Commercial Leases

with Michael Meyer

March 17, 2007
San Diego, California

CLE International
Commercial Real Estate Leases with Michael E. Meyer
Program Schedule

8:00 Registration and Continental Breakfast

8:30 The Lease and Negotiation Tips
An Overview

8:45 Requests For Proposal (Short Form and Long Form), Letters of Intent and Term Sheets
When and How to Use Them

9:10 Lender's Concerns/Protecting the Lender
Dos and Don'ts; Subordination, Non-Disturbance and Attornment Agreement; Estoppel Certificate

9:30 Checklist
All the Key Provisions Put in Perspective

10:15 Morning Break

10:30 Current Issues and Developments in Insurance; Interrelationship with Damage and Destruction
Casualty and Rent Continuation Insurance and How Such Insurance Interrelates with the Damage and Destruction Provisions; Special Focus on Insurance regarding Terrorists, Earthquakes, Hurricanes and Tornadoes

11:15 Assignments and Subleases
Balancing Rights; Recapture; the Use Clause; Recognition Agreement

12:00 Lunch Break

1:15 Options and Fair Market Rental
Options to Expand and Option to Renew; Case Studies on the Importance of Properly Defining Fair Market Rental and Establishing the Correct Procedures to Determine Fair Market Rental

2:00 The Renewed Focus on Tenants' Other Exit Strategies
Contraction Rights and Early Termination Rights; Exclusives; Signage; Affiliates

2:25 Representing the Small Tenant in a Small Lease Transaction
The Top Ten Issues

3:00 Afternoon Break

3:15 Enforcement of Leases
Default; Termination; Evictions; Damages

3:45 Operating Expenses
Inclusions and Exclusions; Gross-Up; Net vs. Gross; Use of Modified Gross Leases; Audit Rights

4:45 The Industrial Lease
Difference Between the Industrial Lease and the General Office Leases

5:00 Ethical Considerations
Limitation on Tenants' and Landlords' Recourse; Arbitration and Mediation; Rules of Behavior; Miscellaneous Provisions

5:15 Evaluations and Adjourn

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Michael E. Meyer is the managing partner of the Los Angeles and Century City offices of DLA Piper Rudnick Gray Cary. He has developed a national reputation as one of the pre-eminent leasing attorneys in the United States. He regularly represents many of this country's leading financial institutions, accounting firms and law firms in connection with major lease transactions throughout the United States. Representative of the major leases he has done for tenants within the last 12 months include Bank of America (200,000 sq.ft.), City National Bank (330,000 sq.ft.), The Capital Group (300,000 sq.ft.), TCW (200,000 sq.ft.) and Rand in Santa Monica.

In 2002, he was named CoreNet Global's Real Estate Professional of the Year and one of the 25 Most Powerful Attorneys in Los Angeles by the Los Angeles Business Journal. In 2002 and 2004, he was named one of the 100 Most Influential Lawyers in California by the Los Angeles Daily Journal and the San Francisco Daily Journal. He was ranked No. 2 among all of the real estate lawyers in California in Chambers USA—America's Leading Business Lawyers, 2003-2004. In 2004, in a vote by his peers which was published by Los Angeles Magazine, he was the only real estate lawyer ranked in the Top 10 of all the Super Lawyers in Southern California. He was recently named on of the Top 500 Lawyers in America, and five of the lawyers named were United States Supreme Court Judges. He is currently representing the State of California on its lease negotiations with the National Football League.

Mr. Meyer has lectured to numerous city organizations, including real estate brokers, landlords and developer groups, interior design groups and real estate appraisers. He also has presented various seminars to BOMA, PLI, CLE, CEB, Los Angeles County Bar Association, State Bar of California and the American Bar Association. He is a member of the American College of Real Estate Lawyers.

Memberships
American Bar Association
Los Angeles County Bar Association
University of Chicago Law School Alumni Association of Southern California - President (1980 to 1982)
Board of Trustees Los Angeles County Bar Association
Board of Directors Los Angeles County Bar Foundation
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Board of Directors Building Owners and Managers Association

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Board of Directors Boy Scouts of America (Greater Los Angeles)
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I. GENERAL LEASE OVERVIEW

A Lease for office space in simple terms really is a contract between two parties, typically referred to as a "**Landlord**" (or Lessor) and a "**Tenant**" (or Lessee). The written contract is typically referred to as a "**Lease**" and sets forth the rights and obligations for a period of time (usually referred to as the "**Lease Term**") for a particular amount of space which could constitute an entire Building or any part of the Building. The space that is the subject of the Lease is usually referred to as the "**Premises**". The Lease will set forth as a fundamental term what the Tenant pays the Landlord for the Premises for the Lease Term (usually referred to as "**Base Rent**" or "**Basic Rent**") and what the Tenant pays the Landlord to compensate the Landlord for the costs incurred by the Landlord for Taxes, Insurance and Maintenance and Repair Costs in connection with the Premises and the Building (usually referred to as "**Additional Rent**" or "**pass throughs**") for the Tenant's Lease Term.

For all Leases, there are specific provisions that address when the Lease Term will start ("**Commencement Date**"), when the Tenant first starts to pay Base Rent and Additional Rent ("**Rent Commencement Date**") and who, how and when the specific improvements are made to the Premises ("**Tenant Improvements**") and what amount of money, if any, the Landlord will contribute to the costs of constructing the Tenant Improvements (typically the "**Tenant Improvement Allowance**"). As part of the process for determining the construction of the Tenant Improvements, the Lease will address the condition of the Building and the Premises when they are delivered to the Tenant (usually the "**Base Building**").

All Leases should include a provision that the Lease will become effective on the date that it is fully executed by authorized representatives of the Landlord and the Tenant.

II. COMMENCEMENT DATE AND CONSTRUCTION OF IMPROVEMENTS

A. Structuring the Commencement Date

In connection with the Lease Term, most of the loose dollars float around the interrelationship between the Commencement Date and the Tenant Improvement Agreement.

Typically, a Lease will provide that the Rent Commencement Date for Base Rent will start on the earlier of (a) a fixed date ("**Fixed Date**") and (b) the date that the Tenant commences business operations from the Premises. That is the way a typical Landlord form will usually be written where a Tenant is going to construct its own construction. Superficially that makes sense to a lot of Tenants who are not very sophisticated until they realize that they need to check and see how the Fixed Date was established. If a Lease is going to be for a full floor, then typically a time period that might be appropriate would reflect that it is going to probably take the Tenant 2 to 3 months to prepare construction drawings and get permits for the space and another 3 or 4 months to build it out and move in. Under those circumstances a Tenant would anticipate that it will take 7 months to design, get permits, construct and move into the Premises. The key for a Landlord has to be that the parties agree upon a date in the Lease as a Fixed Date for the Base Rent to start (or earlier if the Tenant starts business

operations from the Premises prior to the Fixed Date) and that is how a Landlord normally tries to structure the Lease.

What a Tenant wants to do is to have the Lease provide that the design and permitting period of 3 months and the construction and move-in period of 4 months (for a total of 7 months) should not commence until the later of the occurrence of Four (4) Events.

The First Event would be having a signed Lease as all of Tenant's money in designing the Premises would be wasted if the Lease is not signed. The Second Event would be having a Base Building Plan with specifications because the Tenant's designer would not know how to design the Premises until it reviews the Landlord's plans and specifications for the Building. The Third Event would be the day the Tenant receives a fully executed subordination, the non-disturbance and attornment agreement ("**SNDAA**") because the Tenant would not want to sign a Lease if it was not going to receive a properly negotiated SNDAA because it would risk losing its Lease and/or Tenant Improvement Allowance if it does not receive an SNDAA. The Fourth Event would be the Tenant receiving possession of the Premises.

Accordingly, in summary, the sophisticated Tenant will seek to have the whole 7-month time period run from the later of the occurrence of the Four Events: (1) the signed Lease, (2) the receipt of an SNDAA, (3) receipt of a Premises in an agreed-upon condition, and (4) receipt of the Building Plans and specifications. In addition, prior to signing the Lease, the Tenant should also have received the Landlord's construction rules and regulations and have them referenced in the Lease.

Even when the Tenant has bargained for the 7-month period not to start until all Four Events have occurred, a careful Tenant needs to also think of what could happen if they do not finish the improvements within that 7 months because of occurrences beyond their control. One of the worst nightmares for a Tenant is finding themselves in a position where they have to pay Base Rent even before they have been given a fair opportunity to construct their Tenant Improvements and move into the Premises. The additional items that a sophisticated Tenant will always ask is for that time period (in this example, the 7-month period) to be extended by Landlord Delays and Force Majeure Delays. A Force Majeure Delay could be an earthquake, a fire, a casualty, a strike, and similar items that are set forth in the sample Tenant Improvement Agreement included in this Book. Landlord Delays can be the failure of the Landlord to respond promptly to a request by the Tenant to approve their plans and specifications for Tenant Improvements and subsequent change orders, or the Landlord not allowing the Tenant sufficient use of the loading dock or the freight elevator, etc., to do the actual construction of Tenant Improvements and moving into the Premises. A sample Landlord Delay Provision is also set forth in the Tenant Improvement Agreement included in this Book.

When the Landlord is going to construct the Tenant Improvements, normally the Rent Commencement Date is structured as the earlier of (x) the date the Tenant commences business operations from the Premises and (y) a specific number of days (to allow Tenant to move into the Premises and install its furniture, fixtures and equipment) after Tenant receives a factually correct notice that the Tenant Improvements have been, or would have been if Tenant Delays had not occurred, substantially completed. A Tenant Delay provision as well as a notice provision for Tenant Delays, Landlord Delays and Force Majeure Delays are set forth in the sample Tenant Improvement Agreement set forth elsewhere in this Book.

B. Structuring the Tenant Improvement Agreement

After structuring the Commencement Date, the parties then focus on a Tenant Improvement Agreement (also called a "Work Letter Agreement" or a "Construction Exhibit").

1. Condition of the Building and the Premises

Ambiguities can be minimized and the loose dollars tightened in a Tenant Improvement Agreement when the parties take the time and effort to define the condition the Premises are to be in before the start of the construction of the Tenant Improvements.

Typically, a Landlord position is that it will provide the Tenant with a generous Tenant Improvement Allowance, but otherwise desires to have the Tenant accept the Premises in its 'as-is' condition". That makes superficial sense to a great many Tenants. But, the parties need to focus on what really does "as-is" mean?

What most Tenants think of "as-is" is that the Tenant will receive a Tenant Improvement Allowance and that basically the Tenant is going to be delivered the Premises without the Landlord making any other improvements to the Premises. But these same Tenants probably expect that when they receive the Premises "as-is" that the Base Building will be functioning. These Tenants expect that when they are leasing a Building, that the Building will be structurally sound and that the mechanical, electrical, plumbing, and vertical transportation systems of the Building ("**Building Systems**") will be in good operating order or condition and that the Building inclusive of the foundation, floor slabs, perimeter walls, roofs, and columns ("**Building Structure**") will, at a minimum, be structurally sound and water tight. When sophisticated Tenants specifically raise that issue to a major Landlord, then the Landlord will normally agree that even though they are delivering the Premises to the Tenant "as-is", that the Landlord will also agree to deliver the Building with the Building Systems and Building Structure in good operating order and condition and structurally sound.

With respect to the condition of the Building, the sophisticated Tenant will also focus on whether or not the Building has asbestos, mold or other hazardous materials. Tenants may be expecting that when they lease Premises, even if they are leasing the Premises as-is, that the Building is *not* going to have asbestos and it is *not* going to have mold. The sophisticated Tenant will bargain for a provision that provides to the extent that the Building has asbestos and/or mold or other hazardous materials, that the Landlord will remove the mold and asbestos or other hazardous materials to the extent required by applicable Law and to the extent necessary to create a healthy environment. Typically asbestos could be left in a Building in certain places without creating a health risk, but some types of mold can create a very serious health risk. If the Tenant does not intend to spend its Tenant Improvement Allowance to remove the asbestos or the mold or other hazardous materials, that intention needs to be incorporated into a provision contained in the Tenant Improvement Agreement and the Lease specifying the initial and subsequent obligation of the Landlord and Tenant as to Hazardous Materials, including asbestos and mold.

In Buildings which are going to be under construction, then in addition to requiring the Building Structure and the Building Systems be in a certain condition, Tenants will bargain for specific criteria and specifications for the mechanical systems, plumbing systems, HVAC systems, the washrooms and the finishes, floor levels, etc. A sample list for a new Base Building is provided in this Book as to what Tenants could typically ask for in a Building that is not yet constructed.

2. Applicable Laws

When the Building is already constructed, then the Tenant is normally trying to request a high Tenant Improvement Allowance with Window Coverings and to have the Building Systems and the Building Structure delivered in good operating order and in compliance with all Applicable Laws. "**Applicable Law**" is typically defined as all laws, codes, ordinances, regulations, statutes and rules enacted by city, count, state, and federal governments or agencies applicable to the construction, operation, maintenance, repair and safety of a Building.

As to compliance with all Applicable Laws, because of the ADA and other nuances, sophisticated Tenants will seek to add a provision that not only will require the Landlord to deliver the Premises in compliance with all Applicable Laws, but also in compliance with all Laws applicable to new construction disregarding variances and grandfathered rights. This becomes important because when the ADA was first enacted it did not require Landlords to immediately stop everything they were doing and to put in various improvements which would make the Building more accessible to handicapped individuals. What the ADA generally required, is that for new construction various rules and regulations had to be complied with, but for existing Buildings very little had to be done because of a variance or grandfathered right until there was significant new construction on a floor whereupon the variance or the grandfathered right would disappear. When the variance disappeared, either the Landlord or Tenant has to spend significant sums to then bring the Premises, and other portions of the Building, into compliance with the ADA. This could be expensive. For example, in connection with restrooms, to bring a pre-ADA restroom into compliance with Applicable Codes could cost anywhere from $20,000 to $80,000 depending on the age of the restrooms and how badly they fail to meet applicable codes. Accordingly, who pays for ADA-required changes to the Base Building needs to be specifically addressed.

3. Use of the Tenant Improvement Allowance

While even the unsophisticated Tenant knows enough to bargain for as large a Tenant Improvement Allowance as it possible can, the sophisticated Tenant wants great freedom as to how it may use its Tenant Improvement Allowance dollars. A sophisticated Tenant will ask not only for a large Tenant Improvement Allowance, it will also seek to use the Tenant Improvement Allowance for not only hard improvement costs, but also soft improvement costs such as design fees and fees for consultants and moving fees. To the extent that the Tenant does not use all of the Tenant Improvement Allowance, the Tenant seeks to get a credit for the unused portion against the Base Rent that is next due and owing under the Lease because the Base Rent that was quoted to the Tenant initially reflects the presence and the size of the Tenant Improvement Allowance.

4. Protection for Non-Payment of the Tenant Improvement Allowance

Sophisticated Tenants are going to want to include a provision in the Lease, the Tenant Improvement Agreement and the SNDAA, that provides that to the extent the Landlord fails to pay the Tenant Improvement allowance when due, the Tenant can then deduct the unpaid portion from the Base Rent next due and owing under the Lease together with interest.

5. Approval Criteria for Plans and Specifications: The Design Problem Criteria

Sophisticated Tenants, when they are in charge of construction, want to make sure that they can build-out the Premises the way they want to. Historically, Tenants would accept a provision that the Landlord will have a right to consent to all of its plans and specifications with such consent not to be unreasonably withheld. However, recently some Landlords have interpreted that provision as giving them a right to really get into the details as to how the Premises can be built-out and may seek to require that the Premises only be built-out for an open plan because a Landlord may think it is going to help the Landlord Lease the Premises to another Tenant when the current Tenant vacates. Or a Landlord may require that all the Premises on the perimeter walls consist of either conference rooms or office space.

Sophisticated Tenants advise the Landlord that since they are signing a Lease for 5 years, 10 years or 15 years, and need to operate their business in an efficient manner, they need to have the right to construct any Tenant Improvement as long as the Tenant Improvement constructed by the Tenant will not have an adverse affect on the Building Structure, have an adverse affect on the Building Systems, affect the exterior appearance of the Building, fail to comply with Applicable Laws, fail to use building-standard materials or better than building-standard materials, and will not unreasonably interfere with another Tenant's normal and customary business office operations. This standard is normally defined as the "**Design Problem Criteria**" and the Tenant bargains that the Landlord may not refuse its consent to any Tenant Improvement or subsequent Alterations as long as a Design Problem is not created.

Once the criteria for approving the Tenant's Plans and specifications for its Tenant Improvements is agreed upon, then the Tenant and Landlord will bargain for an outside time period for the Landlord to grant its approval. In addition to having a time period for the Landlord to respond, many Tenants want to have the ability to submit the plans and specifications for approval by the Landlord in one or more parts and at one or more times.

6. Disbursement of Tenant Improvement Allowance

When a Tenant and Landlord have agreed as to the amount of the Tenant Improvement Allowance, the Landlord is going to want to provide that with respect to the disbursement of the Tenant Improvement Allowance, that to the extent it is going to cost the Tenant more than the Tenant Improvement Allowance to construct the Tenant Improvements, that the Tenant must use its own money first, or that the Landlord can distribute the Tenant Improvement Allowance *pari passu* with the Tenant's own contributions so that if, for example, it is going to cost $1 million to construct the Tenant Improvements, and the Tenant Improvement allowance is $500,000, then for every dollar spent by the

Tenant the Landlord would like to only reimburse the Tenant $.50 on the dollar until such time as the entire Tenant Improvement Allowance has been exhausted – and that is what is referred to "on a prorata or *pari passu* basis."

