORCE MAJEURE.....36
ARTICLE 28	LIMITATION ON LIABILITY.....36
ARTICLE 29	MODIFICATION FOR LENDER.....36
ARTICLE 30	FINANCIAL STATEMENTS.....36
ARTICLE 31	LENDER APPROVAL.....37
ARTICLE 32	RELOCATION.....37
ARTICLE 33	LEASE INCENTIVES.....37
ARTICLE 34	MISCELLANEOUS.....37

EXHIBITS

EXHIBIT A.....	THE PREMISES
EXHIBIT B.....	THE PROJECT
EXHIBIT C.....	RULES AND REGULATIONS
EXHIBIT D.....	INTENTIONALLY OMITTED
EXHIBIT E.....	STANDARDS FOR UTILITIES AND SERVICES
EXHIBIT F.....	TENANT ESTOPPEL CERTIFICATE
EXHIBIT G.....	TENANT IMPROVEMENT AGREEMENT
EXHIBIT H.....	FORM OF NON-DISTURBANCE AGREEMENT
EXHIBIT I.....	JANITORIAL SPECIFICATIONS

OFFICE LEASE

BASIC LEASE PROVISIONS

- 1 DATE OF LEASE: January 28, 1999 (for reference purposes only)
- 2 LANDLORD: Executive One Associates, an Illinois limited partnership
- 3 TENANT: The City of San Diego, a Municipal corporation
- 4 BUILDING NAME AND ADDRESS:
Executive Complex
1010 Second Avenue, San Diego, California, 92101
- 5 PREMISES: Approximately 104,328 rentable square feet of space in the aggregate, consisting of (i) 18,965 rentable (17,560 usable) square feet of space commonly known as Suite 300 and located on the third (3rd) floor of the Building, (ii) 18,290 rentable (16,935 usable) square feet of space commonly known as Suite 400 and located on the fourth (4th) floor of the Building, (iii) 9,436 rentable (8,737 usable) square feet of space commonly known as Suite 555 and located on the fifth (5th) floor of the west tower of the Building, (iv) 9,978 rentable (9,239 usable) square feet of space commonly known as Suite 500 and located on the fifth (5th) floor of the east tower of the Building, (v) 9,564 rentable (8,856 usable) square feet of space commonly known as Suite 666 and located on the sixth (6th) floor of the west tower of the Building, (vi) 1,565 rentable square feet of space commonly known as Suite 600 and located on the sixth (6th) floor of the east tower of the Building, (vii) 8,378 rentable (7,757 usable) square feet of space commonly known as Suite 800 and located on the eighth (8th) floor of the east tower of the Building, (viii) 8,527 rentable (7,895 usable) square feet of space commonly known as Suite 900 and located on the ninth (9th) floor of the Building, (ix) 8,805 rentable (8,153 usable) square feet of space commonly known as Suite 1100 and located on the eleventh (11th) floor of the Building, (x) 8,794 rentable (8,143 usable) square feet of space commonly known as Suite 1200 and located on the twelfth (12th) floor of the Building, and (xi) 2,026 rentable (1,733 usable) square feet of space commonly known as Suite 1600 and located on the sixteenth (16th) floor of the Building, all as further set forth on Exhibit A, attached hereto.
- 6 TERM: Fifteen (15) years.
- 7 COMMENCEMENT DATE/EXPIRATION DATE: The term shall commence on April 1, 1999, and shall expire on March 31, 2014.
- 8 BASE MONTHLY RENT:

	<u>Period During Lease Term</u>	<u>Annual Base Rent</u>	<u>Base Monthly Rent</u>	<u>Monthly Rental Rate per Rentable Square Foot</u>
1	April 1, 1999, through March 31, 2001	\$1,677,594.24	\$139,799.52 -	\$1.34
2	April 1, 2001, through March 31, 2002	\$1,765,229.76	\$147,102.48	\$1.41
3	April 1, 2002, through March 31, 2003	\$1,790,268.48	\$149,189.04	\$1.43
4	April 1, 2003, through March 31, 2004	\$1,815,307.20	\$151,275.60	\$1.45
5	April 1, 2004, through March 31, 2005	\$1,840,345.92	\$153,362.16	\$1.47

6	April 1, 2005, through March 31, 2006	\$1,865,384.64	\$155,448.72	\$1.49
7	April 1, 2006, through March 31, 2007	\$1,890,423.36	\$157,535.28	\$1.51
	April 1, 2007, through March 31, 2008	\$1,915,462.08	\$159,621.84	\$1.53
	April 1, 2008, through March 31, 2009	\$1,940,500.80	\$161,708.40	\$1.55
	April 1, 2009, through March 31, 2010	\$1,965,539.52	\$163,794.96	\$1.57
	April 1, 2010, through March 31, 2011	\$1,990,578.24	\$165,881.52	\$1.59
	April 1, 2011, through March 31, 2012	\$2,015,616.96	\$167,968.08	\$1.61
	April 1, 2012, through March 31, 2013	\$2,040,655.68	\$170,054.64	\$1.63
	April 1, 2013, through March 31, 2014	\$2,065,694.40	\$172,141.20	\$1.65
9	RENTAL ADJUSTMENTS: INTENTIONALLY OMITTED			
10	PREPAID RENT: Zero Dollars (\$0.00)			
11	SECURITY DEPOSIT: Zero Dollars (\$0.00)			
12	TENANT'S INITIAL PERCENTAGE SHARE OF OPERATING EXPENSES: Approximately 32.17% based upon the Rentable Area of the Premises which is 104,328 square feet and the Rentable Area of the Building which is 324,341 square feet.			
13	BROKERS:			
	Landlord's Broker: A.W. Arendsee Real Estate, Inc. Tenant's Broker: The Irving Hughes Group, Inc. Brokerage Commission Payable By: Landlord			
14	ADDRESS FOR NOTICE:			
	Landlord:	Jupiter Realty Corporation 919 North Michigan Avenue Suite 1500 Chicago, Illinois 60611 Attention: Mr. Jerry J. Ong		
		and		
		Jupiter Realty Corporation 1050 Seventeenth Street Suite 1000 Denver, Colorado 80265 Attention: Ms. Sonya Michieli		
		and		

Executive One Associates
c/o PM Realty Group
1010 Second Avenue
Suite 2250
San Diego, California 92101-4913
Attention: M. H. Peter Tietz

and

Allen, Matkins, Leck, Gamble & Mallory LLP
1999 Avenue of the Stars, Suite 1800
Los Angeles, California 90067
Attention: John M. Tipton, Esq.

Tenant: City Manager
City Administration Building
202 C Street MS 9B, San Diego, CA 92101-4155
Attention: Property Director

- 15 PARKING: Parking spaces shall be at the ratio of one (1) parking space per 1000 square feet of Rentable Area. Parking shall be on a non-exclusive non-reserved basis.
- 16 TENANT'S PERMITTED USE: General office use consistent with a first-class office building and for no other purpose.
- 17 GUARANTOR (If none, so state): None
- 18 TENANT IMPROVEMENT ALLOWANCE: \$1,043,280.00 (i.e., \$10.00 for each of the 104,328 rentable square feet of the Premises)
- 19 BASE YEAR: Calendar Year 2003.
- 20 EXHIBITS: The exhibits referenced in the Table of Contents are each attached to this Lease and are incorporated herein by this reference and made a part hereof.

Each Basic Lease Provision set forth above is a summary of the terms elsewhere in this Lease which relate to each such Basic Lease Provision. If there is any conflict between any Basic Lease Provision and any specific clause of the Lease, the more specific clause shall control.

GENERAL LEASE PROVISIONS

ARTICLE 1

DEFINITIONS

Unless the context otherwise specifically requires, the following terms shall have the meaning set forth below.

1.1 Additional Rent. "Additional Rent" means all fees, assessments, expenses and charges, however denominated, required to be paid by Tenant pursuant to this Lease in addition to the Base Monthly Rent, including, but not limited to, Tenant's Percentage Share of Operating Expenses.

1.2 Base Monthly Rent. "Base Monthly Rent" shall refer to the initial Base Monthly Rent specified in Section 6 of the Basic Lease Provisions, and, as the context requires, any adjustments made to the initial Base Monthly Rent.

1.3 Building; Office Building. "Building" or "Office Building" means the office building located on the Building Lot, in which the Premises are located as delineated on Exhibit B.

1.4 Building Common Areas. "Building Common Areas" means the following: all areas within the Building and the Project which are not now or hereafter held for exclusive use by persons entitled to occupy space in the Building. Building Common Areas include parking areas, driveways, truckways, delivery passages, loading docks, sidewalks, ramps, landscaped and planted areas, exterior stairways, hallways and interior stairwells not located within the premises of any tenant, ground floor lobby, elevators, elevator lobbies not located within the premises of any tenant, retaining walls, restrooms not located within the premises of any tenant, existing fountains, existing statues, any and all monument signs situated on the Building Lot, common pipes, conduits, wires and appurtenant equipment serving the Premises and all other areas and improvements within the Building and/or the Building Lot provided by Landlord from time to time for the common use of Landlord and tenants of the Building and their respective employees and invitees as reasonably determined by Landlord from time to time.

1.5 Building Lot. "Building Lot" means the real property upon which the Building is located which is more particularly described on Exhibit B hereto.

1.6 Business Days/Business Hours. "Business Days" means all days in any given year other than Saturdays, Sundays and Legal Holidays. "Business Hours" means Monday through Friday from 7:00 a.m. to 6:00 p.m. and Saturdays from 8:00 a.m. to 1:00 p.m. All references herein and in the Lease to less than ten (10) "days" shall mean Business Days, and all references to "notice" shall mean written notice given in compliance with the provisions of the Lease.

1.7 Index. Intentionally Omitted

1.8 Lease; Office Lease. "Lease" or "Office Lease" means the Basic Lease Provisions, General Lease Provisions, Tenant Improvement Agreement, Rules and Regulations in their present form or as modified subsequent to the execution of the Lease, and any and all addenda, amendments and exhibits, to this Lease.

1.9 Lease Year. "Lease Year" means each period of twelve (12) consecutive full calendar months beginning on the Commencement Date.

1.10 Legal Holidays. "Legal Holidays" means only New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and such other national holidays which now exist or may be established after the date of this Lease by the U.S. Government.

1.11 Mortgage. "Mortgage" means any mortgage or deed of trust which constitutes a lien on the Building and/or the Building Lot given for the purpose of securing indebtedness to purchase or improve the Building and/or the Building Lot.

1.12 Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage. The term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.13 Operating Expenses.

1.13.1 "Operating Expenses" mean with respect to each full or partial calendar year, including the Base Year (as that term is defined in Section 3.2.1.1, below), during the Term all reasonable costs of managing, operating, overhauling, repairing and maintaining the Building, the Building Common Areas, and the Building Lot (sometimes hereinafter collectively referred to as the "Project") consistent with similar and comparable first-class office buildings located in downtown San Diego (the "Comparable Buildings") determined as if the Building were not less than 95% occupied for an entire calendar year, including the Base Year, limited to the following items:

1.13.1.1 payroll costs, including all salaries, wages, payroll and similar taxes, social security taxes, federal and state unemployment taxes, unemployment insurance costs, workers' compensation, disability and other insurance, medical and other health benefits or payments, welfare, retirement, vacation, holiday and other paid absences and other employee benefits applicable to persons engaged in the management, operation, maintenance or repair of the Project whether employed by Landlord or another party with whom Landlord contracts for such services;

1.13.1.2 premiums and other charges for fire and extended coverage insurance (all risk, full replacement cost), including at Landlord's election flood, windstorm, hail, explosion or riot, broad form comprehensive public liability and property damage insurance, contractual liability insurance, plate glass insurance, owned and non-owned automobile insurance, elevator insurance, boiler and machinery insurance, sprinkler leakage and water damage insurance, legal liability insurance, burglary and hold-up insurance, fidelity and pilferage insurance, rental loss and business interruption insurance, excess and umbrella insurance and any other insurance Landlord deems necessary or desirable;

1.13.1.3 service contracts, including but not limited to contracts for outside maintenance or repair, security, janitorial, landscaping and replanting, gardening and cleaning services, window cleaning, rubbish removal, pest control, water treatment, non-structural roof repairs, servicing of elevators and escalators and electrical, plumbing and mechanical equipment;

1.13.1.4 the cost of materials, tools, supplies and equipment held for use or used for the benefit of the Project;

1.13.1.5 the fair market rental value of Landlord's managing agent's office in the Project not to exceed 2000 square feet of Rentable Area, if any;

1.13.1.6 the costs of all capital improvements and replacements to the Project its contents or any portion thereof, made to comply with any present or future law, ordinance, rule or regulation or made to improve or add Building life-safety or security systems or made to reduce other Building Expenses, such costs to be amortized over the applicable recovery period for federal tax purposes or the estimated useful life as determined by Landlord and utilized by Landlord in its financial and tax reporting, and to include a return on capital at such rate as Landlord may pay on funds borrowed for the purpose of constructing such improvements or replacements;

1.13.1.7 license, permit and inspection fees;

1.13.1.8 management fees and expenses not exceeding fees and charges normally incurred with respect to Comparable Buildings;

1.13.1.9 legal, accounting and consulting fees and expenses;

1.13.1.10 Property Taxes levied against the Project whether assessed against Landlord or assessed against Tenant and paid by Landlord, or any combination of the foregoing;

1.13.1.11 Utility Costs (defined below);

1.13.1.12 any and all other expenses related to the Project however denominated which, in accordance with generally accepted accounting principles consistently applied, could fairly be treated as an operating expense by landlords of Comparable Buildings.

1.13.2 Excluded Items. The following "Excluded Items" shall be excluded from Operating Expenses:

(1) Ground Lease Rent. Any ground lease rental;

(2) Costs of Capital Repairs. Costs of capital repairs, improvements and equipment except for those (a) acquired to reduce Operating Expenses (amortized at an annual rate reasonably calculated to equal the amount of Operating Expenses to be saved in each calendar year throughout the Term (as determined at the time Landlord elected to proceed with the capital improvement or acquisition of the capital equipment to reduce Operating Expenses), together with interest at the actual interest rate incurred by Landlord, (b) costs of capital tools not in excess of Ten Thousand Dollars (\$10,000.00) in any twelve (12) month period, or (c) that are required under any governmental law or regulation by a federal, state or local governmental agency that was enacted after the Commencement Date; provided, however, that each such permitted capital expenditure under this item (c) shall be amortized pursuant to the terms set forth in Section 1.13.1.6, above;

(3) Rental of Capital Items. Rental for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased, rather than rented, would constitute a capital improvement which is specifically excluded in Subsection (2) above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);

(4) Costs of Repairs Covered by Insurance. Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds;

(5) Tenant Decorating Costs. Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant or other occupant improvements made for tenants or other occupants in the Building or Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Building or Project;

(6) Marketing Costs. Marketing costs including leasing commissions, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building or Project;

(7) Capital Alterations. Costs incurred by Landlord for alterations which are considered capital improvements and replacements under generally accepted accounting principles, consistently applied, except as may be permitted in (2) and (3) above;

(8) Capital Costs Generally. Costs of a capital nature, including, without limitation, capital improvements, capital repairs, capital equipment and capital tools, all as determined in accordance with generally accepted accounting principles, consistently applied, except as may be permitted in (2) and (3) above;

(9) Exclusive Services to Tenants. Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged directly, but which are provided to another tenant or occupant of the Building or Project the cost of which is included as an Operating Expense;

(10) Costs of Lease Violations. Costs incurred by Landlord due to the violation by Landlord or any tenant of the terms and conditions of any lease of space in the Building or Project;

(11) Profit on Related Party Transactions. Overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Building or Project, to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

(12) Loan Costs. Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or the Project;

(13) Landlord's Overhead. Landlord's general corporate overhead and general and administrative expenses;

(14) Compensation Paid to Employees of Concessionaires. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage of the Building or Project or wherever Tenant is granted its parking privileges and/or all fees paid to any parking facility operator (on or off site); provided, however, if Landlord provides such parking free of charge to Tenant, these expenses may be included as Operating Expenses;

(15) Leasing Building System Equipment. Except for making repairs or keeping permanent systems in operation while repairs are being made, rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except equipment not affixed to the Building which is used in providing janitorial or similar services;

