

2400 BUILDING AT CIVIC CENTER S Q U A R E

2440 Tulare Street
Fresno, California

Office Lease [Triple Net]

Tenant:
City of Fresno, California
a Municipal Corporation
through its
City Attorney's Office

Landlord:
Tutelian Holdings I, LLC
By
Civic Center Square, Inc.
a California Corporation, Managing Member

Lease Date: _____

Premises Address: 2440 Tulare Street, Suite 100

Premises Rentable SF: 6,499

TABLE OF CONTENTS

ARTICLE 1 - INTRODUCTORY PROVISIONS.....	1
1.01 FUNDAMENTAL LEASE PROVISIONS	1
1.02 EXHIBITS.....	4
1.03 ADDITIONAL DEFINITIONS	4
ARTICLE 2 - PREMISES, BUILDING AND COMMON AREAS	5
2.01 PREMISES	5
2.02 COMMON AREAS.....	5
2.03 LANDLORD’S USE AND OPERATION OF THE BUILDING AND COMMON AREAS	6
ARTICLE 3 - LEASE TERM.....	6
3.01 INITIAL TERM.....	6
3.02 OPTION TO EXTEND	6
ARTICLE 4 – RENT	7
4.01 BASE RENT	7
4.02 RENTAL ADJUSTMENT	7
4.03 ADDITIONAL RENT.....	8
4.04 INTEREST AND LATE CHARGES.	8
4.05 PAYMENT OF RENT	8
ARTICLE 5 - BUILDING OPERATING COSTS	8
5.01 PERSONAL PROPERTY TAXES.....	8
5.02 TENANT’S OBLIGATION TO PAY TENANT’S PROPORTIONATE SHARE OF OPERATING COSTS	8
5.03 BUILDING OPERATING COSTS.	9
5.04 EXCLUSIONS FROM BUILDING OPERATING COSTS	9
5.05 TENANT’S PROPORTIONATE SHARE	10
5.06 CALCULATION OF BUILDING OPERATING COSTS AND PORTION THEREOF TO BE PAID BY TENANT AS ADDITIONAL RENT.....	10
5.07 DISPROPORTIONATE USE	11
ARTICLE 6 - SECURITY DEPOSIT.....	11
6.01 PAYMENT OF SECURITY DEPOSIT	11
6.02 APPLICATION OF SECURITY DEPOSIT	11
6.03 BANKRUPTCY	11
6.04 TRANSFER OF LANDLORD’S INTEREST	11
6.05 ADJUSTMENT	11
ARTICLE 7 - USE OF PREMISES	11
ARTICLE 8 - UTILITY, JANITORIAL AND OTHER SERVICES.....	12
8.01 SERVICE TO BE PROVIDED BY LANDLORD	12
8.02 SERVICES TO BE PROVIDED BY TENANT	13
ARTICLE 9 - ALTERATION AND REPAIRS.....	12
ARTICLE 10 – INSURANCE	14
10.01 TENANT INSURANCE	14
10.02 COMPREHENSIVE GENERAL LIABILITY INSURANCE	14
10.03 PHYSICAL DAMAGE INSURANCE	14
10.04 WORKER’S COMPENSATION AND EMPLOYER’S LIABILITY INSURANCE	15
10.05 FORM OF POLICIES	15
10.06 SUBROGATION	15
10.07 ADDITIONAL INSURANCE OBLIGATIONS	15
10.08 TENANT’S COMPLIANCE WITH LANDLORD’S FIRE AND CASUALTY INSURANCE	15
10.09 EXCULPATION AND INDEMNIFICATION	15
10.10 LANDLORD INSURANCE	15
ARTICLE 11 - CASUALTY DAMAGE AND RECONSTRUCTION.....	16
11.01 DEFINITIONS	16

11.02	INSURED LOSS	16
11.03	UNINSURED LOSS.....	16
11.04	OFFICE BUILDING TOTAL DESTRUCTION	17
11.05	DAMAGE NEAR END OF TERM	17
11.06	ABATEMENT OF RENT	17
11.07	RELEASE FROM LIABILITY	18
11.08	WAIVER OF STATUTORY RIGHTS OF TERMINATION	18
ARTICLE 12 - DEFAULT; REMEDIES		18
12.01	TENANT'S DEFAULT	18
12.02	LANDLORD'S REMEDIES UPON DEFAULT	19
12.03	APPOINTMENT OF A RECEIVER.....	20
12.04	LANDLORD'S RIGHT TO CURE TENANT'S DEFAULT	20
12.05	TENANT'S REIMBURSEMENT	20
12.06	INDUCEMENT RECAPTURE	20
ARTICLE 13 - SUBORDINATION AND MORTGAGES.....		20
ARTICLE 14 – NONWAIVER		21
ARTICLE 15 - ASSIGNMENT AND SUBLETTING		21
15.01	RESTRICTION ON ASSIGNMENT AND SUBLETTING	23
15.02	PROCEDURE TO REQUEST LANDLORD'S CONSENT	23
15.03	NO RELEASE	23
15.04	REQUIRED DOCUMENTS.....	23
15.05	LANDLORD PAYMENT	23
15.06	NO HYPOTHECATION BY TENANT	23
ARTICLE 16 - SURRENDER OF PREMISES.....		23
16.01	SURRENDER OF PREMISES	23
16.02	REMOVAL OF TRADE FIXTURES	23
ARTICLE 17 - HOLDING OVER.....		23
ARTICLE 18 - ESTOPPEL CERTIFICATE		24
ARTICLE 19 – CONDEMNATION.....		24
ARTICLE 20 - RULES AND REGULATIONS		24
ARTICLE 21 – SIGNS		24
ARTICLE 22 - ENTRY BY LANDLORD		25
ARTICLE 23 - ATTORNEY FEES		25
ARTICLE 24 - ARBITRATION OF DISPUTES		25
ARTICLE 25 - TENANT PARKING		26
ARTICLE 26 - GUARANTOR.....		26
ARTICLE 27 - GENERAL PROVISIONS		26
27.01	CAPTIONS	26
27.02	"LANDLORD" AND "TENANT"	27
27.03	"PERSONS"	27
27.04	NONEXCLUSIVE REMEDIES	27
27.05	INDEPENDENT COVENANTS.....	26
27.06	SUCCESSORS AND ASSIGNS	27
27.07	ENTIRE AGREEMENT	27
27.08	TIME	27
27.09	SEVERANCE	27
27.10	NOTICES.....	28
27.11	AUTHORITY OF PARTIES.....	27
27.12	BROKERS	28
27.13	INTEGRATION	28
27.14	JOINT AND SEVERAL	28
27.15	FORCE MAJEURE.....	28
27.16	BUILDING NAME AND SIGNAGE	28

27.17 LANDLORD EXCULPATION 29

27.18 HAZARDOUS MATERIAL 29

27.19 NO DISCRIMINATION..... 29

27.20 GOVERNING LAWS 30

27.21 SUBMISSION OF LEASE 30

Initials:  // _____
LANDLORD TENANT

OFFICE LEASE

2440 TULARE BUILDING

THIS LEASE IS MADE AS OF THE ____ DAY OF JULY 2023

BY AND BETWEEN

TUTELIAN HOLDINGS I, LLC, a California limited liability company ("LANDLORD"),

AND

CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its
City Attorney's Office ("TENANT")

NOW THEREFORE, in consideration of the payment of rent and the performance of the covenants contained herein on the part of Tenant and Landlord, the parties hereto agree as follows:

ARTICLE 1 - INTRODUCTORY PROVISIONS

1.01 Fundamental Lease Provisions.

The following fundamental lease provisions are presented in this Paragraph to facilitate convenient reference by the parties hereto, and, unless otherwise hereinafter defined, the terms set forth below, whenever elsewhere referred to in this Lease, shall have the meaning set forth in this Paragraph 1.01.

(a) Premises:

The "Premises" shall mean a portion of an office building located at 2440 Tulare Street, Fresno, California (the "Building") on land legally described on **Exhibit "A"** attached hereto (the "Land"). **Exhibit "A-1"** is a site plan indicating the current location of Landlord's improvements upon the Land, including the Building, Parking Structure and common areas, together the "Project". The Premises shall be on the first floor in the location shown on **Exhibit "A-2"**. The Premises as herein contemplated contain approximately 6,499 square feet of rentable Floor Area in the Building. The Premises has a street address of 2440 Tulare Street, Suite 100, Fresno, California 93721.

(b) Landlord's Work and Delivery of the Premises:

Landlord's Work and delivery of the Premises shall be as set forth in **Exhibit "C"**. The procedure for the Tenant Improvement work is as set forth in **Exhibit "C"**.

(c) Rent Commencement Date:

The Rent Commencement Date shall be two (2) months following the delivery by Landlord of the Premises to Tenant or as may be modified by the provisions of **Exhibit "G"**. The tentative Rent Commencement Date is November 1, 2023. The Term Commencement Date, the Rent Commencement Date and the Expiration Date of this Lease shall be set forth in Landlord's Notice of Certain Term Dates, which shall be in the form set forth in **Exhibit "B"** and shall be delivered to Tenant by Landlord promptly following the determination of the Rent Commencement Date.

(d) Term:

The "Term" of this Lease shall mean the period of time commencing as of the date Landlord delivers and Tenant accepts possession of the Premises (the "Term Commencement Date") and continuing thereafter until Ten (10) years following the Rent Commencement Date (plus, if the Rent Commencement Date is not the first day of a calendar month, the partial calendar month including and immediately following the Rent Commencement Date). The Rent Commencement Date and Expiration Date of this Lease shall be set forth in Landlord's Notice of Certain Term Dates, which shall be in the form set forth in **Exhibit "B"** and shall be delivered to Tenant by Landlord promptly following the determination of the Rent Commencement Date.

(e) Base Rent:

Monthly Base Rent is abated for the first two (2) months following the Term Commencement Date.

Beginning on the Rent Commencement Date, Base Rent for the Term shall be in accordance with the following schedule:

Monthly Base Rent					
Year		Rent PSF	Rent/Mos	Parking/Mos	Total Base Rent
1-Sep-23	31-Oct-23	\$0.00	\$0.00	\$1,445.00	\$1,445.00
1-Nov-23	31-Oct-24	\$1.80	\$11,698.20	\$1,445.00	\$13,143.20
1-Nov-24	31-Oct-25	\$1.85	\$11,990.66	\$1,479.00	\$13,469.66
1-Nov-25	31-Oct-26	\$1.89	\$12,290.42	\$1,513.00	\$13,803.42
1-Nov-26	31-Oct-27	\$1.94	\$12,597.68	\$1,547.00	\$14,144.68
1-Nov-27	31-Oct-28	\$1.99	\$12,912.62	\$1,581.00	\$14,493.62
1-Nov-28	31-Oct-29	\$2.04	\$13,235.44	\$1,615.00	\$14,850.44
1-Nov-29	31-Oct-30	\$2.09	\$13,566.33	\$1,649.00	\$15,215.33
1-Nov-30	31-Oct-31	\$2.14	\$13,905.48	\$1,683.00	\$15,588.48
1-Nov-31	31-Oct-32	\$2.19	\$14,253.12	\$1,717.00	\$15,970.12
1-Nov-32	31-Oct-33	\$2.25	\$14,609.45	\$1,751.00	\$16,360.45

(f) Tenant Improvement Allowance:

N/A

(g) Use:

Limited to general office use in connection with the City Attorney's Office and purposes incidental thereto as more fully set forth in Article 7 of this Lease.

(h) Security Deposit:

Waived

(i) Advance Rent:

Concurrently with execution of this Lease, Tenant is paying to Landlord an amount equal to the sum of the first month's Base Rent plus one (1) month of estimated Tenant's Proportionate Share of Building Operating Costs, an amount of Eighteen Thousand Nine Hundred Twenty-Seven and 31/100 Dollars (\$13,143.20+\$5,784.11=\$18,927.31), which shall be applied to the Base Rent due for the first full calendar month following the Rent Commencement Date. Landlord's signature herein below acknowledges receipt of this payment.

(j) Building Operating Costs:

This Lease is a Triple-Net (NNN) Lease wherein Tenant, in addition to Base Rent, pays as Additional Rent its proportionate share of building Operating Costs, including utilities and janitorial service within the Premises, on a monthly basis. Tenant shall pay its Proportionate Share of Building Operating Costs, as set forth in Article 5 of this Lease, monthly as Additional Rent commencing upon the Term Commencement Date.

(k) Tenant's Proportionate Share:

Tenant's Proportionate Share of Building Operating Costs shall be as set forth in this subparagraph ("Tenant's Proportionate Share of Building Operating Costs"). Tenant's Proportionate Share of Building Operating Costs which relate to the Project, as defined in Article 1.03, is the percentage determined by computing the proportion that the rentable

square feet of the Premises bears to the total rentable square footage in the Project. Tenant's Proportionate Share of the Project, is 6.66% [i.e. 6,499 SF / 97,750 SF]. Tenant's Proportionate Share of the Building, is the percentage determined by computing the proportion that the rentable square feet of the Premises bears to the total rentable square footage of the Building. Tenant's Proportionate Share of the Building is estimated to be 7.55% [i.e. 6,499SF / 86,117 SF]. Tenant shall pay its Proportionate Share of Building Operating Costs monthly as Additional Rent commencing upon the Term Commencement Date.

(l) Parking:

In addition to the Premises, seventeen (17) non-exclusive parking spaces in the adjacent parking structure (as hereinafter defined), the N Street Parking Pavilion, are included in the Base Rent. Tenant shall have the right to rent on a monthly basis in the adjacent Parking Structure, inclusive of the seventeen (17) parking spaces, up to five (5) non-exclusive parking spaces per one thousand (1,000) square feet of rentable area in the Premises. Such parking spaces are provided at a tenant-discounted monthly rate, currently Eighty-Five and No/100 Dollars (\$85.00) per space, to be paid monthly, as Additional Rent, commencing with the Term Commencement Date. Tenant shall arrange for parking in the Parking Structure directly with the parking structure manager, currently LAZ Parking. Tenant may contact LAZ Parking directly regarding the availability of discounted parking for visitors.

(m) Guarantor:

N/A

(n) Brokers:

Tenant represents, warrants, acknowledges and agrees that it has dealt with no commercial real estate broker in connection with this Lease.