A Tenant who is solid financially or which is providing a credit enhancement such as a letter of credit or a guaranty is going to resist these demands by a Landlord. In every Lease, when a Landlord is going to disburse the Tenant Improvement Allowance, it will require that the Tenant's contractor provide certificates of completion and lien releases for all work that has been performed prior to disbursing the Tenant Improvement Allowance covered by the disbursement request.

7. Miscellaneous Charges

In many markets throughout California, even though a Landlord is going to go out-of-pocket to pay for electricity and water and power and air conditioning during the time period of the Tenant's constructing its Tenant Improvements, and logically should be reimbursed for those amounts, typically Tenants will ask the Landlord to absorb those costs and provide free parking for its contractors and subcontractors as part of the overall business transaction and not require the Tenant to reimburse the Landlord for those amounts. Whether or not a Tenant is successful in getting those concessions depends on the marketplace and at what time during the negotiations the Tenant raises that issue.

8. Fee to Landlord

Finally, Landlords are usually insisting in connection with the construction of the Tenant Improvements, even if the Landlord is not directly involved in the construction of the Tenant Improvements, to be paid a fee for cooperation or coordination of the construction of the Tenant Improvements. Typically the fee ranges anywhere from 1%-8% depending on the Landlord's and Tenant's negotiating power. Tenants will argue with the Landlord that the Landlord is not accepting any responsibility in connection with the construction of the Tenant Improvements and since the Landlord is not accepting any responsibility, therefore it should get no money whatsoever. Landlords argue that a good Landlord can be a strong ally with a Tenant and that the Landlord does "add value" in connection with the Building-out of Tenant Improvements because they have seen so much space built-out in their particular project that they can work with a Tenant contractor to show that certain materials will work better in the Building, that certain sub-contractors are more reliable than others, and that even though it may not jump out at an architect or contractor from looking at the Building code, there are certain things that the building inspectors look for and which equate to local and individualized hot buttons. And, in fact, and in truth, Landlords do add some, and sometimes significant, value and the only issue is whether or not the Landlord should be compensated separate and apart from the Base Rent by separate fees under the Tenant Improvement agreement, for their cooperation.

9. Limited Remedy for Landlord's Failure to Deliver the Building and the Premises in the Proper Condition

The very sophisticated Tenants will normally seek to add a provision to the Tenant Improvement Agreement stating that to the extent that the Tenant incurs increased costs or delays because of the failure of the Landlord to perform its obligations on a timely basis under the Tenant Improvement agreement, or because the Premises that was delivered to the Tenant was not in the condition that the Landlord promised it would be, then under those circumstances the Tenant will require under the Tenant Improvement Agreement for the Landlord to reimburse the Tenant for the incremental extra costs incurred because of Landlord Delays or the breaches by Landlord of Landlord's obligations under the Tenant Improvement Agreement.

In addition, most experienced Tenants will bargain for "blow out dates" which will allow the Tenant to terminate the Lease (and collect liquidated damages) if the Landlord fails to perform certain of its delivery requirements (or, for new buildings, reaching specific milestones) by specific dates.

III. PARKING

In many suburban locations, a Landlord will provide parking at no charge to a Tenant. In downtown locations parking can be very expensive and can range from anywhere from $70.00 a month to $500.00 a month or more depending on the city and type of parking that is involved. The marketplace establishes those fees. Still, sophisticated Tenants will bargain for several basic concessions with respect to parking.

First, the Tenant will ask that the parking be a right and not an obligation. When parking is a right and not an obligation, the Tenant may advise Landlord each month as to how many spaces the Tenant wants to rent for that month, and the Tenant will then pay for those spaces. This will assist the Tenant in saving considerable sums in the event that the Tenant undergoes fluctuation in its work force, or if the Tenant's business plans change and they move out a couple of years early. Tenants hate paying for parking that they are not using, especially when they suspect the Tenant can resell the spaces and in effect collect "double". Landlords on the other hand are financing buildings based on the income that they are going to receive not only from the renting of space, but for parking, and these Landlords strongly desire that while the Tenant is granted specific parking rights, those rights become an obligation of the Tenant and must be paid for even if they are not used. Where a Tenant winds up on whether parking is a right and an obligation or merely a right depends on the marketplace.

Second, Tenants will frequently ask for a discount when they purchase validations for visitor parking. Again, whether a Tenant is successful depends on market conditions. When Landlords do grant discounts they normally require a Tenant to buy in bulk so that in order for a Tenant to receive a discount of, for example, 10% on the cost of validations the Tenant must buy validations in the amount of $5,000 or more.

Third, some Tenants are able to get a Landlord to net out parking income against operating expenses, but that happens only on rare occasions.

Fourth, concerned Tenants will focus on setting forth in the Lease provisions addressing concerns about security, landscaping, lighting, size of parking spaces, tandem spaces and valet parking.

Fifth, some Tenants are able to get a Landlord not to include as an operating expense certain specific costs of operating the garage such as the amount of money that the Landlord pays to the parking facility operator or the fees of the people who are sitting in the booths collecting money for visitors to park their cars, or for garage keeper's insurance or items like that.

IV. USE RESTRICTIONS

Landlords in an office building normally want a Tenant to agree that they will only use its Premises for a limited specific use. If the Tenant is a law firm, some Landlords will occasionally have the use provision provide that the Tenant can only use the Premises for the purposes of operating a law firm. A typical Tenant of an office building will be able to broaden the use provision for a right to use the Premises for any business office purpose in order to provide flexibility for an assignee or a sublessee. Landlords will normally agree to broaden the use provision, except to the extent that they have granted another Tenant an exclusive, which happens rarely. However, occasionally if a major accounting firm or stockbroker company, for example, is leasing a significant part of the Building, they may not want other space in the Building to be leased to one of their competitors and all sophisticated Landlords will include a provision preventing a tenant from changing its use of its Premises to a use which would violate an exclusive. Tenants will normally accept the typical restrictions that a Landlord imposes upon a Tenant such as a Tenant may only use its Premises for general business office operations, but these Tenants may also add a provision that to the extent that the Landlord voluntarily leases space to doctors or dentists or governmental entities, for example, then the Tenant may also sublease its Premises or assign its Lease to somebody who would want to use their space for doctors' or dentists' offices or comparable governmental entities. Landlords who are sophisticated will realize, particularly with respect to long-term Leases, that circumstances change and while they may at the time that a particular Lease is executed have no intention whatsoever of ever leasing space to a doctor or a dentist or a governmental agency, neighborhoods change, market conditions and circumstances change and if they do, it is not unreasonable for a Tenant to want to have the same usage rights when it comes to the transfer of their space to a lessee or sublessee that the Landlord subsequently granted to others on a non-exclusive basis.

V. LENGTH OF LEASE TERM, EARLY TERMINATION AND CONTRACTION RIGHTS

Typically a Landlord will want to have a Lease, particularly for a large Tenant, to be as long as possible because it will make it easier for the Landlord to finance the Project and sell the Project. Tenants need to have great flexibility and therefore besides trying to get broad rights in connection with an assignment or subletting, sophisticated Tenants are frequently asking for right to have an Early Termination Right or Cancellation Right with respect to their Lease, after a certain period of time – typically 7 or 8 years; and under those circumstances Landlords under certain market conditions will reluctantly agree to grant those termination and cancellation rights provided that the Landlord is reimbursed for its unamortized free rent, Tenant Improvement allowances and commissions, and sometimes Landlords ask for an additional amount as a type of "penalty" to the Tenant. Wise Tenants,

besides wanting to have the right to cancel their entire Lease, also bargain to have the right to contract and the same issues will be present there.

If Tenant is leasing, for example, 10 floors, the Tenant may want to have a right to give back up to 1 floor every "X" number of years, provided again that the Tenant reimburses the Landlord for its unamortized cost of the Tenant Improvement Allowance, the free rent and broker's commission and occasionally a "penalty" payment.

VI. RENEWAL RIGHTS

Tenants also want to have a right to renew. The sophisticated Tenant will seek not only to have the right to renew its Lease for the entire Premises, but Tenants leasing large blocks of space are asking not only for a right to renew, but for a right to renew only a portion of its Premises. A major Tenant who has leased, for example, 10 floors, will want to have a right to renew its Lease for the entire Premises or one or more contiguous floors. Landlord under those circumstances will reluctantly agree, provided that the floors are contiguous and that they start at the beginning or the end of the Tenant's space – they will start at the lowest floor and go up, or the highest floor and go down – so that the Landlord when it does get back space, will have the most contiguous space. That will permit a Landlord to accommodate its dream Tenant that needs 7 contiguous floors, under circumstances where the Tenant initially leased 10 floors, and only renewed on 3 floors. The Landlord would have been unable to do that if a Tenant who leased 10 floors dropped the 3 floors that were in the middle.

VII. MARKET RENTS

It is critical to a Tenant that its renewal rights and expansion rights be at market and that market reflects not only the coupon or face rate (the dollar amount per rentable square foot is the "**Coupon Rate**") charged by a particular Landlord for space, but takes into account that the Coupon Rate is reflective of the amount of free rent that a Tenant may be given, the Tenant Improvement Allowance, and other concessions. Therefore, careful Tenants bargain for a market rent definition that includes the typical economic concessions and those Tenants want the fair-market rental rate definition to reflect all of those concessions. Landlords will reluctantly agree to that type of definition because it is logical and comports with reality. However, these same Landlords will often request that even though they are agreeing to that definition of fair-market rental rate which takes into account all concessions, that the Tenant agrees that it will never be less than the Tenant is currently paying at the end of the Lease Term for their space or at the time that they are going to exercise an expansion option. Under certain market conditions Landlords are successful in getting those restrictions, but when they do, it basically significantly, negatively hurts the Tenant in a declining market. In California, when the dot-com collapse occurred, Tenants who agreed to that provision found that they had a right to renew or expand at the higher of market and $90 per square foot when in fact, market was now $25 per square foot and the renewal rights and expansion rights were worthless.

VIII. OPERATING EXPENSES

Virtually all Leases will normally have a provision that requires a Tenant to reimburse the Landlord for Operating Expenses. How the reimbursement occurs depend on which of the two (2) basic lease structures is utilized.

The Lease most favored by Landlords is the Net Lease where the Tenant pays for its prorata share of all Operating Expenses and Taxes and Insurance – and that is the origin of triple-net Leases, the three components – Operating Expenses, Taxes and Insurance - make it a triple-net Lease. Now the references to triple-net Leases have virtually disappeared and the word "net" Lease is synonymous with a triple-net Lease and it simply means that the Tenant pays its prorata share of all Operating Expenses, Taxes and Insurance.

In a Gross Lease, the Tenant pays for its prorata share of *all increases* in Taxes, Insurance and Operating Expenses in *excess* of the Taxes, Insurance and Operating Expenses that were incurred during the Base Year. Already included in the Base Rent in a Gross Lease is an amount which the Landlord, in theory at least, estimates it would incur in the Base Year for Operating Expenses, Taxes and Insurance. The Tenant normally would like the Base Year to be as far out in the future as possible because the Tenant assumes that costs are always going to go up, and since they only have to pay for the increases of Operating Costs, Insurance and Taxes above the Base Year, they want to have the Base Year as far out as possible. Typically the Base Year is the year in which the Lease is signed if a Lease is signed during the first quarter of a Lease year. It may be the first 12 months following the Commencement Date if the Lease is signed subsequent to the first quarter of the Lease year and normally it will be the following calendar year if the Lease is signed during the last quarter of a particularly calendar year. When the Base Year occurs is not required by law; it is whatever the parties bargain for.

The key to a Base Year Lease is to make sure that there is a proper gross-up provision in the Lease. Other than a situation where a Tenant is leasing on a net basis an entire office building, if every Lease contains the proper gross-up provision then the correct result will occur and neither the Landlord or the Tenant will be unnecessarily penalized.

The correct definition of a gross-up provision should provide that whenever the Building is not 100% leased and occupied during an entire calendar year, with all Tenants paying full rent as contrasted with free rent, half rent and the like and the Building fully assessed by the taxing authority, then the variable portion of Operating Expenses, Taxes and Insurance will be grossed-up to what they would have been had the Building been 100% leased and occupied the entire calendar year with all Tenants paying full rent as contrasted with free rent, half rent and the like and the Building fully assessed by the taxing authority. The reason for the phrase "with all Tenants paying full rent as contrasted with free rent, half rent, and the like" is that there are two fundamental components of Operating Costs which vary based on the amount of rent that a Tenant is paying. One component is the gross receipts tax and the other component is the building management fee. When a Tenant signs a Gross Lease with a Base Year where that Tenant and/or other Tenants are going to get a year's free rent, the Tenant could find that its Base Year is unduly low because during the first year there is one or more major Tenant not paying any rent and there is no component, or an artificially low component, for the building management fee or the gross receipts tax in the Base Year. That is why sophisticated Tenants will have

the phrase "as if all Tenants were paying full rent, as contrasted with free rent, half rent and the like" included in the Gross-Up Definition.

Otherwise, Landlords are entitled to recover virtually all of their costs of operating and managing a building which includes the repair costs, the maintenance costs, the insurance costs, the taxes, etc.

The Tenant wants to make sure that while the Landlord is entitled to recover those costs, that those costs are realistic and therefore, Tenants want to make sure that the Landlord does not pass through "**Capital Expenditures**" (typically a major expenditure for a component of the Building with an anticipated life in excess of one year). In many instances and in some marketplaces, Landlords insist that they have the right to pass-through all Capital Expenditures, but typically in California, the Tenant is able to obtain a provision that the Landlord will not pass through Capital Expenditures, except to the extent that the Capital Expenditure is required by newly enacted laws, or are costs savings Capital Expenditures. Recently, sophisticated Landlords are adding two other items to that list – one of which is Capital Expenditures made to improve security in the Building and another of which is Capital Expenditures made to improve safety in the Building with the thought in mind that as to improving security and improving safety, any Tenant should want to encourage their Landlord to make those expenditures. With respect to newly-enacted laws, a Landlord, when it quoted its Base Rate was not anticipating that there were going to be any change in laws and so if they are now required to spend major dollars because there was a change in law, the Landlord can reasonably expect the Tenants to pay for their amortized prorata share of such costs. A typical compromise would be that a newly enacted law is defined as "a law enacted after the day that the Lease is signed." Landlords on the other hand, prefer to have a newly enacted law defined as a law enacted after the date that the Building was built, but for older buildings, such a definition would really defeat and reduce the protections available to a Tenant. The key for a Tenant is to state that when the Tenant agreed to those 4 exceptions for Capital Expenditures, they did so on the basis that those particular Capital Expenditures would be amortized over the useful life. Landlords nowadays typically agree to that, but many of the older Leases have archaic language which will provide that the amortization will occur over the useful life or the remainder of the Lease term or X number of years, whichever is less, and under certain circumstances, that outdated provision could be very bad for a Tenant.

Most Operating Expense inclusions and exclusions are not controversial and several redundant lists of both inclusions and exclusions are included in the form set forth in this Book. There are, however, several exclusions that some Tenants and Landlords consider to be controversial.

One of the controversial inclusions dealing with Operating Expenses is Reserves – whether or not Reserves should be permitted to be included in Operating Expenses. In the Base Year it is really not that important because if a Reserve is included during the Base Year and the same amount is included in the subsequent year, it is a "wash". But in a Net Lease, it is an artificial expense and Tenants now insist that Reserves be an exclusion.

Another exclusion that Tenants ask for is Proposition 13 increases. In California, a Building cannot have its assessed value go up by more than 2% (oversimplified), unless the Building is sold or there is going to be a major change in the Building. Tenants will argue that it is not to their advantage that the Building be sold and therefore, do not want to pay for the increase in Taxes resulting from the sale or major change to the Building. Whether a Tenant gets Proposition 13 protection depends on market conditions. A typical compromise is that a Landlord will provide a exception for increases that

result from the first sale on 100% basis, or that a Landlord will provide an exception for a sale that occurs during the first few years following the Lease Commencement or that a Landlord will provide Proposition 13 protection reduced over a particular period of time. For example, one compromise would provide that where there is a sale during the first 5 years, then Tenant will be forgiven for 100% of the increase during the 1st year and 80% during the 2nd year and 60% during the 3rd year and so on. The compromise just depends on the negotiating position of the Tenant.

In connection with a Base Year Lease, there is another major concern for a Tenant and that is Proposition 8 which allows a Landlord to go and seek a reduction in Taxes during a particular year. However, pursuant to Proposition 8, if the Tenant is granted the tax reduction, the reduction is normally good for one year only. A Tenant may not get the same amount of tax reduction in a subsequent year, or any tax reduction in a subsequent year, and for a Tenant that finds itself with a Base Year where Landlord has gotten the reduction in taxes pursuant to Proposition 8 during the Base Year, but is unable to get the same or any reduction in subsequent years, the Tenant finds itself with an artificially low Base Year and then finds himself having to pay for increases in taxes over an amount that, in the Tenant's mind, is too low.