(16) Advertising Expenses. Advertising and promotional expenditures, and costs of signs in or on the Building or Project identifying the owner of the Building or other tenants' signs;

(17) Direct Contract Electricity. Electric power costs for which any tenant directly contracts with the local public service company;

(18) Costs of Certain Business Operations. Services provided, taxes attributable to, and costs incurred in connection with the operation of the retail, restaurant, and garage operations in the Building or Project, and any replacement garages or parking facilities and any shuttle services;

(19) Costs to Comply with Pre-Existing Building Codes. Costs incurred in connection with upgrading the Building to comply with handicap, life, fire and safety codes in effect prior to the Commencement Date;

(20) Normally Excluded Expenses. Any other expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Operating Expenses by landlords of Comparable Buildings;

(21) Tax Penalties. Tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments and/or file any Property Taxes, income tax or informational returns when due;

(22) Payment of Assessments and Premiums in Installments. All assessments and premiums which are not specifically charged to Tenant because of what Tenant

has done, which can be paid by Landlord in installments, shall be paid by Landlord in the maximum number of installments permitted by law and not included as Operating Expenses except in the year in which the assessment or premium installment is actually paid; provided, however, that if the prevailing practice in Comparable Buildings is to pay such assessments or premiums on an earlier basis, and Landlord pays on such basis, such assessments or premiums shall be included in Operating Expenses as paid by Landlord; in no event, however, shall Landlord include any accrued interest (resulting from such assessments or premiums) in its computation of Operating Expenses;

(23) **Cost Savings Limit on Cost of Capital Improvements.** Costs for capital improvements to reduce Operating Expenses in excess of the amount reasonably anticipated to constitute cost savings;

(24) **No Double Dipping.** Costs for which Landlord has been compensated by a management fee;

(25) **Cost Due to Negligence in Construction.** Costs arising from the negligence or fault of Landlord or its agents, or any vendors, contractors, or providers of materials or services selected, hired or engaged by Landlord or its agents including, without limitation, the selection of building materials;

(26) **Costs of Abating Hazardous Materials.** Notwithstanding any contrary provision of this Lease, including, without limitation, any provision relating to, capital expenditures, costs arising from the presence of Hazardous Materials in or about the Building or Project including, without limitation, hazardous substances in the ground water or soil, not placed in the Premises or Building by Tenant;

(27) **Costs Due to Negligence of Others.** Costs arising from Landlord's or another tenant's negligence or intentional acts;

(28) **Landlord Contributions.** Costs arising from Landlord's charitable or political contributions;

(29) **Earthquake Insurance.** Costs arising from earthquake insurance, except to the extent that Landlord agrees to incorporate such costs into the Operating Expenses for the Base Year as of the time at which such costs, if any, initially arise;

(30) **Latent Defects.** Costs arising from latent defects in the base, shell, or core of the Building or improvements installed by Landlord or repair thereof;

(31) **Artwork.** Costs for sculpture, paintings or other objects of art;

(32) **Litigation Costs.** Costs (including in connection therewith all attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitrations pertaining to the Landlord and/or the Building and/or the Project, except that Landlord may include as an Operating Expense such costs incurred in connection with any such claims, litigation or arbitrations to the extent such litigation is pursued in good faith and reasonably intended to reduce Operating Expenses and/or Property Taxes; and

(33) **Landlord's Business Expenses.** Costs associated with the operation of the business of the partnership or entity which constitute Landlord as the same as distinguished from the costs of operation of the Building, including 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 Landlord's interest in the Building, costs of any disputes between Landlord and its employees (if any) not engaged in Building operation, disputes of Landlord with Building management, or outside fees paid in connection with disputes with other tenants.

(34) **Tenant Improvement Taxes.** Taxes and assessments attributable to the tenant improvements of tenants other than Tenant or the property of tenants other than Tenant if such taxes or assessments are separately paid or separately billed or if such taxes or assessments relate to, or are attributable to, improvements that are above or over the Building's building standard improvements as may be adjusted from time to time.

Landlord further agrees that since one of the purposes of Operating Expenses and the gross up provision is to allow the Landlord to require the Tenant to pay for the expenses attributable to its Premises, Landlord agrees that (i) Landlord will not collect or be entitled to collect Operating Expenses from all of its tenants in an amount which is in excess of 100% of the Operating Expenses actually paid by Landlord in connection with operation of the Building and (ii) Landlord shall make no profit from Landlord's collection of Operating Expenses.

1.14 **Prime.** "Prime" shall mean the rate publicly announced from time to time by Nations Bank, or its successor-in-interest, as its "Reference Rate" or "Prime Rate."

1.15 **Property Taxes.** "Property Taxes" means and shall include any form of real property tax or assessment, license fee, license tax, special tax, business license fee, commercial rental tax, gross receipts tax, levy, charge, penalty (not resulting from failure of the Landlord), tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement assessment or special district thereof, as against any legal or equitable interest of Landlord in the Premises or the Project. "Property Taxes" shall also include any assessment, tax, special tax, fee, levy or charge, in substitution or addition, partial or total, to or regarding any assessment, tax, special tax, fee, levy or charge previously included or not included within the definition of Property Taxes, including but not limited to, any assessments, taxes, fees, levies and charges that may be imposed by governmental agencies for services such as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided with or without charge to property owners and occupants. Tenant and Landlord intend that all such new and increased assessments, taxes, special taxes, fees, levies and charges be included within the definition of Property Taxes for purposes of this Lease.

Notwithstanding any contrary provision of this Section 1.15, Property Taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes. Property Taxes constitute a portion of the Operating Expenses.

1.16 **Rent.** "Rent" as used in this Lease, means and includes the Base Monthly Rent, Additional Rent and all other amounts Tenant is required to pay pursuant to this Lease.

1.17 **Rentable Area/Usable Area.** The term "Usable Area" as used in the Lease in reference to the Building, the Premises, or any other portion of the Building shall mean the number of usable square feet as determined in accordance with the Building Owners and Managers Association Standard of Measurement ANSI Z65.1-1996 ("BOMA Standard"); provided that for purposes of this Lease, the BOMA Standard definition of Usable Area shall exclude elevator lobbies and any rated corridors. The term "Rentable Area" as used in this Lease in reference to the Premises shall mean the number of rentable square feet which shall be equal to the product of (A) the Usable Area of such space measured in accordance with the preceding sentence, and (B) 1.08. All measurements shall be made to the outside surface of interior shaft walls.

1.18 **Rules and Regulations.** "Rules and Regulations" means and refers to the Rules and Regulations set forth in Exhibit C attached hereto, together with any and all reasonable and nondiscriminatory amendments and modifications thereto made by Landlord from time to time.

1.19 **Tenant Improvements.** The term "Tenant Improvements" refers to all permanently affixed improvements existing in the Premises as of the date of this Lease and those improvements, if any, approved by Landlord to be constructed pursuant to the terms of the Tenant Improvement Agreement attached to this Lease as Exhibit G.

1.20 Tenant Improvement Agreement. The term "Tenant Improvement Agreement" refers to the agreement attached hereto as Exhibit G.

1.21 Tenant's Taxes. The term "Tenant's Taxes" shall include any and all taxes, special taxes, assessments, levies, fees, and other governmental charges of every kind or nature levied or assessed by municipal, county, state, federal or other taxing or assessing authorities with respect to those items referenced in Section 3.2.2 of this Lease.

1.22 Term; Lease Term. "Term" or "Lease Term" means the entire period during which the Lease is in effect, commencing with the Commencement Date and continuing for the period specified in Section 6 of the Basic Lease Provisions plus any extension or renewal period.

1.23 Utility Costs. "Utility Costs" means for any calendar year, the utility costs for the Project (excluding those Utility Costs, if any, which are separately metered to the Premises and paid for by Tenant directly to the public utility providing the same) as follows: (i) the costs of all fuel, power (including without limitation electricity costs for air conditioning), light, heat, chilled water and ventilation serving the Project or consumed or used in the Project or any portion thereof; (ii) all sewer and water charges incurred in the operation of the Project; (iii) all charges incurred for off-site disposal of solid waste from the Project; (iv) any and all fees, charges or expenses otherwise imposed as part of any billing by a regulated utility supplying any services or commodities to the Project including without limitation all rentals for equipment and pass-throughs of government mandated charges; and (v) the annual amortization of the cost of any energy conservation equipment installed subsequent to the commencement of the Term, amortized (in the same manner as described in paragraph 1.13.1.6 above) over the applicable recovery period for federal tax purposes or the estimated useful life as determined by Landlord and utilized by Landlord in its financial and tax reporting.

ARTICLE 2

LEASE OF PREMISES

2.1 Premises Leased.

2.1.1 Initial Premises; Additional Space; Contraction Space. Landlord leases to Tenant and Tenant hereby leases from Landlord the Premises described in Section 5 of the Basic Lease Provisions and in Exhibit A, provided that, notwithstanding the provisions of Section 1.17, above, the Rentable Area and Usable Area of the initial Premises shall be deemed to be as set forth in Section 5 of the Basic Lease Provisions and the Rentable Area of the Building shall be deemed to be as set forth in Section 12 of the Basic Lease Provisions. The Rentable Area and Usable Area of any Additional Space (as that term is defined in Section 2.4.1, below) or Contraction Space (as that term is defined in Section 2.5, below) shall be determined in accordance with Section 1.17, above.

2.1.2 Tenant's Percentage Share of Operating Expenses. Tenant's Percentage Share shall be adjusted upon any expansion or contraction of the Rentable Area of the Premises to equal a fraction, the numerator of which is the Rentable Area of the Premises and the denominator is the Rentable Area of the Building all as determined in accordance with the terms of Section 1.17, above, and the terms of Section 5 of the Basic Lease Provisions.

2.1.3 Use of Building Common Area. Tenant shall have the nonexclusive right to use in common with other tenants and occupants of the Building, the Building Common Area subject, however, to Tenant's prior compliance with all applicable provisions of this Lease.

2.1.4 Landlord's Rights with Respect to Building Common Areas and the Project. Landlord reserves the right from time to time without unreasonable interference with Tenant's use of the Premises or parking facilities and with prior written notice from Landlord to Tenant:

2.1.4.1 To install, use, maintain, repair and replace pipes, ducts, conduits, wires, meters and equipment for service to other parts of the Building above the ceiling

surfaces, below the floor surfaces, within the walls and in the central core areas, and to relocate any pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises which are located in the Premises or located elsewhere outside the Premises;

2.1.4.2 To make or permit changes and deletions to the Building Common Areas so long as such changes do not adversely affect Tenant's use of the Premises or limit the amount of Usable Area of the Premises;

2.1.4.3 To close temporarily any of the Building Common Areas for maintenance, repair, improvement and/or construction purposes so long as reasonable access to the Premises remains available and so long as Landlord diligently and continuously pursues such maintenance and repairs to completion:

2.1.4.4 To change the address and name of the Building and/or the Project provided Landlord shall give Tenant at least sixty (60) days prior written notice of the same and shall reimburse Tenant for its actual and documented costs incurred as a result of such change, including but not limited to stationary printing charges, telephone directory charges and other similar charges;

2.1.4.5 To use the Building Common Areas while engaged in making additional improvements, repairs or alterations to the Building, or any portion thereof; so long as such use by Landlord does not adversely affect Tenant's use of the Premises or limit the amount of Usable Area of the Premises.

2.1.5 Termination Premises. Tenant shall have the right to terminate (the "Termination Right") this Lease with respect to Suites 600 and/or 1600 (the "Termination Premises") upon thirty (30) days prior written notice to Landlord. In the event that Tenant exercises the Termination Right, (i) Landlord and Tenant shall enter into a written termination agreement regarding the Termination Premises (which agreement shall include, specifically, any resulting decrease or adjustment of Rent and Tenant's Percentage Share of Operating Expenses), and (ii) no Contraction Fee (as that term is defined in Section 2.5, below) shall be payable in connection with the Termination Premises. Unless and until Tenant exercises the Termination Right, Landlord shall have the right, with respect to the Termination Premises only, to move Tenant to other space in the Project comparable to such Termination Premises, and all terms hereof shall apply to the new space with equal force; provided that Tenant's then existing monetary obligations under this Lease shall not be increased as a result of such relocation of the Termination Premises. In such event, Landlord shall give at least thirty (30) days prior written notice (the "Relocation Notice") to Tenant, shall provide Tenant, at Landlord's sole cost and expense, with tenant improvements at least equal in quality to those in the Termination Premises and shall move Tenant's effects to the new space at Landlord's sole cost and expense at such time and in such manner as to inconvenience Tenant as little as reasonably practicable. In addition, Landlord shall reimburse Tenant for the reasonable costs and expenses incurred by Tenant in connection with such relocation, within thirty (30) days of Landlord's receipt of an invoice therefor. Simultaneously with such relocation of the Termination Premises, the parties shall execute an amendment to this Lease stating the relocation of the Termination Premises. In the event Landlord delivers any Relocation Notice to Tenant, the Termination Right shall expire on the date which is five (5) days following Landlord's delivery of such Relocation Notice.

2.2 Lease Term. The Lease Term is for the period stated in Section 6 of the Basic Lease Provisions. The Term of the Lease shall commence on the date set forth in Section 7 of the Basic Lease Provisions.

2.3 Delay in Commencement. Tenant agrees that if Landlord is unable to deliver possession of any Additional Space within the Building subsequently leased by Tenant with the Landlord Work (as that term is defined in the Tenant Improvement Agreement), if any, substantially completed within one hundred and eighty (180) days of any scheduled Additional Space Commencement Date (as that term is defined in Section 2.4.1, below) for such premises subsequently agreed to in writing by Landlord and Tenant (subject however to Force Majeure and delays caused by Tenant), then Tenant shall have the right to terminate this Lease with

respect to such Additional Space which Landlord has failed to deliver by such scheduled Additional Space Commencement Date upon ten (10) days prior written notice to Landlord.

2.4 Additional Space.

2.4.1 Right of First Offer. Provided there is no continuing and uncured default by Tenant under this Lease, the Tenant originally named in this Lease (the "Original Tenant") shall have a right of first offer with respect to any additional space not initially contained in the Premises and located on (A) the sixth (6th) or seventh (7th) floors of the east tower of the Building, (B) the seventh (7th) or eighth (8th) floors of the west tower of the Building, or (C) the tenth (10th), fourteenth (14th), sixteenth (16th), eighteenth (18th), or nineteenth (19th) floors of the Building (collectively, the "Additional Space") as such Additional Space becomes available from time to time during the initial Term and any extension thereof. Such availability shall be determined by Landlord's review of existing lease termination dates and all subsequently negotiated interim leases and Landlord shall provide Tenant with at least six (6) months prior written notice (the "Additional Space Notice") of such availability. The Additional Space Notice shall describe the space so offered to Tenant and shall set forth the Additional Space Rent (as that term is defined in Section 2.4.3 below) and the other economic terms upon which Landlord is willing to lease such space to Tenant. Tenant shall have thirty (30) calendar days from receipt of the Additional Space Notice within which to notify Landlord of its election to either (i) lease the Additional Space on the terms and conditions set forth therein or (ii) decline to lease the Additional Space. If Tenant does not so notify Landlord within the thirty (30) day period, then Landlord shall be free to lease the space described in the Additional Space Notice to anyone to whom Landlord desires on any terms Landlord desires. Notwithstanding anything to the contrary contained herein, Tenant must elect to exercise its right of first offer, if at all, with respect to all of the space offered by Landlord to Tenant at any particular time, and Tenant may not elect to lease only a portion thereof. The term for each block of Additional Space shall commence upon the substantial completion of the Landlord Work and delivery of such space by Landlord to Tenant (the "Additional Space Commencement Date") and shall end contemporaneously with the expiration of the Term (as the same may be extended); provided that, in no event shall the term of Tenant's lease of the Additional Space be less than three (3) years. Therefore, Tenant shall not have the right to lease any Additional Space at any time during the final three (3) years of the Term, as same may be extended pursuant to Section 2.6, below. All terms and conditions of the Lease will apply to any Additional Space except that the amount of Additional Space Rent payable for each block of Additional Space shall be determined in accordance with Section 2.5.3 below. This right of first offer is subordinate to (a) the renewal rights contained in leases with other tenants of the Building which were signed by Landlord and such tenant(s) prior to the date of this Lease, and (b) the expansion rights of Neil, Dymott, Perkins, Brown, & Frank, currently a tenant on the twentieth (20th), twenty-first (21st), twenty-fourth (24th) and twenty-fifth (25th) floors of the Building.