(o) Landlord's Address:

906 "N" Street
Suite 200
Fresno, California 93721
Facsimile Number: (559) 485-1150

(p) Tenant's Address:

Andrew Janz
City Attorney's Office
City of Fresno
2440 Tulare Street
Suite 100
Fresno, California 93721
Email: Andrew.Janz@fresno.gov

and:

Andrew Janz
City Attorney's Office
City of Fresno
2600 Fresno Street, Room 2031
Fresno, CA 93711
Email: Andrew.Janz@fresno.gov

1.02 Exhibits.

The following documents are attached hereto as exhibits and hereby incorporated herein and made a part of this Lease:

Exhibit "A" Legal Description of the Land

Exhibit "A-1" Site Plan of the Project

Exhibit "A-2" Premises Floor Plan

Exhibit "B" (Form of) Landlord's Notice of Lease Term Dates

Exhibit "C" Allocation of Tenant's and Landlord's Work,

Exhibit "D" Rules and Regulations

Exhibit "E-1" (Form of) Subordination, Nondisturbance and Attornment Agreement

Exhibit "E-2" (Form of) Estoppel Certificate

Exhibit "F" (Form of) Guaranty – N/A

Exhibit "G" Addendum: Special Provisions – N/A

1.03 Additional Definitions.

In addition to the definitions set forth in Paragraph 1.01 and elsewhere in this Lease, the following terms as used in this Lease shall have the following meanings:

(a) Project Common Areas:

The common areas of the Project shall include areas within the Project which are exterior to the Building, including the Land and the Parking Structure, but not the areas within the Parking Structure which are the premises of other tenants (the "Project Common Areas"). The Project Common Areas are for the benefit and non-exclusive use of all tenants of the Building, including Tenant, and tenants of the Parking Structure, as well as, on a limited basis, users of the Parking Structure who are neither tenants of the Building nor the Parking Structure. Landlord shall have the right to reasonably regulate and restrict the Project Common Areas for the benefit of tenants of the Project and users of the Parking Structure.

(b) Building Common Areas:

The "Building Common Areas" are all floor areas within the Building which are not within the Premises, nor the premises of other tenants. Building Common Areas include lobbies of the Building, corridors, restrooms not located within any premises, stairwells, elevators, electrical and janitorial closets. Landlord shall have the right to reasonably regulate and restrict the Building Common Areas for the benefit of tenants of the Project.

(c) Parking Structure:

The term "Parking Structure" shall mean the five-level parking structure within the Project. The Parking Structure is for the use of tenants of the Building, including Tenant as provided in Paragraph 1.01 of this Lease, tenants of the Parking Structure and certain other non-tenant users of the Parking Structure. Landlord shall have the right to reasonably regulate and restrict use of the Parking Structure for the benefit of tenants of the Project and users of the Parking Structure.

(d) Rentable Area:

The “Rentable Area” of the Building includes the floor area within the premises of all tenants, or which are intended by Landlord to be leased to tenants of the Building, plus all Building Common Areas, but not the areas of vertical penetrations of floors within the building (elevators, stairwells and duct chases). The Rentable Area of each tenant within the Building, including Tenant, includes the floor area of the premises of such tenant plus the Building Common Area, less the vertical penetrations, allocated to each tenant.

(e) Building:

The term “Building” shall mean the four (4) story office building within the Project. The Building contains the Premises and the Building Common Areas.

(f) Additional Rent:

“Additional Rent” as that term is used in this Lease shall mean rent Tenant pays to Landlord in addition to Base Rent, and shall include Tenant’s Proportionate Share of Building Operating Costs, Tenant’s monthly payment for parking (“Parking Payment”), and any other sums required to be paid by Tenant to Landlord hereunder.

(g) Consumer Price Index:

The Consumer Price Index (“CPI”) as that term may be used in this Lease means the Consumer Price Index – All Urban Consumers (1982-84=100) as published monthly by the United States Government Bureau of Labor Statistics.

ARTICLE 2 - PREMISES, BUILDING AND COMMON AREAS

2.01 Premises.

Upon and subject to the terms set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord for its exclusive right of possession and use the Premises set forth in Paragraph 1.01 of the Lease. The Premises are a part of the Building set forth in Paragraph 1.01 of the Lease. By occupying the Premises, Tenant acknowledges that the Premises are acceptable and as agreed upon. Landlord hereby advises Tenant that the Premises have not been inspected by a Certified Access Specialist (“CASp”). A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit a lessee or tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

2.02 Common Areas.

Tenant shall have the non-exclusive right to use in common with other tenants in the Building and Parking Structure, and subject to the rules and regulations referred to in Article 20 (“Rules and Regulations”) of this Lease, those portions of the Building and Project Common Areas provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Building and Parking Structure, whether or not those areas are open for use by the general public. The Building Common Area and Project Common Areas are jointly referred to herein as (the “Common Areas”).

2.03 Landlord’s Use and Operation of the Building and Common Areas.

Landlord reserves the right from time to time with 24 hours notice to Tenant (i) to close temporarily any of the Common Areas; (ii) to make changes to the Common Areas, including without limitation, changes in the location, size, shape and number of street entrances,

driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, direction of traffic, landscaped areas and walkways, and (iii) to do and perform such other acts and make such other changes in, to or with respect to the Common Areas as Landlord may, in the exercise of sound business judgment, reasonably deem to be appropriate.

ARTICLE 3 - LEASE TERM

3.01 Initial Term.

The term of this Lease (the “Term”) shall be as set forth in Paragraph 1.01 of the Lease. The term “Lease Year” as used herein shall mean each consecutive twelve (12) month period beginning with the first day of the first full calendar month following the Term Commencement Date, unless the Term Commencement Date occurs on the first day of a month in which case the Lease Year will be the first year of the Term beginning with the Term Commencement Date. The Term Commencement Date, Rent Commencement Date and Expiration Date of the Lease shall be set forth in Landlord’s Notice of Lease Term Dates, which shall be as set forth in **Exhibit “B”** and shall be delivered to Tenant by Landlord promptly following the determination of the Rent Commencement Date.

3.02 Option to Extend.

If Tenant is given the option to extend the Term as may be set forth in the 1.01, Fundamental Lease Provisions of the Lease then such extension shall be in accordance with all the provisions contained, if any, on the same terms and conditions set forth in this Lease, except that the Base Rent shall be adjusted for each Option Term in accordance with this Article and as may be amended or modified by the provisions of **Exhibit “G”** hereto. Each renewal Option must be exercised by Tenant giving Landlord irrevocable written notice of such exercise (a) during the Term (as the same may have been previously extended pursuant hereto), and (b) after the date that is three hundred sixty (360) days prior to, and before the date that is one hundred eighty (180) days prior to, the expiration of the Term (as the same previously may have been extended pursuant hereto) (each such written notice is referred to as an “Option Notice”); provided, however, that at Landlord’s election such renewal Option shall be deemed not to be properly exercised by Tenant notwithstanding the proper giving of such Option Notice if, as of the date on which Landlord receives the Option Notice, or at any time thereafter through the end of the initial Lease Term or then current Option Term (whichever is applicable), Tenant is in default of any of its representations, warranties, covenants or obligations under this Lease. If an Option Notice is not properly given, or if a renewal Option is not exercised properly by Tenant, all subsequent Options to renew the Term of this Lease, if any, thereupon shall expire and be null and void for all purposes hereunder. If the Option to renew hereunder is properly exercised by Tenant, the Term of this Lease shall then be deemed to include the Option period for which the option has been properly exercised.

3.02.1 Base Rent During Option Term. If Base Rent during the Extended (Option) Term is not set forth in Exhibit “G”, Addendum, then upon receipt of the Option Notice, Landlord and Tenant shall attempt to negotiate the Base Rent payable during the Option Term. If Landlord and Tenant cannot agree to such Base Rent payable during the Option Term within ninety (90) days before the expiration of the initial Term, this Lease shall expire at the end of the initial Term. If the parties agree on the Base Rent for the Option Term before such time, they shall immediately execute an amendment to this Lease stating the Base Rent. If rent for the Option Term is to be based on Fair Market Rent, then in that event, rent for the Option Term shall be determined in accordance with the procedure set forth below, otherwise this Lease shall expire at the end of the then current term. The results of the procedure below notwithstanding, the Base Rent in the first year of the Option Term shall not be less than 95% of the Base Rent in the immediately preceding year.

3.02.2 Determination of Fair Market Rent. Prior to the ninetieth (90th) day before Term Expiration, Landlord and Tenant shall each have submitted to the other party their determination of Fair Market Rent for the first year of the Option Term. If the higher Determination is not more than one hundred five percent (105%) of the lower Determination, then the Fair Market Rent shall be the average of the two Determinations. Otherwise, within ten (10) days after the parties exchange Landlord's and Tenant's

Determinations, the parties shall each appoint an arbitrator who shall be a licensed California real estate broker with at least ten (10) years' experience in leasing commercial office space similar to the Building in the Fresno area immediately prior to his or her appointment, and be familiar with the rentals then being charged in the Building and in Comparable Buildings. Within ten (10) days following their appointment, the two arbitrators so selected shall appoint a third, similarly qualified, independent arbitrator who has not had any current or prior business relationship with either party (the "Independent Arbitrator"). Within five (5) days following notification of the identity of the Independent Arbitrator so appointed, Landlord and Tenant shall submit copies of Landlord's Determination and Tenant's Determination to the three arbitrators (the "Appraisal Panel"). The Appraisal Panel shall, by majority vote, select either Landlord's Determination or Tenant's Determination as the Fair Market Rent for the applicable Extension Term, and shall have no right to propose a middle ground or to modify either of the two proposals or the provisions of this Lease. In no event will the Base Rent for the first year of an Extension Term be less than ninety-five percent (95%) of the Base Rent in the year immediately preceding such Extension Term, nor will the Base Rent for the Option Term be greater than 105% of the higher Determination. Beginning with the second year of any Extension Term and each year of the Term thereafter the Base Rent shall be adjusted annually in accordance with the Consumer Price Index – All Urban Consumers (CPI-U). The Appraisal Panel shall render a decision within thirty (30) days after appointment of the Independent Arbitrator. The decision of the Appraisal Panel shall be final and binding upon the parties. Each party shall pay the fees and expenses of the arbitrator designated by such party, and one-half of the fees and expenses of the Independent Arbitrator.

3.02.3 If the Fair Market Rent is not determined prior to commencement of the applicable Extension Term, Tenant's monthly payments of Base Rent shall continue at the then current rate. Within thirty (30) days following determination of the Fair Market Rent, Tenant shall pay to Landlord, or Landlord shall pay to Tenant, the amount of any deficiency or excess, as the case may be, in the Base Rent previously paid by Tenant.

ARTICLE 4 - RENT

4.01 Base Rent.

Tenant shall pay the Base Rent, set forth in Paragraph 1.01 of this Lease during the Term of this Lease (including renewals or extensions thereof, if applicable), commencing as of the Rent Commencement Date in consideration of Tenant's use and occupancy of the Premises. In accordance with Paragraph 1.01, Tenant shall pay Base Rent specified therein in advance on or before the first day of each calendar month during the Term (including, if applicable, Option Terms), without any notice, demand, set off or deduction (except as expressly set forth elsewhere in this Lease, if at all), in twelve (12) equal monthly installments during each Lease Year. However, if the Rent Commencement Date is other than the first day of a calendar month, then the Base Rent for the partial month, if any, in which the Rent Commencement Date occurs, shall be prorated on a daily basis, based on a thirty (30) day month and shall be payable on the first day of the immediately succeeding calendar month.

4.02 Rental Adjustment.

Base Rent shall be subject to upward adjustments as set forth in Paragraph 1.01 of this Lease. If this Lease contains provisions that rental adjustments are to be based on the Consumer Price Index, as defined in this Lease, then the method for such adjustments shall be as follows:

Beginning on the first day of the year in which an adjustment in Base Rent is to be made (the "Adjustment Date"), Base Rent shall be increased by the increase in the Consumer Price Index ("CPI") on each Adjustment Date. Such increase shall be calculated by multiplying the then current Annual Rent by a fraction, the numerator of which shall be the CPI for the Adjustment Date and the denominator of which shall be the CPI for the previous Adjustment Date.

4.03 Additional Rent.

Tenant shall pay monthly, as Additional Rent, Tenant's Proportionate Share of Building Operating Costs and the Parking Payment. The procedures for payment of Additional Rent shall be as provided for the payment of Base Rent.

4.04 Interest and Late Charges.

If Tenant fails to pay when due and payable, any Base Rent, Additional Rent, or other Rent due from Tenant under this Lease, the unpaid amount shall bear interest at the rate of the lesser of (i) eighteen percent (18%) per annum or (ii) the highest rate permitted by applicable law, from five (5) days after the due date of payment, or the next business day if the fifth day falls on a weekend or holiday, until paid. Tenant acknowledges that its late payment of any monthly installment of Base Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, processing and accounting expenses. Therefore, if any installment of Base Rent is not received by Landlord from Tenant on or before the fifth (5th) day of the month for which such installment is past due, Tenant shall immediately pay to Landlord a late charge equal to six percent (6%) of such installment. Such late charge is in addition to any interest due pursuant to this Paragraph 4.04. Landlord and Tenant agree that the actual amount of costs and expenses that Landlord may have to incur and other damages that Landlord may suffer as a result of the late payment by Tenant of any such installment likely will be extremely difficult to ascertain, and that this late charge represents a reasonable estimate of such costs, expenses and other damages, and is and will be fair compensation to Landlord for its costs, expenses and damages incurred and suffered as the result of such late payment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such late payment nor prevent Landlord from exercising any other rights and remedies that may be available to Landlord under this Lease.

4.05 Payment of Rent.

All Rent due under this Lease shall be paid by Tenant to Landlord at Landlord's address in this Lease, or at such other place as may from time to time be designated by Landlord in writing to Tenant at least ten (10) days prior to the next ensuing payment date.

ARTICLE 5 - BUILDING OPERATING COSTS

5.01 Personal Property Taxes.

Tenant shall cause Tenant's trade fixtures, equipment, furnishings, furniture, merchandise, inventory, machinery, appliances and other personal property installed or located on the Premises (collectively, the "personal property") to be assessed and billed separately from the Premises. Tenant shall pay before delinquency any and all taxes, assessments and public charges levied, assessed or imposed upon or against Tenant's personal property. If any of Tenant's personal property shall be assessed with the real property comprising the Common Area or with the Premises, Tenant shall pay to Landlord, as Additional Rent, the amounts attributable to Tenant's personal property within thirty (30) days after receipt of written statement from Landlord setting forth the amount of such taxes, assessments and public charges attributable to Tenant's personal property. Tenant shall comply with the provisions of any Law which requires Tenant to file a report of Tenant's personal property located on the Premises.