Typically, a Lease will provide that repairs to the Building are a pass-through and all Tenants want the Buildings in which their Premises are located to be maintained in good repair and condition and will typically agree to permit a pass-through for almost all repair costs. If there is a major capital repair that could be quite expensive and the repair was necessitated by a casualty, typically, the repair cost is going to be covered by insurance and under a typical insurance policy, where the typical casualty is fire, the deductible, even on a $200 million office building, may be only $25,000 and so the issue is not significant to a Tenant for the typical casualty. But there are two major categories of insurance where the deductible is much higher than $25,000. One is the natural catastrophe such as earthquake, flood, tornado or hurricane. Under those circumstances the deductible may be 5% or 10% of the replacement costs of the Building and that is a significant amount of money. The other is when the damage occurred because of a Terrorist Act where again the deductible may be 5% or 10% of the replacement costs to the Building, Worse yet, in some instances, damage caused by Terrorist Acts actually are not covered by even terrorism insurance. Typically, insurance companies do not want to issue terrorist insurance and when they do, they are required to do so by Applicable Laws, and right now the Applicable Laws cover Terrorist Acts except for biological or chemical terrorist acts which many experts predict will be the next significant type of Terrorist Act. And terrorism insurance does NOT cover domestic terrorist acts. So, for example, when there was the bombing of the Federal office building in Oklahoma City, that was a domestic terrorist act and would not today have been covered by the typical Terrorist Act insurance policy. In most circumstances, Tenants are normally asking for the Landlord to agree that they will not pass-through those capital repair costs and Landlords, of course, object. Tenants and Landlords normally agree as a compromise that a portion of those repair costs will be permitted and the typical compromise is somewhere between $.25 and $2.00 a square foot depending on market conditions, etc.

The final controversial aspect of Operating Expenses is the Vacancy Credit. A Vacancy Credit occurs when the Tenant vacates the Premises before its Lease expires and typically because of the gross-up provision, the Landlord actually receives a windfall when the Tenant vacates its Premises. Under a typical scenario without a vacation of its Premises, a Tenant will pay money to a Landlord for cleaning and electricity and HVAC and the Landlord then takes that money and pays it out to the cleaning service or electric company or the people who provide the HVAC and it is called a

pass-through – it typically does not stay with the Landlord, the Landlord collects it and then passes it through to the other providers of those utilities or services. If the Tenant vacates its Premises, then the Premises do not have to be cleaned and the Landlord does not have to provide electricity and HVAC to the Premises. Under those circumstances, when the Tenant pay the money to the Landlord for HVAC, electricity and cleaning that is not actually provided, the Landlord is not passing it through but puts it in its pocket and makes a windfall. Under that scenario a Tenant will request that the Landlord not make that windfall, but pay that money back to the Tenant and that is what is included in the Vacancy Credit.

IX. AUDIT RIGHTS

Typically, in almost all Leases, the Landlord will make an estimate at the beginning of the year of what it anticipates will be the cost for Operating Expenses, Taxes and Insurance for the ensuing year and will then ask the Tenant to pay $1/12^{th}$ of such amount (or $1/12^{th}$ of the increase of such amount over the amounts accrued during the Base Year in a Gross Lease) monthly in advance. At the end of the each year, the Landlord will provide the Tenant with a reconciliation showing the difference, if any, between the amounts paid by the Tenant for the Operating Expenses (or increases in Operating Expenses in a Gross Lease) over the amount actually incurred by the Landlord with the Tenant receiving a bill for the difference if the estimate was too low and providing a credit to the Tenant if the estimate was too high. Typically, Tenants ask for a right to audit those statements for Operating Expenses, Taxes and Insurance. In California, Landlords are willing to provide a Tenant a right to audit the Operating Expenses, Taxes and Insurance and provide a provision that if the Tenant does not exercise its right to conduct an audit within X number of months following the issuance of the actual statement, then the Tenant will be deemed to have given up that right. In California, the statute of limitations on a written contract is four years and absent the artificial statute of limitations of X months provided in the Lease, the Tenant would have four years to challenge any perceived overcharge. Having audit rights are normal with the key issues involving whether the time period to audit shall be X number of months or X number of years, whether the audit can be done by a contingent fee auditor, the requirement of a confidentiality agreement from the Tenant and the auditor, and the limitation of remedies in the event of an overcharge by the Landlord to the return of the amount of the overcharge depending on the percentage of the overcharge (together with interest and the cost of the audit).

For major Leases, some Tenants will bargain for the right to pay its prorata share of Taxes and Insurance twice a year since Taxes and Insurance costs are normally billed twice a year compared to all of the other Operating Expenses which occur monthly.

X. SECURITY DEPOSIT

Security deposits are required by Landlords of Tenants whose financial condition is not particularly stellar, and that again fluctuates with market conditions. A security deposit could be anywhere from 1 month to 6 months rent and whether a Tenant has to pay it, how long it has to keep the security deposit, simply depends on market conditions and the Tenant's financial condition. Typically if a Landlord is going to advance a lot of money in the form of concessions to a major Tenant, a Landlord is going to want to protect itself against its worst nightmare. The Landlord's worst nightmare is paying a $2 million commission and a $6 million Tenant Improvement Allowance and providing a years free rent and then having the Tenant go bankrupt after the first year. So, Landlords will frequently ask a

SAMPLE Short Form
Request for Proposal
Office Space 5,000 SF or less
Michael E. Meyer
DLA Piper Rudnick Gray Cary US LLP

_____ __, 2005

RE: Request For Proposal ("RFP") From _____

Dear:

_____ has been authorized by _____ (hereinafter referred to as "Tenant") to request a proposal to lease space in the above-referenced project (the "Project"). This RFP is also being concurrently sent in electronic format to two other landlords. When we receive your response, we will compare it to the responses we receive from the other two landlords and select one landlord to enter into exclusive negotiations for a lease. In your proposal please address the following items by returning this RFP, which is being sent to you in electronic format, blacklined to show what you agree with, what you find acceptable and what, when appropriate, you will accept with modifications (and please specifically indicate such modifications.):

PROJECT: Building located at _____.

FLOOR & AREA: Approximate contiguous usable square feet: 3,200

Exact square footage to be initially leased is subject to Tenant's approval of a final space plan.

Rentable area of a single-tenancy floor is the area of the entire floor measured in accordance with the methods specified in the BOMA publication ANSI Z65.1-1980 (as reaffirmed in 1989). The Premises shall be measured in accordance with such BOMA standards and appropriate adjustments shall be made to the gross rent to reflect the actual square footage.

OPERATIONAL COVENANT: Landlord shall operate the Building and the Project in as first class manner and at all times shall keep the Project and Building in first class condition and repair.

COMMENCEMENT DATE: The earlier of (a) the date Tenant conducts business operations from the Premises and (b) the earlier of the first business day of the weeks after Tenant's receipt of a five (5) business day factually correct notice that the Tenant Improvements have been substantially completed by Landlord or would have been substantially completed by Landlord had Tenant Delays (as defined in the Lease) not occurred..

PRIMARY LEASE TERM:	Five (5) years.
FREE RENT:	Two (2) months following the Commencement Date.
BASE ANNUAL RENTAL RATE:	Please indicate the lowest possible fully serviced, net effective rental rate with a 2006 base year.
OPERATING EXPENSES:	Tenant shall pay its share of any increase in the actual operating costs of the Building on a prorata basis, predicated upon a 2006 base year method-of-expense calculation ("Base Year"). All operating expenses shall be based upon the Building being 100% occupied and fully assessed for real estate taxes with all tenants paying full rent, as contrasted with free rent, half rent and the like. Tenant shall receive Proposition 8 protection during the Base Year. In the event that Tenant ceases to occupy, but still leases, _____ rentable square feet of the Premises, Tenant shall receive a credit against operation expenses equal to the cost of electricity, janitorial, service, water HVAC and any additional utility and/or service not used by Tenant as a result of such vacancy.
USE:	Tenant may use the Premises for general office purposes.
ACCESS:	Tenant requires access to the Premises seven (7) days per week, 24 hours per day, 365 days per year.
RIGHT TO SUBLEASE/ ASSIGN:	Tenant shall have the right at any time to sublease, assign or otherwise permit occupancy of all or any portion of its space to any related entity, subsidiary, parent company or affiliate of Tenant or Tenant's parent, any company in which Tenant or Tenant's parent has a controlling interest, or to any successor corporation, whether by merger, consolidation or otherwise or to any person who purchases all or substantially all of Tenant's assets without the Landlord's approval or consent. Tenant may retain one hundred percent (100%) of any revenues derived from the Sublease. In addition, Tenant shall have the right to sublease or assign all or any portion of the Premises during the initial or extended lease term to any 3rd party subtenant of a type and quality suitable for a first-class office building with Landlord's prior written consent which will not be withheld, conditioned or delayed if such transferee will not cause Landlord to be in violation of an exclusive, will comply with the use provisions and restrictions of the Lease, and is comparable in quality to other tenants of the Project leasing above ground floor space in the Project.

In the event of a sublease of the entire premises, Landlord shall agree that in the event of a default by Tenant under the Lease, Landlord will recognize the sublease as a direct lease between Landlord and the subtenant on the terms and conditions of the lease except that the rent will be the higher of the rent provided (per rentable square foot) in the lease and the rent (per rentable square foot) provided in the sublease.

FIRST RIGHT TO LEASE: Tenant shall have the First Right to Lease, after the execution of the lease, any space in the Building. Landlord shall notify Tenant of any such space becoming available and shall propose a rent and other lease terms and conditions for the space. Tenant shall, within ten (10) days after receipt of such notice advise Landlord which (or all) of such space Tenant elects to lease for a period of time to run coterminously with the term of Tenant's Lease.

Thereafter, the parties shall negotiate in good faith in an attempt to reach agreement with respect to rent, terms and conditions. If Landlord and Tenant are unable to agree within a forty-five (45) day period, then Landlord must lease such space to Tenant at the Fair Market Rental Rate as defined below.

MOVE-IN: Tenant's Premises shall be thoroughly cleaned at Landlord's sole cost and expense prior to and immediately following Tenant's move into Tenant's Premises. No charge for services and utilities during construction and move-in. Tenant and Tenant's contractors, subcontractors, architects, engineers and designers shall not be charged for, and Landlord shall provide, the use of elevators, restrooms, loading docks, parking or utilities (during normal business hours) during the construction of Tenant's Premises or during Tenant's actual move into the Building. Landlord shall run the HVAC twenty-four (24) hours per day for the seven (7) day period prior to the date Tenant anticipates commencing business operations to flush out new finish odors, etc.

PARKING: Tenant wants the right, but not the obligation to use up to _____ spaces per 1,000 square feet of rentable area in the Building parking structure and/or surface parking areas immediately adjacent to the Building. Please indicate if parking charges are applicable and, if so, the amount of the charges both monthly and transient and whether or not there are any specific monthly city taxes assessed to Tenant. Tenant also requires the ability to convert up to ___% of its parking ratio into reserved stalls. The location of the reserved and unreserved parking spaces shall be set forth on an exhibit attached to the lease.

ELECTRICITY: Landlord shall provide electricity for normal office purposes during Normal Business Hours (as defined below), including but not limited to, fluorescent and incandescent lighting, including task and task ambient lighting systems, normal office equipment, including, but not limited to, duplicating (reproductions) machines, computers, terminals, communications and audiovisual equipment, vending machines, kitchen equipment. Landlord will furnish to Tenant wattage and electricity up to an amount necessary to operate their business and all equipment of not less than 6.5 watts per usable square foot.

HEATING, VENTI-LATING AND AIR CONDITIONING (HVAC): Landlord shall furnish heating, ventilating, and air conditioning, Monday through Friday from 7:00 a.m. to 9:00 p.m. and on Saturdays from 7:00 a.m. to 2:00 p.m., except for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day ("Normal Business Hours").

It is to be understood and agreed that any after-hour air conditioning costs will be reduced to the extent that any other tenant has requested utilization of the system, with such overall cost to be prorated. Tenant shall be charged for any after-hour air conditioning costs at Landlord's Actual Cost.

ACTUAL COSTS:: "Actual Cost" shall mean an amount equal to the actual out-of-pocket incremental extra costs to Landlord to provide such after-hour air conditioning (or other additional services or utilities), without markup for profit, overhead, depreciation or administrative costs. Please identify any after hour's cost.

CLEANING SPECIFICATIONS: Landlord shall clean Tenant's Premises, five (5) days per week pursuant to the building standard Janitorial Schedule.

BUILDING SECURITY: Landlord shall provide building security, equipment, personnel, procedures, and systems twenty-four (24) hours per day, every day of the year. Please provide information on the Building's security system.

DIRECTORY BOARD: Landlord, at Landlord's expense, shall furnish Tenant with space on the Building directory board in the lobby of the Building and any other directory which may be a part of the complex for _____ (__) designated names per each one thousand (1,000) square feet of space leased.

TENANT IMPROVEMENTS:

Landlord shall furnish $_____ per rentable square foot as a lump sum payment over and above the building core and shell ("Tenant Improvement Allowance" or "TIA"). Landlord shall construct the Tenant Improvements and Tenant shall pay for the construction costs in excess of the TIA. Landlord shall receive a fee of 3% of the TIA for coordination of the construction of the tenant improvements and. to the extent commercially reasonable and practical, shall bid out the cost of constructing such tenant improvements. A core and shell definition will be attached as a separate exhibit to the lease but at a minimum shall include the Base Building Work itemized below.

APPLICABLE LAWS:

Landlord shall deliver the space in first class condition and operating order and in compliance with all laws applicable to new construction, disregarding variances and grandfathered rights, subject to the following definition of Landlord's Basic Work.

APPROVAL CRITERIA:

Tenant needs to have assurances that once the lease is executed, it can construct its tenant improvement and subsequent alterations in a manner which will allow Tenant to efficiently and effectively operate its business. Accordingly, Landlord may not withhold or condition its consent unless the making or installation of the improvements or alterations (a) adversely affects the Building Structure, (b) adversely affects the Building Systems, (c) do not comply with applicable laws, (d) affect the exterior appearance of the Building, or (e) would unreasonably interfere with the normal and customary business operations of the other tenants in the Building (individually and collectively, a "Design Problem").

LANDLORD'S BASE BUILDING WORK:

Landlord will provide the following at its expense:

1. The HVAC distribution main loop shall be in place, tight to the slab above, and provide for the installation of VAV mixing boxes, flex duct and linear slot diffusers installed at the window line.

2. Electrical service to the electrical closed on each floor proposed, with 120/208-volt power panels and circuit breakers in place, along with an isolated grounding system.

3. Interior surfaces of the exterior walls shall be finished in drywall; taped, speckled and sanded.

4. All interior columns on the floor proposed for Tenant shall be finished in drywall; taped, speckled and sanded.

5. All work in common areas of the Building, including, but not limited to, common corridors and common elevator lobbies shall be completed.

6. The automatic sprinkler system main loop shall be fully completed, operational and tested in accordance with NFPA requirements.

7. All building standard restroom work shall be completed and meet all ADA requirements.

8. Floor slabs shall be flash patched to achieve a level, smooth surface and prepped for carpet installation and shall be level so that there is no more than one eighth (1/8) inch deflection per each ten (10) square feet. All vertical penetrations shall be sealed and fireproofed.

9. Connection "stub outs" shall be available for vent, hot and cold water at all wet columns.

10. Connection point installed on the floor(s) for fire alarm system. The complete core fire detection system shall be installed, operating and tested in accordance with NFPA requirements.

11. Exterior window coverings to be furnished and installed by Landlord.

COMPLIANCE WITH LAWS:

Landlord shall ensure that the Premises, and the Building of which they are a part, are in compliance with all federal, state and local laws and regulations, including, but not limited to the Americans with Disabilities Act (ADA), both at the time of Tenant's possession of the Premises and throughout the Primary Lease Term and any extensions thereof.

NON-DISTURBANCE AGREEMENT:

Landlord shall agree that concurrently with the execution of the lease, Landlord will provide Tenant with a commercially reasonable Non-Disturbance Agreement acceptable to Tenant from any current or future ground lessors, mortgage holders or lien holders.

HAZARDOUS MATERIALS:

Landlord shall comply with all laws applicable to hazardous materials. Landlord agrees that Tenant shall have no obligations as to hazardous materials that exist in the Project as of the date the lease is signed or that subsequently is found in the Project except to the extent such hazardous materials are placed in the Project by Tenant.

MOLD: To the extent mold is found in the Project, and to the extent it was not created by Tenant, Landlord shall cause such mold to be removed from the Project as soon as is reasonably possible so as not to cause any health concerns to people who work in, or visit, the Project.

OPTION(S) TO EXTEND: Tenant shall have Options to Extend the lease for _____ (__) consecutive _____ (__) year periods for all or any part of the premises and any space added to the premises pursuant to the exercise of Tenant's expansion rights. Tenant shall be required to give Landlord no less than _____ (__) months prior written notice of Tenant's election to exercise an Option to Extend. Such extension shall be upon the same terms and conditions as the lease except that the rental rate for each option period shall be at a Fair Market Rental Rate.

The term "Fair Market Rental Rate" shall mean the annual amount per rentable square foot including economic concessions that Landlord has accepted and granted in current transactions between non-affiliated parties from non-expansion and non-equity tenants of comparable credit-worthiness, for comparable space, for a comparable use for a comparable period of time ("Comparable Transactions") in the Building, or if there are not a sufficient number of Comparable Transactions in the Building, what a comparable landlord of a comparable building in the vicinity of the Building with comparable vacancy factors would accept in Comparable Transactions.

TENANT'S RIGHT TO AUDIT: Tenant shall have the right, at its own cost and expense (except as provided below), to audit or inspect Landlord's records (but not more than once in any Lease Year) with respect to operating expenses and real estate taxes, as well as all other additional rent payable by Tenant hereunder for any Lease Year.

FINANCIAL STATEMENTS/ SECURITY DEPOSIT: Tenant will submit to Landlord any and all relevant financial information reasonably required for credit purposes. Please confirm that Tenant shall not be required to post any security deposit.