2.4.2 Delivery and Improvement of Additional Space. If Tenant desires to lease the Additional Space, Landlord shall have twelve (12) months from receipt of such notice from Tenant to deliver the applicable Additional Space to Tenant. Except as specifically provided for herein, Tenant shall take the Additional Space in its "as is" condition, and the construction of improvements in the Additional Space shall comply with the terms of Article 7 of this Lease. All Additional Space to be occupied by Tenant shall have the Landlord Work performed by Landlord, at Landlord's sole cost and expense, and shall contain at least the following elements (some of which elements may be part of the existing improvements in the Additional Space): (i) smooth concrete floor, (ii) drywall (fire taped) around surfaces of core walls, around surfaces of columns and underneath window sills, (iii) primary HVAC (as that term is defined in Section 5.3, below) system, including the main distribution loop, (iv) primary electrical system which will service the floor of the Building on which the Additional Space is located, (v) life-safety system as required to be provided in the Landlord Work and (vi) Building standard window coverings. Landlord will use reasonable diligence to make each block of Additional Space available to Tenant as soon as possible after Landlord's receipt of the Tenant's notice of election to lease such space.

2.4.3 Additional Space Rent. The Rent for each block of Additional Space (the "Additional Space Rent") shall be as follows: (A) with respect to any Additional Space with an Additional Space Commencement Date prior to March 31, 2002, the Base Monthly Rent for such Additional Space shall be in the same amount as the then current Base Monthly Rent applicable to the initial Premises (provided that (I) the Base Monthly Rent for such Additional Space shall increase concurrently and in the same amount as all increases in the Base Monthly Rent for the initial Premises, and (II) the rent concession set forth in Section 3.1.2 shall not apply to any Additional Space Rent) with the same 2003 calendar year Base Year as applicable to the initial Premises and all other terms and conditions of this Lease applicable to the Premises shall also apply, except that the Tenant Improvement Allowance applicable to the Additional Space shall be equal to Twenty-Five and No/100 Dollars (\$25.00) for each rentable square foot of the Additional Space; and (B) with respect to any Additional Space with an Additional Space Commencement Date on or after March 31, 2002, the Additional Space Rent shall be equal to the Market Rent (as that term is defined below). Regardless of whether the Additional Space Commencement Date occurs prior to or after March 31, 2002, (1) Tenant may elect to receive up to forty percent (40%) of any Tenant Improvement Allowance applicable to the Additional Space in the form of either (i) a credit against Additional Space Rent for such Additional Space, or (ii) a check made payable to Tenant as of the Additional Space Commencement Date applicable to such Additional Space, and (2) Tenant shall pay to Landlord a construction supervision and management fee equal to two and five-tenths percent (2.5%) of the amounts actually expended from the Tenant Improvement Allowance in connection with the design and construction of the Tenant Improvements. The term "Market Rent" shall mean the rent (including additional rent and considering any "base year" or "expense stop" applicable thereto), including all escalations, at which tenants, as of the commencement of the Additional Space Commencement Date or Option Term (as that term is defined in Section 2.6, below), as the case may be, are leasing non-sublease, non-encumbered, non-equity space comparable in size, location and quality to the Additional Space or the Premises, as the case may be, for a comparable term, which comparable space is located in the Project and in Comparable Buildings, in either case taking into consideration the following concessions: (a) rental abatement concessions, if any, being granted such tenants in connection with such comparable space; and (b) tenant improvements or allowances provided or to be provided for such comparable space, taking into account, and deducting the value, if any, of, the existing improvements in the Additional Space or the Premises, as the case may be, such value to be based upon the age, quality and layout of the improvements and the extent to which the existing improvements in the Additional Space or the Premises, as the case may be, can be utilized by a general office user.

2.4.4 Documentation. Upon the exercise of any right of first offer by Tenant, Landlord and Tenant shall enter into a written agreement that the applicable space is a part of the Premises under this Lease and containing other appropriate provisions relating to the addition of such space to this Lease (including specifically any increase or adjustment of Rent and Tenant's Percentage Share of Operating Expenses).

2.4.5 Termination of Right of First Offer. The rights contained in this Section 2.4 shall be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any assignee, sublessee or other transferee of the Original Tenant's interest in this Lease) if the Original Tenant occupies at least seventy-five percent (75%) of the Premises. Tenant shall not have the right to lease Additional Space, as provided in this Section 2.4, if, as of the date of the attempted exercise of any right of first offer by Tenant, or as of the scheduled date of delivery of such Additional Space to Tenant, Tenant is in default under this Lease.

2.5 Contraction Rights. Provided there is no continuing and uncured default by Tenant under this Lease, on April 1, 2009, April 1, 2011, and April 1, 2013 (each a "Contraction Date"), Tenant shall have the right to reduce the amount of space then occupied by Tenant in the Building (hereinafter the "Contraction Rights"), subject to the following terms and conditions: (i) Tenant shall provide Landlord with written notice thereof ("Contraction Notice") at least nine (9) months prior to the Contraction Date specified in the Contraction Notice setting forth the space that Tenant intends to surrender ("Contraction Space"), (ii) the amount of reduction of space on any Contraction Date shall be limited to five percent (5%) (on a non-cumulative basis) of the total Rentable Area then occupied by Tenant in the Building at the time of delivery of the

Contraction Notice, (iii) concurrently with Tenant's delivery of the Contraction Notice, Tenant shall pay to Landlord the Contraction Fee for such Contraction Space, (iv) the Contraction Space shall be located on the outermost periphery of the Premises, and (v) Landlord shall have the right, pursuant to notice delivered to Tenant within thirty (30) days following delivery of the Contraction Notice, to terminate this Lease with respect to any portion of the Premises remaining on any floor containing Contraction Space, provided that Tenant shall not be obligated to pay any Contraction Fee with respect to any space Landlord so elects to terminate. Upon the exercise of any Contraction Rights by Tenant, Landlord and Tenant shall enter into a written termination agreement regarding the applicable space, which agreement shall set forth the contracted Premises and shall contain other appropriate provisions relating to the reduction of such space to this Lease (including specifically any decrease or adjustment of Rent and Tenant's Percentage Share of Operating Expenses). The term "Contraction Fee" shall mean an amount equal to (i) the unamortized portion of leasing commissions paid by Landlord applicable to the Contraction Space, Premises in question plus (ii) the unamortized value of the Tenant Improvements made by Landlord to the Contraction Space. The rights contained in this Section 2.5 shall be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any assignee, sublessee or other transferee of the Original Tenant's interest in this Lease).

2.6 Option Term.

2.6.1 Option Right. Landlord hereby grants the Original Tenant two (2) options to extend the Lease Term for a period of five (5) years each (the "First Option Term" and the "Second Option Term" respectively), (the foregoing option terms shall be referred to hereinafter sometimes individually or collectively as the "Option Term"), which options shall be exercisable only by written notice delivered by Tenant to Landlord as provided below, provided that, as of the date of delivery of such notice, Tenant is not in default under this Lease. Upon the proper exercise of such option to extend, and provided that, as of the end of the initial Lease Term or the First Option Term, as the case may be, Tenant is not in default under this Lease, the Lease Term, as it applies to the Premises, shall be extended for a period of five (5) years. The rights contained in this Section 2.6 shall be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any assignee, sublessee or other transferee of the Original Tenant's interest in this Lease) if the Original Tenant occupies at least seventy-five percent (75%) of the Premises.

2.6.2 Option Rent. The rent payable by Tenant during the Option Term (the "Option Rent") shall be equal to the Market Rent.

2.6.3 Exercise of Option. The option contained in this Section 2.6 shall be exercised by Tenant, if at all, only in the following manner: (i) Tenant shall deliver written notice to Landlord not more than eighteen (18) months nor less than fifteen (15) months prior to the expiration of the initial Lease Term or the First Option Term, as the case may be, stating that Tenant is interested in exercising its option; (ii) Landlord, after receipt of Tenant's notice, shall deliver notice (the "Option Rent Notice") to Tenant not less than thirteen (13) months prior to the expiration of the initial Lease Term or the First Option Term, as the case may be, setting forth the Option Rent; and (iii) if Tenant wishes to exercise such option, Tenant shall, on or before the earlier of (A) the date occurring twelve (12) months prior to the expiration of the initial Lease Term or the First Option Term, as the case may be, and (B) the date occurring thirty (30) days after Tenant's receipt of the Option Rent Notice, exercise the option by delivering written notice thereof to Landlord and upon, and concurrently with, such exercise, Tenant may, at its option, object to the Option Rent contained in the Option Rent Notice, in which case the parties shall follow the procedure, and the Option Rent shall be determined, as set forth in Section 2.6.4. below.

2.6.4 Determination of Option Rent. In the event Tenant timely and appropriately objects to the Option Rent, Landlord and Tenant shall attempt to agree upon the Option Rent using their best good-faith efforts. If Landlord and Tenant fail to reach agreement within ten (10) days following Tenant's objection to the Option Rent (the "Outside Agreement Date"), then each party shall make a separate determination of the Option Rent, as the case may

be, within five (5) days, and such determinations shall be submitted to arbitration in accordance with Sections 2.6.4.1 through 2.6.4.7, below.

2.6.4.1 Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate broker or appraiser who shall have been active over the five (5) year period ending on the date of such appointment in the leasing (or appraisal, as the case may be) of commercial high-rise properties in the downtown San Diego area. The determination of the arbitrators shall be limited solely to the issue area of whether Landlord's or Tenant's submitted Option Rent is the closest to the actual Option Rent as determined by the arbitrators, taking into account the requirements of Section 2.4.3 of this Lease which apply to the determination of Market Rent. Each such arbitrator shall be appointed within fifteen (15) days after the applicable Outside Agreement Date.

2.6.4.2 The two (2) arbitrators so appointed shall within ten (10) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third (3rd) arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two (2) arbitrators.

2.6.4.3 The three (3) arbitrators shall within thirty (30) days of the appointment of the third (3rd) arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Option Rent, and shall notify Landlord and Tenant thereof.

2.6.4.4 The decision of the majority of the three (3) arbitrators shall be binding upon Landlord and Tenant.

2.6.4.5 If either Landlord or Tenant fails to appoint an arbitrator within fifteen (15) days after the applicable Outside Agreement Date, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

2.6.4.6 If the two arbitrators fail to agree upon and appoint a third arbitrator, or both parties fail to appoint an arbitrator, then the appointment of the third arbitrator or any arbitrator shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association, but subject to the instruction set forth in this Section 2.6.4.

2.6.4.7 The cost of arbitration shall be paid by Landlord and Tenant equally.

ARTICLE 3

RENT

3.1 Base Monthly Rent.

3.1.1 Payment of Rent. Rent shall be payable in equal monthly installments in advance and without any deduction, offset (except as otherwise provided in this Lease), prior demand or notice whatsoever, commencing on the Commencement Date (except as specifically set forth in Section 34.22, below) and continuing on the first day of each calendar month of the Term thereafter. All Rent and other charges due for any partial month shall be calculated by dividing the number of days for which Rent is due by the actual number of days in the month and multiplying the result thereof by the applicable monthly rate. All Rent shall be paid by Tenant to Landlord at the address shown in Section 14 of the Basic Lease Provisions, or such other place as Landlord may designate in writing from time to time. All Rent shall be payable in lawful currency of the United States of America.

3.1.2 Rent Concession. Tenant shall not be required to pay the Base Monthly Rent which is attributable to the initial Premises for the period from July 1, 1999, through June 30, 2000.

3.2 Additional Rent. The sums, if any, required to be paid by Tenant pursuant to the terms of this Section 3, and all other fees, assessments, expenses and charges required to be paid by Tenant under this Lease (except Base Monthly Rent), however denominated, including but not limited to Tenant's Percentage Share of Operating Expenses, shall be deemed to be Additional Rent. If any Additional Rent is not paid at the time provided in the Lease, such Additional Rent nevertheless shall be payable with the next installment of Base Monthly Rent falling due.

3.2.1 Operating Expenses.

3.2.1.1 Tenant's Percentage Share of Operating Expenses. Operating Expenses shall be determined and calculated on a calendar year basis. If Tenant's Percentage Share of Operating Expenses ("Tenant's Percentage Share") paid or incurred by Landlord for any calendar year during the Term, exceeds Tenant's Percentage Share for the Base Year (hereinafter defined), then Tenant shall pay such excess as Additional Rent in the manner specified in subparagraphs 3.2.1.2, 3.2.1.3 and 3.2.1.4 below. If the Rentable Area of the Premises changes during the Term then Tenant's Percentage Share shall be recomputed by dividing the Rentable Area of the Premises for the calendar year in question by the total Rentable Area of the Building for the same year. If the Rentable Area of the Premises changes during the year in question, there shall be a proration for the partial year applicable to the changed space. For purposes of this Lease, "Base Year" means calendar year 2003.

3.2.1.2 Expense Statements. Landlord shall provide to Tenant a written estimate, showing in reasonable detail, Operating Expenses for the Base Year. Landlord shall also provide to Tenant a written estimate of the amount by which the Operating Expenses for each succeeding calendar year will exceed the Operating Expense for the Base Year on or before January 1 of each such calendar year during the Term and an estimate of Tenant's Percentage Share thereof for the ensuing calendar year or portion thereof. With respect to each such calendar year or partial calendar year, Tenant shall pay to Landlord, monthly, in advance, without deduction or offset and concurrently with the installments of Base Monthly Rent then due, one-twelfth (1/12th) of the estimate of Tenant's Percentage Share of Operating Expenses as Additional Rent. If for any reason Landlord is unable to provide to Tenant the estimate of Operating Expenses prior to January 1 of any calendar year during the Term, then Tenant shall continue to pay monthly the same amount for Tenant's Percentage Share of Operating Expenses as was applicable for the most recent previous month until thirty (30) days after receipt of such estimate; such delay shall not be deemed a waiver of any such Additional Rent which Tenant is otherwise obligated to pay for Tenant's Percentage Share of Operating Expenses for such preceding months during the new calendar year, all of which shall be paid within thirty (30) days after receipt of the estimate from Landlord.

3.2.1.3 Year-End Adjustments. Within ninety (90) days after the end of each calendar year during the Term, or as soon thereafter as reasonably practicable, Landlord will prepare and deliver to Tenant a statement showing the actual Operating Expenses incurred by Landlord during such calendar year and showing the amount of Tenant's Percentage Share of Operating Expenses based thereon. Such statement will be final and binding on the Tenant unless Tenant objects in writing within one (1) year after the statement is delivered to Tenant. If in any calendar year, Tenant's Percentage Share of Operating Expenses is less or greater than the amount which Tenant has paid for that year, then upon receipt of Landlord's statement, any overpayment made by Tenant shall be credited against (i.e., a reduction of) the next installment of Base Monthly Rent falling due or Tenant shall pay the amount of any underpayment to Landlord with the next installment of Base Monthly Rent falling due, as the case may be. The estimated monthly installments of Tenant's Percentage Share of Operating Expenses thereafter shall be adjusted to reflect such lower or higher Operating Expenses for the most recent calendar year. The annual determination and statement shall be prepared by Landlord in accordance with generally accepted accounting principles.

3.2.1.4 Adjustment Upon Termination of Lease. In the event of the termination or expiration of this Lease prior to the final determination of Tenant's Percentage Share of Operating Expenses, and even though Tenant has vacated the Premises, Tenant's

agreement to pay Tenant's Percentage Share of Operating Expenses up to the time of termination shall survive termination of this Lease, and Tenant shall pay all amounts due to Landlord within sixty (60) days after receipt of a statement therefor (provided however, no such assessment may be made against Tenant after the expiration of two (2) years following the expiration of the Lease; or the applicable renewal terms if option(s) to renew are exercised) and conversely any overpayment made in the event of a decrease in Operating Expenses shall be rebated by Landlord to Tenant within sixty (60) days of such termination.