5.02 Tenant's Obligation to Pay Tenant's Proportionate Share of Building Operating Costs.

In addition to the Base Rent and the Parking Payment required to be paid under Article 4 of this Lease, Tenant shall pay monthly as Additional Rent one-twelfth (1/12th) of Landlord's estimate of Tenant's Proportionate Share of the Building Operating Costs for the current calendar year (or portion thereof during which the Term shall occur) as set forth in this Article 5. If at any time Landlord's estimate of Tenant's Proportionate Share of the Building Operating Costs as set forth in this Article 5 for such year or portion shall change, Landlord shall advise Tenant in writing as to the adjustment in monthly installments thereof that Tenant shall, after the giving of such notice, be required to pay. Tenant shall pay to Landlord, together with each monthly installment

of Base Rent and the Parking Payment, the amount set forth in the most recent such notice given by Landlord to Tenant. Tenant's obligation to pay on a monthly basis its proportionate share of operating expenses shall commence upon the Term Commencement Date.

5.03 Building Operating Costs.

Building Operating Costs shall include all of the following items:

(a) All real estate property taxes, assessments, water and sewer charges and similar governmental or quasi-governmental charges levied on, paid in connection or with attributable to the Project, improvements serving or contemplated to serve the Project or any portion thereof, water, sewer, improvement and other districts of which the Project or any portion thereof is a part, or the operation of any thereof.

(b) Operating costs incurred by Landlord in maintaining, repairing and operating the Project or any portion thereof, including without limitation the following: costs of (1) utilities; (2) supplies; (3) insurance premiums and similar charges paid or incurred by Landlord in connection with the Project, any portion thereof, any events or circumstances related thereto and any perils arising in connection with any thereof, in each case for which Landlord or its insurance consultants deem insurance coverage or other protection to be desirable or appropriate; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons (whether employees or independent contractors) who perform duties connected with the operation, maintenance, repair and replacement of the Project and each portion thereof, and equipment, improvements and facilities located within the Project or any portion thereof, including without limitation engineers, janitors, sweepers, plumbers, electricians, handy-men, engineers, painters, floor waxers, window washers, trash collectors, snow and ice removers, security personnel and gardeners; (6) management of the Project and each portion thereof, whether managed by Landlord or an independent contractor; (7) personal property, including rental expenses for and personal property taxes and assessments levied on or with respect to personal property, that is used in the maintenance, operation or repair of the Project or any portion thereof; (8) expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental agency, instrumentality or other authority; (9) amortization of capital expenses made by Landlord to reduce costs that, but for such capital expenses, would be operating costs; (10) repairs and maintenance to the roof, roof membrane and exterior of the Building; (11) pest control for the Project; (12) repaving or resurfacing and restriping of parking areas, walkways and other areas servicing the Building but not within the Parking Structure; (13) repainting or resurfacing the exterior of the Building or repainting, resurfacing or replacing the interior walls or floors of the Building Common Areas; (14) losses incurred in connection with (i) the Project, (ii) any portion thereof, (iii) any events or circumstances related thereto and (iv) any perils arising in connection with any thereof, to the extent such losses are not paid for by insurance policies or third parties for any reason, (15) lighting of the Common Areas, (16) providing heat, ventilation, water, gas, sewer service and air conditioning to the Project, (17) replacement of landscape and hardscape in the Project Common Areas but not within the Parking Structure, (18) repair, maintenance and replacement of mechanical and electrical equipment serving the Building Common Areas (19) third parties engaged for the purpose of seeking reductions of property taxes, any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Project, (20) any other costs or expenses paid or incurred by Landlord in connection with the Project or any portion thereof and not directly reimbursed to Landlord by a single tenant of the Building, and (21) establishing and maintaining appropriate reserves for any and all of the foregoing items.

5.04 Exclusions from Building Operating Costs.

Building Operating Costs shall not include the following:

- a. Replacement of the roof of the Building;
- b. Except for the Project insurance and Project property taxes, which shall be calculated for the Project, as set forth in Paragraph 5.02 above, and which shall be prorated to all tenants of the Project, relating directly and solely to the Parking Structure;

- c. Repairs or maintenance required to maintain the structural integrity of the Building (other than routine maintenance and repair of the structural elements of the Building, including warranty costs);
- d. Except as specified above, expenses for any capital improvement made to the Project or other capital expenses;
- e. Expenses for painting, redecorating, or other similar work which Landlord performs for Tenant or any other tenant of the Building;
- f. Expenses for repairs or other work occasioned by fire, windstorm or other insured casualty, except that Landlord shall have the right to include in Operating Costs the amount of such expenses that represents Landlord's insurance deductible, not to exceed \$10,000;
- g. Any work performed by Landlord specific to the Premises or any other premises within the Building;
- h. Expense incurred in leasing or procuring new tenants, including without limitation, brokerage commissions and legal fees;
- i. Legal expenses incurred in enforcing the terms and conditions of any lease;
- j. Interest or amortization payments on any mortgage or obligation in the nature of a mortgage;
- k. Penalties or interest resulting from late payment of taxes by Landlord;
- l. Advertising expenses;
- m. Any cost incurred to remedy any defect in the original construction of the Building, Project or Premises;
- n. Amounts paid for services or goods supplied by a party affiliated with Landlord to the extent that the cost thereof exceeds prevailing market rates for such services or goods;

5.05 Tenant's Proportionate Share.

Tenant's Proportionate Share is set forth in Paragraph 1.01 of the Lease.

5.06 Calculation of Building Operating Costs and Portion thereof to be Paid by Tenant as Additional Rent.

Within a reasonable time after the end of each calendar year during the Term, estimated to be March 1st, and at the end of the Term, Landlord shall determine, and advise Tenant a written statement (the "Operating Costs Statement") setting forth, the Operating Costs incurred during such year (or shorter period during the Term, if applicable) and Tenant's Proportionate Share thereof.

In the event the amount of Tenant's Proportionate Share of Operating Costs exceeds the sum of the monthly installments actually paid by Tenant for such calendar year (or shorter period during the Term, if applicable), Tenant shall pay to Landlord the difference within thirty (30) days following receipt of the Operating Costs Statement. In the event the sum of the monthly installments actually paid by Tenant for such calendar year (or shorter period during the Term, if applicable) exceeds Tenant's Proportionate Share of Building Operating Costs actually due and owing, the difference shall be applied as a credit to Tenant's monthly payment due in the future, or if the Term has expired, the excess paid by Tenant shall be refunded by Landlord to Tenant not later than thirty (30) days following delivery of such Operating Costs Statement. Amounts due under this Article 5. shall survive the expiration or other termination of this Lease.

5.07 Disproportionate Use.

In addition to the foregoing, if Landlord reasonably determines at any time that Tenant is using any services in quantities that are greater than the normal amount of usage for premises of the size of the Premises, or Tenant otherwise is causing Landlord to pay or incur common area costs in an amount that exceeds the usage thereof that Landlord determines to be normal for premises of the size of the Premises, Tenant shall pay to Landlord the incremental amount of the excess operating costs occasioned by such usage, as estimated by Landlord from time to time, promptly after Landlord gives Tenant notice of Landlord's estimate or computation thereof.

ARTICLE 6 - SECURITY DEPOSIT

6.01 Payment of Security Deposit.

Tenant has deposited with Landlord the sum specified in Paragraph 1.01 hereof as the "Security Deposit", receipt of which is hereby acknowledged by Landlord. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord, and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.

6.02 Application of Security Deposit.

If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, or if Tenant otherwise is obligated to pay Landlord any amount of money, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much thereof as is necessary to compensate Landlord for loss of Base Rent or Additional Rent or other Rent, or damages sustained by Landlord due to such default by Tenant, or such other amount of money that Tenant then is obligated to pay to Landlord. In that event, Tenant shall immediately restore the Security Deposit to the amount then required to have been deposited as a Security Deposit pursuant to this Lease, as adjusted pursuant to Paragraph 6.05. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the unapplied Security Deposit (or the balance thereof remaining, if any) shall be returned in full to Tenant not later than thirty (30) days following the end of the Term and delivery of possession of the Premises to Landlord in the condition required by this Lease.

6.03 Bankruptcy.

In the event of bankruptcy or other proceedings against Tenant under any Laws for the protection of debtors from creditors, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.

6.04 Transfer of Landlord's Interest.

Landlord may deliver the funds deposited hereunder by Tenant and not previously applied by Landlord pursuant to this Lease to the purchaser of Landlord's interest in the Premises or credit such purchaser therefore, and upon said delivery or credit Landlord shall be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.

6.05 Adjustment.

If the Base Rent is increased beyond the amount of the Security Deposit, from time to time, as provided herein, Tenant shall thereupon deposit with Landlord an additional cash security deposit, so that the amount of the Security Deposit held by Landlord shall at all times bear the same proportion to the currently effective Base Rent as the original Security Deposit bears to the original Base Rent. Landlord's failure to give notice of demand for additional Security Deposit under this Paragraph 6.05 shall not constitute a waiver of Landlord's right to do so or

relieve Tenant of such obligation hereunder. Landlord shall not be required to keep the Security Deposit separate from its general accounts, and may commingle said funds with the general funds of Landlord.

ARTICLE 7 - USE OF PREMISES

Tenant shall use the Premises solely for the purposes set forth in Paragraph 1.01 of the Lease and consistent with the character of the Building as a first-class office building, and Tenant shall not use or permit the Premises to be used for any other purpose whatsoever. Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any purpose contrary to the provisions of the Rules and Regulations set forth in **Exhibit "D"**, attached hereto, or in violation of federal or state laws, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction, and that Tenant shall conduct its business or profession in the manner and according to the generally accepted written or unwritten code of ethics or business principles of the business or profession in which it is engaged. Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Building and any amendments thereto. Tenant shall not use or allow another person or entity to use any part of the Premises for the storage, use, treatment, transport, release, disposal, manufacture or sale of "Hazardous Material," as that term is defined in Paragraph 27.18 of this Lease.

ARTICLE 8 - UTILITY, JANITORIAL AND OTHER SERVICES

8.01 Service to be Provided by Landlord.

As part of the Building Operating Expenses, Landlord agrees to provide all utilities service (gas and electricity) water, sewer, disposal, repair and maintenance of all building systems and equipment, yard work, and five day-per-week janitorial service including supplies to the Building as follows:

- (a) Heat and air conditioning as each season may require to provide a temperature condition necessary in Landlord's reasonable judgment (but subject to applicable governmental restrictions) for comfortable occupancy, Monday through Friday, 7:00 a.m. to 6:00 p.m., except for all Federal and Bank Holiday's;
 - (i) Landlord shall furnish HVAC beyond the above stated hours, as "Additional Service" provided that notice requesting such service is delivered to Landlord before noon on a business day when such service is required for that evening, and by noon of the preceding business day when such service is required on a Saturday, Sunday or holiday as above defined;
 - (ii) Landlord's costs (including labor costs) of supplying such Additional Service plus reasonable amounts for equipment depreciation and administrative overhead shall be paid separately by Tenant to Landlord. Landlord shall bill Tenant on or before the last day of the month following the month in which such charges are incurred, and shall submit with its invoice a tabulation of the hours and the dates on which the overtime HVAC was furnished. Tenant shall reimburse Landlord therefore within thirty (30) days after receipt of the invoice.
- (b) Sufficient electrical power for lighting and general purpose office use throughout the Premises. If Tenant's electricity usage exceeds 3.5 watts per usable square foot, excluding HVAC use, Tenant shall pay Landlord for all excessive electrical uses. Alternatively, Landlord may, at Landlord's option, install an "E-Mon" meter serving the Premises at Tenant's cost, as part of Tenant's improvement work, and said electrical service to the Premises shall be metered separately to Tenant, and shall be paid for by Tenant at the then rate charged to Landlord by the providing utility company;
- (c) Hot and cold water for drinking, lavatory and toilet purposes;

- (d) Janitorial services in and about the Premises and Common Areas, Saturdays, Sundays and holidays excepted, and refuse collection and disposal;
- (e) Window washing, inside and outside deemed necessary by Landlord;
- (f) Passenger elevator service in common with other tenants and Landlord. Operatorless automatic elevator service shall be deemed "elevator service" within the meaning of this Paragraph;
- (g) Fire protection to the Building in compliance with applicable fire codes;
- (h) Ingress and egress to the Premises on a twenty-four (24) hours basis, seven (7) days a week

Landlord shall maintain the Project, including the Building and Common Areas (other than Tenant's maintenance obligations set forth elsewhere in this Lease) in first class condition and repair, free of defects in materials and workmanship. All costs and expenses paid or incurred by Landlord in connection therewith shall be included in Building Operating Costs pursuant to Article 5 of this Lease

8.02 Services to be Provided by Tenant.

At Tenant's sole cost and expense, Tenant shall arrange for its telephone service and cabling for computers and modems, and other similar services. Landlord shall cooperate with the installation of such services to the Premises.

ARTICLE 9 - ALTERATION AND REPAIRS

Landlord and Tenant agree that:

- a) Upon occupancy, Tenant accepts the Premises as being in a tenantable and good condition;
- b) Tenant shall take good care of the Premises and shall not alter, improve or otherwise change the Premises or any portion thereof in any respect, or permit the same to occur, without in each instance the prior written consent of Landlord, which Landlord may grant or withhold in Landlord's sole and absolute discretion;
- c) Tenant shall cause all alterations, improvements and changes that may be performed by Tenant or on Tenant's behalf to be performed (i) in a good and workmanlike manner by licensed contractors approved by Landlord in advance and with new, first-class materials, and (ii) either by or under the direction of Landlord, but at the cost of Tenant, unless otherwise provided by written agreement between Landlord and Tenant;
- d) All alterations, additions and improvements made in and affixed to the Premises shall be the property of Landlord, and shall remain upon and be surrendered with the Premises, unless Landlord otherwise directs at any time;
- e) All damage or injury done to the Premises by Tenant, or by any person who may be in or upon the Premises with or without the consent of Tenant, other than Landlord, its agents or employees, shall be repaired by Landlord and Tenant shall reimburse to Landlord on demand as additional Rent all costs and expenses paid or incurred by Landlord in connection therewith or allocable thereto; and
- f) Except as otherwise provided in Article 8(d) above, Tenant shall, at the termination of this Lease, surrender the Premises to Landlord in the same condition as that in which the Premises exist on the date of occupancy by Tenant, ordinary wear and tear excepted.