CONSENT: Except as otherwise provided herein (and except for matters which (1) could have an adverse effect on the structural integrity of the Building Structure, (2) could have an adverse effect on the Building Systems, or (3) could have an effect on the exterior appearance of the building, whereupon in each such case Landlord's duty is to act in good faith and in compliance with the Lease), any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld, conditioned or delayed. Whenever the lease grants Landlord or Tenant the right to take action, exercise

discretion, establish rules and regulations or make allocations or other determinations (other than decisions to exercise expansion, contraction, cancellation, termination or renewal options), Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated tenant or landlord concerning the benefits to be enjoyed under the lease.

REAL ESTATE COMMISSION :

_____ has been retained by Tenant to act as its real estate representative. Tenant understands, agrees, and expects that _____ will be compensated on the basis of a full market real estate commission paid by the owner of the project that is ultimately selected.

APPROVALS:

The above referenced terms and conditions are subject to the final approval of Tenant and its Real Estate Committee. Your proposal should include the following:

1. A specific response to each of the requirements outlined above.

2. The rentable and usable square footage of the space proposed to Tenant.

3. The building's estimated/actual operating expenses and real estate taxes for the Base Year and budget years _____ and _____ (assuming 100% occupancy).

THIS LETTER IS AN INVITATION TO NEGOTIATE. IT IS NEITHER AN OFFER NOR A CONTRACT. TENANT AND LANDLORD RESERVE THE RIGHT TO NEGOTIATE WITH OTHER PARTIES. NO PARTY SHALL HAVE ANY LEGAL RIGHTS OR OBLIGATIONS WITH RESPECT TO ANY OTHER PARTY, AND NO PARTY SHOULD TAKE ANY ACTION OR FAIL TO TAKE ANY ACTION IN DETRIMENTAL RELIANCE UNTIL DEFINITIVE WRITTEN AGREEMENTS ARE PREPARED AND SIGNED BY ALL PARTIES INVOLVED. TIME IS OF THE ESSENCE.

We look forward to receiving your proposal seven (7) days from the date of this Request for Proposal. If you have any questions or comments please contact the undersigned at _____.

Yours very truly,

_____

USE OF REQUEST FOR PROPOSAL; LETTER OF INTENT

presented by

Michael E. Meyer, Esq.

DLA Piper Rudnick Gray Cary US LLP

Los Angeles-Downtown

Old wives', and old husbands', tales (see how political correctness and gender sensitivity can be carried to extremes) prevail in the real estate profession. Conventional wisdom among bad real estate brokers is that part of a lawyer's job description is to "slow down every deal and then kill the deal." The conventional wisdom among the bad lawyers is that "real estate brokers don't really care about protecting their clients, all they care about is closing a deal at any cost so that they can get paid regardless of what happens to the client."

The truth differs dramatically from these "conventional wisdoms." The truth is that great real estate lawyers fully understand that their job is to find out what the business deal is and then get it closed as quickly and economically as possible while protecting the interests of the respective parties to the transaction. Great real estate brokers realize that the key to their success is their reputation over the long haul and that their reputation is dependent upon not only the transaction closing but upon the transaction being completed in a manner that will satisfy the reasonable expectations of the parties.

Any lawyer can figure any number of ways "not to make the deal" but the great lawyers will figure out a way to "make the deal" even if roadblocks appear by creative detours and new routes being created to accomplish the goals of the parties. Great real estate brokers will welcome the addition of great lawyers to a transaction because the ultimate success of the transaction is dependent the real estate broker and the lawyer working in harmony. Great lawyers know that if they develop a reputation for not getting a deal done, then they will in essence "be out of business" because no one wants to work with a deal-killer. Accordingly, the only thing worse than a deal not closing is for a deal to fail to close after three or four months of negotiations. When this happens, it is almost always the result of bad faith on the part of one of the parties or lack of communication and upfront due diligence between the real estate broker and the lawyer. At a minimum, at the very start of a transaction, the lawyer and the broker should meet with their respective clients and determine what issues, if any, are critical to the tenant or landlord and, if not obtained, would cause the landlord or tenant not to conclude the transaction. Those issues should be identified upfront and agreed upon, as a condition precedent to the broker and lawyer going forward with negotiations.

Sophisticated lawyers and brokers understand that the best time to do lease negotiations is at the request for proposal stage, at least from the tenant's perspective. This is because the tenant's leverage is maximized prior to the time that it has settled on one particular location and one particular landlord. At this point in time, the tenant can always tell the landlord that if the landlord does not agree to this particular point, then the tenant will go elsewhere. Once a site and a location are selected, the tenant's negotiating power significantly diminishes. In addition, raising issues at the request for proposal stage strips a great deal of the "emotionalism" from the lease negotiations. The worst thing for a tenant to do is to walk away from the table because it did not get a particular point only to find out that it cannot obtain that point from any of the other landlords of comparable buildings in the vicinity. Everyone has different "hot buttons" and marketplaces differ even within the same city. If a tenant compares what it

is receiving from a landlord not to "utopia" but rather to what is typically available in the marketplace, the emotion is stripped from a decision by the landlord to stick with a 1996 BOMA measurement rather than a 1980 BOMA measurement, or to insist that capital expenditures be included as operating expenses and amortized over a five-year period rather than the useful life, or that the landlord will allow a tenant only sixty days to audit operating expenses rather than three years, etc.

Attached are two sample Requests For Proposal. The first Request for Proposal is for use when working with a real estate broker on large transactions in marketplaces where the tenant has reasonable leverage. The proposal sets forth our list of issues that most think are critical. The real estate broker is asked to request that each of the owners respond in detail to each of the positions set forth on the Request For Proposal. The responses from various landlords are then placed on a spreadsheet and the tenant isolates on the basis of the responses one landlord for the purposes of negotiating a detailed letter of intent. No one has to call anyone names and the issues that could cause a problem later on are simply addressed before a project is selected. Under these circumstances, the actual lease negotiations turn out to be much more amicable and much less likely to ever bog down or fall apart. The second Request For Proposal is for small transactions where the tenant's leverage is small and the deal cannot afford the legal expense and time involved with larger transactions.

SAMPLE Long Form
Request for Proposal
Office Space 15,000 SF+
Michael E. Meyer
DLA Piper Rudnick Gray Cary US LLP

_____ __, 2005

RE: Request For Proposal ("RFP") From _____

Dear:

_____ has been authorized by _____ (hereinafter referred to as "Tenant") to request a proposal to lease space in the above-referenced project (the "Project"). This RFP is also being concurrently sent in electronic format to two other landlords. When we receive your response, we will compare it to the responses we receive from the other two landlords and select one landlord to enter into exclusive negotiations for a lease. In your proposal please address the following items by returning this RFP, which is being sent to you in electronic format, blacklined to show what you find acceptable, what you find unacceptable and what, when appropriate, you will accept with modifications (and please specifically indicate such modifications.):

PROJECT: (Please see EXHIBIT "B" for Building Questionnaire)

FLOOR & AREA: Approximate contiguous usable square feet: 85,000

Exact square footage to be initially leased is subject to Tenant's approval of a final space plan.

Rentable area of a single-tenancy floor is the area of the entire floor measured in accordance with the methods specified in the BOMA publication ANSI Z65.1-1980 (as reaffirmed in 1989) but shall specifically exclude areas on the roof, below the ground floor lobby and outside the perimeter walls. The Premises shall be measured in accordance with such BOMA standards and appropriate adjustments shall be made to the gross rent to reflect the actual square footage (see Attachment 1). Please define the Building Loss Factor.

OPERATIONAL COVENANT: Landlord shall operate the Building and the Project in as first class manner and at all times shall keep the Project and Building in first class condition and repair. Landlord shall have the responsibility for maintenance and operation of the Building Structure and Building Systems (see Attachment 2).

COMMENCEMENT DATE: Ten (10) months after lease execution, which ten (10) month period will be extended for Force Majeure Delays and Landlord Delays (to be defined in the lease), but not beyond the date Tenant commences business operations from the Premises.

PRIMARY LEASE TERM: Ten (10) years.

FREE RENT: Four (4) months following the Commencement Date.

BASE ANNUAL RENTAL RATE: Please indicate the lowest possible fully serviced, gross rental rate with a 2006 base year.

CANCELLATION PROVISION: Tenant will require a right to cancel this lease as to all of the Premises, or one or more contiguous full floors, with nine (9) months written notice to Landlord, which notice may be sent anytime after the 75th full month following the Commencement Date. Tenant shall pay to Landlord a cancellation payment equivalent to the then unamortized brokerage commission, free rent and tenant improvement monies expended by Landlord. Said payment shall be due upon the date of Tenant's actual vacation of the Premises.

OPERATING EXPENSES—IN GENERAL: Tenant shall pay its share of any increase in the actual operating costs of the Building on a prorata basis, predicated upon a 2006 base year method-of-expense calculation ("Base Year").

A. GROSS UP: All operating expenses shall be based upon the Building being 100% occupied and fully assessed for real estate taxes with all tenants paying full rent, as contrasted with free rent, half rent and the like. (See Exhibit "A" for Exclusions from Operating Expenses). Any pass-throughs above the Base Year shall be capped at five percent (5%) per annum.

B. PROPOSITION 8 PROTECTION: Tenant shall receive Proposition 8 protection during the Base Year.

C. INSURANCE AND TAXES: For the purpose of payment of operating expenses, to the extent Landlord pays taxes and/or insurance premiums less frequently than monthly, the cost of same shall not be included in operating expenses but shall be separately calculated, with Tenant being obligated to pay Tenant's prorata share of same on the later of five (5) business days after receipt of an invoice from Landlord or ten (10) days prior to the date Landlord is obligated to pay same to the taxing authority or insurance company.

D. VACANCY CREDIT: In the event that Tenant ceases to occupy, but still leases, _____ rentable square feet of the Premises, Tenant shall receive a credit against operation expenses equal to the cost of electricity, janitorial, service, water HVAC and any additional utility and/or service not used by Tenant as a result of such vacancy.

PROPOSITION 13 EVENT OF SALE INCREASE IN TAXES:

In the event of a reassessment of the Building or Project resulting from a sale, refinancing or disposition of the Building or Project or any interest therein, any change in ownership whatsoever or any renovation or new construction in the Project during the Primary Lease Term or any extensions thereof, Landlord shall be 100% responsible for the increase in real estate taxes over the then-current Base Year.

MOVING ALLOWANCE:

Landlord to provide a moving allowance equivalent to $1.00 per rentable square foot.

USE:

Tenant may use the Premises for general office purposes, for purposes incidental thereto (including a cafeteria, an exercise health club facility, or a child care facility) and for any other lawful purpose consistent with the uses permitted by comparable landlords of comparable space in comparable projects in the vicinity of the Project

ACCESS:

Tenant requires access to the Premises seven (7) days per week, 24 hours per day, 365 days per year.

RIGHT TO SUBLEASE/ ASSIGN:

Tenant shall have the right at any time to sublease, assign or otherwise permit occupancy of all or any portion of its space to any related entity, subsidiary, parent company or affiliate of Tenant or Tenant's parent, any company in which Tenant or Tenant's parent has a controlling interest, or to any successor corporation, whether by merger, consolidation or otherwise or to any person who purchases all or substantially all of Tenant's assets without the Landlord's approval or consent. Tenant may retain one hundred percent (100%) of any revenues derived from the Sublease.

In addition, Tenant shall have the right to sublease or assign all or any portion of the Premises during the initial or extended lease term to any 3rd party subtenant of a type and quality suitable for a first-class office building with Landlord's prior written consent which will not be withheld, conditioned or delayed if such transferee will not cause Landlord to be in violation of an exclusive, will comply with the use provisions and restrictions of the Lease, and is comparable in quality to other tenants of the Project leasing above ground floor space in the Project. Tenant may retain one hundred percent (100%) of any revenues derived from the sublease. **[*In the event that Tenant must share the "Profits", see Attachment 3 for the definition of Profits.*]**

Landlord shall not have the ability to recapture such sublease space during the initial or extended terms.

RECOGNITION AGREEMENT:

In the event of a sublease of the entire premises or one or more full floors of the premises, Landlord shall agree that in the event of a default by Tenant under the Lease, Landlord will recognize the sublease as a direct lease between Landlord and the subtenant on the terms and conditions of the lease except that the rent will be the higher of the rent provided (per rentable square foot) in the lease and the rent (per rentable square foot) provided in the sublease.

FIXED OPTIONS TO EXPAND:

Tenant requires the following Expansion Options:

- Approximately _____ RSF contiguous to the premises on the 3rd and 6th anniversary of the Commencement Date;
- Tenant agrees to give six (6) months prior notice of its intent to lease the additional space;
- Rent rate for the additional space will be the current Fair Market Rental Rate as defined below;
- Rent rate for the expansion space (including the ROFO Space described below) shall commence on the earlier of the date Tenant commences business operations from the Premises or four (4) months after the premises are delivered to Tenant, which four (4) month period will be extended for Force Majeure Delays and Landlord Delays.

FIRST RIGHT TO LEASE (ROFO):

Tenant shall have the First Right to Lease, after the execution of the lease, any space in the Building. Landlord shall notify Tenant of any such space becoming available and shall propose a rent and other lease terms and conditions for the space. Tenant shall, within ten (10) days after receipt of such notice advise Landlord which (or all) of such space Tenant elects to lease for a period of time to run coterminously with the term of Tenant's Lease.

Thereafter, the parties shall negotiate in good faith in an attempt to reach agreement with respect to rent, terms and conditions. If Landlord and Tenant are unable to agree within a forty-five (45) day period, then Landlord must lease such space to Tenant at the Fair Market Rental Rate as defined below.

FAIR MARKET DEFINITION:

The term "Fair Market Rental Rate" shall mean the annual amount per rentable square foot that Landlord has accepted in current transactions between non-affiliated parties from non-expansion and non-equity tenants of comparable credit-worthiness, for comparable space, for a comparable use for a comparable period of time

("Comparable Transactions") in the Building, or if there are not a sufficient number of Comparable Transactions in the Building, what a comparable landlord of a comparable building in the vicinity of the Building with comparable vacancy factors would accept in Comparable Transactions. In any determination of Comparable Transactions appropriate consideration shall be given to the annual rental rates per rentable square foot, the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, the type of escalation clause (e.g., whether increases in additional rent are determined on a net or gross basis, and if gross, whether such increases are determined according to a base year or a base dollar amount expense stop), the extent of Tenant's liability under the lease, abatement provisions reflecting free rent and/or no rent during the period of construction or subsequent to the commencement date as to the space in question, brokerage commissions, if any, which would be payable by Landlord in similar transactions, length of the lease term, size and location of premises being leased, building standard work letter and/or tenant improvement allowances, if any, and other generally applicable conditions of tenancy for such Comparable Transactions. The intent is that Tenant will obtain the same rent and other economic benefits that Landlord would otherwise give in Comparable Transactions and that Landlord will make, and receive the same economic payments and concessions that Landlord would otherwise make, and receive in Comparable Transactions. If, for example, after applying the criteria set forth above, Comparable Transactions provide a new tenant with comparable space at Thirty-Two Dollars ($32) per rentable square foot, with a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements, four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance, a "lease takeover" obligation in the amount of One Hundred Thousand Dollars ($100,000), a brokerage commission of Fifty Thousand Dollars ($50,000), and certain other generally applicable economic terms, the Fair Market Rental Rate for Tenant shall not be Thirty-Two Dollars ($32) per rentable square foot only, but shall be the equivalent of Thirty-Two Dollars ($32) per rentable square foot, a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements or three (3) months' additional free rent in lieu of such construction, an additional four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance or payment in lieu of such allowance, One Hundred Thousand Dollars ($100,000) cash payment in lieu of a lease takeover, a payment to Tenant's then broker of a Fifty Thousand Dollar ($50,000) brokerage commission (or if Tenant is not then represented by a broker, Tenant shall receive a rent credit in the amount of the brokerage commission that Landlord would have otherwise been required to pay) and such other generally applicable

economic terms. The Fair Market Rental Rate shall be determined in accordance with Attachment 8.

OPTION(S) TO EXTEND: Tenant shall have Options to Extend the lease for _____ (__) consecutive _____ (__) year periods for all or any part of the premises and any space added to the premises pursuant to the exercise of Tenant's expansion rights. Tenant shall be required to give Landlord no less than _____ (__) months prior written notice of Tenant's election to exercise an Option to Extend. Such extension shall be upon the same terms and conditions as the lease except that the rental rate for each option period shall be at a Fair Market Rental Rate (as defined below) and the base year for operating expenses shall be adjusted forward to the first full twelve calendar months of the extension term.

MOVE-IN CLEANING: Tenant's Premises shall be thoroughly cleaned at Landlord's sole cost and expense prior to and immediately following Tenant's move into Tenant's Premises.

NO CHARGE FOR UTILITIES AND SERVICES DURING CONSTRUCTION AND MOVE-IN: No charge for services and utilities during construction and move-in. Tenant and Tenant's contractors, subcontractors, architects, engineers and designers shall not be charged for, and Landlord shall provide, the use of elevators, restrooms, loading docks, parking or utilities (during normal business hours) during the construction of Tenant's Premises or during Tenant's actual move into the Building.

ODOR AND FUMES FLUSH-OUT PERIOD: Landlord shall run the HVAC twenty-four (24) hours per day for the seven (7) day period prior to the date Tenant anticipates commencing business operations to flush out new finish odors, etc.

EARTHQUAKE INSPECTION : Please verify whether or not the Building's welded steel frame has been seismically tested and repaired according to the earthquake safety ordinance, Section 91.8908 of the Los Angeles Municipal Code.