3.2.1.5 Audit Rights. Tenant shall have the right, after reasonable notice and at reasonable times, to audit, inspect and photocopy Landlord's accounting records at Landlord's office in San Diego by a staff auditor of Tenant. If, after such audit, inspection and photocopying, Tenant still disputes the amount of Tenant's Percentage Share of Operating Expenses as set forth in the Statement, Tenant shall be entitled to retain an independent, certified public accountant (the "Accountant") to audit Landlord's records to determine the proper amount of Tenant's Percentage Share of Operating Expenses, provided that the Accountant (i) is a member of a nationally recognized accounting firm, and (ii) is mutually and reasonably agreed upon by Landlord and Tenant. If such audit reveals that Landlord has overcharged Tenant, then within ten (10) days after the results of such audit are made available to Landlord, Landlord shall reimburse Tenant the amount of such overcharge plus interest thereon at Prime (the "Interest Rate"), provided that Landlord's agents shall have the opportunity to review such audit, discuss such audit with the Accountant, and to provide the Accountant with information relating to any disputed Operating Expenses. If the audit reveals that Tenant was undercharged, then within ten (10) days after the results of the audit are made available to Tenant, Tenant shall reimburse Landlord the amount of such undercharge plus interest thereon at the Interest Rate. Tenant agrees to pay the cost of such audit, provided that Landlord shall pay Tenant's actual and documented cost of such audit within ten (10) days of delivery of a statement therefor from Tenant if the audit reveals that Landlord's determination of Tenant's Percentage Share of Operating Expenses as set forth in the Statement was in error by more than five percent (5%). Landlord shall be required to maintain records of all Operating Expenses and other Rent adjustments for the entirety of the three-year period following delivery of each Statement. The payment by Tenant of any amounts pursuant to this paragraph shall not preclude Tenant from questioning the correctness of any Statement provided by Landlord, but the failure of Tenant to object thereto within one (1) year after its receipt hereof shall be conclusively deemed Tenant's approval thereof.

3.2.1.6 Limitation on Operating Expense Increases. Notwithstanding anything in this Lease to the contrary, during the Term (including any extensions thereof), for the purpose of calculating Tenant's Percentage Share of Operating Expenses, Property Taxes shall not increase in any calendar year by more than two percent (2%) over the Property Taxes for the immediately preceding calendar year. In the event the Building is sold or otherwise transferred during the initial Term of this Lease, Tenant shall be exempt from the payment of any increase in Property Taxes, in excess of the two percent (2%) increase set forth in the preceding sentence, as a result of a "change in ownership" as that term is currently defined in California Revenue and Taxation Code Sections 60 through 68, and amendments thereto or any successor statutes or regulations.

3.2.1.7 Operating Expense Credit. Commencing with calendar year 2004, if in any calendar year during the Term the amount of the estimated monthly installments of Tenant's Percentage Share of increases in Operating Expenses is decreased, pursuant to the terms of Section 3.2.1.3, above, to reflect an Operating Expenses decrease (as grossed up to 95% occupancy) from the immediately preceding calendar year, as a result of a lower actual Operating Expenses amount than the estimated Operating Expenses amount for such calendar year, Tenant shall be entitled to a credit in the total amount of Tenant's Percentage Share of such decrease already paid by Tenant prior to such adjustment during the calendar year in which such adjustment is made, which credit shall be applied against the next installment(s) of Base Monthly Rent then due.

3.2.2 Tenant's Taxes.

3.2.2.1 Tenant shall be liable for and shall pay all taxes levied against any personal property or trade fixtures placed by Tenant in or about the Premises. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of the Premises, Building, the Building Lot, or Project is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof, but only under proper protest if requested by Tenant, Tenant shall, upon demand, repay to Landlord the taxes so levied against Landlord, or the portion of such taxes resulting from such increase in the assessment.

3.2.2.2 If the Tenant Improvements in the Premises, are assessed for Property Tax purposes at a valuation higher than the valuation of building standard tenant improvements for other space in the Building, then the Property Taxes levied against the Building, the Building Lot or Project by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of paragraph 3.2.2.1. If the records of the County Assessor are not available or sufficiently detailed to serve as a basis for making said determination, the actual cost of construction of the Tenant Improvements shall be used.

3.3 Security Deposit. Intentionally Omitted.

3.4 Late Charges. Intentionally Omitted.

3.5 Abatement of Rent when Tenant is Prevented from Using Premises. In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, as a result of any damage or destruction to the Premises, or any failure of Landlord to provide services or access to the Premises, then Tenant's rent shall be abated or reduced, as the case may be, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises during the period Tenant is prevented from conducting its business from the Premises or the unusable portion of the Premises. However, in the event that Tenant is prevented from conducting, and does not conduct, its business in any portion of the Premises, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then the rent for the entire Premises shall be abated during said period; provided, however, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence.

ARTICLE 4

USE OF PREMISES

4.1 Permitted Use. The Tenant shall use and occupy the Premises only for the use described in Section 16 of the Basic Lease Provisions.

4.2 Acceptance of Premises. Landlord and Tenant acknowledge that Tenant currently occupies the Premises pursuant to the Existing Lease (as that term is defined in Section 34.22, below), and such possession and use of the Premises by Tenant shall conclusively establish that the Premises, the Building and the Project are in satisfactory condition and in conformity with the provisions of this Lease.

4.2.1 Construction/Standard For Maintenance and Repair. Landlord hereby warrants to Tenant that the Building and that portion of the Premises constructed by Landlord or Landlord's contractor were constructed in a first class manner and in full compliance with all governmental regulations, ordinances, and laws which were in existence at the time of

construction in order to make the Building and the Premises suitable for occupancy by Tenant utilizing the space for business offices. Landlord will be fully responsible for making all alterations and repairs to the Building and the Premises at its cost, which shall not be included as Operating Expenses, resulting from or necessitated by the failure by Landlord and/or Landlord's contractor to comply with governmental regulations, ordinances and laws which were in existence at the time of the construction of the Building and that portion of the Premises constructed by Landlord's contractor, or from Landlord's and/or Landlord's contractor's utilization of asbestos or hazardous waste. Otherwise, Landlord shall maintain the Building, and subject to Tenant's repair obligations set forth in this Lease, the Premises, in a first class condition and repair, the cost of which shall be included in Operating Expenses, or paid directly by Tenant (with respect to repairs to and maintenance of the Premises) if not normally included in Operating Expenses.

4.3 Conduct of Business.

4.3.1 Nuisances. Tenant shall not do or permit anything to be done in or about the Premises and/or the Building which will obstruct or interfere with the rights of other tenants or occupants of the Building and the Project. Landlord reserves the right to prescribe the weight and position of all files, safes and heavy equipment which Tenant desires to place in the Premises so as to properly distribute the weight thereof and to require all such heavy equipment, furniture and similar items to be moved into and out of the Building and Premises only at such times and in such manner as Landlord shall direct in writing. Tenant's business machines and mechanical equipment which cause vibration or noise that may be transmitted to the Building structure or to any other space in the Building or Project shall be so installed, maintained and used by Tenant as to eliminate such vibration or noise. Landlord represents to Tenant that the structural loads for the Building are sufficient for Tenant's intended use of the Premises.

4.3.2 Noxious Activities. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, nor shall any animals or birds (except seeing-eye dogs) be brought in or kept in or about the Premises or the Building. No cooking shall be done or permitted by Tenant on the Premises (except as may be specifically permitted by the Rules and Regulations), nor shall the Premises be used for the storage of merchandise, for washing clothes or for lodging. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material or use any method of heating or air conditioning other than that supplied by Landlord.

4.3.3 Compliance with Law, Recorded Covenants and Project Documents.

4.3.3.1 Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules and regulations now in force or which may hereafter be in force, and with the requirements of the certificate of occupancy (or its equivalent) for the Building and the requirements of Landlord's insurance company relating to or affecting the condition, use or occupancy of the Premises, the Building and/or the Project.

4.3.3.2 If the Building, Building Lot, and/or the Project are presently governed or burdened by any easements, covenants, conditions and/or restrictions of record agreed to, granted and/or imposed by Landlord and/or any other third party, then this Lease and all of Tenant's rights and interest in the leasehold estate created by this Lease is and shall be subject and subordinate thereto and to any and all amendments or modifications at any time thereafter made thereto. Tenant shall promptly upon written request execute and deliver to Landlord any documents or instruments required to evidence the subordination of this Lease hereunder, but failure to do so shall not affect the automatic subordination specified herein.

4.4 Rules and Regulations. Tenant and its employees, agents and visitors shall comply with the Rules and Regulations, attached hereto as Exhibit C. Tenant agrees to abide by and comply with such Rules and Regulations and any and all reasonable and nondiscriminatory amendments, modifications, and/or additions thereto. Landlord shall not be liable to Tenant for any violation of the Rules and Regulations, or nonperformance by, or the breach in any provision in any lease, by any other tenant or occupant of the Building or Project, but Landlord shall use its

best efforts to enforce compliance with the same. Landlord agrees that the rules and regulations of the Building, attached to and made a part of the Lease, shall not be changed, revised or enforced in any unreasonable way by Landlord nor enforced or changed by Landlord in such a way as to interfere with the Tenant's intended use of the Premises as permitted under this Lease.

4.5 Signage. Tenant shall not place, or permit to be placed or maintained, on any exterior door, wall or window of the Premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door, or that can be seen through the glass, of the Premises except as specifically approved in advance, in writing by Landlord. If approved by Landlord, Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or thing as may be approved, in good condition and repair at all times at Tenant's sole cost and expense. Tenant agrees at Tenant's sole cost, that any Tenant sign will be maintained in strict conformance with all applicable governmental regulations and Landlord's sign program for the Project. For those floors of the Building which Tenant occupies in their entirety, Tenant shall have the right to place its name in the elevator lobby of such floor. In addition, for those floors upon which Tenant occupies only a portion of such floors, Tenant shall have the right to place its name on the entry doors to its Premises. Tenant shall also have the right to place two (2) names per 1000 square feet of Rentable Area on the Building directory.

4.6 Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials (defined below) to be brought upon, kept or used in or about the Premises or Project by Tenant, its agents, employees, contractors or invitees. If Tenant breaches the obligation stated above, or if the presence of Hazardous Materials on the Premises or Project caused or permitted by Tenant results in contamination to the Premises or Project, or if contamination of the Premises or Project by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damages resulting therefrom, then Tenant shall be liable and responsible for, without limitation, (i) removal from the Premises and Project of any Hazardous Materials and the cost of such removal; (ii) damages to persons or property in or on the Premises and Project; (iii) claims resulting therefrom; (iv) fines imposed by any governmental agency; and (v) any other liability as provided by law. In addition to the foregoing, Tenant shall indemnify, defend and hold Landlord, its agents and contractors harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, damages for the loss or restriction on use of Rentable Area or of any amenity of the Premises and Project, damages arising from any adverse impact on marketing of space in the Project, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, which arise during or after the Lease Term as a result of such contamination.

With the exception of asbestos, which the parties acknowledge to be present in the Building, Landlord represents and warrants, to the best of Landlord's knowledge, that neither Landlord nor any third party has used, generated, built with, manufactured, stored or disposed of on, under or above the Building and/or the Premises (and the real property on which the Building and/or the Premises are located), or transported to or from the Building and/or the Premises (or the real property on which the Building and/or the Premises are located) any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials (collectively "Hazardous Materials"), except to the extent that the presence and/or use of such Hazardous Materials on, under or above the Building and/or the Premises (and the real property on which the Building and/or the Premises are located) is in compliance with all applicable laws. For the purpose of this Lease, Hazardous Materials shall include, but not be limited to, substances defined as "Hazardous Substances", "Hazardous Materials", or "Toxic Substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq; and those substances defined as "Hazardous Wastes" in Section 25117 of the California Health and Safety Code or as "Hazardous Substances" in Section 25316 of the California Health and Safety Code; and the regulations adopted and publications promulgated pursuant to said laws.

Landlord hereby agrees to indemnify and hold harmless Tenant, its directors, officers, employees, and agents, and any successors, from and against any and all liability including, without limitation, costs of any required or necessary repair, cleanup, or detoxification and the preparation of an enclosure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Materials by any person at the Building or on the Premises (or real property on which the Building and/or the Premises are located) prior to October 21, 1991.

Landlord shall make available to Tenant for Tenant's inspection and copying at Landlord's office of the Building, all information reasonably requested by Tenant regarding the Hazardous Materials abatement program for the Building as well as the current Operations and Maintenance program for the Building. In addition, Landlord, at Landlord's expense (which expense shall be included in Operating Expenses), agrees to conduct an annual testing program to detect the presence of Hazardous Materials in the Building. If in connection with such testing it is determined that the presence of any Hazardous Materials exceeds the "safe" level as determined by the EPA, OSHA or other similar agency, then Landlord shall immediately notify Tenant of the same and Tenant may vacate the Premises and Rent shall abate as provided in Section 3.5 of this Lease. If Landlord thereafter fails to bring the level of contamination to a "safe" level within ninety (90) days from the date of Tenant's receipt of such notice, Tenant may, at Tenant's sole option, elect to either (i) require Landlord to take all actions necessary to bring the level of contamination back to a "safe" level, or (ii) terminate and cancel this Lease with respect to the portion(s) of the Premises which exceed the "safe" levels (unless the remaining portion of the Premises is no longer suitable for Tenant's use, in which case Tenant may terminate this Lease with respect to the entire Premises).

ARTICLE 5

SERVICES AND UTILITIES

5.1 Landlord's Provision of Services. Landlord agrees to furnish or cause to be furnished to the Premises the utilities and services described in the Standards for Utilities and Services, attached hereto as Exhibit E, subject to the conditions and in accordance with the standards set forth therein. Landlord's failure to furnish any of the foregoing items when such failure is caused by (i) accident, breakage or repairs; (ii) strikes, lockouts or other labor disturbance or labor dispute of any character; (iii) governmental regulation, moratorium or other governmental action; (iv) inability despite the exercise of reasonable diligence to obtain electricity, chilled water, water or fuel; or (v) any other cause beyond Landlord's reasonable control, shall not result in any liability to Landlord. Except as otherwise specifically provided in this Lease, Tenant shall not be entitled to any abatement or reduction of Rent by reason of such failure and Tenant shall not be relieved from the performance of any covenant or agreement in this Lease because of such failure. In the event of any failure, stoppage or interruption thereof, Landlord shall diligently attempt to resume service promptly. Notwithstanding the foregoing, if the utilities and services necessary for the conduct of Tenant's business are not available on business days during business hours for more than two (2) consecutive days (hereinafter an "Interruption"), then on the third (3rd) consecutive business day of the Interruption, Rent and other charges due hereunder shall abate if Tenant is prevented by the Interruption from using the Premises or portion thereof and does not use the Premises or portion thereof.

5.1.1 Tenant's Obligation to Pay for Premises Utilities/Separate Metering. Tenant shall pay for all utilities used by Tenant on the Premises (except as included in Base Year Operating Expenses). Tenant shall pay directly to the appropriate utility company the cost of any utilities used on the Premises and not provided by Landlord. Landlord or Tenant may, at their discretion, install separate meter(s) or monitors for the Premises. If Landlord or Tenant separately meters or monitors any utility costs being utilized by Tenant, such cost shall be paid by Tenant separate from the computation of the Operating Expenses and such payments shall be made directly to the utility company.

5.2 Excess Usage. Tenant shall not use any apparatus or device in the Premises, including without limitation, electronic data processing machines, punch card machines and

other similar machines, which will materially increase the amount of electricity or water usually furnished or supplied for use of the Premises for normal office use; nor connect with electric current, except through existing outlets in the Premises or water pipes, any apparatus or device, for the purposes of using electric current or water. If Tenant shall require water or electric current in excess of that usually furnished or supplied for use of the Premises, Tenant shall first procure the consent of Landlord and Landlord or Tenant may cause a water meter or electric current meter to be installed in the Premises, so as to measure the amount of water and electric current consumed for any such other use. The cost of any such meters and of installation, maintenance and repair thereof shall be paid for by Tenant and Tenant agrees to pay to Landlord promptly upon written demand therefor by Landlord for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility furnishing the same and the pass-through of Operating Expenses as set forth in Section 3.2.1 shall be adjusted accordingly. If heat generating machines or equipment are used in the Premises (other than typical and normal office machines, equipment and personal computers) by Tenant which affect the temperature otherwise maintained by the air conditioning system, Landlord reserves the right to install supplementary air conditioning units in the Building and/or the Premises and the cost thereof, including the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord within thirty (30) days of written demand by Landlord.