In connection with clause (c), above, Tenant shall pay all costs for or related to work done by or for Tenant in the Premises, and Tenant shall keep the Premises and Project free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability, loss, damage, costs, attorney fees and all other expenses on account of claims of lien of laborers or materialmen or

others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises), Landlord may require Tenant to provide demolition and/or lien and completion bonds from bonding companies, and in form and amount, satisfactory to Landlord. If Tenant is in default in paying any charge for which a mechanics' lien claim has been filed and Tenant has not provided a bond pursuant to *California Civil Code* Section 3143 in form and substance, and issued by a bonding company, satisfactory to Landlord or given Landlord adequate security to protect the Premises, the Project and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorney fees and costs incurred in connection with such payment shall be due and owing on demand from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the Interest Rate specified in Paragraph 4.04 from the date of Landlord's payment. Landlord or its representative shall have the right to enter and inspect the Premises upon reasonable prior notice (or without notice, in the case of an actual or perceived emergency) and at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises and Project. Tenant shall, not less than ten (10) days prior to commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

Landlord may, but is not required to, enter the Premises in accordance with Article 22 herein, by pass keys or otherwise at all reasonable times and from time to time to make such repairs, alterations, improvements or additions to the Premises or to the Building, or to any equipment located in the Building as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree, and for that purpose to erect in or about the Premises any necessary scaffolding or other temporary structures, and Landlord shall not be liable to Tenant for any damage or inconvenience thereby suffered by Tenant. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE 10 – INSURANCE

10.01 Tenant Insurance.

Tenant shall, at all times during Tenant's tenancy and at Tenant's expense, carry and maintain coverages in the amounts set forth in this Article 10.

10.02 Comprehensive General Liability Insurance.

Comprehensive General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of Tenant's operations, assumed liabilities or use of the Premises, including a Broad Form Comprehensive General Liability endorsement/policy covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Paragraph 10.09 of this Lease, for limits of liability not less than: **One Million and No/100 Dollars (\$1,000,000.00)** each occurrence or annual aggregate for bodily injury and property damage liability; and **Two Million and No/100 Dollars (\$2,000,000.00)** each occurrence or annual aggregate for personal injury liability.

10.03 Physical Damage Insurance.

Physical Damage Insurance covering all office furniture, trade fixtures, office equipment, merchandise, improvements to the Premises originally paid for by Tenant and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any

co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement, and sprinkler leakage coverage.

10.04 Worker's Compensation and Employer's Liability Insurance.

Worker's Compensation and Employer's Liability Insurance, with a waiver of subrogation.

10.05 Form of Policies.

The insurance required herein shall (i) name as an additional insured Landlord its officers, employees and agents and such other parties as Landlord, in its sole discretion, shall name; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Article 11; (iii) be insured by an insurance company having a rating of not less than A+ in Best's Insurance Guide or which is otherwise reasonably acceptable to Landlord (iv) be primary insurance as to all claims thereunder, provide that any insurance carried by Landlord is excess and is noncontributing with any insurance requirement of Tenant (v) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Term Commencement Date and at least thirty (30) days before the expiration dates thereof.

10.06 Subrogation.

Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance carried by Landlord and Tenant, respectively, is not invalidated thereby. As long as such waivers of subrogation are contained in their respective insurance policies, Landlord and Tenant hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, or other similar insurance

10.07 Additional Insurance Obligations.

Tenant shall carry and maintain during the entire Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10, and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord or Landlord's lender.

10.08 Tenant's Compliance with Landlord's Fire and Casualty Insurance.

Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies carried by Landlord then Tenant shall reimburse Landlord for any such increase.

10.09 Exculpation and Indemnification.

(a) Exculpation of Landlord and Indemnity by Tenant. Landlord, its officers, agents, servants, employees, and independent contractors ("Landlord Parties") shall not be liable for any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant unless caused solely by the gross negligence, breach of this Lease that continues beyond applicable cure periods, or willful misconduct of Landlord. Tenant shall indemnify, defend, protect, and hold harmless Landlord Parties, from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorney fees) incurred in connection with or arising from any cause in, on or about the Premises, either prior to, during, or after the expiration of the Term, provided that the terms of the foregoing indemnity shall not apply to the gross negligence, breach of this Lease that continues beyond applicable cure periods, or

willful misconduct of Landlord.

(b) Exculpation of Tenant Parties by Landlord. Tenant, its officers, agents, servants, employees, and independent contractors ("Tenant Parties") shall not be liable for any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Landlord and is caused solely by the gross negligence, breach of this Lease that continues beyond applicable cure periods, or willful misconduct of Landlord.

Landlord Parties agree that this Agreement shall in no way act to abrogate or waive any immunities available to CITY under the Tort Claims Act of the State of California, and nothing herein shall constitute a waiver by CITY of governmental immunities including California Government Code Section 810 et seq.

(c) Survival. The provisions of this Article 10.09 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

10.10 Landlord Insurance.

So long as the same is available from a reputable and financially viable insurance carrier at a reasonable premium, Landlord shall carry insurance against loss or damage to the Building caused by fire, windstorm, hail, explosion, damage from aircraft and vehicles, smoke damage, and such other risks as are from time to time included in a standard extended coverage endorsement (or, if Landlord so elects in its sole discretion, it may carry special extended coverage endorsements) in the amount (excluding applicable deductibles) of its full replacement value above foundations, and such other insurance of such types and amounts and with such terms, as Landlord from time to time, in its reasonable discretion, shall deem appropriate, including, but not limited to rental interruption insurance covering loss of rental income for a period of not less than one year caused by loss or damage to the Building, pandemics or similar events or circumstances. Notwithstanding anything to the contrary contained in this Article 10 or elsewhere in this Lease, Landlord shall have the right to maintain deductibles in the policies of insurance that it procures in amounts that it deems to be reasonable and prudent under the circumstances, and (if applicable) the amount of loss sustained on account of such deductibles shall be included in Operating Costs.

ARTICLE 11 - CASUALTY DAMAGE AND RECONSTRUCTION

11.01 Definitions.

- (a) "Premises Damage" shall mean if the Premises are damaged or destroyed to a material extent, making them substantially untenable by Tenant for the conduct of its business.
- (b) "Office Building Partial Damage" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is less than forty percent (40%) of the then Replacement Cost of the Office Building.
- (c) "Office Building Total Destruction" shall mean if the Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is forty percent (40%) or more of the then Replacement Cost of the Office Building.
- (d) "Insured Loss" shall mean damage or destruction caused by an event required to be covered by the insurance described in Article 10. If damage or destruction is caused by an event not covered by the insurance described in Article 10, it is an "Uninsured Loss." The fact that an Insured Loss has a deductible amount shall not make the loss an uninsured loss.
- (e) "Replacement Cost" shall mean the amount of money necessary to be spent in order to repair or rebuild the damaged area to the condition that existed immediately prior to the damage occurring, excluding all improvements made by Tenant.

11.02 Insured Loss.

Subject to the provisions of Paragraphs 11.05 and 11.06, if at any time during the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage (a) that is an Insured Loss (b) that falls into the classifications of either Premises Damage or Office Building Partial Damage, (c) for which Landlord's mortgagees of record make the proceeds of insurance available to Landlord for repair, and (d) the proceeds so made available to Landlord are and will be sufficient, in Landlord's judgment, to complete the repair, then Landlord shall, as soon as reasonably possible, and to the extent the required materials and labor are readily available through usual commercial channels, at Landlord's expense, use reasonable efforts to repair such damage (but not Tenant's Fixtures or Personal Property and equipment) substantially to its condition existing immediately prior to the time of the damage (to the extent permitted by applicable laws, statutes, regulations, codes and ordinances), and this Lease shall continue in full force and effect; provided, however, if Landlord reasonably determines that more than two hundred seventy (270) days from the date of the damage or destruction to so complete the repair, Landlord may, within thirty (30) days of making such determination, terminate this Lease by giving notice of such termination to Tenant, in which event the Term of this Lease shall terminate thirty (30) days after the date on which Landlord shall have given such a termination notice to Tenant.

11.03 Uninsured Loss.

Subject to the provisions of Paragraphs 11.05 and 11.06, if at any time during the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage that is an Uninsured Loss and which falls into the classifications of either Premises Damage or Office Building Partial Damage, unless caused by a negligent or willful act of Tenant, or any officer, agent, employee, guest, or invitee of Tenant (in which event Tenant shall make the repairs as soon as reasonably possible at Tenant's sole cost and expense and this Lease shall continue in full force and effect), which damage prevents Tenant from making any substantial use of the Premises, Landlord may at its option either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease, in which event this Lease shall terminate as of the date of the occurrence of such damage.

11.04 Office Building Total Destruction.

Subject to the provisions of Paragraphs 11.05 and 11.06, if at any time during the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage, whether or not it is an Insured Loss, that falls into the classification of Office Building Total Destruction, then Landlord may at its option either (i) repair such damage or destruction as soon as reasonably possible at Landlord's expense (to the extent the required materials and labor are readily available through usual commercial channels) to its condition existing at the time of the damage, but not Tenant's fixtures, equipment or Tenant improvements, and this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of occurrence of such damage of Landlord's intention to cancel and terminate this Lease, in which event this Lease shall terminate as of the date of the occurrence of such damage.

11.05 Damage Near End of Term.

- (a) Subject to Subparagraph (b), below, if at any time during the last two (2) years of the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage to the Premises for which the Replacement Cost is greater than forty percent (40%) of the then Replacement Cost of the total Premises, Landlord may at its option cancel and terminate this Lease as of the date of occurrence of such damage, by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage.
- (b) Notwithstanding Subparagraph (a) above, in the event that Tenant has an Option to extend or renew this Lease, and the time within which said Option may be exercised has not yet expired, Tenant shall irrevocably exercise such Option, if it is to be exercised at all, no later than twenty (20) days after the occurrence of an Insured Loss falling within the classification of Premises Damage during the last two (2) years of the Term of this Lease (including renewal or extension Option periods, if applicable). If Tenant duly exercises such Option during said twenty

(20) day period, Landlord shall, at its expense, repair such damage, but not Fixtures or Tenant's Personal Property, equipment or Tenant improvements originally paid for by Tenant, as soon as reasonably possible, and this Lease shall continue in full force and effect. If Tenant fails to irrevocably exercise such Option during such twenty (20) day period, then, for the purpose of Subparagraph (a), above only, the remaining Term of this Lease shall be determined as though Tenant has no Option to extend or renew the Term of this Lease. If Landlord elects to repair the Premises, Tenant's rights to the Option shall not be affected.

11.06 Abatement of Rent.

In the event of reconstruction of the Premises under this Article 11, the Base Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for herein until substantial completion thereof, as determined by Landlord's architect, and Tenant's ability to conduct business is restored. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical, as a matter of prudent business management, and the obligation of Tenant to pay Additional Rent hereunder shall remain in full force and effect. Regardless of whether or not Tenant shall be entitled to an abatement of Base Rent pursuant to this Paragraph 11.06, in no event shall Tenant be entitled to any compensation or damages from Landlord for (a) loss of the use of the whole or any part of the Premises, Office Building or Tenant's Personal Property, (b) any lost revenues, business opportunities or profits, (c) any costs paid or incurred by Tenant in connection with the damage or destruction, or (d) any inconvenience or annoyance, suffered by reason of damage or destruction to the Premises or other portions of the Office Building, or the reconstruction or replacement of all or any portion thereof.

11.07 Release From Liability.

Upon any termination of this Lease as permitted by any of the provisions of this Article 11, payment of the Base Rent and Additional Rent apportioned up to the date of damage, and surrender of possession of the Premises to Landlord, each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued and except as otherwise provided in Paragraph 10.09 above. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance covering the items set forth as "Tenant's Work" in **Exhibit "C"** and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other Personal Property, shall be paid to Landlord.

11.08 Waiver of Statutory Rights of Termination.

The provisions of this Lease constitute an express agreement between Landlord and Tenant with respect to any and all damage to or destruction of, all or any part of the Premises or the Office Building. Tenant hereby waives any statutory right of termination which may arise by reason of any partial or total destruction of the Premises or Office Building which Landlord is obligated to restore or may restore under any of the provisions of this Lease, and specifically waives all rights under *California Civil Code* Section 1933.

ARTICLE 12 - DEFAULT; REMEDIES

12.01 Tenant's Default.

The occurrence of any of the following shall constitute a default by Tenant ("Default"):

(a) Failure to Pay Rent.

Any failure to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, within three (3) days after written notice from Landlord to Tenant that such payment is due.

(b) Failure to Perform.

Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for fifteen (15) days after written notice thereof from Landlord to Tenant. If the default is curable and cannot reasonably be cured within fifteen (15) days, Tenant shall not be in default upon expiration of the fifteen-day period provided Tenant diligently and in good faith commenced and has thereafter continued and does diligently continue to cure the default.

(c) Abandonment.

Abandonment or vacation of the Premises by Tenant.

(d) Assignment for the Benefit of Creditors or Bankruptcy.

To the extent permitted by law, a general assignment by Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days; or

(e) Assignment of Lease.

The hypothecation or assignment of this Lease or subletting of the Premises, or attempts at such actions, in violation of Article 15 hereof.

12.02 Landlord's Remedies Upon Default.

Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(a) Tenant's Right to Possession Not Terminated.

Landlord shall have 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.

During the period Tenant is in Default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses or remodeling the Premises required by the reletting, and like costs and interest thereon at the maximum statutory rate. Reletting can be for a period shorter or longer than the remaining Term. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this Paragraph 12.02 shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(b) Termination of Tenant's Right to Possession.

Upon Tenant's Default, Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the

appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

- (1) The worth, at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease;
- (2) The worth, at the time of the award of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;
- (3) The worth, at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and
- (4) Any amount, including reasonable attorney fees and costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

(c) The term "rent" as used in this Paragraph 12.02 shall be deemed to be and mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in this Paragraph 12.02, "the worth, at the time of the award," shall be computed by allowing interest at the rate set forth in Paragraph 4.04 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Paragraph 12.02(b)(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%).

12.03 Appointment of a Receiver.

If Tenant is in Default of this Lease, Landlord shall have the right to have a receiver appointed to collect rent from Tenant's accounts receivable. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

12.04 Landlord's Right to Cure Tenant's Default.

All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. If Tenant shall fail to perform any of its obligations or Default under this Lease, Landlord may, but shall not be obligated to, after reasonable prior notice to Tenant (except in the case of an emergency), make any such payment or perform any such act on Tenant's part without waiving its rights based upon any Default of Tenant and without releasing Tenant from any obligations hereunder.