PARKING: Tenant wants the right, but not the obligation to use up to _____ spaces per 1,000 square feet of rentable area in the Building parking structure and/or surface parking areas immediately adjacent to the Building. Please indicate if parking charges are applicable and, if so, the amount of the charges both monthly and transient and whether or not there are any specific monthly city taxes assessed to Tenant. Tenant also requires the ability to convert up to ___% of its parking ratio into reserved stalls. The location of the reserved and unreserved parking spaces shall be set forth on an exhibit attached to the lease. No tandem parking will be permitted.

ELECTRICITY: Landlord shall provide electricity for normal office purposes during Normal Business Hours (as defined below), including but not limited to, fluorescent and incandescent lighting, including task and task ambient lighting systems, normal office equipment, including, but not limited to, duplicating (reproductions) machines, computers, terminals, communications and audiovisual equipment, vending machines, kitchen equipment. Landlord will furnish to Tenant wattage and electricity up to an amount necessary to operate their business and all equipment of not less than 6.5 watts per usable square foot on a 24/7 basis.

HEATING, VENTI-LATING AND AIR CONDITIONING (HVAC): Landlord shall furnish heating, ventilating, and air conditioning, Monday through Friday from 7:00 a.m. to 9:00 p.m. and on Saturdays from 7:00 a.m. to 2:00 p.m., except for New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day ("Normal Business Hours").

It is to be understood and agreed that any after-hour air conditioning costs will be reduced to the extent that any other tenant has requested utilization of the system, with such overall cost to be prorated. Tenant shall be charged for any after-hour air conditioning costs at Landlord's Actual Cost.

ACTUAL COSTS:: "Actual Cost" shall mean an amount equal to the actual out-of-pocket incremental extra costs to Landlord to provide such after-hour air conditioning (or other additional services or utilities), without markup for profit, overhead, depreciation or administrative costs. Please identify any after hour's cost.

CLEANING SPECIFICATIONS: Landlord shall clean Tenant's Premises, five (5) days per week pursuant to the building standard Janitorial Schedule attached hereto as Exhibit C and made a part hereof. Exterior windows shall be washed four (4) times per year.

BUILDING SECURITY: Landlord shall provide building security, equipment, personnel, procedures, and systems twenty-four (24) hours per day, every day of the year. The lease shall contain an exhibit setting forth building standard security specifications, procedures and systems. Tenant shall be permitted to install its own security system for the Premises at Tenant's cost. In addition, on request, Landlord's security guards will accompany Tenant's employees and/or visitors to their vehicles after dark. Please provide information on the Building's security system.

DIRECTORY BOARD: Landlord, at Landlord's expense, shall furnish Tenant with space on the Building directory board in the lobby of the Building and any

other directory which may be a part of the complex for _____ (__) designated names per each one thousand (1,000) square feet of space leased. Tenant shall also be permitted group and alphabetical listings on the lobby directory board.

TENANT IMPROVEMENTS: Landlord shall furnish $_____ per rentable square foot as a lump sum payment over and above the building core and shell ("Tenant Improvement Allowance" or "TIA"). A core and shell definition will be attached as a separate exhibit to the lease but at a minimum shall include the Base Building Work itemized below.

USE OF T.I. DOLLARS: The Tenant Improvement Allowance may be used for any and all costs associates with the design and construction of the tenant improvements and for Tenant's moving expenses, including any amount paid to a project coordinator, construction consultant or similar consultant, and for Tenant's legal fees in negotiating the lease. In addition, Tenant may use the Tenant Improvement Allowance for any additional freestanding workstations, furniture, fixtures, and/or equipment.

UNUSED T.I. DOLLARS: Monies remaining from the Tenant Improvement Allowance shall, at Tenant's option, be used as free rent or be converted into cash.

OFFSET RIGHT FOR NON-PAYMENT OF T.I. DOLLARS: If Landlord fails to pay the TIA to tenant as and when due, Tenant may deduct the unpaid amount, together with interest, from the rents next due and owing under the Lease. Tenant reserves the right to competitively bid all contracted and subcontracted work and Landlord shall not charge a supervision fee.

T.I. DOLLARS FOR EXPANSION SPACE: In the event Tenant leases expansion space, please confirm that Tenant will receive the same tenant improvement allowance as is offered with the initial space. Please also confirm that such allowance should be upwardly adjusted by the increase in the Consumer Price Index from the commencement date of the lease until the commencement date for Tenant's expansion space.

NO FEE TO LANDLORD: Landlord shall not receive a fee for coordination (or the like) of the tenant improvements.

APPLICABLE LAWS: Landlord shall deliver the Premises to Tenant in first class condition and operating order and in compliance with all laws applicable to new construction, disregarding variances and grandfathered rights, subject to the following definition of Landlord's Basic Work.

APPROVAL CRITERIA:

Tenant needs to have assurances that once the lease is executed, it can construct its tenant improvement and subsequent alterations in a manner which will allow Tenant to efficiently and effectively operate its business. Accordingly, Landlord may not withhold or condition its consent unless the making or installation of the improvements or alterations (a) adversely affects the Building Structure, (b) adversely affects the Building Systems, (c) do not comply with applicable laws, (d) affect the exterior appearance of the Building, or (e) would unreasonably interfere with the normal and customary business operations of the other tenants in the Building (individually and collectively, a "Design Problem").

LANDLORD'S BASE BUILDING WORK:

Landlord will provide the following at its expense:

1. The HVAC distribution main loop shall be in place, tight to the slab above, and provide for the installation of VAV mixing boxes, flex duct and linear slot diffusers installed at the window line.

2. Electrical service to the electrical closed on each floor proposed, with 120/208-volt power panels and circuit breakers in place, along with an isolated grounding system.

3. Interior surfaces of the exterior walls shall be finished in drywall; taped, speckled and sanded.

4. All interior columns on the floor proposed for Tenant shall be finished in drywall; taped, speckled and sanded.

5. All work in common areas of the Building, including, but not limited to, common corridors and common elevator lobbies shall be completed.

6. The automatic sprinkler system main loop shall be fully completed, operational and tested in accordance with NFPA requirements.

7. All building standard restroom work shall be completed and meet all ADA requirements.

8. Floor slabs shall be flash patched to achieve a level, smooth surface and prepped for carpet installation and shall be level so that there is no more than one eighth (1/8) inch deflection per each ten (10) square feet. All vertical penetrations shall be sealed and fireproofed.

9. Connection "stub outs" shall be available for vent, hot and cold water at all wet columns.

10. Connection point installed on the floor(s) for fire alarm system. The complete core fire detection system shall be installed, operating and tested in accordance with NFPA requirements.

11. Exterior window coverings to be furnished and installed by Landlord.

WAIVER OF CLAIM/ SUBROGATION:

Tenant requires a mutual waiver of claim and subrogation for loss or damage to property, both real and personal, caused by or resulting from casualties customarily insurable.

COMPLIANCE WITH LAWS:

Landlord shall ensure that the Premises, and the Building of which they are a part, are in compliance with all federal, state and local laws and regulations, including, but not limited to the Americans with Disabilities Act (ADA), both at the time of Tenant's possession of the Premises and throughout the Primary Lease Term and any extensions thereof.

RIGHT OF OFFSET/ SELF HELP:

Tenant shall have the right (but not the obligation) to fulfill Landlord's obligations with respect to the maintenance and repair of the Premises (and Tenant shall have access to utility systems and elements outside the Premises which service the Premises in order to do so) in the event Landlord defaults on its obligations to do same and after the expiration of appropriate notice from Tenant and Landlord's failure to cure. In such event, Tenant shall deduct its actual cost so incurred from the next monthly installment of base rental due (See Attachment 4).

DAMAGE TO PREMISES OR BUILDING; INTERRUPTION OF ESSENTIAL SERVICES:

If the Premises or any part thereof, including parking areas, shall be untenantable as a result of any damage or destruction to the Building or the Premises, or any failure of Landlord to provide access to the Premises, or if there is an interruption of essential services, for more than three (3) consecutive business days or ten (10) business days within a twelve month period, or such lesser periods if covered by insurance, then the Base Rent, additional rent and any other amounts owed by Tenant to Landlord shall be abated and shall not be payable with respect to such affected portion of Tenant's Premises from the date of such interruption until such services or access have been restored or such damage or destruction has been repaired and Tenant has been given sufficient time to reconstruct its tenant improvements, install and test its furniture, fixtures and equipment, and move back into the Premises. Tenant's entry into the Premises to remove Tenant's personal property during an interruption of

essential services shall not be deemed as use of the Premises and such entry shall not effect any abatement of rent (see Attachment 5).

CASUALTY LOSS/ CONDEMNATION: If the Building (including the parking areas) and/or premises are damaged by fire, taken by eminent domain or the threat thereof, or otherwise are unavailable to Tenant for the conduct of its business for more than six (6) months, Tenant will have the right to terminate the lease and move its business operations elsewhere (See Attachment 6).

AFFIRMATIVE BUILDING SIGNAGE: Tenant shall have the right to major exclusive building top and monument signage.

RESTRICTIONS ON BUILDING SIGNAGE: Landlord will not grant sign rights on the Building or on the site to entities traditionally thought or perceived to be sexist such Hooters, Playboy, Hustler and Penthouse magazines, strip clubs, and the like, or to organizations traditionally perceived to be racist such as KKK, American Nazi Party, and the like. Landlord shall not permit Building Clad Signage.

SPACE PLANNING: Tenant shall have the right to engage a space planner of its choice relative to the preparation of preliminary working drawings. Landlord to provide an allowance of $_____ per rentable square foot and said amount shall be over and above the Tenant Improvement Allowance mentioned herein.

ENGINEERING: Landlord shall be responsible for the cost of all electrical, mechanical and structural engineering including all permits, licenses and fees relative to the development of Tenant's Premises.

BUILDING MANAGEMENT: Any management agreement shall provide that the managing agent shall operate the building in a first-class and cost effective manner so as to minimize operating expenses. Tenant shall have the right to inspect all operating records and costs for the Building as required. The management fee shall not exceed the lower of 3% or the percentage used during the Base Year.

NON-DISTURBANCE AGREEMENT: Landlord shall agree that concurrently with the execution of the lease, Landlord will provide Tenant with a Non-Disturbance Agreement acceptable to Tenant from any current or future ground lessors, mortgage holders or lien holders. Such Non-Disturbance Agreement shall acknowledge that, to the extent any of the concessions to be provided to Tenant have not been fully funded or performed by Landlord at the time of a foreclosure, deed in lieu of

foreclosure or any other transfer of the Building as a result of a default of Landlord under the terms of the applicable ground lease, loan documents, etc., subject to Landlord and lender protections set forth in the lease, Tenant, to the extent Tenant pays or has paid such unfunded amount, may deduct the unfunded amount or equivalent value thereof, together with interest, from the Base Rent, additional rent and other amounts owed by Tenant to Landlord next becoming due and payable (See Attachment 7 and Exhibit A to Attachment 7).

STRUCTURAL/ LATENT DEFECTS:

Landlord, at Landlord's sole cost and expense, shall be 100% responsible for repair of any and all structural defects including roof and flooring and/or latent defects in the Building over the primary lease term and the extension periods (including earthquake damage). Further, Landlord's cost for repair of any and all structural and/or latent defects, shall be excluded from operating expenses which would otherwise be passed through to Tenant.

HAZARDOUS MATERIALS:

Landlord warrants, neither Landlord nor any preceding owners of the property have used the property or any portion thereof for the production, disposal or storage of any Hazardous Materials (as defined below), and Landlord is not aware of any such prior use or any proceeding or inquiry by a governmental authority with respect to the presence of such waste or substance on the property or the movement thereof from or to adjoining property. Landlord warrants there is no asbestos in the Building. Landlord will not, at any time, use or permit the use of any portion of Tenant's Premises, the Building, parking facilities or the land beneath any of them (collectively, the "Site") to be used in violation of any governmental laws, ordinances, regulations or orders ("Regulations"), including those relating to environmental conditions on, under or about the Site, including but not limited to asbestos, soil and ground water conditions and Hazardous Materials. Landlord agrees to remove at Landlord's sole cost and expense, any Hazardous Materials, which may have been used in the construction of the Building. Further, Landlord's cost for the removal of Hazardous Materials from Tenant's Premises or the project shall be excluded from operating expenses which would otherwise be passed through to Tenant inclusive of any material which is deemed toxic presently or in the future. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all losses, costs (including reasonable attorneys' fees), liabilities and claims arising from any violations of the Regulations and/or the existence of Hazardous Materials that are now or hereinafter become located in, on or under the Site, and shall assume full responsibility and cost to remedy such violations and/or the existence of Hazardous Materials, to the extent that such violation or the existence of Hazardous Materials is not caused by

Tenant. Prior to the mutual execution of the lease, the Landlord shall, at Landlord's sole cost and expense, engage a qualified environmental testing company to analyze and provide a detailed report to Tenant regarding the existence and corresponding level(s) of the following Hazardous Materials: (i) radon, (ii) asbestos, and (iii) lead, if any, in, on, under or about the Site.

Hazardous Materials shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 1802; the Resource Conservation Recovery Act, 42 U.S.C. Section 6901, et. seq.; or those substances defined as "hazardous wastes" in applicable codes in the State of California and in the regulations adopted and publications promulgated to such codes.

MOLD: To the extent mold is found in the Project, and to the extent it was not created by Tenant, Landlord shall cause such mold to be removed from the Project as soon as is reasonably possible so as not to cause any health concerns to people who work in, or visit, the Project.

TENANT'S RIGHT TO AUDIT: Tenant shall have the right, at its own cost and expense (except as provided below), to audit or inspect Landlord's records (but not more than once in any Lease Year) with respect to operating expenses and real estate taxes, as well as all other additional rent payable by Tenant hereunder for any Lease Year. Tenant's right to audit must commence within three (3) years from Tenant's receipt of a final statement from Landlord. Tenant shall give Landlord not less than thirty (30) days prior written notice of its intention to conduct any such audit. Landlord shall cooperate with Tenant during the course of such audit, which shall be conducted during normal business hours in Landlord's office. Landlord agrees to make such personnel available to Tenant as is reasonably necessary for Tenant, or for Tenant's employees or agents to conduct such audit. If such audit discloses that the amount paid by Tenant as Tenant's operating expenses and/or real estate taxes, or of other additional rental payable by Tenant hereunder, has been overstated by more than two percent (2%), then, in addition to immediately repaying such overpayment to Tenant with interest, Landlord shall also pay the reasonable costs incurred by Tenant in connection with such audit.

FINANCIAL STATEMENTS/ SECURITY DEPOSIT:

Tenant will submit to Landlord any and all relevant financial information reasonably required for credit purposes. Please confirm that Tenant shall not be required to post any security deposit or credit enhancements.

BUILDING ANTENNA/ SATELLITE DISH(ES)/ SUPPLEMENTAL HVAC UNITS:

Tenant shall have the right, without rental or other charge, to use a portion of the roof to install, operate and maintain telecommunications antennas, microwave dishes and other communications equipment and supplemental HVAC units. Such use shall be subject to receipt of all required governmental approvals and shall not interfere with the Building Systems. Tenant will pay for any abnormal wear and tear to the roof area to which said equipment is installed or utilized as access to the area of installation. The location of such equipment shall be mutually acceptable to both Landlord and Tenant. Landlord may not withhold its consent unless a Design Problem exists.

HOLDING OVER:

Tenant will require the ability to holdover in its lease space with notice and approval, for a period of up to six months, under the same terms and conditions of the existing Lease. Thereafter, the rental rate shall be one hundred twenty (120%) of the rental rate in effect during the last month of the primary lease term or extension term, as applicable.

AMERICANS WITH DISABILITIES ACT OF 1990:

Landlord shall perform all work in full compliance with the applicable laws including any governing regulations involving the Americans With Disabilities Act of 1990 ("ADA") and the laws set forth in Chapters 2-71, Part 2, Title 24 of the California Administrative Code or as allowed by an approved variation or legally non-conforming conditions to the extent same will not cause Tenant to incur any increased costs in constructing the tenant improvements (collectively, "applicable laws"), in order to make the Building, the Premises, and the Project suitable for Tenant's intended use.

CONSENT:

Except as otherwise provided herein (and except for matters which (1) could have an adverse effect on the structural integrity of the Building Structure, (2) could have an adverse effect on the Building Systems, or (3) could have an effect on the exterior appearance of the building, whereupon in each such case Landlord's duty is to act in good faith and in compliance with the Lease), any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld, conditioned or delayed. Whenever the lease

grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations (other than decisions to exercise expansion, contraction, cancellation, termination or renewal options), Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated tenant or landlord concerning the benefits to be enjoyed under the lease.

ARBITRATION:

Unless otherwise stated herein, in addition to all of the legal rights and remedies that are available to Tenant at law or in equity, in the event that nay dispute or disagreement between Landlord or Tenant arises under the lease or any related document, the matter shall be resolved pursuant to binding arbitration.

DEFAULT BY LANDLORD AND TENANT:

Any time a payment is due from Landlord to Tenant or from Tenant to Landlord, and if a specific time period is not set forth in the Lease, the payment will be deemed due in thirty (30) days (see Attachment 9). There shall be only one event of default by Landlord (see Attachment 10). There shall be only two events of default by Tenant (nonpayment or nonperformance of a lease provision) (see Attachment 11). If Landlord files for bankruptcy protection, Tenant may remain in the Premises even if the lease is rejected (see Attachment 12).