5.3 Services To Be Provided. Notwithstanding anything set forth in this Article 5 to the Lease, Landlord shall provide on the Premises the following services consistent with the quality and quantity of such services provided in Comparable Buildings: (a) heat, ventilation, air conditioning (collectively "HVAC") and other cooling as required for the comfortable use and occupancy of the Premises based upon the Tenant Improvements existing in the Premises as of the Commencement Date; (b) janitorial services in material conformance with the specifications attached hereto as Exhibit I (c) all electrical power for Tenant's normal fluorescent and incandescent lighting and business office equipment (including but not limited to duplicating machines, computers, and communications equipment) required for the normal functioning of a business office; (d) Building security services (which will require the operation of an access control system twenty-four (24) hours per day); and (e) window washing services comparable with the Comparable Buildings.

Landlord also grants Tenant twenty-four (24) hour access to the Premises, the Building, and the parking facilities within the Building, and shall, subject to the terms of Section 5.2, above, provide Tenant, upon Tenant's request, utilities and services, twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year (after-hours access may require the use of a magnetic card or compliance with other reasonable security devices required by Landlord). Capacity for supplemental HVAC to the Premises will be made available to Tenant upon demand.

In the event that Tenant regularly requires utilities and/or services in excess of what Landlord is required to provide during business hours or at times other than during business hours, Landlord agrees to provide such extra utilities and services and Tenant agrees to reimburse to Landlord its reasonable estimate of its actual costs of providing such extra service and/or utilities, without profit to Landlord, but inclusive of additional maintenance and personnel costs, if any, caused by any extra usage or over usage of any equipment of the Building systems.

ARTICLE 6

MAINTENANCE AND REPAIR

6.1 Tenant to Maintain. Except to the extent of the services which are included as part of Landlord's maintenance obligations pursuant to this Lease and except for the routine and customary cleaning and janitorial services furnished by Landlord, Tenant shall, at its own expense, keep and maintain the Premises in a clean, sanitary and safe condition and shall, when and if needed, at Tenant's cost and expense, make all repairs to the Premises and every part thereof. Tenant shall be responsible for all repairs to the Building, including the Premises which are made necessary by any misuse or neglect by Tenant or any of its officers, agents, employees,

contractors, licensees, or subtenants unless and to the extent Landlord is entitled to receive the proceeds from insurance carried as a part of Operating Expenses. Tenant shall, upon the expiration or sooner termination of the term hereof, surrender the Premises to Landlord in the same good condition as when received, usual and ordinary wear and tear excepted. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises or any part thereof, except as specifically herein set forth.

6.2 Landlord's Maintenance. Landlord shall repair and maintain the structural portions of the Building, the Building Common Areas, and the Building systems installed or furnished by Landlord as "Building Standard" connecting to and servicing the Premises with heating, ventilating, air conditioning, plumbing, fire sprinklers, and electrical services in the manner in which a prudent Landlord of one of the Comparable Buildings would undertake. Except as otherwise provided in this Lease, there shall be no abatement of Rent and no liability of Landlord by reason of interference with Tenant's business arising from the making of any repairs, alterations, or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant shall pay to Landlord within thirty (30) days after request therefor by Landlord, the reasonable cost (or portion thereof equitably allocated to Tenant, in Landlord's best judgment) of such maintenance and repair. Except as otherwise specifically provided in this Lease, Tenant waives the provisions of California Civil Code Sections 1932(1), 1941 and 1942 with respect to Landlord's obligations for tenantability of the Premises and Tenant's right to make repairs to the Premises or the Project at the expense of Landlord, or to deduct the cost of such repairs from any payment owed to Landlord under the Lease.

6.3 Landlord's Failure to Maintain. If Tenant provides written notice to Landlord of an event or circumstance relative to the Premises which requires the action of Landlord with respect to repair and/or maintenance, and Landlord fails to provide such action (or commence to provide such action and thereafter diligently pursue the same to completion) within a reasonable period of time, after the receipt of such written notice, but in no event later than ten (10) Business Days after receipt of such written notice, unless Landlord is specifically required to act in less than ten (10) Business Days pursuant to a specific provision of this Lease or because of an emergency by any provision hereof, then Tenant may proceed to take the required action upon delivery of an additional written notice to Landlord specifying Tenant is taking such required action. In such event Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable, actual, documented costs and expenses in taking such action plus interest thereon at the Interest Rate. In the event Tenant takes such action, and such work in the Premises will affect the Building's life safety system, heating, ventilating and air conditioning systems and elevator systems, Tenant shall use only those contractors used by Landlord in the Building for work on such systems or other contractors approved by Landlord. Further, if Landlord does not deliver a detailed written objection to Tenant within thirty (30) days after receipt of an invoice by Tenant of its costs of taking action which Tenant claims should have been taken by Landlord, and if such invoice from Tenant sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking such action on behalf of Landlord, then Tenant shall be entitled to deduct from rental payable by Tenant under this Lease, the amount set forth in such invoice.

ARTICLE 7

ALTERATIONS AND IMPROVEMENTS

7.1 Alterations by Tenant.

7.1.1 Landlord's Approval Required. Tenant shall make no alterations, additions or improvements in or to the Premises which exceed Five Thousand Dollars (\$5,000.00) in cost ("Alterations") without Landlord's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed; provided however, if Tenant proposes to undertake any Alterations above the ceiling of the Premises (without regard to cost), Tenant shall first provide Landlord with written notice of the same. All Alterations shall, at Tenant's option, be made by Landlord or a contractor selected by Tenant and approved by Landlord. Tenant shall submit to Landlord plans and specifications for any proposed Alterations, and no such

Alterations, additions or improvements shall be made until Landlord has approved of such plans and specifications. All Alterations, shall be constructed in accordance with the plans and specifications approved by Landlord, and no amendments or modifications thereto shall be authorized without Landlord's prior written consent. No construction of partitions or other obstructions shall interfere with Landlord's free access to mechanical installations or service facilities of the Building or interfere with the moving of Landlord's equipment to or from the enclosures containing said installations or facilities. All such work shall be done at such times and in such manner as Landlord may reasonably designate. Tenant covenants and agrees that all work done on behalf of or by Tenant shall be performed in full compliance with all laws, rules, orders, ordinances, regulations and requirements of all governmental agencies, offices and boards having jurisdiction over the Building. All Alterations to the Premises made by either party or its agent, including (without limiting the generality of the foregoing) all wallcovering, built-in cabinet work, paneling and the like, shall, unless Landlord elects otherwise by written notice to Tenant at the time of installation, become the property of Landlord, and shall remain upon, and be surrendered, with the Premises as a part thereof at the end of the Term hereof, except that Landlord may, by written notice to Tenant at the time Landlord approves such Alterations, require Tenant to remove some or all Alterations installed by or on behalf of Tenant, and Tenant shall repair all damage resulting from such removal or, at Landlord's option, shall pay to Landlord all costs arising from such removal.

7.1.2 Free Standing Partitions. Tenant will have the right to install free standing work station partitions, without Landlord's prior written consent, so long as no building or other governmental permit is required for their installation or relocation; however if a permit is required, Landlord will not unreasonably withhold its consent to such relocation or installation. Any existing free-standing work station in the Premises or any free-standing work station partitions for which Tenant pays either directly or as a part of the Tenant Improvement Allowance will be part of Tenant's trade fixtures for all purposes under this Lease. All permanently installed partitions (i.e. drywall) which are installed in the Premises are and will be Landlord's property for all purposes under this Lease.

7.1.3 Removal of Trade Fixtures. All articles of personal property and all business and trade fixtures, machinery and equipment, furniture and movable partitions owned by Tenant and installed by Tenant at its expense in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the Term provided Tenant shall repair and restore all damages to the Premises caused by such removal. If Tenant shall fail to remove all of its effects from the Premises upon termination of this Lease, Landlord may, at its option following at least ten (10) days written notice to Tenant, remove the same and store said effects without liability to Tenant for loss thereof. In such event, Tenant agrees to pay Landlord within thirty (30) days of written demand, any and all actual and documented expenses incurred in such removal, including court costs and attorneys' fees and storage charges on such effects, for any length of time that the same shall be in Landlord's possession.

7.2 General Contractor and Bonds. The work necessary to make any repairs required pursuant to this Lease, or to make any Alterations to the Premises to which Landlord may consent, shall be done by employees or contractors employed by Landlord or by Tenant using licensed contractors approved by Landlord in writing and subject to all conditions Landlord may reasonably impose. If Landlord allows Tenant to use its own contractor, Tenant shall, if required by any Mortgagee, secure at Tenant's cost and expense a completion and lien indemnity bond satisfactory to Landlord for said work. All such bonds to be obtained by Tenant shall be California private work bonds issued by an admitted corporate surety reasonably acceptable to Landlord and shall name Landlord as a dual obligee. All bonds obtained by Tenant shall be recorded in accordance with California Civil Code Section 3235 et seq., or any successor statute or law. Upon obtaining each bond required pursuant to this Lease, Tenant shall promptly submit a copy thereof to Landlord. Upon completion of any Alterations by Tenant, Tenant shall supply Landlord with "as-built" plans.

7.3 Builder's Insurance. Intentionally Omitted.

7.4 Written Notification Required. Tenant will notify Landlord in writing not less than ten (10) days prior to commencing any Alterations, which have been approved by Landlord. Landlord shall have the right to record and post notices of non-responsibility on the Premises.

7.5 Freedom From Liens. Tenant shall pay to Landlord or to a contractor approved by Landlord, as the case may be, when due, all claims for labor and materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein, and upon completion, deliver to Landlord (if payment is made directly to a contractor approved by Landlord), evidence of payment and waivers of all liens for labor, services, or material. Tenant shall, at its sole cost and expense, keep the Premises, all other property therein and the Building free from any liens arising out of any work performed, material furnished or obligations incurred by Tenant, and shall indemnify, defend and hold Landlord harmless from any liens and encumbrances arising out of any work performed or material furnished by or at the direction of Tenant. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall at its sole expense defend itself and Landlord against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Landlord, the Premises, and the Project upon the condition that if any Mortgagee shall reasonably require, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to such contested lien claim or demand indemnifying Landlord against liability for the same and holding the Premises and the Project free from the effect of such lien or claim. In the event that Tenant shall not, within thirty (30) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, upon not less than ten (10) days prior written notice to Tenant to cause the same to be released by such means as it shall deem proper, including payment of and/or defense against the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including reasonable attorneys' fees and costs, shall be payable as Additional Rent to Landlord by Tenant on demand with interest at the maximum rate per annum then permitted by law (but in no event in excess of the Prime Rate accruing from the date paid or incurred by Landlord until reimbursed to Landlord by Tenant.

ARTICLE 8

RIGHTS OF LANDLORD

8.1 Entry and Inspection.

8.1.1 Landlord's Inspection and Maintenance. Subject to the provisions of Section 3.5 of this Lease, Landlord reserves and shall at any and all reasonable times have the right to enter the Premises to inspect the same, to supply janitor service and any other service to be provided by Landlord to Tenant pursuant to this Lease, to show the Premises to prospective purchasers or tenants, to post notices of non-responsibility, to alter, improve or repair the Premises or any other portion of the Building, all without committing any eviction of Tenant and without abatement of rent. Landlord may, to carry out such purposes, erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, provided that the business of Tenant shall be interfered with as little as reasonably practicable. Landlord shall at all times have and retain a key with which to unlock all doors in the Premises, excluding Tenant's vaults and safes. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency to obtain entry to the Premises. Any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not be construed or deemed to be a forcible or unlawful entry into the Premises, or an eviction of Tenant from the Premises or any portion thereof.

8.2 Transfer by Landlord. In the event of a transfer of all of Landlord's ownership interest in the Building, other than a transfer for security purposes only, Landlord shall be automatically relieved of any and all obligations and liabilities of Landlord pursuant to this Lease accruing from and after the closing of such transfer provided such transferee expressly assumes Landlord's obligations under this Lease. Tenant's right to quiet possession of the Premises shall

not, however, be disturbed on account of any such transfer, so long as Tenant shall pay Rent and observe and perform all the provisions of this Lease unless this Lease is otherwise terminated.

ARTICLE 9

INSURANCE AND INDEMNITY

9.1 Tenant's Insurance. Notwithstanding anything to the contrary set forth in this Article 9, Landlord acknowledges that the City of San Diego is currently self-insured for its public liability insurance, and budgets annually for its self-administered claims program handled through the Risk Management Department. Claims are handled in accordance with the California Government Code 900 Series. The City of San Diego agrees to pay any and all claims and all judgments that it may become legally obligated to pay under the California Government Code, arising out of any negligence on the part of the City of San Diego. Accordingly, Landlord acknowledges that so long as the Tenant is the City of San Diego or an Affiliate (defined below) the insurance requirements of this Section 9.1 shall not be applicable to Tenant. Except as provided in this Section 9.1, the right of Tenant to self-insure shall not in any way limit the obligations of Tenant under any provision of this Lease. The right of Tenant to self-insure shall (i) not limit the applicability of the waiver of subrogation set forth in Section 9.3, below, and (ii) be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any assignee, sublessee or other transferee of the Original Tenant's interest in this Lease).

9.1.1 Required Insurance. Tenant shall at all times during the Term and any other period of occupancy, at its own expense, keep in full force and effect the following insurance:

9.1.1.1 Worker's Compensation and Employers' Liability Insurance as required by State law;

9.1.1.2 Standard form property insurance insuring against the perils of fire, extended coverage, vandalism, malicious mischief, special extended all risk coverage and sprinkler leakage. This insurance policy shall be upon all property owned by Tenant, for which Tenant is legally liable or that was installed at Tenant's expense, and which is located in the Building including, without limitation, furniture, fittings, installations, fixtures, equipment and any other personal property, in an amount not less than the full replacement cost thereof with an "agreed amount" or "stipulated value" endorsement. In the event of a dispute as to the amount which comprises full replacement cost, the decision of Landlord or any mortgagees of Landlord shall be conclusive. Such policy shall name Landlord and any mortgagees of Landlord as loss payees, as their respective interest may appear.

9.1.1.3 Any combination of a Commercial General Liability Insurance Policy, excess Liability Policy and/or Umbrella Liability Policy insuring Tenant on an occurrence basis against any liability arising out of the leasing, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in the amount of two million dollars (\$2,000,000) Combined Single Limit for injury to, or death of one or more persons in an occurrence. The policy shall insure the hazards of the Premises and Tenant's operations thereon, independent contractors, contractual liability (covering the indemnity contained in Section 9.4 hereof) and shall (i) name Landlord and any Mortgagee(s) designated by Landlord as additional insured, (ii) contain a cross liability provision, and (iii) contain a provision that the insurance provided the Landlord hereunder shall be primary and non-contributing with any other insurance available to the Landlord.

9.1.1.4 Any other form or forms of insurance as Tenant or Landlord or any mortgagees of Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself.

Tenant may, with the written consent of Landlord, elect to have reasonable deductibles in connection with the policies of insurance required to be maintained by Tenant pursuant to this Article 9. If Tenant elects to maintain such deductibles, Tenant shall be liable for paying the full amount of any deductibles in the event of a loss or casualty.