12.05 Tenant's Reimbursement.

If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the rate set forth in Paragraph 4.04 of this Lease from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be Additional Rent.

12.06 Inducement Recapture.

Any agreement by Landlord for free or abated Rent or other charges, or for the giving or paying by Landlord to or for the benefit of Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, or any other concessions of Rent or other charges hereafter given in writing by Landlord to Tenant, all of which concessions are

hereinafter referred to as “Concession Provisions,” are conditioned upon Tenant, during the Term, or any extension or renewal thereof, not being in default under this Lease beyond any applicable notice and cure period. Upon the occurrence of a default by Tenant beyond applicable notice and cure periods, any rent (whether Base Rent or Additional Rent), other charge, bonus, inducement, or consideration abated, given, or paid by Landlord under such a Concession Provision shall be due and payable by Tenant to Landlord within five (5) days following written notice to Tenant from Landlord and recoverable by Landlord as Additional Rent due under this Lease, notwithstanding any subsequent cure by Tenant. The acceptance by Landlord of rent or the cure of the default which initiated the operation of this Paragraph shall not be deemed a waiver by Landlord of the provisions of this Paragraph unless specifically so stated in writing by Landlord at the time of acceptance. For any months of abated rent not yet past, the abated rent shall thereafter be due and payable as it accrues, as if such rent had neither been reduced, conceded nor abated under Terms of this Lease.

ARTICLE 13 - SUBORDINATION AND MORTGAGES

This Lease shall be subject and subordinate to the lien of any first mortgage or trust deed, now or hereafter in force against the Building, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deed, unless the holders of such mortgages or trust deeds, require in writing that this Lease be superior thereto. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof, to attorn, without any deductions or set-offs, to the purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof if so requested to do so by such purchaser, and to recognize such purchaser as the lessor under this Lease. Tenant shall, within five (5) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages or trust deed, including but not limited to, a form substantially similar to the Subordination, Non-Disturbance and Attornment Agreement attached hereto as **Exhibit “E”**.

ARTICLE 14 - NONWAIVER

No waiver of any provision of this Lease shall be implied by any failure of Landlord to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently, and any waiver by Landlord of any provision of this Lease may only be in writing. Additionally, no express waiver shall affect any provision other than the one specified in such waiver and then only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant’s right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, (subject to the provisions of Article 24), or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and payment of said Rent shall not waive or affect said notice, suit or judgment.

ARTICLE 15 - ASSIGNMENT AND SUBLETTING

15.01 Restriction on Assignment and Subletting.

Tenant shall not, without the prior written consent of Landlord (which consent shall not be unreasonably withheld), assign or otherwise transfer this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, or sublet the Premises or any part thereof (all of the foregoing are hereinafter sometimes referred to as a “Transfer”). Any Transfer made without Landlord’s prior written consent shall, at Landlord’s option, be null, void and of no effect, and shall, at Landlord’s option, constitute a Default by Tenant under Article 12 of this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord’s review and processing fees, as well as any reasonable legal fees incurred by Landlord, within thirty (30) days after written request by Landlord. Landlord may withhold consent to a proposed Transfer and such withholding of consent shall be deemed to be reasonable if, in Landlord’s reasonable business judgment, any one or more of the following is true: (i) the proposed Transfer may result in a material deterioration in the quality of tenants occupying premises in the Project; (ii) the proposed transferee lacks a good business

reputation; (iii) the financial worth of the proposed transferee is less than the financial worth of Tenant as of the date of this Lease; (iv) the proposed transferee's proposed use of the Premises may be other than the use permitted hereby; (v) the proposed Transfer would breach any covenant of Landlord respecting any financing or other agreement relating to the Project.

15.02 Procedure to Request Landlord's Consent.

In the event of a contemplated assignment, sublease or other transfer Tenant shall address a letter to Landlord outlining all details of the proposed transfer, including but not limited to ("Transferee Information"):

15.02.1 Full description of the proposed transferee, including but not limited to: full legal name, legal business location, contact information, type of entity, where incorporated if a corporation, names of corporate officers or principals, type of business including history.

15.02.2 Full financials of proposed transferee, including the most recent two-years' profit and loss statement, a current certified financial statement (balance sheet), a current credit report, and the most recent two-years' tax returns.

15.02.3 The written legal document executed by Tenant and Transferee which includes all terms, financial and otherwise, of the transfer, and including certain specific language for benefit of Landlord, which document shall be submitted for Landlord's review and approval

15.02.04 In accordance with criteria set forth herein Landlord will make a decision as to the approval of the proposed transferee by written notice to Tenant within fifteen (15) business days following Landlord's receipt of all required Transferee Information. No transfer shall be considered valid until Landlord has reviewed all the information required by this of Article 15 of the Lease and rendered its written approval.

15.03 No Release of Tenant.

No subletting or assignment, even with the consent of Landlord, shall relieve Tenant of its obligation to pay the Rent and to perform all of the other obligations to be performed by Tenant under this Lease. In the event that there has been, at any time or from time to time, an assignment of this Lease or a subleasing of the Premises as permitted by the terms of this Lease, and a new person or entity has assumed the primary obligations of the Tenant under this Lease, the original Tenant named herein (and its assignee or subtenant in the event of a further assignment or subleasing) waives any and all rights to require Landlord to proceed first against the new primary obligor or any other party responsible for the obligations of the Tenant hereunder, or to otherwise require Landlord to exhaust its remedies, prior to proceeding against such original Tenant (and/or its assignee or subtenant in the event of a further assignment or subleasing); and the original Tenant named herein (and its assignee or subtenant in the event of a further assignment or subleasing) further waives all other rights and defenses under the law of suretyship or which are in the nature of suretyship defenses.

15.04 Required Documents.

Each Transfer to which Landlord shall have consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the sublessee, assignee or transferee, as applicable (each, a "Transferee"). Each Transferee (i) under an assignment shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease; and (ii) under a sublease shall acknowledge in writing in the sublease that it is subject to the terms of this Lease. One (1) fully executed copy of such written instrument shall be delivered to Landlord. If Tenant fails to obtain in writing Landlord's prior consent as required by this Article 15 or otherwise comply with the provisions of this Article 15, any attempted Transfer shall, at Landlord's option, be null and void and of no further force or effect whatsoever.

15.05 Landlord Payment.

Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of the Transfer, depreciated on a straight-line basis over the remaining balance of the then-current Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided between Landlord and Tenant such that Landlord receives fifty percent (50%) and Tenant receives fifty percent (50%) of that excess. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as Additional Rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records during normal business hours at either the Premises or Tenant's principal place of business upon three (3) days' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder and provided that Landlord keeps all information from the audit confidential.

15.06 No Hypothecation by Tenant.

Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage, pledge, encumber or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant, Tenant's employees or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease.

ARTICLE 16 - SURRENDER OF PREMISES

16.01 Surrender of Premises.

No act or thing done by Landlord or an agent or employee of Landlord during the Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery. Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work as a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

16.02 Removal of Trade Fixtures.

Upon the expiration of the Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 16, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris, and such items of furniture, equipment, and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

ARTICLE 17 - HOLDING OVER

If Tenant holds over after the expiration of the Term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall

be payable at a monthly rate equal to one-hundred fifty percent (150%) of the Base Rent applicable during the last rental period of the Term under this Lease. Such monthly tenancy shall be subject to every other term, agreement, covenant, and condition herein contained, including the requirement to pay all additional rent and the charges during the month-to-month period after the end of the agreed Term. Nothing contained herein shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 17 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorney fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom, all of such obligations of Tenant to survive Tenant's surrender of possession of the Premises.

ARTICLE 18 - ESTOPPEL CERTIFICATE

Tenant shall at any time and from time-to-time on or before the tenth day following written notice from Landlord, execute, acknowledge, and deliver to Landlord an estoppel certificate (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease is so modified, is in full force and effect) and the date to which the rental and other charges are paid in advance, if any; and (b) acknowledging that there are not, to said party's knowledge, any uncured defaults on the part of Landlord or Tenant hereunder, or specifying such defaults if any are claimed, and such other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. The estoppel certificate shall be in such form as may be required by any prospective mortgagee or purchaser of the Building). Any such statement may be relied upon by a prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. Failure of the Tenant to timely execute and deliver such estoppel certificate or other instruments shall constitute a Default and acceptance of the Premises and an acknowledgement by Tenant that statements included in the estoppel certificate are true and correct, without exception.

ARTICLE 19 - CONDEMNATION

If the whole or any part of the Premises or Building shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking, condemnation, reconfiguration, vacation, deed or other instrument. If more than twenty percent (20%) of the Premises is taken, or if access to the Premises is substantially impaired, Tenant shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking. Landlord shall be entitled to the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Term pursuant to the terms of this Lease, and for moving expenses, so long as such claims do not diminish the award available to Landlord or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination, or the date of such taking, whichever shall first occur. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

ARTICLE 20 - RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the Rules and Regulations as set forth in **Exhibit "D"** attached hereto as revised and amended a from time-to-time by Landlord. Landlord

reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be in effect upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the nonperformance of any said rules by any other tenants or occupants.

ARTICLE 21 – SIGNS

Upon occupancy of the Premises by Tenant, Landlord shall install signage on or about the entrance door to Tenant’s suite and on the directory/directories located at the building entrance(s). Thereafter, modifications shall be made by Landlord, at Tenant’s request and expense. All signage requests shall be made to Landlord in writing. Tenant shall not place any signs, advertisements or awnings upon the Premises in areas visible to the general public or the Building without the prior written approval of Landlord with respect to number, design, size, and location of any such sign, which Landlord may grant or withhold in Landlord’s sole discretion.

ARTICLE 22 - ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times to enter the Premises, with 24 hours notice, except in case of emergency, to (i) inspect them; (ii) show the Building, the Premises, the Project and each portion thereof to prospective tenants, mortgagees, purchasers, ground lessors or other third parties and their respective engineers, architects, appraisers, space planners and other consultants; (iii) post notices of nonresponsibility; or other applicable laws, or for structural alterations, repairs or improvements to the Building. Notwithstanding anything to the contrary contained in this Article 22, Landlord may enter the Premises at any time to (A) perform services required of Landlord; (B) take possession after a Default of this Lease in the manner provided herein; (C) perform any covenants to be performed by Tenant after a Default by Tenant; and (D) in an emergency. Landlord may make any such entries without the abatement of Rent and may take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant’s business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant’s vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainee of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises.

ARTICLE 23 - ATTORNEY FEES

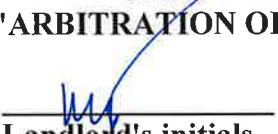
If either party commences litigation against the other for the specific performance of this Lease, for damages for the breach hereof, or otherwise for enforcement of any remedy hereunder, the parties hereto agree to and hereby do waive any right to trial by jury, and in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorney fees as may have been incurred.

ARTICLE 24 - ARBITRATION OF DISPUTES

IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES UNDER THIS LEASE, OR IN THE EVENT ANY DISPUTE IS ANTICIPATED AS TO WHICH EITHER PARTY DESIRES TO OBTAIN DECLARATORY RELIEF, THE DISPUTE OR ANTICIPATED DISPUTE SHALL BE SUBMITTED TO BINDING ARBITRATION, UPON THE APPLICATION OF EITHER PARTY, IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 1282-1284.2.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS

THE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. EACH OF THE UNDERSIGNED HAS READ AND UNDERSTANDS THE FOREGOING AND AGREES TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.


Landlord's initials

Tenant's initials

ARTICLE 25 - TENANT PARKING

Tenant shall be assigned, commencing on the Rent Commencement Date, on a nonexclusive basis, together with other tenants and their respective employees, the number of undesignated, unreserved spaces specified in Paragraph 1.01 of the Lease, available in the Parking Structure. Commencing on the Rent Commencement Date, or such other date as may be set forth in Paragraph 1.01 and/or Exhibit "G", and monthly thereafter throughout the Term of the Lease as it may be extended, the Parking Payment, set forth in Paragraph 1.01 of this Lease, and as it may be increased from time to time, will be due and payable under terms and provisions set forth in the Lease. Tenant and Tenant's employees shall abide by all rules and regulations which are prescribed from time to time for the orderly operation and use of the Parking Structure. Such rules and regulations shall provide that Tenant shall pay Landlord's then reasonable current charge for any replacement of any Tenant access card which is lost, stolen, damaged or destroyed. Landlord specifically reserves the right to reasonably modify, change the size, configuration, design, layout and all other aspects of the Parking Structure at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close-off or restrict access to the Parking Structure or portions thereof, or other parking areas for purposes of permitting or facilitating any such construction, alteration or improvements. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. The parking privileges provided to Tenant pursuant to this Article 25 are solely for use by Tenant's own personnel and such privileges may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior written approval. Tenant's invitees and guests may use parking spaces in the Parking Structure that are otherwise allocated or reserved on a first-come, first-serve basis, upon payment of Landlord's then prevailing parking rate. A validation or other system determined, in Landlord's reasonable judgment, shall be made available to Tenant to enable Tenant to pay for customer parking. The parking privileges made available to Tenant are not for long term (i.e., more than 48 hours) storage of automobiles, or for short or long term storage of boats, trailers, recreational vehicles, motorcycles or other vehicles or equipment. Such vehicles will be removed from the Parking Structure at Tenant's expense.

ARTICLE 26 - GUARANTOR

If a Guarantor is referenced in Article 1.01(n) of the Fundamental Lease Provisions, it shall be a condition precedent to the effectiveness of this Lease that the Guarantor execute and deliver to Landlord a guaranty of lease in the form attached to this Lease as Exhibit E and incorporated into this Lease by this reference, guaranteeing the full and faithful performance of all obligations of Tenant under this Lease.

ARTICLE 27 - GENERAL PROVISIONS

27.01 Captions.

The captions of the Articles and Paragraphs of this Lease are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Paragraphs.

27.02 "Landlord" and "Tenant".

The words "Landlord" and "Tenant" whenever used herein shall be applicable to one (1) or more persons as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one as to any given leasehold estate arising hereunder, the obligations of this Lease applicable thereto shall be joint and several.

27.03 "Persons".

The word "persons" wherever used shall include individuals, firms, associations, and corporations.

27.04 Nonexclusive Remedies.

Various rights, options, elections, powers and remedies of either party contained in this Lease shall be construed as cumulative, and no one of them exclusive of any others, or of any other legal or equitable remedy which such party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not in any way impair such party's right to any other right or remedy until all obligations imposed upon the other have been fully performed.