LIABILITY AND INSURANCE:

Landlord shall carry casualty and all risk insurance for the full replacement value of the Building (and parking areas) and shall carry earthquake insurance for the Building (and Building parking areas) and rental loss insurance on such terms as those contained in policies maintained by owners of comparable buildings (and containing waivers of subrogation). Furthermore, notwithstanding such insurance, Landlord agrees to indemnify and defend Tenant and its affiliates and to hold them harmless from liability for any and all claims, liabilities and costs (including attorneys' fees and expenses) arising in connection with any and all negligent acts or willful misconduct of Landlord, its agents, employees, contractors, invitees and licensees.

RESTRICTION ON LEASING:

Landlord agrees that it will not, during the primary lease term (as it may be extended) lease any space in the Building to any other tenant, or consent to a sublease or an assignment, to either (i) any other person or entity whose business is in direct competition with Tenant ("Competitor") or (ii) an entity or person that conducts a business or connotes an image that adversely conflicts with the corporate and public image of Tenant as a major corporation conscious of maintaining a reputation for integrity, financial

reliability, and for good corporate and moral citizenship. In the event that Landlord violates its agreement set forth in this Section, Tenant shall have, in addition to all other remedies which it may have under the lease or at law, the right to terminate this lease upon notice to Landlord, in which case this lease shall terminate on the date set forth in Tenant's notice as if that were the date set forth in the lease for the natural expiration thereof.

REAL ESTATE COMMISSION :

_____ has been retained by Tenant to act as its real estate representative. Tenant understands, agrees, and expects that _____ will be compensated on the basis of a full market real estate commission paid by the owner of the project that is ultimately selected. The commission will be calculated based on the average fully serviced rental paid by Tenant to Landlord during the entire Primary Lease Term. In the event Tenant elects to expand its square footage, _____ will also receive a commission related to these events bases on a full market commission schedule. Your proposal should reflect this expectation.

APPROVALS:

The above referenced terms and conditions are subject to the final approval of Tenant and its Real Estate Committee. Your proposal should include the following:

1. A specific response to each of the requirements outlined above.

2. The rentable and usable square footage of the space proposed to Tenant.

3. The building's estimated/actual operating expenses and real estate taxes for the Base Year and budget years _____ and _____ (assuming 100% occupancy).

THIS LETTER IS AN INVITATION TO NEGOTIATE. IT IS NEITHER AN OFFER NOR A CONTRACT. TENANT AND LANDLORD RESERVE THE RIGHT TO NEGOTIATE WITH OTHER PARTIES. NO PARTY SHALL HAVE ANY LEGAL RIGHTS OR OBLIGATIONS WITH RESPECT TO ANY OTHER PARTY, AND NO PARTY SHOULD TAKE ANY ACTION OR FAIL TO TAKE ANY ACTION IN DETRIMENTAL RELIANCE UNTIL DEFINITIVE WRITTEN AGREEMENTS ARE PREPARED AND SIGNED BY ALL PARTIES INVOLVED. TIME IS OF THE ESSENCE.

We look forward to receiving your proposal seven (7) days from the date of this Request for Proposal. If you have any questions or comments please contact the undersigned at _____.

Yours very truly,

_____

Exhibit A
OPERATING EXPENSE EXCLUSIONS

Notwithstanding anything to the contrary in the Lease, Operating Expenses shall not include the following except to the extent specifically permitted by a specific exception to the following:

(1) Any ground lease rental;

(2) Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied or otherwise ("Capital Items"), except for (A) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, incurred by Landlord after the Commencement Date for any capital improvements installed or paid for by Landlord and required by any new (or change in) laws, rules or regulations of any governmental or quasi-governmental authority which are enacted after the Commencement Date; (B) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, or any equipment, device or capital improvement purchased or incurred as a labor-saving measure or to affect other economics in the operation or maintenance of the Building (provided the annual amortized costs does not exceed the actual cost savings realized and such savings do not redound primarily to the benefit of any particular tenant other than Tenant); or (C) minor capital improvements, tools or expenditures to the extent each such improvement or acquisition costs less than five thousand dollars ($5,000);

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

(4) Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds, and costs of all capital replacements, regardless of whether such repairs are covered by insurance (except if permitted under subsection (ii) above) and cost of earthquake repairs in excess of twenty-five thousand dollars ($25,000) per earthquake (which for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to such initial earthquake);

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

(6) Depreciation, amortization and interest payments, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services' all as determined in accordance with generally accepted accounting principles, consistently applied, and when

depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;

(7) Marketing costs including without limitation leasing commissions, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building;

(8) Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Building;

(9) Overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Building to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis for comparable buildings;

(10) Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or the Land (except as permitted in subsection (ii) above);

(11) Landlord's general corporate overhead and general and administrative expenses;

(12) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord and/or all fees paid to any parking facility operator (on or off site);

(13) Rentals and other related expenses incurred in leasing HVAC systems, elevators or other equipment ordinarily considered to be Capital Items, except for: (A) expenses in connection with making repairs on or keeping Buildings Systems in operation while repairs are being made and (B) costs of equipment not affixed to the Building which is used in providing janitorial or similar services;

(14) Advertising and promotional expenditures and costs of signs in or on the Building identifying the owner of the Building or other tenant's signs;

(15) The cost of any electric power used by any tenant in the Building in excess of the Building-standard amount, or electric power costs for which any tenant directly contracts with the local public service company or of which any tenant is separately metered or sub-metered and pays Landlord directly; provided, however, that if any tenant in the Building contracts directly for electric power service or is separately metered or sub-metered during any portion of the relevant period, the total electric power costs for the building shall be "grossed up" to reflect what those costs would have been had each tenant in the Building used the Building-standard amount of electric power;

(16) Services and utilities provided, taxes attributable to, and costs incurred in connection with the operation of the retail, parking (to the extent same services the retail operations of the Project), and restaurant operations in the Building, except to the extent the square footage of such operations are included in the rentable square feet of the Building and do not

exceed the services, utility and tax costs which would have been incurred had the retail and/or restaurant space been used for general office purposes;

(17) Costs incurred in connection with upgrading the Building to comply with the current interpretation of disability, life, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including, without limitation, the ADA, including penalties or damages incurred due to such non-compliance;

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

(19) Costs for which Landlord has been compensated by a management fee, and any management fees in excess of those management fees which are normally and customarily charged by comparable landlord's of comparable buildings;

(20) Costs arising from the negligence or fault of other tenants or Landlord;

(21) Notwithstanding any contrary provision of the Lease, including, without limitation, any provision relating to capital expenditures, other than normal and customary office building maintenance materials and office supplies, any and all costs arising from the release of hazardous materials or substances (as defined by Applicable Laws in effect on the date the Lease is executed) in or about the Premises, the Building or the Land in violation of applicable law including, without limitation, hazardous substances in the ground water or soil, not placed in the Premises, the Building or the Land by Tenant;

(22) Costs arising from Landlord's charitable or political contributions;

(23) Costs arising during the contractual warranty period from construction defects in the base, shell or core of the Building or improvements installed by Landlord;

(24) Costs arising from any mandatory or voluntary special assessment on the Building or the Land by any transit district authority or any other governmental entity having the authority to impose such assessment in connection with the initial construction of the Building;

(25) Costs for sculpture, paintings or other objects of art;

(26) Costs (including in connection therewith all attorneys' fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitration pertaining to the Landlord and/or the Building and/or the Land;

(27) Costs associated with the operation of the business of the partnership or entity which constitutes Landlord as the same are distinguished from the costs of operation of the Building, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building, costs of any disputes between Landlord and its employees (if any) not

engaged in Building operation, disputes of Landlord with Building management, or outside fees paid in connection with disputes with other tenants;

(28) Any increases of, or reassessment in, Real Property Taxes and assessments in excess of two percent (2%) of the taxes for the previous year, and any increase in Real Property Tax resulting from a change in ownership of the Landlord or from major alterations, improvements, modifications or renovations to the Building or the Land (collectively, "Transfers") except that Operating Expenses shall include the portion of Real Property taxes resulting from or attributable to an assessed value of the Building and Land greater than the market value per rentable square foot at the inception of the lease resulting from a change in ownership, or;

(29) Costs of any "tap fees" or any sewer or water connection fees for the benefit of any particular tenant in the Building;

(30) Any expenses incurred by Landlord for use of any portions of the Building to accommodate events including, but not limited to shows, promotions, kiosks, displays, filming, photography, private events or parties, ceremonies and advertising beyond the normal expenses otherwise attributable to providing Building services, such as lighting and HVAC to such public portions of the Building in normal operations during standard Building hours of operation;

(31) Any entertainment, dining or travel expenses of Landlord for any purpose;

(32) Any flowers, gifts, balloons, etc. provided to any entity whatsoever, including, but not limited to, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents;

(33) Any "validated" parking for any entity;

(34) Any "finders fees," brokerage commissions, job placement costs or job advertising cost, other than with respect to a receptionist or secretary in the Building office, once per year;

(35) Any "above-standard" cleaning, including, but not limited to construction cleanup or special cleanings associated with parties/events and specific Tenant requirements in excess of service provided to tenant, including related trash collection, removal, hauling and dumping;

(36) The cost of any "tenant relations" parties, events or promotion not consented to by an authorized representative of Tenant in writing;

(37) "In-house" legal and/or accounting fees;

(38) Any other expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Operating Expenses by comparable landlords of comparable buildings.

(39) To the extent that an expense included in Operating Expenses includes an expense related to the Project and not the Building, then the word "Building" utilized in these exclusions shall mean, and be extended to include, the Project.

OTHER

In the event any facilities, services or utilities used in connection with the Building or the Project are provided from another building or project owned or operated by Landlord or vice versa, the cost incurred by Landlord in connection therewith shall be allocated to Operating Expenses by Landlord on a reasonably equitable basis.

Landlord further agrees that since one of the purposes of Operating Expenses and the gross up provision is to allow Landlord to require Tenant to pay for the costs attributable to its Premises and pro-rata share of Operating Expenses, Landlord agrees that (I) Landlord will not collect or be entitled to collect Operating Expenses from all of its tenants in an amount which is in excess of one hundred percent (100%) of the Operating Expenses actually paid by Landlord in connection with the operation of the Project. All assessments and premiums which are not specifically charged to Tenant because of what Tenant has done, which can be paid by Landlord in installments, shall be paid by Landlord in the maximum number of installments permitted by law if requested by Tenant and not included as Operating Expenses except in the year in which the assessment or premium installment is actually paid; provided, however, that if the prevailing practice in comparable buildings is to pay such assessments or premiums on an earlier basis, and Landlord pays on such basis, such assessments or premiums shall be included in Operating-Expenses as paid by Landlord.

Each time Landlord provides Tenant with an actual and/or estimated statement of Operating Expenses, such statement shall be itemized on a line item by line item basis, showing the applicable expense for the applicable year and the year prior to the applicable year.

In the event Tenant ceases to occupy a contiguous portion of the Premises constituting a full floor on any floor of the Premises for a period of more than thirty (30) consecutive days, then upon Tenant giving Landlord written notice thereof, Tenant shall receive a credit against Tenant's Pro Rata Share of Operating Expenses and Real Property Taxes equal to the charges, on a per square foot of rentable Area basis, for utilities and services (if Tenant has not elected to provide its own utilities and services and receive a separate credit, and HVAC not used by Tenant as a result of such vacancy during the period of such vacancy.

Payment of Taxes and Insurance Premiums: Gross Up. Notwithstanding any Sections of the Lease to the contrary, Tenant shall not be required to pay its Pro Rata Share of Real Property Taxes or insurance premiums on any basis of estimates or in monthly installments. Tenant shall only be required to pay such Pro Rata Share of Real Property Taxes or insurance premiums five (5) days prior to the date Landlord is required to pay such taxes or insurance premiums. Landlord shall bill Tenant for Tenant's Pro Rata Share of Real Property Taxes ten (10) days before Landlord is required to make payment of such taxes to the appropriate taxing authorities. Landlord shall bill Tenant for Tenant's Pro Rata Share of insurance premiums ten (10) days before Landlord is required to make payment of such insurance premiums to the appropriate insurer(s). Landlord shall in any year, including the Base Year, during which the Project is not one hundred percent (100%) occupied during the entire calendar year with all occupants paying full rent (as contrasted with free rent, half rent and the like), adjust such Operating Expenses to what the Operating Expenses would have been had the Project been one hundred percent (100%) occupied during the entire calendar year and had all occupants been paying full rent (as contrasted with free rent, half rent, etc.).

"Real Property Taxes" shall mean all taxes, assessments (special or otherwise) and charges levied upon or with respect to the Project and ad valorem taxes on personal property used in connection therewith. Real Property Taxes shall include, without limitation, any tax, fee or excise on the act of entering into this Lease, on the occupancy of Tenant, the rent hereunder or in connection with the business of owning and/or renting space in the Project which are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision, public corporation, district or other political or public entity, and shall also include any other tax, assessment, fee or excise, however described (whether general or special, ordinary or extraordinary, foreseen or unforeseen), which may be levied or assessed in lieu of, as a substitute for, or as an addition to, any other Real Property Taxes. Landlord may pay any such special assessments in installments when allowed by law, in which case Real Property Taxes shall include any interest charged thereon. Real Property Taxes shall also include (except as restricted in the exclusion to Operating Expense Exclusions) legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Property Taxes; provided, however, notwithstanding anything to the contrary Real Property Taxes shall not include income, franchise, transfer, inheritance or capital stock taxes, unless, due to a change in the method of taxation, any of such taxes are levied or assessed against Landlord, in whole or in part, in lieu of, as a substitute for or as an addition to, any other tax which would otherwise constitute a Real Property Tax. For purposes of computing rent adjustments pursuant to this Article 5, Real Property Taxes shall be allocated and charged to Tenant in accordance with generally accepted accounting and management practices and expressed as an amount per square foot of Rentable Area. Tenant shall pay Real Property Taxes on any portion of the Tenant Improvements that are constructed by Tenant at a cost in excess of $30.00 per square foot of Rentable Area. Landlord shall seek a reduction in Real Property Taxes to the extent reasonably requested by Tenant, provided that Tenant shall pay directly for all of the costs of seeking such reduction in Taxes and Tenant shall be reimbursed for the amount of such costs that it pays out of any actual reduction in Real Property taxes achieved by such effort.

If Landlord receives a reduction in Real Property Taxes attributable to the Base Year as a result of a commonly called Proposition 8 application, the Real Property Taxes for the Base Year and each Lease Year shall be calculated as if no Proposition 8 reduction in Real Property Taxes was applied for and/or received.

If Landlord provided Tenant pursuant to this Lease a service or utility, the cost of which was included in Operating Expenses during the Base Year, then to the extent Tenant provides such service or utility itself, the cost of which was included in Operating Expenses during the Base Year, then to the extent Tenant provides such service or utility itself, the cost of providing same may be deducted by Tenant from the Rents next due and owing under this Lease, but not in an amount in excess of the corresponding amount included in Operating Expenses during the Lease Year that was attributable to Tenant's use of such service and/or utility during the Lease Year.

In the event Landlord incurs, subsequent to the Base Year, costs or expenses associated with or relating to separate items or categories or subcategories of Operating Expenses which were not part of Operating Expenses during the entire Base Year, Operating Expenses for the Base Year shall be deemed increased by the amounts Landlord would have incurred during the Base Year with respect to such costs and expenses had such separate items or categories or subcategories of Operating Expenses been incurred in Operating Expenses during the entire Base Year.

In the event any portion of the Project is covered by a warranty or service agreement at any time during the Base Year and to the extent the Project is not covered by such warranty or service agreement during a subsequent Lease year, Operating Expenses for the Base Year shall be deemed increased by such amount as Landlord would have incurred during the Base Year with respect to the items or matters covered by the subject warranty, had such warranty or service agreement not been in effect at the time during the Base Year.

In the event that the property management agreement attributable to the Base Year changes, and a service that was previously performed pursuant to, and as a part of, such property management agreement, then such cost shall either be excluded from Operating Expenses or the Base Year shall be grossed up to reflect such cost of such performance.

If the Project is not fully assessed for Real Property Taxes during the Base Year, the Real Property Taxes shall be grossed up during the Base Year to reflect what they would have been had such Real Property Taxes been fully assessed.

In the event a service is added subsequent to the Base Year, and is included in Operating Expenses, the Base Year shall be grossed up to reflect what Operating Expenses would have been had such service been provided during the Base Year.

Landlord shall cause retail and restaurant operations in the Project to be separately metered in order to facilitate the computation and allocation of Project Expenses.

Exhibit B
BUILDING QUESTIONNAIRE

This form will be used by Tenant in evaluating a building. All information provided shall pertain to the space that is currently under consideration by Tenant.

1. **BUILDING NAME & LOCATION**

   a. Name _____

   Street Address, Suite No. _____

   City, State, Zip Code _____

   b. Contact _____

2. **BUILDING INFORMATION**

   a. Completion Date _____

   b. Number of floors in building _____

   c. Total building rentable SF (BOMA definition) _____

   d. Total building usable SF (BOMA definition) _____

   e. Total rentable SF per floor (BOMA definition) _____

   f. Usable SF per floor (BOMA definition) _____

   g. Common area factor (BOMA definition) _____

   h. Ceiling height (finished) _____

   i. Slab to slab height _____

   j. Parking ratio (spaces/RSF) _____

   k. Exterior signing/signage rights _____

3. **ELECTRICAL SPECIFICATIONS**

a. Lighting _____

b. Additional electrical power service capacity _____

c. Type of electrical distribution (under floor duct, cellular deck, "poke through") _____

d. Emergency lighting

Generator _____ with Automatic Start _____ Battery Pack _____

4. **VOICE & DATA**

No. of future trunklines available _____

Service to building _____

Risers _____

Fibre Optics Available? YES NO

5. **HVAC**

a. Describe HVAC System

Type _____

Manufacturer _____

Capacity _____

b. Heating

Capable of maintaining a minimum of 72°F degrees? YES NO

c. Cooling

Capable of maintaining a maximum of 78°F degrees? YES NO

d. Ventilation

Capable of providing minimum
make up fresh air of 20%? YES NO

Capable of providing
rest room ventilation -
10 air charges per hour? YES NO

e. Supplemental (Spot) Cooling:
Please attach a description
of the availability of additional
supplemental cooling including
type, capacity and time constraints.