9.1.2 Certificates of Insurance. All policies obtained by Tenant shall be written in a form satisfactory to Landlord; shall be maintained with insurance companies holding a General Policyholder's Rating of "A-" or better, and a financial rating of "VI", or better, as set forth in the most current issue of Best's Key Rating Guide; and shall require thirty (30) days advance written notice to Landlord of any cancellation or modification. Tenant shall deliver to Landlord at least thirty (30) days prior to the time such insurance is first required to be carried by Tenant pursuant to this Lease, Certificates of Insurance ("Certificates") evidencing the above coverage with limits not less than those specified above. The Certificates, with the exception of Worker's Compensation, shall add Landlord, and each of its partners, subsidiaries, affiliates, directors, agents and employees and any Mortgagee(s) designated by Landlord as additional insured and shall expressly provide that the interest of same therein shall not be affected by any breach by Tenant of any policy provision for which such Certificates evidence coverage. The insurance required by this Section shall be the primary insurance as respects Landlord (and any other additional insured designated by Landlord) and not contributory with any other available insurance. The Certificate(s) evidencing the liability insurance coverage required under Section 9.1.1.2 above shall contain an endorsement providing that such insurance as is afforded hereby for the benefit of Landlord shall be primary and any insurance carried by Landlord shall be excess and not contributory. Tenant shall, within ten (10) days prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof. If Landlord obtains any insurance that is the responsibility of Tenant pursuant to this Article 9, Landlord shall deliver to Tenant a written statement setting forth the cost of any such insurance and showing in reasonable detail the manner in which it has been computed and Tenant shall thereupon pay the same to Landlord as Additional Rent.

9.1.3 Adjustments to Insurance. The minimum commercial general liability insurance limits set forth in Section 9.1.1.3 above may be adjusted upward after the expiration of the fifth anniversary of the Commencement Date and upon the expiration of every fifth year thereafter. Not less than sixty (60) days prior to each relevant adjustment date commencing with the fifth anniversary of the Commencement Date, Landlord may request that the amount of insurance to be obtained by Tenant be increased if, in the reasonable opinion of Landlord's lender or the insurance broker retained by Landlord, the amount of such insurance is inadequate.

9.2 Landlord's Insurance. Landlord shall insure the Building (excluding any property which Tenant is obligated to insure) against damage with property liability insurance, all in such amounts and with such deductibles as are normally carried by similar landlords of Comparable Buildings or as may be required by any Mortgagee, provided however such amounts and deductibles shall be consistent with or comparable to the requirements of institutional lenders of Comparable Buildings. All Tenant Improvements installed by Landlord or Landlord's contractor shall be covered by insurance obtained by the Landlord. Landlord may, but shall not be obligated to, obtain and carry any other form or forms of insurance as it or Landlord's mortgagees may determine advisable. Notwithstanding any contribution by Tenant for the cost of insurance premiums, except as otherwise provided herein, Tenant acknowledges that it has no right to receive any proceeds from any insurance policies carried by Landlord. The cost of all such insurance obtained by Landlord shall be included as an Operating Expense pursuant to Section 3.2.1 except to the extent proceeds remain after the repairs have been completed, the remaining amount shall be credited to reduce principal, interest or any sum due on any loan secured by the Building in existence at the time of the damage or destruction to the extent required by the terms of such loan or if not required by the terms of such loan the remaining amount shall be credited to reduce Operating Expenses if not prohibited by the term of the insurance policies.

9.2.1 Tenant's Activities/Tenant Improvements. Tenant will not keep, use, sell or offer for sale in or upon the Premises any article which may be prohibited by any insurance policy in force covering the Building. If Tenant's occupancy or business in, or on, the Premises, contrary to the uses permitted by Article 4 of this Lease whether or not Landlord has consented to the same, results in any increase in premiums for the insurance carried by Landlord with respect to the Building, Tenant shall pay any such increase in premiums as Additional Rent within thirty (30) days after being billed therefore by Landlord. In determining whether increased premiums are a result of Tenant's use of the Premises, a schedule issued by the

organization computing the insurance rate on the Building or the Tenant Improvements showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up such rate. Tenant shall promptly comply with all reasonable requirements of the insurance company or any present or future insurer relating to the Building or Premises. Tenant acknowledges that if Landlord incurs additional insurance expense related to the quality of tenant improvements or Alterations within the Premises in excess of building standard improvements which Landlord insures pursuant to the terms of this Lease, such additional insurance expense identified by the insurer relating to Tenant's Premises shall be paid solely by Tenant.

9.2.2 Cancellation of Coverage. If any of Landlord's insurance policies shall be cancelled or cancellation shall be threatened, the coverage thereunder reduced or threatened to be reduced in any way or the premiums are increased or threatened to be increased because of the use of the Premises contrary to the uses permitted by Article 4 of this Lease or any part thereof by Tenant or any assignee, subtenant, invitee, permittee or agent of Tenant and, if Tenant fails to remedy the condition giving rise to such event within forty-eight (48) hours after notice thereof, Landlord may, enter upon the Premises and attempt to remedy such condition, and Tenant shall promptly pay the cost thereof to Landlord as Additional Rent. Tenant shall not prevent or interfere with Landlord's entry upon the Premises or its attempt to remedy such condition and shall provide its assistance to and cooperate with Landlord to remedy such condition. If Tenant fails to remedy such condition and if Landlord is unable to remedy such condition, then Tenant shall be in default under this Lease and Landlord shall have all of the remedies provided for in this Lease in the event of a default by Tenant.

9.3 Mutual Waiver of Subrogation. All policies of property insurance required pursuant to this Lease shall include a clause or endorsement denying the insurer any rights of subrogation against the other party to the extent rights have been waived by the insured before the occurrence of injury or loss. Landlord and Tenant each hereby waive any and all rights of recovery against the other or against the officers, directors, shareholders, partners, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control to the extent that such loss or damage is insured against, or would have been insured against except for Tenant's election to self-insure pursuant to Section 9.1, above, under any policy of property insurance required to be carried by such waiving party pursuant to the provisions of this Lease (or any other policy of insurance carried by such waiving party in lieu thereof). Tenant shall give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

9.4 Indemnification.

9.4.1 Tenant's Indemnity Obligations. Tenant shall indemnify, defend and hold Landlord harmless from all claims arising from Tenant's use of the Premises, or the conduct of its business or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, the Building or the Project. Tenant as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to person in, upon or about the Premises from any cause whatsoever except that which is caused by Landlord's negligence or willful misconduct or by the failure of Landlord to observe any of the terms and conditions of this Lease.

9.4.2 Landlord's Indemnity Obligations. Landlord hereby indemnifies and agrees to hold Tenant harmless and against Landlord's negligence or willful misconduct or that of its agents, contractors, servants or employees in connection with Landlord's activities outside the Premises, or with respect to personal injuries caused within the Premises by the negligent acts of Landlord or Landlord's agents, contractors, servants or employees.

9.5 Damage to Tenant's Property. Notwithstanding the provisions of Section 9.4 to the contrary, Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or other property of Tenant, of Tenant's employees, invitees, customers, or of any other person in or about the Premises or the Building caused by or resulting from any peril which may affect the Premises or Building, including fire, steam, electricity, gas,

water, or rain which may leak or flow from or into any part of the Premises or Building, or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Premises or Building, whether such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or from other sources except if such injury or damage is caused by the negligence or willful misconduct of Landlord or Landlord's agents, contractors, employees, servants, tenants or concessionaires or Landlord's failure to implement and/or adhere to a preventative maintenance program for the Building that would commonly be undertaken by a prudent Landlord of one of the Comparable Buildings. Landlord and its agents shall not be liable for any damages arising from any act or neglect of: (a) any other tenant of the Building; or (b) any officer, employee, agent, representative, customer, business visitor, or invitee of any such tenant. Landlord and its agents shall further not be liable for (i) damage to any property entrusted by Tenant to employees of the Building or Project; or (ii) loss or damage to any property by theft or otherwise. Landlord or its agents shall not be liable for interference with light, view, sight or other incorporeal hereditament. Tenant shall give prompt notice to Landlord in case of fire or accidents in the Premises or in the Building and of defects therein or in the fixtures or equipment.

9.6 Mutual Waiver of Consequential Damages. Notwithstanding anything to the contrary contained in this Lease, nothing in this Lease shall impose any obligations on Tenant or Landlord to be responsible or liable for, and each hereby releases the other from all liability for, consequential damages incurred by either Landlord or Tenant in connection with any cause of action arising in relation with the provisions of this Lease.

ARTICLE 10

ASSIGNMENT AND SUBLETTING

10.1 Landlord's Consent. Tenant shall not voluntarily or involuntarily or by operation of law or otherwise, assign or encumber its interest in this Lease or in the Premises or sublease all or any part of the Premises, or allow any other person or entity ("Transferee") to occupy or use all or any part of the Premises (collectively "Transfer"), without first obtaining Landlord's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed. Any Transfer without Landlord's prior written consent shall be voidable at Landlord's election and shall constitute a default. Tenant shall not, under any circumstances, mortgage, encumber or hypothecate its interest in this Lease. Notwithstanding the foregoing, Tenant may at any time during the Term of this Lease, Transfer its interest in this Lease or sublet all or a portion of the Premises to any department, subsidiary, affiliate, or related entity of Tenant, or any entity, which in whole or in part is owned by, affiliated with, or which is acquired by, or which acquires Tenant, or is merged into Tenant, or which Tenant is merged into (hereinafter an "Affiliate"), without having to obtain Landlord's consent or approval; provided however, such Transfer to an Affiliate shall not be in contravention with any exclusive use provision in effect at the date of this Lease with the retailers in the Building.

10.1.1 Notice. Except in the case of a Transfer to an Affiliate, Tenant shall give Landlord advance written notice of Tenant's intent to Transfer, the name of the proposed Transferee, information concerning the financial responsibility of the proposed Transferee, a full description of the terms of the proposed Transfer including copies of all documents relating thereto, a description of the proposed use of the Premises, a list of personal and business references of the proposed Transferee, similar information for any proposed guarantor and any other information, documentation or evidence that may be reasonably requested by Landlord.

10.1.2 Landlord's Response. Within fifteen (15) days after the submission of all required information described in the preceding sentence, Landlord shall give notice to Tenant of its decision to approve or deny the Transfer. If Landlord fails to give such notice, Landlord shall be presumed to have approved Tenant's request for such Transfer. If Landlord denies its consent to the proposed Transfer pursuant to this subsection 10.1, and if Tenant shall so request in writing, Landlord shall provide to Tenant a statement of the basis on which Landlord denied its consent within a reasonable time after the receipt of Tenant's notice.

10.2 No Release. No consent to any proposed Transfer, whether conditional or unconditional, shall be deemed to be a consent to any other or further Transfer of the Lease, or any other Transfer of the Lease on the same or other conditions (if any). No Transfer of the Lease shall in any way diminish, impair or release any of the liabilities and obligations of Tenant, any guarantor or any other person liable for all or any portion of the Tenant's obligations under the Lease.

10.3 Excess Rent.

10.3.1 Affiliated Transfer. If Landlord consents to any Transfer by Tenant to any Affiliate, then all of the rents and other consideration paid by such Transferee in excess of the Rent otherwise payable by Tenant under this Lease shall be retained one hundred percent (100%) by Tenant.

10.3.2 Other Transfers. If Landlord consents to any Transfer by Tenant to a Transferee which is not an Affiliate of Tenant, then (in addition to Rent and all other amounts payable by Tenant under this Lease) all of the rents and other consideration paid by such Transferee in excess of the Rent otherwise payable by Tenant under this Lease shall be shared proportionally by Tenant and Landlord, with seventy-five percent (75%) of such excess proceeds to Tenant and twenty-five percent (25%) of such excess proceeds to Landlord, net of (i) Tenant's underlying Rent; (ii) any improvement allowance or other economic concession (space planning allowance, moving expenses, lease takeover allowance, rent abatement etc.) given by Tenant to sublessee or assignee; (iii) broker's commissions; (iv) attorneys' fees; and (v) the unamortized cost of initial and any subsequent improvements to the Premises (if any) made and paid for by Tenant.

ARTICLE 11

DAMAGE OR DESTRUCTION

11.1 Repair or Termination.

11.1.1 Insured Damage. In the event the Building and/or the Premises is damaged by fire or other perils covered by Landlord's insurance, Landlord shall:

11.1.1.1 In the event of total destruction of the Building and/or the Premises ("Total Destruction"), at Landlord's option, as soon as reasonably possible thereafter, commence repair, reconstruction and restoration of the Building and/or the Premises and prosecute the same diligently to completion, in which event this Lease shall remain in full force and effect; or within sixty (60) days after such damage, elect not to so repair, reconstruct or restore the Building and/or the Premises, in which event this Lease shall terminate. In either event, Landlord shall give Tenant written notice of its intention within said sixty (60) day period. In the event Landlord elects not to restore the Building, and/or the Premises, this Lease shall be deemed to have terminated as of the date of such Total Destruction.

11.1.1.2 In the event of a partial destruction of the Building and/or the Premises ("Partial Destruction"), and if the damage thereto is such that the Building and/or Premises may be repaired, reconstructed or restored within a period of one hundred eighty (180) days from the date of the happening of such casualty, and if Landlord (subject to the rights of Landlord's lenders) will receive insurance proceeds sufficient to cover the cost of such repairs, then Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If such work of repair, reconstruction and restoration shall require a period longer than one hundred eighty (180) days, or if said insurance proceeds will not be sufficient to cover the cost of such repairs, then Landlord may either elect to so repair, reconstruct or restore and the Lease shall continue in full force and effect, or Landlord may elect not to repair, reconstruct or restore and the Lease shall then terminate but only if Landlord elects not to repair or reconstruct the Building or any other tenant's premises in the Building. Under any of the conditions of this Section 11.1.1.2, Landlord shall give written notice to Tenant of its intention within sixty (60) days of such determination.

In the event Landlord elects not to restore the Building and/or the Premises, this Lease shall be deemed to have terminated as of the date of such Partial Destruction.

11.1.1.3 Notwithstanding anything to the contrary contained in this Article 11, if all or any part of the Premises or Building is damaged or destroyed, and Tenant cannot be given reasonable use of, and access to, a fully-repaired and restored Premises and Building, and the utilities and services pertaining to the Building and the Premises, within one hundred eighty (180) days of the damage or destruction (subject to the terms of Section 11.4, below), then Tenant may terminate this Lease upon notice to Landlord, given at any time within sixty (60) days following such damage or destruction; provided, however, Tenant may not exercise such cancellation right if Landlord within thirty (30) days following such damage or destruction elects to provide Tenant with reasonably comparable substitute premises in one of the Comparable Buildings, with equivalent or better floor plan and improvements at Landlord's expense and with equivalent or better facilities than Tenant's Improvements and facilities at the Premises, and pays for the extra moves and any related expenses and any and all difference in expenses and costs between the substitute lease and this Lease. The maximum time that Tenant can be required to occupy the substitute premises is one (1) year from the date of damage or destruction.

11.2 Termination And Release. Upon any termination of this Lease pursuant to any of the provisions of this Article 11, the parties shall be released without further obligation to the other from the date possession of the Premises is surrendered to Landlord except for items which have accrued and are then unpaid.

11.3 Temporary Abatement of Rent. In the event of repair, reconstruction and restoration by Landlord as herein provided, the Rent payable pursuant to this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired during the period of such repair, reconstruction or restoration.

11.4 Force Majeure. Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Article 11 and Section 3.5 of this Lease. Notwithstanding anything to the contrary contained in this Article 11, if Landlord has not elected to terminate this Lease pursuant to the terms of Section 11.1.1.1 or 11.1.1.2, above, but is delayed or prevented from repairing or restoring the damaged Premises within one (1) year after the occurrence of such damage or destruction by reason of a Force Majeure Event (as that term is defined in Article 27, below), Tenant, at its option, may terminate this Lease, whereupon Landlord shall be relieved of its obligation to make such repairs or restoration and Tenant shall be released from its obligations under this Lease as of the end of such one year period.

11.5 Uninsured Casualty. If damage is due to any cause other than fire or other peril covered by extended coverage insurance, Landlord may elect to terminate this Lease but only if Landlord elects to terminate all other leases of tenants in the Building whose premises are similarly affected. Under any of the conditions of this Section 11.5, Landlord shall give written notice to Tenant of its election to repair the Premises and/or the Building or terminate the Lease within sixty (60) days of such damage. In the event Landlord elects not to restore the Building and/or the Premises, this Lease shall be deemed to have terminated as of the date of such destruction.

11.6 Limits of Landlord's Obligations. If Landlord is obligated to or elects to repair or restore as herein provided, Landlord shall be obligated to make repair or restoration only of those portions of the Building and the Premises which were originally provided at Landlord's expense or are covered by Landlord's insurance pursuant to the terms of this Lease, and the repair and restoration of items not provided at Landlord's expense shall be the obligation of Tenant.