27.05 Independent Covenants.

This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord; provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Building of any portion thereof, whose address has been given to Tenant, and a reasonable opportunity is granted to Landlord and such holder to correct such violations as provided above.

27.06 Successors and Assigns.

Subject to all other provisions of this Lease, each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 15 of this Lease.

27.07 Entire Agreement.

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease and any separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith, contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use occupancy of the Premises and shall be considered to be the only agreements between the parties hereto and their representatives and agents. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

27.08 Time.

Time is of the essence of each item and provision of this Lease.

27.09 Severance.

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or

condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

27.10 Notices.

In addition to the service of notices in accordance with State law, all notices, demands, or other writings which may be given or made or sent by either party according to State law or according to the Lease shall be deemed to have been fully given provided given in writing addressed to the Tenant at such addresses as set forth in Article 1.01 of the Lease (or as re-designated in accordance with this Article 27.10) and shall be deemed given (i) two (2) business days after being deposited in the United States mail, registered or certified and postage prepaid (return receipt not required); (ii) and (1) business day after being deposited with a nationally recognized overnight delivery service such as Federal Express or UPS; or (iii) when delivered if delivered by personal delivery.

27.11 Authority of Parties.

If Tenant or Landlord is a corporation, partnership or other form of entity, each individual executing this Lease on behalf Landlord or Tenant hereby represents and warrants that such party is a dully formed and existing entity qualified to do business in California and that it has full right and authority to execute and deliver this Lease and that each person signing on behalf of such party is authorized to do so. If Tenant is a Corporation, this Lease shall be signed by the Chairman of the Board, the President or any Vice President, and the Secretary, Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation, or Tenant shall provide Landlord, concurrently with a duly adopted Resolution of the Corporation's Board of Directors, in accordance with its Articles of Incorporation and By-Laws.

27.12 Brokers.

Tenant hereby represents and warrants that it has had no dealing with any real estate broker or agents in connection with the negotiation of this Lease, excepting only the real estate broker(s) or agent(s) specified in Paragraph 1.01 of the Lease ("Broker(s)", and that it knows of no real estate broker or agent who is entitled to a commission in connection with this Lease. Tenant agrees to indemnify and defend Landlord against and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorney fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than Broker, occurring by, through, or under Tenant.

27.13 Integration.

This Lease, including the Rules and Regulations attached hereto and incorporated herein by reference and including any addendum attached hereto and executed by the parties, contains the entire understanding between the parties and supersedes any prior understandings and/or written or oral agreements between them respecting the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written between and among the parties hereto relating to the subject matter of this Lease which are not fully expressed herein.

27.14 Joint and Several.

If there is more than on Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

27.15 Force Majeure.

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental or quasi-governmental (including utility companies) action, failure to act or impositions of restrictions or limitations, riot or civil commotion, explosion, fire, earthquake or other casualty, unusual and severe weather, pandemic, event impacting environmental conditions, and other causes (whether or not similar to any of the foregoing) beyond the reasonable control of the party obligated to perform and impacting such party's performance (each such event is referred to as a

“Force Majeure Event”) shall excuse such party’s performance for a period of time that is equal to the period of such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for a party’s performance of a covenant or obligation, that time period for that party’s performance shall be extended by the period of any delay in its performance arising from the Force Majeure Event; provided, however, that the term “Force Majeure Event” shall not in any event include, and this Section 27.15 shall not apply to, or delay or excuse, a party’s covenants and obligations to make payments as, when and in the amounts set forth in this Lease.

27.16 Building Name and Signage.

Landlord shall have the right at any time to change the name of the Building or Civic Center Square and to install, affix and maintain any and all signs on the exterior and on the interior of the Building as Landlord may, in Landlord’s sole discretion, desire. Tenant shall not use the name of the Building or Civic Center Square, or use pictures or illustrations of the Building or Civic Center Square in advertising or other publicity, without the prior written consent of Landlord.

27.17 Landlord Exculpation.

It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, the liability of Landlord hereunder (including any successor landlord hereunder) and any recourse by Tenant against Landlord shall be limited solely and exclusively to the interest of Landlord in and to the Building, and neither Landlord, nor officers, directors, shareholders or members shall have any personal liability thereof, and Tenant, on behalf of itself and all persons claiming by, through or under Tenant, hereby expressly waives and releases Landlord and such officers, directors, shareholders or members from personal liability.

27.18 Hazardous Material.

As used herein, the term “Hazardous Material” means any hazardous or toxic substance, material or waste which is or becomes regulated by, or is dealt with in, any local governmental authority, the State of California or the United States Government, but shall exclude any deminimis items commonly used in the operation of a business office in a Class A Office Building so long as used in compliance with all applicable laws.

27.19 No Discrimination.

Tenant covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or group of persons, on account of race, solar, creed, sex, religion, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, or enjoyment of the Premises.

27.20 Governing Laws.

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

27.21 Submission of Lease.

Submission by Landlord of this Lease for review or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

/

/

/

/

IN WITNESS WHEREOF, Landlord and Tenant have executed this agreement the date set forth above.

TENANT:
CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne White,
City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: Tracy N. Paryanian
Tracy N. Paryanian Date
Supervising Deputy City Attorney 7-13-23

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

LANDLORD:
TUTELIAN HOLDINGS I, LLC,
A California limited liability company

Civic Center Square, Inc., a California Corporation
Managing Member

By: Michelle Tutelian
Michelle Tutelian

Title: President and CFO
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

If Tenant is a Corporation, this Lease shall be signed by the Chairman of the Board, the President or any Vice President, and the Secretary, Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation; or Tenant shall provide Landlord, concurrently with a duly adopted Resolution of the Corporation's Board of Directors, in accordance with its Articles of Incorporation and By-Laws.

EXHIBIT "A"
2440 TULARE BUILDING – Office Lease
Legal Description of Land

Parcel 1: (Building Parcel)

Lots 27 That portion of Lots 1 through 8, inclusive, 28 through 32, inclusive, in Block 126 of the Town (now City) of Fresno, in the City of Fresno, County of Fresno, County.

Excepting therefrom the Northeasterly 50 feet of Lots 31 and 32 and the Northeasterly 50 feet of the Northwesterly 12 1/2 feet of Lot 30 of said Block 126.

92-168784, together with the portion of the alley located within said Block 126 (abandoned) which would pass by a conveyance of said land under Section 831 and 1112 of the Civil Code, described as follows:

Beginning at a point on the Northwest line of said Lot 32, a distance of 146.40 feet from the most Westerly corner of said Lot 32; thence North 48°03'23" East, along the Northwest line of said Block 126, a distance of 173.70 feet to the most Northerly corner of said Lot 1; thence South 42° 01'00" East, along the Northeast line of said Block 126, a distance of 180.04 feet; thence South 48°06'32" West, a distance of 99.60 feet; thence North 41°53'28" West, a distance of 53.85 feet; thence South 89°21'51" West, a distance of 27.52 feet; thence South 48°06'32" West, a distance of 53.81 feet; thence North 41°53'28" West, a distance of 107.88 feet to the Point of Beginning.

Parcel 2: (Parking Structure)

That portion of Lots 24 through 32, inclusive, in Block 126 of the Town (now City) of Fresno, recorded in Book 1, page 2 of Plats, Fresno County Records and Parcel B and Outlot A of Parcel Map No. 83-46, recorded in Book 42, pages 30 through 33, inclusive, of Parcel Maps, Fresno County Records, described as follows:

Beginning at the most Westerly corner of said Lot 32, thence North 48°03'23" East, along the Northwest line of said Lot 32, a distance of 123.62 feet; thence South 42°01'14" East, a distance of 102.16 feet; thence North 47°58'46" East, a distance of 12.00 feet; thence South 42°01'14" East, a distance of 4.80 feet; thence South 51°33'26" East, a distance of 29.91 feet; thence South 38°26'34" West, a distance of 17.19 feet; thence South 42°01'14" East, a distance of 82.81 feet to the intersection with the Northwest line of said Parcel B; thence South 42°01'14" East, a distance of 52.00 feet; thence South 48°01'33" West, parallel with and 52.00 feet from the Northwest line of said Parcel B, a distance of 143.62 feet to the intersection with the Southwest line of said Parcel B; thence North 42°01'14" West, along the Southwest line of said Parcel B, a distance of 52.00 feet to the most Westerly corner of said Parcel B; thence North 48°01'33" East, along the Northwest line of said Parcel B, a distance of 20.00 feet to the intersection with the Southwest line of Lot 24; thence North 42°01'14" West, along the Southwest line of Lots 24 through 32 inclusively, a distance of 222.18 feet to the Point of Beginning.

Parcel 3: (Common Area)

That portion of Lots 1 through 9, inclusive, 24 through 32, inclusive, in Block 126 of the Town (now City) of Fresno, recorded in Book 1, page 2 of Plats, Fresno County Records, together with that portion of the alley located within said Block 126 (abandoned) which would pass by a conveyance of said land under Section 831 and 1112 of the Civil Code, and Parcel B and Outlot A of Parcel Map No. 83-46, recorded in Book 42, pages 30 through 33, inclusive, of Parcel Maps, Fresno County Records, described as follows:

Beginning at a point on the Northwest line of said Lot 32, a distance of 123.62 feet from the most Westerly corner of said Lot 32; thence North 48°03'23" East, along the Northwest line of said Lot 32, a distance of 22.78 feet; thence South 41°53'28" East, a distance of 107.88 feet; thence North 48°06'32" East, a distance of 53.81 feet, thence North 89°21'51" East, a distance of 27.52 feet; thence South 41°53'28" East, a distance of 53.85 feet; thence North 48°06'32" East, thence a distance of 99.60 feet to the intersection with the Northeast line of said Block 126;

Situated in Fresno County, California.

EXHIBIT "A-1"
2440 TULARE BUILDING – Office Lease
Site Plan of the Project

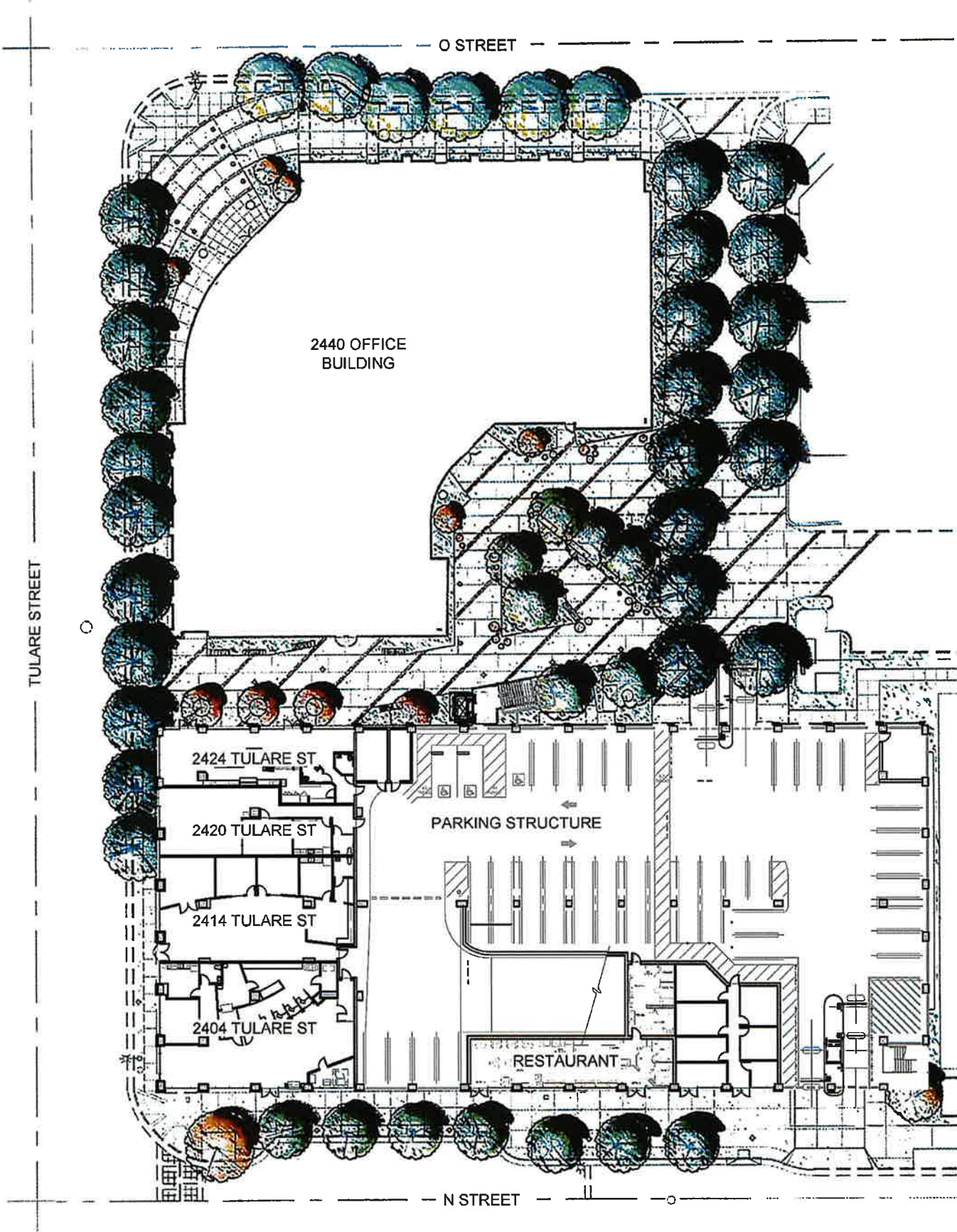
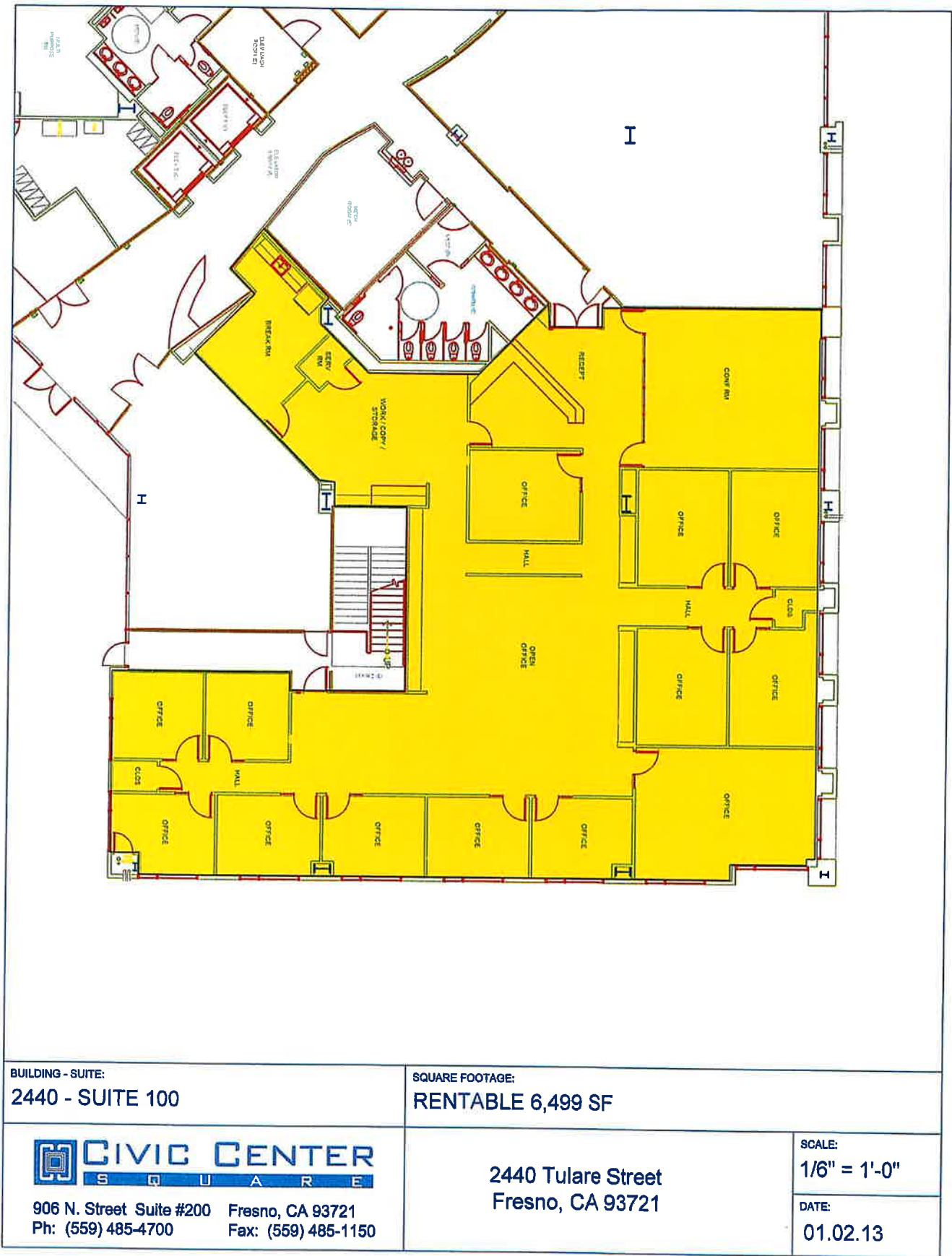