6. **PLUMBING**

a. Nominal pressure of domestic hot and cold water at lavatories (PSIG _____)

b. Per code, the rest rooms can accommodate on each floor

Women _____

Men _____

7. **ELEVATORS & DOCKS**

Passenger Elevators

Floors served per bank _____ Cabs per bank _____

Capacity per cab (pounds) _____ Freight cab capacity ____

8. **STRUCTURAL**

Total live load capacity _____ (Partition load _____ +live load _____)

9. **LIFE SAFETY**

a. Fire Towers/Stairs

Number of rated enclosures: Smoke proof _____ Pressurized _____

Number of Towers that lead directly to the exterior or through rated areas directly to the exterior

Number of Towers _____ Number of Towers to add _____

b. Sprinklers

Building sprinklered? Full _____ Part _____

Are Fire Department connections provided? YES NO

c. Standpipe and Hose System

Standpipe and hose connections installed in the building? _____

d. Hydrant Protection and Water Supply

1. Two fire hydrants within 500 feet of the property?

_____

2. Do they each supply a minimum of 1,000 gallons per minute at pressure of at least 40 pounds per square inch (PSI)? _____

e. Alarms

1. Automatic Fire/Smoke detection provided? At Core _____ Throughout _____

2. Are manual pull stations provided at all exit routs? YES NO

3. Manual pull stations alarmed? Local _____ Remote _____

f. Public Address System - provided _____

10. **SECURITY PROTECTION**

Attach description of the type of security system.

11. **DISABLED ACCESS**

Does the building completely comply with the 1991 ADA Accessibility Guidelines?

YES NO If not, attach explanation of exceptions.

12. **ASBESTOS**

Building is asbestos free YES NO If no, attach explanation of exceptions.

13. **PCB**

Electrical equipment does not contain PCB? YES NO , If so, attach explanation.

14. **GOVERNING CODES** _____

Date of Proposal _____

Name of Owner or Developer _____

Submitted By _____

Name _____

Firm _____

Title _____

Address _____

Telephone _____

Exhibit C
JANITORIAL SCHEDULE

Premises

Daily

1. All desks and other furniture will be dusted with specially treated dust cloths.
2. All window sills, chair rails, baseboards, moldings, partitions, and picture frames fewer than six feet in height will be hand dusted and wiped clean.
3. All floors will be dust mopped with specially treated dust mops.
4. All bright metal work will be maintained and kept in a clean, polished condition.
5. All drinking fountains will be thoroughly cleaned and sanitized.
6. All stairways will be swept with a chemically treated dust mop and wet mopped as needed.
7. Replacement of light bulbs as needed.
8. All elevators will be wet mopped, on coat of finish applied to floor and machine buffed. If floors are carpeted, carpet will be vacuumed nightly. Interior of cabs will be wiped clean and all metal hardware polished.
9. Empty, clean and dust all wastepaper baskets, ash trays, receptacles, etc.
10. Remove trash and wastepaper to designated areas.
11. Carpeting and rugs to be vacuum cleaned nightly.
12. All tile floors in all areas will maintain a satin finish. Trafficked areas to receive regularly programmed floor maintenance to insure luster and remove black marks and scuffs.

Lavatories

13. Floors to be swept and washed, using antiseptic liquid detergent.
14. Bowls, urinals and basins will be cleaned nightly. A safe antiseptic and deodorant bowl cleaner will be used.
15. All metal and mirrors will be cleaned and polished.
16. Fill and maintain mechanical operations of all tissue, towel, soap and sanitary napkin dispensers. Materials to be supplied from contractor's stock.
17. Remove wastepaper and refuse.

Weekly

1. Spot clean all interior partition glass as required.

2. Remove fingerprints, smudges and scuff marks from all vertical and horizontal surfaces (doors, walls, and sills) under six feet in height.

3. Wash and refinish resilient floors in public areas, strip, wash and polish as needed.

4. Clean all elevator cabs and door tracks.

Monthly

1. Polish and buff (no wax) resilient floors in tenant areas as needed.

2. Dust all louvers, grills and other than flush light fixtures.

Quarterly

1. Dust clean all vertical surfaces; such as, walls, partitions, doors, etc. not reached in nightly cleaning.

2. Dust and wipe clean all venetian blinds.

Every Four (4) Months

1. Wax and buff all resilient flooring in tenant areas, or as needed. Floors shall be stripped, re-waxed and buffed when required. Unusual traffic conditions will receive special attention.

2. Wash windows, inside and outside.

Every Six (6) Months

Dust and damp wipe all ceiling vents.

ATTACHMENT NO. 1

BOMA Method of Measurement. The rentable and usable areas of the Premises and the Building shall be determined in accordance with the standards set forth in ANSI Z65.1-1996, as promulgated by the Building Owners and Managers Association ("BOMA Standard"). Landlord and Tenant shall each have the right, upon notice delivered to the other party within ninety (90) days following the date Tenant commences business operations from the Premises to remeasure the Premises and the Building. Landlord and Tenant shall have a parallel right to remeasure any expansion space leased by Tenant within ninety (90) days following the date Tenant commences conducting business therefrom. In the event that any remeasurement pursuant to the terms of this Section indicates that the square footage measurement previously set forth in the Lease or otherwise agreed upon by Landlord and Tenant is in excess of or lower than the square footage number which would have resulted had the BOMA Standard been properly utilized, any payments due either party (or other rights between Landlord and Tenant) based upon the amount of square feet contained in the Premises shall be proportionally, retroactively and prospectively reduced or increased, as appropriate, to reflect the actual number of square feet as properly remeasured under the BOMA Standard. If either party disagrees with the other party's remeasurement and if a dispute occurs regarding the final accuracy of the measurement of the Premises and the Building in accordance with the BOMA Standard, such dispute will be resolved pursuant to binding arbitration pursuant to the Section __ [Arbitration].

ATTACHMENT NO. 2

Building Structure and Building Systems. Landlord agrees that at all times it will maintain the structural portions of the Building, including the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, parking areas, stairwells, escalators, elevator cabs, plazas, pavement, sidewalks, curbs, entrances, landscaping, art work, sculptures, washrooms, mechanical, electrical and telephone closets, and all Common Areas and public areas (collectively, "Building Structure") and the mechanical, electrical, life safety, plumbing, sprinkler systems (connected to the core) and HVAC systems (including primary and secondary loops connected to the core) ("Building Systems") in first class condition and repair and shall operate the Building as a first class office building. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to make any repair to, modification of, or addition to the Building Structure and/or the Building Systems and/or the Site except and to the extent required because of Tenant's use of all or a portion of the Premises for other than normal and customary business office operations.

ATTACHMENT NO. 3

Definition of Profits. Whenever Landlord is entitled to share in any excess income resulting from an assignment or sublease of the Premises, the following shall constitute the definition of "Profits": the gross revenue received from the assignee or sublessee during the sublease term or during the assignment, with respect to the space covered by the sublease or the assignment ("Transferred Space") less: (a) the gross revenue paid to Landlord by Tenant during the period of the sublease term or during the assignment with respect to the Transferred Space; (b) the gross revenue as to the Transferred Space paid to Landlord by Tenant for all days the Transferred Space was vacated from the date that Tenant first vacated the Transferred Space until the date the assignee or sublessee was to pay Rent; (c) any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee; (d) brokers' commissions; (e) attorneys' fees; (f) lease takeover payments; (g) costs of advertising the space for sublease or assignment; (h) unamortized cost of initial and subsequent improvements to the Premises by Tenant; and (i) any other costs actually paid in assigning or subletting the Transferred Space or in negotiating or effectuating the assignment or sublease; provided, however, under no circumstance shall Landlord be paid any Profits until Tenant has recovered all the items set forth in subparts (a) through (i) for such Transferred Space, it being understood that if in any year the gross revenues, less the deductions set forth in subparts (a) through (i) above (the "Net Revenues"), are less than any and all costs actually paid in assigning or subletting the affected space (collectively "Transaction Costs"), the amount of the excess Transaction Costs shall be carried over to the next year and then deducted from Net Revenues with the procedure repeated until a Profit is achieved.

ATTACHMENT NO. 4

Right to Repair. Notwithstanding any provision set forth in this Lease to the contrary, if Tenant provides written notice (or oral notice in the event of an emergency such as damage or destruction to or of any portion of the Building Structure and/or the Building Systems and/or anything that could cause material disruption to Tenant's business) to Landlord of an event or circumstance which requires the action of Landlord with respect to repair and/or maintenance, and Landlord fails to provide such action within a reasonable period of time, given the circumstances, after the receipt of such notice, but in any event not later than seven (7) days after receipt of such notice, then Tenant may proceed to take the required action upon delivery of an additional three (3) business days' notice to Landlord specifying that Tenant is taking such required action (provided, however, that neither of the notices shall be required in the event of an emergency which threatens life or where there is imminent danger to property or a possibility that a failure to take immediate action could cause a material disruption in Tenant's normal and customary business activities), and if such action was required under the terms of the Lease to be taken by Landlord and was not taken by Landlord within such ten (10) day period (unless such notice was not required as provided above), then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable costs and expenses in taking such action plus interest thereon at the Interest Rate (as defined in Section __) below plus rent abatement to the extent Tenant would have otherwise been entitled to rent abatement under Section __ of this Lease. Landlord agrees that Tenant will have access to the Building, Building Systems, Building Structure and Site to the extent necessary to perform the work contemplated by this provision. In the event Tenant takes such action, and such work will affect the Building Structure and/or the Building Systems, Tenant shall use only those contractors used or approved by Landlord in the Building for work on such Building Structure or Building Systems unless such contractors are unwilling or unable to perform (and are able to immediately perform), or timely and competitively perform, such work, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in Comparable Buildings. Furthermore, if Landlord does not deliver a detailed written objection to Tenant within thirty (30) days after receipt of an invoice by Tenant of its costs of taking action which Tenant claims should have been taken by Landlord, and if such invoice from Tenant sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking such action on behalf of Landlord, then Tenant shall be entitled to deduct from Rent payable by Tenant under the Lease, the amount set forth in such invoice. If, however, Landlord delivers to Tenant, within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of the Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not then be entitled to such deduction from Rent, but as Tenant's sole remedy, Tenant may proceed to claim a default by Landlord or, if elected by either Landlord or Tenant, the matter shall proceed to resolution by the selection of an arbitrator to resolve the dispute, which arbitrator shall be selected and qualified pursuant to the procedures set forth the arbitration provision in the Lease, and whose costs shall be paid for by the losing party, unless it is not clear that there is a "losing party", in which event the costs of arbitration shall be shared equally. If Tenant prevails in the arbitration, the amount of the award which shall include interest at the Interest Rate (from the time of each expenditure by Tenant until the date Tenant receives such amount by payment or offset and attorneys' fees and related costs) may be deducted by Tenant from the rents next due and owing under the Lease.

ATTACHMENT NO. 5

Abatement of Rent When Tenant Is Prevented From Using Premises. In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, for three (3) consecutive business days or ten (10) business days in any twelve (12) month period (the "Eligibility Period") as a result of (1) any damage or destruction to the Premises, the Parking Facility and/or the Building, (2) any repair, maintenance or alteration performed by Landlord after the Commencement Date, which substantially interferes with Tenant's use of the Premises, the Parking Facility and/or the Building, (3) any failure by Landlord to provide Tenant with services or access to the Premises, the Parking Facility and/or the Building, (4) because of an eminent domain proceeding or (5) because of the presence of hazardous substances in, on or around the Premises, the Building or the Site which could pose a health risk to occupants of the Premises, then Tenant's Rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. However, in the event that Tenant is prevented from conducting, and does not conduct, its business in any portion of the Premises for a period of time in excess of the Eligibility Period, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Rent for the entire Premises shall be abated; provided, however, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence. If Tenant's right to abatement occurs during a free rent period (for these purposes, free rent shall be deemed to include half rent, etc.) which arises after the Commencement Date, Tenant's free rent period shall be extended for the number of days that the abatement period overlapped the free rent period ("Overlap Period"). Landlord shall have the right to extend the Expiration Date for a period of time equal to the Overlap Period if Landlord sends a notice to Tenant of such election within ten (10) days following the end of the extended free rent period. If Tenant's right to abatement occurs because of an eminent domain taking and/or because of damage or destruction to the Premises, the Parking Facility, the Building and/or Tenant's property, Tenant's abatement period shall continue until Tenant has been given sufficient time, and sufficient access to the Premises, the Parking Facility and/or the Building, to rebuild such portion it is required to rebuild, to install its property, furniture, fixtures, and equipment to the extent the same shall have been removed and/or damaged as a result of such damage or destruction and/or eminent domain taking and to move in over a weekend. To the extent Tenant is entitled to abatement without regard to the Eligibility Period, because of an event covered by Sections __ [Damage or Destruction] and __ [Eminent Domain] of the Lease, then the Eligibility Period shall not be applicable. To the extent Tenant has prepaid rent (as it does each month since Rent is due on the first day of each month) and Tenant is subsequently entitled to an abatement, such prepaid, and subsequently abated, Rent should be refunded to, and paid by Landlord to, Tenant within thirty (30) days after the end of the appropriate month.

ATTACHMENT NO. 6

Right to Terminate.

(a) Notwithstanding anything in either Section __ [Damage or Destruction] and __ [Eminent Domain] to the contrary, and except as expressly set forth in Subsection (b) below, in the event that Tenant is notified or becomes aware of the fact that as a result of:

(i) damage or destruction of the Premises, the Parking Facility and/or the Building or any part thereof so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building;

(ii) a taking by eminent domain or exercise of other governmental authority of the Premises, the Parking Facility and/or the Building or any part thereof so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building;

(iii) the inability of Landlord to provide services to the Premises, the Parking Facility and/or the Building so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building; or

(iv) any discovery of hazardous substances in, on or around the Premises, the Building and/or the Site not placed in, on or around the Premises, the Building and/or the Site by Tenant, that may, considering the nature and amount of the substances involved, interfere with Tenant's use of all or a portion of the Premises or which may present a health risk to any occupants of the Premises); or

(v) the discovery of any other hazardous condition with respect to the Premises, the Parking Facility and/or the Building which would make it dangerous or unsafe for Tenant and its employees to conduct their normal and customary business operations from the Premises (each of the items set forth in provision (a)(i), (ii), (iii), (iv) and (v) being referred to herein as a "Trigger Event"),

Tenant cannot, within six (6) months ("Non-Use Period") of the occurrence of the Trigger Event, be given reasonable use of, and access to, a fully repaired, restored, safe and healthful Premises, Parking Facility and Building (except for minor "punch-list" items which will be repaired promptly thereafter), and the utilities and services pertaining to the Premises, the Parking Facility and the Building, all suitable for the efficient conduct of Tenant's business therefrom, then Tenant may thereafter elect at any time to exercise an on-going right to terminate the Lease upon ten (10) days' written notice sent to Landlord at any time following the expiration of the Non-Use Period.

(b) In the event of any Trigger Event occurring during the last year of the Lease Term or, if an applicable renewal option has been exercised, during the last year of any renewal term, should the Non-Use Period continue for thirty (30) days, Tenant may elect to exercise an on-going right to terminate the Lease upon ten (10) days' written notice sent to Landlord at any time following the expiration of the Non-Use Period.

ATTACHMENT NO. 7

Non-Disturbance, Attornment and Subordination Agreement. Landlord agrees that, prior to the earlier of: (1) the Commencement Date, (2) the exhaustion by Tenant of its Tenant Improvement Allowance (as defined in the Work Letter Agreement), or (3) twenty (20) days after the date of full execution of the Lease, it will provide, without cost to or charge of, Tenant with non-disturbance, subordination and attornment agreements ("non-disturbance agreement") in favor of Tenant from any ground lessors, mortgage holders or lien holders (each, a "Superior Mortgagee") then in existence, substantially in the form of Exhibit "A" attached hereto. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense. In the event Landlord fails to provide such commercially reasonable non-disturbance agreements within the time frame set forth in this Section, Tenant shall have the right, exercisable at any time thereafter, to give ten (10) business days' written notice to Landlord terminating the Lease. In the event Landlord does not provide Tenant with the applicable non-disturbance agreements within such ten (10) day period, the Lease shall terminate and Landlord shall reimburse Tenant all of Tenant's out-of-pocket costs incurred in connection with the design and construction of the Tenant Improvements and Tenant's legal fees incurred in connection with the review and negotiation of the Lease and this provision shall survive the termination of the Lease.

Landlord agrees to provide Tenant with non-disturbance agreement(s) substantially in the form of Exhibit "A" attached hereto, in favor of Tenant from any Superior Mortgagee(s) of Landlord who later come(s) into existence at any time prior to the expiration of the Term of the Lease, as it may be extended, in consideration of, and as a condition precedent to, Tenant's agreement to be bound by Lease Section __. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense.