11.7 Damages at End of Term. Notwithstanding anything to the contrary contained in this Article 11, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered by this Article 11 occurs during the last twelve (12) months of the initial Term or First Option Term, as applicable,

if Tenant has not elected to extend the Term of this Lease, or during the last twelve (12) months of the Second Option Term.

11.8 Exclusive Remedy. This Article 11 shall be Tenant's exclusive remedy in the event of damage or destruction to the Premises or the Building or the Project, and Tenant, as a material inducement to Landlord entering into this Lease, irrevocably waives and releases Tenant's rights under California Civil Code Sections 1932(2) and 1933(4).

ARTICLE 12

EMINENT DOMAIN

12.1 Substantial or Total Taking. If all of the Premises are taken by exercise of the power of eminent domain (or conveyed by Landlord in lieu of such exercise) this Lease will terminate on a date (for purposes of this Article the "Termination Date") which is the earlier of the date upon which the condemning authority takes possession of the Premises or the date on which title to the Premises is vested in the condemning authority. If more than twenty-five percent (25%) of the Rentable Area of the Premises is so taken, and Tenant cannot use the remainder of the Premises to conduct its business therein, Tenant will have the right to cancel this Lease by written notice to Landlord given within thirty (30) days after the Termination Date. If less than twenty-five percent (25%) of the Rentable Area of the Premises is so taken, or if Tenant does not cancel this Lease according to the preceding sentence, the Base Monthly Rent will be abated in the proportion that the Rentable Area of the Premises so taken bears to the Rentable Area of the Premises immediately before such taking, and Tenant's Percentage Share will be appropriately recalculated. If all or substantially all of the Building or the Project is so taken, Landlord may cancel this Lease by written notice to Tenant given within thirty (30) days after the Termination Date. In the event of any such taking, the entire award will be paid to Landlord and Landlord's Mortgagees, as their interests may appear, however, Tenant will have the right to assert a claim, for (i) Tenant's moving expenses, (ii) personal property and equipment, (iii) the unamortized value of the leasehold improvements owned and paid for by Tenant, and (vi) the "bonus value" of the Lease.

12.2 Temporary Taking. In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and Rent shall not abate, and (ii) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term. For purposes of this Section 12.2, a temporary taking shall be defined as a taking for a period of one hundred eighty (180) days or less.

12.3 Waiver. Each party waives the provisions of any statute or court decisions allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the Premises.

ARTICLE 13

DEFAULT AND REMEDIES

13.1 Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Premises is conditioned upon such performance. The notice required by the provisions set forth below are intended to satisfy any and all notice requirements imposed on Landlord by law and is not in addition to any such requirements.

13.2 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder by Tenant:

13.2.1 Failure to Pay. The failure by Tenant to make any payment of Base Monthly Rent or Additional Rent or any other payment required to be made by Tenant pursuant to this Lease, as and when due where such failure shall continue for a period of ten (10) business days after written notice of non-payment thereof from Landlord to Tenant.

13.2.2 Failure to Perform. The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Section 13.2.1 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant. If the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion.

13.3 Landlord's Remedies. In the event of any such default by Tenant, at any time thereafter Landlord shall be entitled to the following rights and remedies:

13.3.1 Termination of Possession. Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder, in which event Landlord may recover from Tenant:

13.3.1.1 the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

13.3.1.2 the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

13.3.1.3 the worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

13.3.1.4 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.

As used in Section 13.3.1.1 and 13.3.1.2 above, the "worth at the time of award" is computed by allowing interest at the maximum rate an individual is permitted to charge by law. As used in Section 13.3.1.3 above, the "worth at the time of award" shall be 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%).

13.3.2 Re-Entry and Removal. In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to 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 re-entry or taking possession of the Premises by Landlord pursuant to this Section 13.3.2 shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant. In addition to its other rights under this Lease, Landlord has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

13.3.3 Reletting the Premises. In the event that Landlord shall elect to re-enter as provided above or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then if Landlord does not elect to terminate this Lease as provided above, Landlord may from time to time, without terminating this Lease, either recover all rent as it becomes due or relet the Premises or any part thereof for the term for this Lease on terms and conditions as Landlord in its sole discretion may deem advisable with the right to make alterations and repairs to the Premises.

In the event that Landlord shall elect to so relet, then rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness other than rent due

pursuant to this Lease from Tenant to Landlord; second, to the payment of any cost of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of rent due and unpaid hereunder and the residue, if any, shall be held by Landlord and applied to payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord immediately upon demand therefore by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred, including but not limited to brokers' commissions, by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

13.3.4 Remedies Cumulative; No Waiver. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant shall be implied from any acceptance by Landlord of any rent or other payments due pursuant to this Lease or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant. Notwithstanding anything in this Lease to the contrary, Landlord acknowledges that Landlord's remedies under this Article 13 and this Lease shall be subject to any limitations imposed by the California Constitution.

13.4 Landlord's Default. Landlord shall not be in default in the performance of any obligation required to be performed by it pursuant to this Lease unless it has failed to perform such obligation within ten (10) Business Days after receipt of written notice by Tenant to Landlord specifying the manner in which Landlord has failed to perform such obligation. If the nature of Landlord's obligation is such that more than ten (10) Business Days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such ten (10) day period and thereafter diligently prosecute the same to completion upon any such default by Landlord. Upon any such default by Landlord, Tenant may exercise any of its rights provided in law or at equity. No waiver of any default of Landlord hereunder shall be implied from any payments by Tenant of any Rent or other payments due hereunder if Tenant makes such payments under protest or by any omission of Tenant to take any action on account of such default. If such default persists or is repeated, no express waiver shall affect defaults other than as specified in said waiver.

ARTICLE 14

ESTOPPEL CERTIFICATES

14.1 Estoppel Certificates.

14.1.1 Landlord's Request. Within thirty (30) days following any written request which Landlord may make from time to time, Tenant shall execute, acknowledge and deliver to Landlord a written statement, in a form substantially similar to the form of Exhibit F, certifying to any potential Mortgagee, encumbrancer or prospective purchaser the matters set forth therein and such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 14.1.1 may be relied upon by any such purchaser or prospective purchaser, encumbrancer, or Mortgagee of the Building or Project.

14.1.2 Failure to Deliver. Tenant's failure to deliver such statement to Landlord within such thirty (30) day period shall be conclusive upon Tenant that (i) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) this Lease has not been cancelled or terminated and is in full force and effect, except as otherwise represented by Landlord; (iii) the current amount of the Base Monthly Rent is as represented by

Landlord; (iv) there have been no subleases or assignments of the Lease; (v) not more than one month's Base Monthly Rent or other charges have been paid in advance; and (vi) Landlord is not in default under the Lease. Tenant's failure to deliver such statement within thirty (30) days of receipt of Landlord's request therefor shall constitute a default under this Lease.

14.1.3 Landlord's Certificate. Landlord shall, at any time and from time to time, within ten (10) days following notice by Tenant, execute, acknowledge and deliver to Tenant a statement in writing prepared by Tenant and edited by Landlord, as appropriate, 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), the dates to which Tenant has paid rent, adjustments to rent, and other charges in advance, if any, stating whether or not to the best knowledge of Landlord, Tenant is in default in the performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default of which Landlord may have knowledge, or containing any other information or certifications which reasonably may be requested by Tenant, any proposed assignee or sublessee of Tenant, or any person or entity that Tenant requests that such information be provided to. Any such statement, delivered pursuant to this subsection, may be relied upon by any proposed assignee or sublessee or any proposed lender of Tenant. Landlord's failure to deliver such statement within thirty (30) days of receipt of Tenant's request shall constitute a default by Landlord under this Lease.

ARTICLE 15

HOLDING OVER; SURRENDER OF PREMISES

15.1 Holding Over. If Tenant holds over after the expiration or earlier termination of the term hereof without the express written consent of Landlord, Tenant shall become a Tenant at sufferance only, at a rental rate equal to the Base Monthly Rent in effect upon the date of such expiration (including adjustments to the Base Monthly Rent as provided in Article 3 hereof and prorated on a daily basis), and otherwise subject to the terms, covenants and conditions herein specified, so far as applicable. Acceptance by Landlord of Rent after such expiration or earlier termination shall not result in a renewal of this Lease.

15.2 Surrender of Premises.

15.2.1 Surrender of Lease Not Merger. A surrender of this Lease by Tenant, a cancellation of this Lease by mutual agreement between Landlord and Tenant, or a termination of this Lease for any reason shall not automatically work a merger. After such a surrender, cancellation or termination Landlord, at Landlord's option, may elect to treat such surrender, cancellation or termination as an assignment to Landlord of any or all such subleases or subtenancies. The delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

15.2.2 Condition of Premises. Upon the expiration or earlier termination of the Term, Tenant shall surrender possession of the Premises to Landlord in the same good order, condition, and repair as when received by Tenant or as thereafter improved by Landlord or Tenant excepting only reasonable wear and tear which Tenant was not otherwise obligated to remedy pursuant to any provision of this Lease. In such event, Tenant shall, at its expense, promptly remove or cause to be removed from the Premises all debris, rubbish, furniture, equipment, business and trade fixtures, freestanding cabinet work, shelving, movable partitions, and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises (exclusive of any items described in Subsection 15.2.3), and all similar articles of any other persons claiming under Tenant, unless Landlord exercises its option to have any subleases or subtenancies assigned to it. Tenant shall also repair, at its expense, all damages which removals from or restoration of the Premises may cause.

15.2.3 Affixed Improvements. All fixtures, equipment, alterations, additions, improvements, and/or appurtenances attached to or built into the Premises prior to or during the Lease Term, whether at the expense of Landlord, at the expense of Tenant, or at the expense of

both, shall be and remain part of the Premises and shall not be removed by Tenant at the end of the Lease Term, unless otherwise expressly provided for in this Lease or by separate written agreement of the parties.

ARTICLE 16

QUIET ENJOYMENT

Landlord covenants and agrees that Tenant, upon paying the Rent and any and all other charges herein provided for and observing and performing the covenants, agreements and conditions of this Lease to be observed and performed by Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with this Lease.

ARTICLE 17

SUBORDINATION

17.1 Landlord's Election. Landlord agrees that, within thirty (30) days from the Effective Date (as that term is defined in Section 34.22, below), it will use its best efforts to provide Tenant with non-disturbance agreements in favor of Tenant from any ground lessors, mortgage holders or lien holders then in existence, in a form substantially similar to the form attached to this Lease as Exhibit H. This Lease shall be subject and subordinate at all times to:

17.1.1 all ground leases or underlying leases which may now exist or hereafter be executed affecting the Building or the Building Lot or both, and

17.1.2 the lien of any Mortgage, or specific provisions of any such Mortgage as determined by Landlord and its lenders which may now exist or hereafter be executed in any amount for which the Building, Building Lot, ground leases or underlying leases, or Landlord's interest or estate in any of said items is specified as security; provided that in consideration of, and as a condition precedent to, Tenant's agreement to permit its interest pursuant to this Lease to be subordinated to any particular future ground or underlying lease of the Building or the Building Lot or to the lien of any first Mortgage, hereafter enforced against the Building or the Building Lot and to any renewals, extensions, modifications, consolidations and replacements thereof, Landlord shall deliver to Tenant a commercially reasonable non-disturbance agreement executed by the landlord under such ground lease or underlying lease or the holder of such Mortgage, which agreement shall provide, at a minimum, that as long as Tenant is not in default of the provisions of this Lease, this Lease shall remain in effect, notwithstanding a judicial foreclosure or sale in lieu of foreclosure.

17.2 Delivery of Documents. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens or specific provisions of such liens as determined by Landlord and its lenders to this Lease. In the event that any ground lease or underlying lease terminates for any reason or any Mortgage is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor-in-interest to Landlord, at the option of such successor-in-interest. Subject to the terms of Section 17.1.2, above, Tenant covenants and agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases or underlying leases or the lien of any such Mortgage. Should Tenant fail to sign and return any such documents within thirty (30) business days of request Tenant shall be in default under this Lease.

ARTICLE 18

LIENS

Tenant shall not permit any mechanics', materialmen's or other liens to be filed against the Premises or the Project, except for those liens being contested and bonded in accordance with the terms of Section 7.5 above. Landlord shall have the right at all reasonable times to post and

keep posted on the Premises any notices which it deems necessary for protection from such liens. If any such liens are filed, Landlord may, without waiving its rights and remedies based on such breach of Tenant and without releasing Tenant from any of its obligations, cause such liens to be released by any means it shall deem proper, including payments in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord at once, upon notice by Landlord, any sum paid by Landlord to remove such liens.

ARTICLE 19

BANKRUPTCY

If Tenant is otherwise in default under this Lease and if Tenant shall file a petition in bankruptcy pursuant to any provision of the Bankruptcy Code as then in effect, or if Tenant shall be adjudicated a bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within sixty (60) days from the date thereof, or if a receiver or trustee shall be appointed of Tenant's property and the order appointing such receiver or trustee shall not be set aside or vacated within sixty (60) days after the entry thereof, or if Tenant shall assign Tenant's estate or effects for the benefit of creditors, or if this Lease shall, by operation of law or otherwise, pass to any person or persons other than Tenant, then in any such event Landlord may terminate this Lease, if Landlord so elects, with or without notice of such election and with or without entry or action by Landlord.

ARTICLE 20

PROFESSIONAL FEES

If either party incurs any costs or expenses in connection with any action instituted by either party by reason and on any dispute under this Lease or any alleged default of the other party, then all costs and expenses, including without limitation, its actual professional fees such as appraisers', accountants', and attorneys' fees, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

ARTICLE 21

PERFORMANCE BY TENANT

If Tenant shall fail to pay any sum of money owed to any party other than Landlord, for which Tenant is liable pursuant to this Lease, or if Tenant shall fail to perform any other obligation on its part to be performed pursuant to this Lease, and such failure shall continue for thirty (30) days after notice thereof by Landlord, Landlord may, without waiving or releasing Tenant from its obligations, but shall not be obligated to, make any such payment or perform any such other act to be made or performed by Tenant. All sums so paid by Landlord and all necessary incidental costs together with interest thereon at the maximum rate permissible by law (but not in excess of the Prime Rate), from the date of such payment by Landlord, shall be payable to Landlord on demand. Tenant covenants to pay any such sums, and Landlord shall have (in addition to any other right or remedy of Landlord) all rights and remedies in the event of the nonpayment thereof by Tenant as are set forth in Article 13.

ARTICLE 22

MORTGAGEE PROTECTION

In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a first or lower priority Mortgage covering the Project whose address shall have been furnished to Tenant, and shall offer such 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.

ARTICLE 23

DEFINITION OF LANDLORD

The term "Landlord," as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner at the time in question, of the fee title of the Premises or the lessee under a ground lease, if any. In the event of any transfer, assignment or other conveyance of title, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of any and all liability for the performance of all covenants or obligations of Landlord thereafter to be performed. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord pursuant to this Lease, during its ownership of the Premises, Building and/or the Building Lot.

ARTICLE 24

WAIVER

24.1 Waiver by Landlord. Landlord's waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice which may grow up between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of Landlord to insist upon full performance by Tenant of the terms, covenants and conditions of this Lease in strict accordance with the terms thereof. The subsequent acceptance of Rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant or any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. Acceptance by Landlord of a sum less than the Base Monthly Rent and Additional Rent or other sum then due shall not be deemed to be other than on account of the earliest installment of such rent or other amount due, nor shall any endorsement or statement on any check or any letter accompanying any check be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or other amount or pursue any other remedy provided in this Lease.

24.2 Waiver by Tenant. Tenant's waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice which may grow up between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of Tenant to insist upon the performance by Landlord in strict accordance with said terms. Any payments of rents or other sums hereunder by Tenant shall not be deemed a waiver of any preceding breach by Landlord of any term, covenant or condition of this Lease, regardless of Tenant's knowledge of such preceding breach at the time of payment of such rent or other sums.