EXHIBIT "A-2"
2440 TULARE BUILDING – Office Lease
Premises Floor Plan



Initials: //
LANDLORD TENANT

EXHIBIT "B"

2440 TULARE BUILDING – Office Lease

LANDLORD'S NOTICE OF CERTAIN TERM DATES

This Exhibit "B" when delivered by Landlord to Tenant is attached to and made part of the Lease dated the ____ day of _____, 2023 by and between **Tutelian Holdings I, LLC**, a California limited liability company ("Landlord"), and **City of Fresno, California**, a municipal corporation, through its **City Attorney's Office** ("Tenant").

1. The Premises have been accepted by the Tenant as of _____, 2023, which shall be initial date of the Term.
2. Pursuant to the provisions of Paragraph 1.01 of the Lease, the Rent Commencement Date is _____, 2023. Pursuant to the provisions of Paragraph 1.01 of the Lease, the expiration date of the Term of this Lease is _____, 20____, unless Tenant properly and timely exercises its renewal Options pursuant to Paragraph 1.01 of the Lease.
3. Under the terms of Paragraph 1.01 of the Lease, Tenant shall commence paying its proportionate share of Operating Costs as Additional Rent on the _____ day of _____, 2023.
4. If the Commencement Date of the Lease is other than the first day of the month, the first Rent billing will contain a pro-rata adjustment. Each billing thereafter shall be for the full amount of monthly installments of Rent provided for in the Lease.
5. Tenant has paid concurrently with lease execution the first full month's rent in advance, which shall be for the month of _____. Rent is due now for the partial month of _____ in the amount of _____. The first regular payment of Minimum Annual Rent shall be for the month of _____, and is due on the first of that month.
6. Rent is due and payable in advance on the first day of each month during the Term. Tenant's Rent checks are to be made payable to Landlord and delivered to Landlord at 906 N Street, Suite 200, Fresno, CA, or at such other place designated in writing by Landlord.

LANDLORD: TUTELIAN HOLDINGS I, LLC,
a California limited liability company

By: Civic Center Square, Inc., a California corporation
Managing Member

By: _____ Date: _____

EXHIBIT "C"

2440 TULARE BUILDING at Civic Center Square

Allocation of Improvement Work to Premises

This Exhibit "C" is attached to and made a part of the Office Lease dated as of the _____ day of _____ 2023, by and between **Tutelian Holdings I, LLC**, a California limited liability company, ("Landlord"), and **City of Fresno, California**, a municipal corporation, through its **City Attorney's Office** ("Tenant").

THIS WORK LETTER ("Work Letter") supplements the Lease executed concurrently herewith. All capitalized terms not defined herein shall have the same meanings as set forth in the Lease.

1. Tenant Improvements. Landlord and Tenant acknowledge and agree that Landlord shall deliver and Tenant shall accept the Premises "As-Is", except that Landlord shall, at Landlord's cost, have the carpets professionally steam cleaned; the Premises repainted throughout with the existing paint colors; and miscellaneous repairs, as may be necessary ("Tenant Improvements"). All other Tenant Improvements as approved by Landlord shall be performed by Landlord at Tenant's expense, including but not limited to any electrical or conduit cabling to accommodate Tenant's systems furniture.

2. Changes.

- a. Tenant shall not make or request any improvements to the Premises without Landlord's prior written approval, which approval shall not be unreasonably withheld; provided, however, that Landlord may disapprove, in its sole and absolute discretion, any improvements that: (i) do not comply with the Building Codes; (ii) would delay the completion of the Tenant Improvements to be completed by Landlord, (iii) require power consumption and/or Building services beyond the level normally provided to other tenants in the Building; (iv) overload the floors; or (v) in Landlord's reasonable opinion, are of a nature or quality that is inconsistent with Landlord's objectives concerning the appearance or quality of the Building.
- b. If Tenant requests any improvements to the Premises, and Landlord approves such improvements, and such changes and/or substitutions result in increased costs of constructing the Tenant Improvements, then Tenant shall pay all such excess costs to Landlord within thirty (30) days after receipt of Landlord's invoice therefor, including Landlord's overhead, administration and supervisory fee equal to fifteen (15%) of the amount of the approved change order. Any and all sums or changes owing by Tenant to Landlord pursuant to this Paragraph 3 shall be considered Additional Rent.

3. Tenant's Work. Any other item or work, including, for example, telephone and data service or furnishings, for which Tenant contracts separately (hereinafter "Tenant's Work"), shall be subject to Landlord's policies and schedules and shall be conducted in such a way as not to hinder, cause any disharmony with, or delay work of improvement in the Building. Tenant's suppliers, contractors, workmen, and mechanics shall be subject to reasonable approval by Landlord prior to the commencement of their work and shall be subject to Landlord's administrative control while performing their work. Tenant shall have provided adequate proof of the insurance required to be maintained by Tenant pursuant to the terms of the Lease, prior to commencing any Tenant Work.

/

/

/

/

IN WITNESS WHEREOF, the parties have executed this Work Letter as of the execution date of the Lease.

TENANT:
CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne White,
City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____ Date _____
Tracy N. Parvanian
Supervising Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____ Date _____
Deputy

LANDLORD:
TUTELIAN HOLDINGS I, LLC,
A California limited liability company

Civic Center Square, Inc., a California Corporation
Managing Member

By: _____
Michelle Tutelian

Title: President and CFO
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

EXHIBIT "D"

2440 BUILDING at Civic Center Square

PROPERTY RULES AND REGULATIONS WHICH CONSTITUTE A PART OF THE LEASE

These Rules and Regulations shall be attached to and form a part of the Lease at the Building. Tenant upon execution of the Lease for space at the Building shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of space in the Building. In the event of any conflict between these Rules and Regulations, or any amendments or additions thereto, and the provisions of the Lease, such Lease provisions shall control.

1. Tenant and Tenant's employees, agents, clients or invitees shall not loiter in the common areas of the Property nor shall they in any way obstruct the sidewalks, entry passages, driveways, entrances and exits to the Property, and they shall use same only as passageways to and from their respective work areas.

2. Tenant, and Tenant's employees, agents, clients or invitees shall not do anything on any premises, or bring or keep anything therein, which will in any way increase or tend to increase the risk of fire or the rate of fire insurance or which shall conflict with applicable law, rules or regulation established by any governmental body or official having jurisdiction, the regulations of the fire department or the provision or requirements of any insurance policy on such premises or any part thereof.

3. Tenant and Tenant's employees, agents, clients or invitees shall not interfere in any way with other tenants or those having business with them, nor bring nor keep in or about the Building any animal or bird (with exception of those permitted by the ADA or FEHA) nor any bicycle, automobile or any other vehicle, except such vehicles as they are permitted to park in the designated area of the Parking Structure. Parking in all areas about the Building is provided for the maximum convenience of the patrons of the Building. All tenant cars and tenant employee cars shall be registered with the Building Manager. Employee parking shall be in all circumstances as directed by Landlord or Building manager as Landlord's representative. Building Manager may issue parking stickers to Tenant and Tenant employees.

4. Tenant shall not make nor permit any other agents, employees, customers, or visitors to make any loud or improper noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business within the Building. No Tenant shall conduct, directly or indirectly, any auction in the Building, nor permit any other person to conduct an auction therein. No musical instruments shall be played in the Building. Tenant shall not throw nor permit any of its employees, agents, clients, or invitees to throw cigar or cigarette butts or other substances or litter of any kind in or about the Building, except in receptacles placed there for such purpose.

5. No part of the offices shall be used for lodging or sleeping purposes. Cooking of meals, other than by microwave oven in the kitchen area provided for that purpose, is prohibited in the Premises.

6. The water-closets, urinals, sinks, and set basins shall not be used for any purposes other than those for which they were constructed. Waste and excessive or unusual use of water or heat will not be allowed. Tenant shall exercise extraordinary care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's employees leave the Building, and that all electricity shall likewise be carefully shut off so as to prevent waste or damage, and for any default or carelessness the Tenant shall make good all injuries sustained by other tenants or occupants of the Building or by the Landlord.

7. The Premises shall not be used by the Tenant, Tenant's employees, agents, clients or invitees for the sale of intoxicating liquors, nor for any illegal or immoral purpose, and all governmental laws and ordinances shall be complied with by the Tenant.

8. Landlord reserves the right to refuse access to any persons Landlord in good faith judges to be a threat to the safety, reputation, or property of the Building and its occupants.
9. The entry door of the Building shall be unlocked as follows:
- On all business days, Monday through Friday, between the hours of 7:00 AM and 6:00 PM.
 - During other hours, the Tenant may gain access to the Building by the use of a key that will be furnished.
10. Heat and air conditioning will be provided to the Building from 7:00 AM until 6:00 PM (Monday through Friday) or whenever such heating and cooling shall, in the Landlord's judgment, be required for the comfortable occupation of the Building. Heating and air conditioning, for times in excess of those specified herein, may be arranged by the mutual written agreement of the parties, and Tenant may be required to pay the increased cost therefore.
11. The Landlord shall provide a directory which shall contain the names of each of the tenants in the Building. The Tenant shall not use the name of the Building, or any change in the name of the Building in connection with or in promotion or advertising the business of the Tenant except as the Tenant's address.
12. Machinery, equipment and furnishings which have any of the following characteristics are restricted and may not be placed in the Premises without the express prior written permission of Landlord:
- Anything of unusually heavy weight including safes, large files, etc.
 - Anything which in the sole judgement of Landlord may tend to do damage to the floors and/or or structure of the Premises and/or the common area.
 - Any machinery which, in Landlord's sole judgement may cause any unreasonable noise or jar, or tremor, or excessive vibration to the floors or walls or which by its weight might injure the walls or floors of such Premises or any other portion of the Building, or that may disturb any other tenant of the Building.
 - Any machinery of any kind, other than customary office equipment.
 - Any apparatus other than low-power drain, normal office equipment connected with the electrical wiring of the Building.
 - Any apparatus connected with the plumbing system of the Building.
13. Before moving furnishings or equipment in or out of the Premises Tenant must get prior approval from, and schedule with, Landlord's Property Manager and comply with all moving instructions, including but not limited to, floor protection and insurance requirements.
14. Tenant, Tenant's employees, agents, clients and invitees shall comply with California Government Code, Sections 7596-7598, which states "no public employee or member of the public shall smoke any tobacco product inside a public building or in an outdoor area within 20 feet of a main exit, entrance, or operable window of a public building".
15. All freight must be moved into, within, and out of the Premises only through the back doors and according to such regulations as may be posted from time to time by the Landlord.
16. No painting shall be done in the Building, nor shall any alteration be made in any part of the building by putting up or changing partitions, doors, or windows, nor shall there be any nailing, boring or screwing into the woodwork, metal partitions or plastering without the consent of the Landlord or his agents, except for the hanging of customary office decorations including certificates, pictures, and similar items on sheet rock walls.
17. Tenant shall not place or store in the Common Area any table, chairs, benches, or other personal property, except with written consent of Landlord.
18. No aerial of any kind shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance, the written consent of the Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time and at Tenant's expense.

19. Tenant shall give immediate notice to the Building Manager in case of accidents on the Premises or in the Building or of defects therein or in any fixtures or equipment, or of any known emergency in the Building.

20. Neither Tenant, nor Tenant's employees, agents or invitees shall go upon the roof of the Building.

21. Tenant shall observe all security regulations issued by the Landlord and comply with instructions and/or directions of the duly authorized security personnel for the protection of the Building and all tenants therein.

22. Tenant shall comply with all safety, fire protection, and evacuation regulations established by Landlord or any applicable governmental agency.