ARTICLE 25

IDENTIFICATION OF TENANT

INTENTIONALLY OMITTED

ARTICLE 26

PARKING

26.1 Lease of Spaces. Tenant, its employees and invitees shall have the right to use certain areas designated by Landlord for parking automobiles on a non-exclusive non-reserved basis. Landlord shall have the right to designate where parking spaces shall be located and may reserve certain spaces from Tenant's use as Landlord may reasonably require. Landlord shall

have the right to require that Tenant pay a separate and additional charge for such parking. Such charge shall be at the then prevailing parking rates for parking in the Building's parking facilities; provided however, Landlord will make available to Tenant up to sixty-eight (68) parking spaces for use by the City's Fire Department at parking rates consistent with the parking rates charged by the City of San Diego at its parking facility in the City Community Concourse. Any failure to require such a separate and additional charge, at any time during the Term, shall not operate as a waiver or otherwise preclude Landlord from, at some later time, instituting such a separate and additional charge. Notwithstanding anything contained to the contrary in Article 26 of this Lease, during the Term of this Lease and any extension or renewals thereof, Tenant shall have the right to lease up to one (1) parking space per 1,000 square feet of Rentable Area in the Premises, which total amount of parking spaces shall include the parking spaces for use by the City's Fire Department set forth in this Section 26.1. Rent for each parking space shall be payable at the same time and in the same manner as Base Monthly Rent. Each time Tenant exercises its right to expand the Premises in accordance with this Lease, the foregoing right to lease parking spaces at a rate of up to one (1) parking space per 1,000 square feet of Rentable Area of such Additional Space shall apply.

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

ARTICLE 27

FORCE MAJEURE

The period for performance of any obligation by either party shall be extended (except for Tenant's obligations to pay Rent, Additional Rent and other charges due pursuant to this Lease which obligations shall not be extended) by the period of any delay in performance caused by an act of God, labor strike, adverse weather conditions, shortage of materials, war, invasion, acts of a public enemy, governmental preemption in connection with a national emergency, riot, laws, rules, regulations or order of governmental or military authorities, or failure or defect in the supply, quantity or character of utilities furnished to the Building or Premises (collectively "Force Majeure Event"), excluding from all the foregoing financial inability.

ARTICLE 28

LIMITATION ON LIABILITY

In consideration of the benefits accruing to Tenant pursuant to this Lease, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord, the extent of Landlord's liability shall be strictly limited to and shall not extend beyond Landlord's interest in the Project.

ARTICLE 29

MODIFICATION FOR LENDER

If, in connection with obtaining construction, interim or permanent financing or refinancing for the Building and/or the Project any Mortgagee shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such modifications do not increase the rental or other obligations of Tenant hereunder or materially or adversely affect the leasehold estate created by this Lease or Tenant's rights hereunder.

ARTICLE 30

FINANCIAL STATEMENTS

INTENTIONALLY OMITTED

ARTICLE 31

LENDER APPROVAL

INTENTIONALLY OMITTED

ARTICLE 32

RELOCATION

INTENTIONALLY OMITTED

ARTICLE 33

LEASE INCENTIVES

INTENTIONALLY OMITTED

ARTICLE 34

MISCELLANEOUS

34.1 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California.

34.2 Headings and Titles. The captions of the Articles or Sections of this Lease are only to assist the parties in reading this Lease and shall have no effect upon the construction or interpretation of any part hereof.

34.3 Interpretation. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other. In any provision relating to the conduct, acts or omissions of Tenant, the term "Tenant" shall include Tenant's agents, employees, contractors, invitees, successors or others using the Premises with Tenant's express or implied permission.

34.4 Successors and Assigns. Except as otherwise specifically provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

34.5 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

34.6 Severability. If any term or provision of this Lease is held invalid or unenforceable to any extent under any applicable law by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby, and each remaining term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

34.7 Integration. This Lease, along with any exhibits, attachments or other documents affixed hereto or referred to herein, constitutes the entire agreement between Landlord and Tenant relative to the leasing of the Premises. This Lease and such exhibits, attachments and other documents may be amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant hereby agree that no prior agreement, understanding or representation pertaining to any matter covered or mentioned in this Lease shall be effective for any purpose.

34.8 Notices. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid or by nationally or locally recognized overnight or same day delivery service which provides for acknowledgment of delivery. Notices to Tenant shall be delivered to the address specified in Section 14 of the Basic Lease Provisions. Notices to Landlord shall be delivered to the address

specified in Section 14 of the Basic Lease Provisions. All notices shall be effective upon personal delivery or three (3) days after deposit in the U.S. Mail. Either party may change its notice address upon written notice to the other party.

34.9 No Light, Air or View Easements. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building or elsewhere in the Project shall in no way affect this Lease or impose any liability on Landlord.

34.10 Brokers. Landlord and Tenant acknowledge that the brokers who procured this Lease are, unless otherwise specifically provided in this Lease, specified in Section 11 of the Basic Lease Provisions. Landlord shall be solely responsible for the payment of brokerage commissions to such brokers, and Tenant shall have no responsibility therefor unless written provision to the contrary has been made a part of this Lease. If Tenant has dealt with any other real estate broker or agent or any other person in connection with the leasing of space in the Building, Tenant shall be solely responsible for the payment of any fee due such person, and Tenant shall indemnify, defend and hold Landlord harmless from and against any liability in respect thereto, including attorneys' fees and costs.

34.11 No Partnership. This Lease shall not be construed to constitute any form of partnership or joint venture between Landlord and Tenant. Landlord and Tenant mutually acknowledge that no business or financial relationship exists between them other than as Landlord and Tenant, and that Landlord is not responsible in any way for the debts of Tenant or any other party.

34.12 Recording. Neither Landlord nor Tenant shall record this Lease nor a short form memorandum of this Lease without the prior written consent of the other.

34.13 Consent/Duty to Act Reasonably. Regardless of any reference to the words "sole" or "absolute" (but except for matters which could have an adverse affect on the Building's plumbing, heating, life safety, ventilating, air conditioning, or electrical systems ("Building Systems"), or which could affect the exterior appearance of the Building, whereupon in each such case Landlord's and Tenant's duty is to act in good faith) anytime the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld or delayed. Whenever the Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations, Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the other parties reasonable expectations concerning the benefits to be enjoyed under the Lease.

34.14 Exhibits. All exhibits, schedules and addenda attached to this Lease are incorporated herein by references as though fully set forth herein.

34.15 Compliance with the City of San Diego Equal Opportunity Contracting Program. Landlord shall comply with the City's Equal Opportunity and Minority and Women Business Enterprise Contracting Programs, approved by the City Council and filed with the City Clerk as document RR-262633. Landlord shall submit a Certificate of Compliance with Title VII of the Civil Rights Act of 1984, as amended, the California Fair Employment Practices Act, and other applicable federal and state laws and regulations hereinafter enacted. Landlord understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease.

34.16 Disabled Access. Landlord hereby agrees to comply with the California State Building Code, Title 24, and the Federal Rehabilitation Act of 1973, Section 504, Americans with Disabilities Act (Public Law 101-336) Minimum Guidelines & Regulations for Accessible Design, and any other applicable, federal and/or state laws and regulations hereinafter enacted (collectively, the "Disabled Access Codes") within the Building Common Areas. Landlord agrees to comply with the City's disabled access requirements by bringing up to City code and making accessible any areas of the Building Common Areas which deny access to disabled persons. All such improvements and alterations to the Building Common Areas in order to bring the Building Common Areas into compliance with Disabled Access Codes existing as of the Commencement Date shall be at the sole expense and cost of Landlord and shall not be included

in Operating Expenses. Tenant hereby agrees to comply with the Disabled Access Codes within the Premises. All such improvements and alterations to the Premises shall be at the sole expense and cost of Tenant, which costs may, at Tenant's option, be deducted from the Tenant Improvement Allowance. Landlord and Tenant each understand that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Lease.

34.17 Option to Purchase Building. Provided there is no continuing and uncured default by Tenant under this Lease, Tenant shall have the option to purchase the Building ("Purchase Option") on the terms and conditions set forth herein. If at any time during the Term (including any extensions thereof) Landlord desires to sell the Building (or any interest therein) or receives a bona-fide offer for the purchase of the same from a third party, then before entering into an agreement to sell the Building, Landlord shall provide Tenant with written notice ("Notice of Sale") of its desire to sell the Building and the price, terms and conditions of such bona-fide offer or, in the absence of such bona-fide offer, the price, terms and conditions reasonably determined by Landlord to be the fair market value of the Building. If, within thirty (30) days after receipt of the Notice of Sale, Tenant gives Landlord written notice of its interest in purchasing the Building at the price and upon the terms and conditions contained in the Notice of Sale, Landlord and Tenant shall enter into a legally binding agreement to carry out the previously expressed intent promptly and in good faith. If Tenant fails to respond to the notice within said thirty (30) day period, there shall be a conclusive presumption that Tenant has elected not to exercise the Purchase Option and Landlord may sell the Building upon substantially similar terms (i.e., a purchase price of at least 95% of the purchase price set forth in the Notice of Sale) without any further obligation to Tenant. If, however, Landlord desires to sell the Building on terms substantially more favorable than set forth in the Notice of Sale which would have the effect of creating a more favorable opportunity for any third party purchaser (i.e., a price reduction of more than 5%) or fails to sell the Building on such terms and conditions within one hundred and eighty (180) days of Tenant's receipt of the Notice of Sale (unless Landlord is then engaged in an active escrow or negotiations for the sale of the Building on such terms and conditions identified by Landlord in the Notice of Sale), then any further transaction shall be deemed a new determination by Landlord to sell the Building and the provisions of this Section shall again be applicable. Notwithstanding anything in this Section 34.17 to the contrary, this Section 34.17 shall not be applicable (i) in the event the existing first Mortgagee becomes the owner of the Building through foreclosure or deed in lieu thereof, or (ii) in the event Landlord elects to sell or transfer ownership of the Building to an entity which is a subsidiary, affiliate, or related entity of Landlord, or any entity, which in whole or in part is owned by, affiliated with, or which is acquired by, or which acquires Landlord, or is merged into Landlord, or into which Landlord is merged.

34.18 Storage Space. During the period from April 1, 1999, to October 1, 1999, Tenant shall have the right to lease up to twelve hundred (1200) usable square feet of storage space ("Storage Space") located on the lower level of the Building for the Term including any extensions thereto. Rent for the Storage Space shall be at the rate of Seventy-Five Cents (\$.75) per usable square foot per month, fixed for the remainder of the Term. Subsequent to October 1, 1999, Tenant shall have the right to lease additional storage space, subject to availability. Rent for such additional storage space shall be the prevailing rental rate for similar storage space in downtown San Diego office buildings.

34.19 Refurbishment Allowance. On the first day of the seventh (7th) Lease Year, Landlord shall provide Tenant with a cash refurbishment allowance ("Refurbishment Allowance") to be used by Tenant for the purpose of repainting, recarpeting, refurbishing and other miscellaneous repairs to the Premises as Tenant, in its discretion, shall determine. The Refurbishment Allowance shall not exceed Five and No/100 Dollars (\$5.00) per rentable square foot of the Premises which Tenant then leases and occupies, excluding any Additional Space leased by Tenant pursuant to Section 2.4, above, for which Tenant shall receive the Additional Space Refurbishment Allowance (defined below). In addition, on the first day of the seventh (7th) year of the term of Tenant's occupancy of any Additional Space, Landlord shall provide Tenant with a cash refurbishment allowance ("Additional Space Refurbishment Allowance") to be used by Tenant for the purpose of repainting, recarpeting, refurbishing and other

MAR 12 '99 15:56 FR ALLEN MATKINS LECK 310 788 2410 TO ##58749161923667 P.02/02

miscellaneous repairs to the Additional Space as Tenant, in its discretion, shall determine. The Additional Space Refurbishment Allowance shall not exceed the product of (i) Five and No/100 Dollars (\$5.00) per rentable square foot of such Additional Space, multiplied by (ii) a fraction, the numerator of which is the number of years remaining in the initial Term as of the expiration of the sixth (6th) year of the term of Tenant's occupancy of such Additional Space and the denominator of which is the number nine (9).

In the event Tenant does not use the entire Refurbishment Allowance, or Additional Space Refurbishment Allowance, as the case may be, Tenant shall have the option of receiving the unused portion of the Refurbishment Allowance, or Additional Space Refurbishment Allowance, as the case may be, in the form of a check made payable to Tenant or to apply said unused portion to the next installments of Base Monthly Rent due under this Lease.

34.20 Building Conference Facility. Landlord will furnish and make available to Tenant a conference facility in the lower level of the main lobby of the Building (i.e., the same floor as the deli and sundry shop) for use by all tenants of the Building on an "as available" basis, with the scheduling for such conference facility to be handled by the office of the Building. The conference facility shall be approximately 1539 square feet and shall have a large conference table capable of seating twenty (20) with additional chairs available. Tenant shall have the right, at no additional charge to Tenant, to use the conference facility subject, however, to such reasonable rules and regulations as Landlord may establish from time to time.

34.21 Transportation Demand Management. Landlord agrees to comply with any lawful ordinance or regulation of the City of San Diego and/or the County of San Diego respecting transportation demand management programs in those jurisdictions, related to the conduct of Tenant's business in the Premises and will provide Tenant with written notice of such compliance.

34.22 Existing Lease. Landlord and Tenant acknowledge that Tenant currently occupies the Premises pursuant to that certain Office Lease by and between Landlord and Tenant, dated October 21, 1991, as amended by that certain Addendum to Lease dated October 21, 1991, that certain Letter Agreement dated January 31, 1992, that certain Letter Agreement dated November 19, 1992, that certain Letter Agreement dated August 2, 1994, that certain Addendum dated September 14, 1994, that certain Lease Addendum dated February 26, 1996, and that certain Lease Addendum dated October 16, 1997 (collectively, the "Existing Lease"). As this Lease amends and restates the Existing Lease, the Existing Lease shall be deemed, as of the Effective Date (as that term is defined below), to have terminated and to have come to an end as of the Commencement Date as if that day were the date set forth in such Existing Lease for the termination thereof and Landlord and Tenant shall be relieved from any obligations thereunder except for Tenant's obligation to pay Base Monthly Rent and Tenant's Percentage Share of increases in Operating Expenses, if any, up to the Commencement Date. All of the space in the Building covered by the Existing Lease shall, as of the Effective Date, be governed by the terms and conditions of this Lease as if this Lease had commenced on the Commencement Date, and the Base Monthly Rent with respect thereto shall be as specified in Section 8 of the Basic Lease Provisions and shall be payable with respect to any such space for any period during which it is occupied by Tenant. Landlord and Tenant specifically acknowledge that the effectiveness of this Lease is contingent upon the adoption of an ordinance ("Ordinance") approving this Lease by the City Council of Tenant and that such Ordinance will not become fully effective until the expiration of the thirty (30) day appeal period following the date of the adoption (the "Adoption Date") of the Ordinance by the City Council (the date upon which such thirty (30) day appeal period following the Adoption Date expires to be known as the "Effective Date"). If the Effective Date has not occurred on or before May 14, 1999, then Tenant shall provide Landlord with a written notice (the "Termination Notice") thereof on or before May 14, 1999. Upon receipt of the Termination Notice, this Lease shall be of no further force or effect and the Existing Lease shall not be deemed terminated on the Commencement Date and shall continue in full force and effect on the terms and conditions set forth therein.

34.23 Year 2000 Compliance. Landlord hereby agrees that Landlord shall use commercially reasonable, good faith efforts to insure that all changes to the Building Systems which are required for the proper functioning of the Building Systems as of and following January 1, 2000, based upon the "year 2000" problem ("Year 2000 Compliance") are timely

completed. In the event that Landlord reasonably anticipates that Year 2000 Compliance will not be timely completed, Landlord shall deliver notice thereof to Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

LANDLORD

TENANT

Executive One Associates,
an Illinois limited partnership

The City of San Diego,
a Municipal corporation

By: [Signature]
Jerry J. Ong, Vice President
Agent for the Partnership

By: [Signature]
Its: Real Estate Assets Director (Acting)

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT. ^{LEGALITY}
CASEY GUINN, CITY ATTORNEY
By: Prescilla Dugard

Name: Prescilla Dugard
Title: City Attorney
^A
Deputy

0-18636