23. No additional lock or locks shall be placed by the Tenant on any door in the Building, nor shall locks be changed, unless written consent of the Landlord shall have been first obtained.

24. All window coverings must have the approval of Landlord prior to installation. No posters, signs nor any other object which can be seen from the exterior of the Building shall be placed in any window of the Building.

25. The Landlord shall be in no way responsible to the Tenant for any loss of property from the leased premises, however occurring, nor from any damage, including but not limited to damage done to the effects of Tenant by the janitor, or any of his employees, or by any other person or any other cause, except the Landlord's gross negligence.

26. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such tenant or any other tenant.

27. Landlord reserves the right to rescind any of these Rules and Regulations of the Building, and to make such other and further rules and regulations that in its judgment shall from time to time be needed for the safety, protection, care and cleanliness of the Building, the Premises and the operation thereof, the preservation of good order therein and the protection and comfort of the other tenants in the Building and their agents, employees, clients and invitees, which rules and regulations, when made and written notice thereof is given to Tenant, shall be binding upon Tenant in like manner as if originally herein prescribed. However, no rule or regulation adopted by Landlord shall unreasonably interfere with the operation of Tenant's business.

EXHIBIT "E-1"

2440 BUILDING at Civic Center Square

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

SAMPLE — SUBJECT TO MODIFICATION UPON REVIEW OF LEASE

WHEN RECORDED RETURN TO:
MECHANICS BANK
725 ALFRED NOBEL DRIVE
HERCULES, CA 94547-5610

PARTIES: LANDLORD: TUTELIAN HOLDINGS I, LLC, a limited liability company
906 'N' Street, Suite 200
Fresno, CA 93721

TENANT: [Company Name]
[Address]
[Address]

BANK: MECHANICS BANK, a California banking corporation
725 Alfred Nobel Drive
Hercules, CA 94547-5610

This Subordination, Acknowledgment of Lease Assignment, Non-Disturbance and Attornment Agreement ("Agreement") is made and entered into this [Date] day of [Month] , [Year] by and among Landlord, Tenant and Bank.

WITNESSETH

WHEREAS, Landlord is the owner of an Office Building, situated in the City of Fresno County of Fresno, State of California commonly known as 2440 Tulare Street, and more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein as though set forth in full (the "Property"), which Exhibit describes the real property, improvements and appurtenant rights owned by Landlord: and

WHEREAS, Landlord and Tenant entered into a Lease Agreement dated [Date] , as modified by an Addendum to Lease dated [Date] (the "Lease"), whereby Tenant was granted a leasehold interest in and to the Property known as 2440 Tulare Street consisting of [# Sq. Ft] rentable square feet (the "Premises"); and

WHEREAS, Landlord has received a loan commitment from Bank, whereby Bank has made, or agreed to make a loan to Landlord which has been, or will be, secured by a deed of trust on the Property, and all improvements thereon, and

WHEREAS, Landlord has executed, or proposes to execute, a deed of trust and assignment of rents securing, among other things, a promissory note covering the Property and all improvements thereon, in favor of Bank, which note is payable with interest upon the terms and conditions described therein ("Loan"). Said deed of trust is to be recorded concurrently herewith, in the records of the County Recorder of Fresno County, California. In making the Loan, Bank is relying in part upon the statements, acknowledgments, representations and agreements set forth in this Agreement. The deed of trust and assignment of rents and promissory notes, described in this paragraph shall hereinafter be referred to collectively as the "Deed of Trust" and "Note," respectively; and

WHEREAS, as a condition of making the Loan secured by the Deed of Trust, Bank requires that all leasehold interest held by Tenant with respect to said Property, be subordinate to the lien of the Deed of Trust securing the Note from Landlord to Bank; and

WHEREAS, for valuable consideration received by Tenant from Landlord, the receipt of which Tenant hereby confirms, Tenant has agreed that Landlord has the right to place liens on encumbrances on and against the Premises and all improvements located thereon, including Tenant's leasehold interest and that such liens and encumbrances shall be superior in all respects to Tenant's leasehold interest and estate; and that Tenant shall, upon Landlord's request, execute such documents as Landlord or Bank may require to evidence the subordination of the Lease and Tenant's interest therein to any such lien or encumbrance.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Subordination of the Lease: Tenant hereby declares and agrees that Tenant's leasehold interest in the entire estate created thereby is, and shall be, subordinate, subject to and inferior to the indebtedness of Landlord to Bank as evidenced by the Note and further evidenced by the Deed of Trust given by Landlord to Bank as security therefor, and such subordination shall extend to and include all renewals, modifications, consolidations, replacements and extension of said Deed of Trust to the full extent of the principal sums secured thereby, including any advances made by Bank to Landlord thereunder, together with interest thereon.

2. Notice to Bank: So long as the Deed of Trust shall remain a lien on the leased Premises, Tenant agrees simultaneously with the giving of any notice to Landlord, which is required to be given by the terms of the Lease, to give a duplicate copy of any such notice to Bank. Further, Tenant agrees that if Landlord defaults in the performance of Landlord's covenants under the Lease and if such default allows Tenant to cancel or surrender said Lease, Bank may cure said default with the same effect as if cured by Landlord, and if necessary, enter upon the Premises for the purpose of curing any such default; provided, however, Tenant will take no action to cancel or surrender said Lease (a) if the default is not curable by Bank (so long as the default does not interfere with Tenant's use and occupation of the Premises), or (b) if the default is curable by Bank and the default is such that it cannot reasonably be cured within the period set forth in said Lease, such period shall be extended for such additional period of time as shall be reasonably necessary (including, without limitation, a reasonable period of time to obtain possession of the Property and to foreclose upon the Deed of Trust), if Bank delivers Tenant written notice, within thirty (30) days after Bank's receipt of written notice thereof, of Lender's election to undertake the cure of the default and if curative action (including, without limitation, action to obtain possession and foreclose) is instituted within a reasonable period of time and is thereafter diligently pursued. This right in no way obligates Bank to cure such default. The giving of any such notice to Landlord shall not be properly given under the terms of the Lease and shall be of no force and effect until a duplicate copy thereof shall also have been given to the Bank pursuant to the terms of this paragraph.

3. Non-Disturbance: Notwithstanding the foregoing, as long as Tenant is not in default in payment of rent or additional rent, or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the leased Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option thereof in the Lease, shall not be diminished or interfered with by Bank, and Tenant's occupancy of the leased Premises shall not be disturbed by Bank for any reason whatsoever during the term of the Lease or any extensions or renewals thereof; provided that any options to purchase, rights of first refusal to purchase, or first rights of offer contained in the Lease and relating to any portion of the Premises or Property shall be of no further force or effect in the event the interest of Landlord shall be transferred to and owned by any person or entity (including but not limited to Bank) by reason of foreclosure, deed in lieu of foreclosure or other proceeding instituted or action taken under the Deed of Trust. If Tenant is not in default in the payment of rent or additional rent or in the performance of the terms, covenants and conditions of the Lease on Tenant's part to be performed, Bank will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease, except to terminate an option to purchase, if any, because of any default under the Deed of Trust.

4. Attornment: If the interest of Landlord shall be transferred to and owned by any person or entity (including but not limited to Bank) by reason of foreclosure, deed in lieu of foreclosure or other proceeding instituted or action taken under the Deed of Trust, Tenant shall be

bound to such transferee and such transferee's successors and assigns (collectively, "Transferee") under all of the terms, covenants and conditions of the Lease for the period of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any options thereof in the Lease, with the same force and effect as if Transferee were the Landlord under the Lease, and Tenant does hereby attorn to Transferee as its Landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto, immediately upon Transferee succeeding to the interests of the Landlord under the Lease. The respective rights and obligations of Tenant and Transferee upon such attornment to the extent of the then remaining balance of the term of the Lease, and any such extensions and renewals, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as set forth herein. In the event that Transferee shall, in accordance with the foregoing, succeed to the interest of Landlord under the Lease, Transferee agrees to be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such event, have the same remedies against Transferee for the breach of any agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Transferee had not succeeded to the interest of Landlord; provided, however, that Transferee shall not be:

- (a) Liable for any act or omission of any prior landlord (including Landlord); or
- (b) Liable for any failure of any prior landlord (including Landlord) to construct any improvements (including any tenant improvements at the Premises);
- (c) Subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or
- (d) Bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or
- (e) Bound by any material amendment or modification of the Lease made without Bank's consent; or
- (f) Personally liable under the Lease, Transferee's liability thereunder being limited to its interest in the Property and the income and proceeds therefrom.

Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages.

5. Assignment: Tenant has notice that the Lease and the rent and all other sums due thereunder have been or will be assigned to Bank as security for the Note and Tenant consents to that assignment in favor of Bank.

6. Modification, Termination and Cancellation: Tenant shall not consent to any modification, termination or cancellation of the Lease without Bank's prior written consent.

7. Advance Rents: Tenant shall make no payments or prepayments of rent more than one (1) month in advance of the time when the same became due under the terms of the Lease.

8. Notices: All communications and notices required or permitted hereunder, or pursuant to the Note, Deed of Trust or Lease, shall be dispatched by United States registered or certified mail, with return receipt requested, postage prepaid, addressed to the other parties as designated on page one hereof, or to such other addresses as any party may from time to time designate in writing to the other parties hereto.

9. Inconsistencies: This Agreement supersedes any inconsistent provisions under the terms of the Lease.

10. Binding Effect: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall be governed and construed in accordance with the laws of the State of California; provided, however, that in the event of the assignment or transfer of Bank's interest, all obligations and liabilities shall be the responsibility of Bank's successor in interest; and provided further that Tenant's interest under this Agreement may not be assigned or transferred without Bank's prior written consent, which consent shall not be unreasonably withheld.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

EXHIBIT "E-2"

2440 BUILDING at Civic Center Square

TENANT ESTOPPEL

SAMPLE — SUBJECT TO MODIFICATION UPON REVIEW OF LEASE



ESTOPPEL CERTIFICATE

To: Mechanics Bank ("Lender")
1111 Civic Drive
Walnut Creek, CA 94596
Attn: Real Estate Industries Group

Re: "Loan" by Lender to Borrower pursuant to a "Loan Agreement" which is secured by a Deed of Trust ("Deed of Trust") and a related Assignment of Rents ("Assignment") with respect to the Property.

"Lease" dated _____ between _____
as "Lessor" and _____ as "Lessee" with respect to "Premises"
described in the Lease as approximately _____ rentable square feet, constituting property located at
_____, California; as set forth in Paragraph 1 below.

Ladies and Gentlemen:

This Estoppel Certificate ("Estoppel") is furnished by Lessee to Borrower and to Lender pursuant to the requirements of the above-referenced Loan Agreement. Lessee understands that Borrower and Lender are relying upon Lessee's statements and agreements in connection with Lender making and maintaining the Loan.

Lessee hereby represents and certifies to, and agrees with, Borrower and Lender as set forth below.

1. A true, correct and complete copy of the Lease, including any and all amendments, is attached to this letter as Exhibit A. The Lease has not been amended or modified in any way, nor are there any side letters or other arrangements relating to the Premises or the Property, except for the following [if no exceptions are stated, there are NONE]:

2. The Lease has not been assigned, nor have the Premises sublet, in whole or in part, except as hereinafter stated [if no exceptions are stated, there are NONE]:

3. The Lease is presently in full force effect according to its terms and is valid and binding obligation of Lessee.

4. Neither Lessee nor Lessor is in default under the Lease nor does any state of facts exist that with the passage of time or the giving of notice, or both, could constitute a default under the Lease.

Initials: //
LANDLORD TENANT

ESTOPPEL CERTIFICATE

5. All conditions under the Lease to be satisfied by Lessor as of the date hereof (including, without limitation, all work, if any, to be performed by Lessor in the Premises or the Property) have been satisfied, and all contributions, if any, required to be paid by Lessor under the Lease to date for improvements to the Premises have been paid, except as hereafter stated [if no exceptions are stated, there are NONE]:

6. All conditions under the Lease to be satisfied by Lessor as of the date hereof (including, without limitation, all work, if any, to be performed by Lessor in the Premises or the Property) have been satisfied, and all contributions, if any, required to be paid by Lessor under the Lease to date for improvements to the Premises have been paid, except as hereafter stated [if no exceptions are stated, there are NONE]:

7. The termination date of the current term of the Lease: _____
8. The Lease does not provide for any payments (including, without limitation, rent credits) by Lessor to Lessee that are presently due and payable, or that are due and payable in the future, except as hereafter stated [if no such payments or credits are stated, there are NONE]:

9. On this date, to the best of Lessee's knowledge, there are no existing defenses or off-sets that Lessee has against the enforcement of the Lease by Lessor, except as hereafter stated [if no exceptions are stated, there are NONE]:

10. Rent currently due under the Lease is as follows _____. Except as hereafter stated, no rent has been paid more than one (1) month of the due date and no security has been deposited with Lessor [if no advance rents or security deposits are stated, there are NONE]:

11. Except as hereafter stated, Lessee has no options to extend the Lease, to lease additional space at the Property, or to purchase the Property, and Lessee has no right of refusal with respect to leasing additional space at the Property or with respect to purchasing the Property [if no such options or rights of refusal are stated, there are NONE]:

12. Except as hereafter stated, no parties have guaranteed the payment or performance of any of Lessee's obligations under the Lease [if no guarantors are listed, there are NONE]:

ESTOPPEL CERTIFICATE

- 13. There are no actions, whether voluntary or otherwise, pending or threatened against Lessee, or any guarantor of Lessee's obligations under the Lease, pursuant to the bankruptcy or insolvency laws of the United States or any similar state laws.
- 14. To the undersigned's knowledge, the undersigned has not received notice and is not aware of any prior transfer, assignment, hypothecation or pledge by Landlord or of any of Landlord's interest in the Lease or the Property, except to Lender in connection with the Loan.
- 15. The undersigned is duly authorized to execute this Estoppel on behalf of Lessee. This Estoppel shall inure to the benefit of Borrower and Lender and their respective successors and assigns (including, without limitation, any Borrower at or after foreclosure) and shall be binding upon Lessee and Lessee's successors and permitted assigns.

DATED as of _____ day of _____, _____

LESSEE:

By: _____

Print Name: _____

Title: _____

Initials:  // _____
LANDLORD TENANT

EXHIBIT “F”

2440 BUILDING at Civic Center Square

Guaranty of Lease

N/A

EXHIBIT “G”

2440 BUILDING at Civic Center Square

Addendum: Special Provisions

N/A

G

Initials: W //
LANDLORD TENANT