Notwithstanding anything to the contrary set forth in this Lease, in the event that Landlord fails to pay to Tenant (i) the Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (ii) **[*the Lease Takeover Payment*]** (as hereinafter defined), (iii) any final arbitration award or court judgment, or (iv) **[*return to Tenant any Security Deposit*]**, the Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to Tenant, together with interest at the Interest Rate (as defined in Section __) , such unpaid amounts and shall recognize and honor any remaining credit of Base Rent and/or Operating Expenses. In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker, together with interest thereon at the Interest Rate. With respect to all such payments, interest thereon shall be computed from the date such amounts should have been paid until the date such amounts are in fact paid.

All non-disturbance agreements shall acknowledge that, and Landlord hereby independently agrees that, to the extent Landlord has failed to fulfill its obligations with respect to the payment of any (i) Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (ii) **[*monetary obligations arising out of Tenant's existing lease at _____ which Landlord has agreed to directly or indirectly assume ("Lease Takeover Payment")*]**, (iii) unpaid arbitration or court award, (iv) **[*unrefunded security deposit*]**, (v) remaining credit of Base Rent and/or Operating Expenses, or (vi) unpaid commission due and owing

to Tenant's real estate broker ("Key Obligations"), and to the extent Superior Mortgagee has failed to fulfill its obligations with regard to the payment of such Key Obligations as provided in the preceding paragraph, Tenant may deduct the amount of the Key Obligation which Landlord has not paid, together with interest thereon at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease.

In addition to the foregoing, Landlord agrees that in the event Landlord has failed to pay its Key Obligations, Tenant may deduct the amount of the Key Obligations which Landlord has not paid, together with interest at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease. Landlord further agrees that, upon Tenant's request, Landlord will provide Tenant with a preliminary title report within [*_____ (__)*] business days following such request by Tenant.

EXHIBIT A

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Agreement is made on _____, 200_, between _____ _____ ("Superior Mortgagee"), whose address is _____, _____ ("Landlord"), whose address is _____, and _____, a _____ corporation ("Tenant"), whose address is _____ _____, who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts and objectives:

(a) Superior Mortgagee is, or it is anticipated that Superior Mortgagee will become, the beneficiary under a certain deed of trust ("Trust Deed") on improved property located at _____ ("Property"), more specifically described in Schedule "__" attached hereto and made a part hereof by this reference. Superior Mortgagee shall also be deemed to include any lender who executes this Agreement and subsequently acquires title to the Building pursuant to a bankruptcy proceeding involving Landlord.

(b) On or about _____, 200_, Landlord leased to Tenant, and Tenant leased from Landlord, a portion of the Property. A copy of the lease between Landlord and Tenant ("Lease") is attached hereto as Schedule "__" and made a part hereof by this reference.

(c) The parties desire, under the provisions set forth in this Agreement, to assure Tenant that in the event of the foreclosure of the Trust Deed, or in the event of a sale in lieu of such foreclosure, or in the event that Superior Mortgagee directly or indirectly becomes the new landlord of the Building because of its providing financing to Landlord, the terms, covenants and conditions of the Lease shall not be terminated, disturbed, or adversely affected, provided an uncurable Event of Default has not occurred under Section __ of the Lease and subject to the cure rights set forth in Section __ of the Lease ("Tenant Default").

2. Attornment. If Landlord is in default under the Trust Deed after expiration of the applicable period that Landlord has in which to cure its default, and if a foreclosure sale takes place due to such default, or if Superior Mortgagee shall notify Tenant of such transfer of title to the Property or if Superior Mortgagee becomes the new Landlord of the Building, after receipt of such notice, upon the effective date of such transfer of title, and after Tenant has received written notice of such transfer of title, Tenant shall attorn to Superior Mortgagee and shall recognize Superior Mortgagee as Tenant's landlord under the Lease, and Tenant agrees to execute any instruments reasonably requested to evidence such attornment. Upon attornment, the Lease shall continue in full force and effect, so long as a Tenant Default has not occurred, and Tenant shall perform all Tenant's obligations under the Lease directly to Superior Mortgagee, as if Superior Mortgagee were the landlord under the Lease. Tenant agrees to make any modifications of the Lease requested by Superior Mortgagee hereunder, provided that such modifications do not materially or adversely affect any right of Tenant under the Lease or increase any of Tenant's monetary obligations under the Lease.

3. Non-Disturbance by Superior Mortgagee. If a Tenant Default is not in existence at the time of the transfer of title as provided in the above paragraph, the Lease shall continue with the same force and effect as if Superior Mortgagee and Tenant had entered into a lease with the same provisions

as those contained in the Lease, and the terms of the Lease and Tenant's leasehold estate in the Property shall not be terminated, disturbed, or adversely affected, except according to the terms, covenants or conditions of the Lease.

4. Conditions of Superior Mortgagee's Recognition. Until a Tenant Default occurs, Superior Mortgagee or such other purchaser shall recognize the leasehold estate of Tenant under all of the terms, covenants and conditions of the Lease for the remaining balance of the term and any renewals thereof with the same force and effect as if Superior Mortgagee or such other purchaser were the landlord under the Lease, and Superior Mortgagee and Tenant shall immediately enter into a written agreement with the same provisions as those in the Lease, except for any technical changes that are necessary because of the substitution of Superior Mortgagee in place of Landlord; provided, however, that Superior Mortgagee, or such other purchaser, shall not be (1) liable for any act or omission of Landlord or any other prior lessor which occurred prior to the time the Superior Mortgagee purchased or acquired its interest under the Lease, except for the obligations of Landlord or any other prior lessor to perform under the Lease those obligations which are in the nature of on-going obligations under the Lease, and except with respect to Tenant's right to deduct from rents next due under the Lease, together with interest thereon at the Interest Rate, as defined in the Lease, any (i) remaining credit of Base Rent, or operating expenses, (ii) unpaid Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant in constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (iii) unpaid arbitration or court award, (iv) unpaid obligation of Landlord arising out of Tenant's existing Lease at **[*Existing Location*]** which Landlord has agreed to directly or indirectly assume, (v) unrefunded security deposit, or (vi) unpaid commission due and owing to Tenant's real estate broker all as set forth in the Lease, (2) except as provided in (i) to the contrary, obligated to cure any defaults of Landlord or any other prior lessor under the Lease which occurred prior to the time that Superior Mortgagee purchased or acquired its interest under the Lease (except to the extent that the default is not monetary and remains in existence at the time the Superior Mortgagee purchased or acquired its interest under the Lease), (3) except as provided in (i) to the contrary, subject to any offsets or defenses which Tenant may be entitled to assert against Landlord or any other prior lessor; (4) bound by any payment of rent or additional rent by Tenant to Landlord or any other prior lessor for more than one month in advance, (5) bound by any amendment or modification of the Lease which would adversely affect any right of Landlord under the Lease made without the written consent of Superior Mortgagee or such other purchaser who has first, in writing, notified Tenant of its interest, which consent cannot be unreasonably withheld, or (6) except as provided in (i) to the contrary, liable or responsible for or with respect to the retention, application and/or return to Tenant of any security deposit paid to Landlord or any other prior lessor, whether or not still held by Landlord, unless and until Superior Mortgagee or such other purchaser has actually received for its own account as landlord the full amount of such security deposit, or any portion thereof (such liability and responsibility being limited to the amount received, if any).

5. Special Payment. Notwithstanding anything to the contrary set forth in this Agreement or in the Lease, in the event that the Landlord fails to pay to Tenant (a) the Tenant Improvement Allowance, (b) unpaid final arbitration award or court judgment, (c) unpaid obligation of Landlord with respect to a Lease Takeover or similar agreement, or (d) unrefunded security deposit, Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to the Tenant, together with interest at the Interest Rate, such unpaid amounts and shall recognize and honor any remaining credit of (or so called free) Base Rent and operating expenses ("Outstanding Credit"). In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or the

Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker together with interest at the Interest Rate. With respect to all such payments, interest shall be computed from the date such amounts are in fact paid.

In the event Landlord, Superior Mortgagee or such other successor to the interests of Landlord and/or Superior Mortgagee shall fail to pay to Tenant such unpaid amounts, honor any Outstanding Credit, or pay to Tenant's broker any unpaid commission that was due and not paid by Landlord to Tenant's broker, Tenant may deduct such amounts, together with interest thereon at the Interest Rate and computed as set forth above, from the rent next becoming due and payable under the Lease.

6. Covenants of Superior Mortgagee.

(a) Superior Mortgagee shall, at the request of Tenant, oppose any rejection of this Lease in the event a bankruptcy proceeding is instituted involving Landlord as the debtor.

(b) Superior Mortgagee shall serve Tenant, in the same manner and at the same time, with a copy of all notices it serves on Landlord with respect to any default by Landlord on any obligation of Landlord to Superior Mortgagee.

7. Miscellaneous.

(a) No Effect on Trust Deed. Nothing in this Agreement shall be deemed to change in any manner the provisions of the Trust Deed as between Superior Mortgagee and Landlord, to waive any right that Superior Mortgagee may now have or later acquire against Landlord by reason of the Trust Deed.

(b) Attorneys' Fees. In the event of any suit under this Lease, reasonable attorneys' fees and costs shall be awarded by a court or arbitrator to the prevailing party and are to be included in any judgment or award. In addition, the prevailing party shall be entitled to recover reasonable attorneys fees and costs incurred in enforcing any judgment arising from a suit under this Lease including but not limited to post judgment motions, contempt proceedings, garnishment, levy and debtor and third party examinations, discovery and bankruptcy litigation, without regard to schedule or rule of court purporting to restrict such award. This post judgment or award of attorneys' fees and costs provision shall be severable from any other provisions of this Lease and shall survive any judgment on such suit and is not to be deemed merged into the judgment or award. For the purpose of this provision, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of internal/external legal counsel to the parties hereto, which include printing, photocopying, duplicating, mail, overnight mail, messenger, court filing fees, cost of discovery, fees billed for law clerks, paralegals, investigators and other persons not admitted to the bar but performing services under the supervision or direction of an attorney. For the purpose of determining in-house counsel fees, the same shall be considered as those fees normally applicable to a partner in a law firm with like experience in such field.

(c) Notice. All written notices, statements, or other communications required or permitted to be given hereunder shall be given by letter, telex, telegram, mailgram, cable or fax and shall be deemed delivered if dispatched by certified or registered mail, return receipt requested, postage prepaid or personal delivery or telex or fax transmission or other form of electronic transmission, addressed to the parties as set forth opposite their respective names in the Fundamental Lease Provisions A or B, as is appropriate.

If personally delivered, such notice shall be effective upon delivery. If notice is sent by telex or fax transmission or other form of electronic transmission, such notice shall be effective upon transmission (if prior to 6:00 p.m. in the recipient's time zone. If after 6:00 p.m., the notice shall be effective at 9:00 a.m. on the next business day after such transmission). If mailed, notice shall be deemed given on the third day after it is deposited in the mail in accordance with the foregoing. Any party may change the address at which to send notices by notifying the other party of such change of address in writing in accordance with the foregoing. Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger, officer of the law or overnight delivery service.

(d) Successors. This Agreement shall be binding on and inure to the benefit of the parties and their successors.

(e) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of **[*California*]**.

(f) No Modifications Unless in Writing. This Agreement contains all of the agreements and understandings between the parties regarding this Agreement relating to the leasing of the Premises and the obligations of Landlord and Tenant in connection with such Lease. This Agreement supersedes any and all prior agreements and understandings between Landlord, Tenant and Superior Mortgagee and alone expresses the agreement of the parties. This Agreement shall not be amended, changed or modified in any way unless in writing executed by Landlord, Tenant and Superior Mortgagee. Landlord, Tenant and Superior Mortgagee shall not have waived or released any of their rights hereunder unless in writing and executed by Landlord, Tenant and Superior Mortgagee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LANDLORD:

_____,
a _____

By: _____
Its: _____

TENANT:

_____,
a _____ corporation

By: _____
Its: _____

SUPERIOR MORTGAGEE:

_____,
a _____

By: _____
Its: _____

ATTACHMENT NO. 8

Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within fifteen (15) days (but in no event later than twenty (20) days) after Tenant provides the notice to Landlord exercising Tenant's option rights which require a calculation of the Fair Market Rental Rate. Tenant shall have thirty (30) days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental in writing. In the event Tenant fails to accept the new rental proposed by Landlord, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period ("Outside Agreement Date"), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below. Failure of Tenant to so elect in writing within Tenant's Review Period shall conclusively be deemed its disapproval of the Fair Market Rental Rate determined by Landlord.

In the event that Landlord fails to timely generate the initial written notice of Landlord's opinion of the Fair Market Rental Rate which triggers the negotiation period of this Section, then Tenant may commence such negotiations by providing the initial notice, in which event Landlord shall have fifteen (15) days ("Landlord's Review Period") after receipt of Tenant's notice of the new rental within which to accept such rental. In the event Landlord fails to accept in writing such rental proposed by Tenant, then such proposal shall be deemed rejected, and Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Landlord's Review Period (which shall be, in such event, the "Outside Agreement Date" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below.

(a) Landlord and Tenant shall meet with each other within five (5) business days of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Fair Market Rental Rate within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate lawyer or broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable commercial properties in the vicinity of the Building. Neither Landlord nor Tenant shall consult with such broker or lawyer as to his or her opinion as to Fair Market Rental Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Premises is the closer to the actual Fair Market Rental Rate for the Premises as determined by the arbitrator, taking into account the requirements of this Section. Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion, determines is necessary. In addition, Landlord or Tenant may submit to the arbitrator with a copy to the other party within five (5) business days after the appointment of the arbitrator any market data and additional information that such party deems relevant to the determination of Fair Market Rental Rate ("FMRR Data") and the other party may submit a reply in writing within five (5) business days after receipt of such FMRR Data.

(b) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental Rate, and shall notify Landlord and Tenant of such determination.

(c) The decision of the arbitrator shall be binding upon Landlord and Tenant, except as provided below.

(d) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(e) The cost of arbitration shall be paid by Landlord and Tenant equally.

ATTACHMENT NO. 9

When Payment Is Due. Whenever in this Lease a payment is required to be made by one party to the other, but a specific date for payment is not set forth or a specific number of days within which payment is to be made is not set forth, or the words "immediately", "promptly" and/or "on demand", or the equivalent, are used to specify when such payment is due, then such payment shall be due thirty (30) days after the party which is entitled to such payment sends written notice to the other party demanding payment.

ATTACHMENT NO. 10

Default by Landlord. Landlord shall be in default in the performance of any obligation required to be performed by Landlord under the Lease if Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) calendar days are required for its performance, Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon any such default by Landlord, Tenant may exercise any of its rights provided in law or at equity and shall have the right, but not the obligation, to cure any such default by Landlord and to deduct the costs incurred by Tenant to cure such default, including legal fees and expenses, from the amounts next due and owing under the Lease.

ATTACHMENT NO. 11

Default by Tenant. Lease Section __ pertaining to defaults by Tenant, is hereby deemed deleted, and the following paragraph is deemed inserted in its place:

"A. The occurrence of any of the following shall constitute an event of default ("Event of Default") hereunder on the part of Tenant:

"(1) Nonpayment of Rent. Failure to pay any installment of Base Rent due and payable hereunder, upon the date when payment is due, such failure continuing for a period of ten (10) business days after written notice of such failure; or

"(2) Other Obligations. Failure to perform any obligation, agreement or covenant under the Lease, other than Tenant's obligation to pay Base Rent, such failure continuing for thirty (30) calendar days after written notice of such failure or such longer period as is reasonably necessary to remedy such failure, provided that Tenant shall continuously and diligently pursue such remedy until such failure is cured.

"B. All notices to be given pursuant to this Section ___ shall be in addition to, and not in lieu of, the notice requirements of **[*California Code of Civil Procedure Section 1161*]**.

"C. Tenant shall have, and under no circumstances shall Tenant be deemed to have waived, the rights set forth in Sections 1174 and 1179 of the California Civil Code of Procedure."

ATTACHMENT NO. 12

Landlord Bankruptcy Proceeding. In the event that the obligations of Landlord under the Lease are not performed during the pendency of a bankruptcy or insolvency proceeding involving the Landlord as the debtor, or following the rejection of this Lease in accordance with Section 365 of the United States Bankruptcy Code, then notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to set off against Rents next due and owing under this Lease (a) any and all damages caused by such non-performance of Landlord's obligations under the Lease by Landlord, debtor-in-possession, or the bankruptcy trustee, and (b) any and all damages caused by the non-performance of Landlord's obligations under the Lease following any rejection of the Lease in accordance with Section 365 of the United States Bankruptcy Code.

Tenant to put up a letter of credit equal to the amount of the free rent, commissions and the Tenant Improvement Allowance and then have that amount amortized over a period of time. Landlord would like to have the amortization take as long as possible and the Tenant obviously would like it to be as short as possible. Typically, Tenants are having a more and more difficult time in convincing a Landlord that they do not need the letter of credit because of the collapse of Arthur Andersen and Enron, both of which were thought to be impossibilities, and so recently letters of credit are becoming more frequent and the amortization period is typically anywhere from 3-7 years depending on the perceived condition of the Tenant.

The essential elements of a Lease pertain to the size of the Premises, the length of the Term, the uses that can be made of the Premises and when and how much Base Rent and Additional Rent that the Tenant pays to the Landlord for the Premises during the Lease Term, where parking is to be provided, how the parking facility is to be operated and whether and or how Tenant pays for parking, etc., the condition of the Base Building and the construction of the Tenant Improvements and issues related to signage, security deposit and guaranties. In addition to these Fundamental Terms, the typical Lease will describe the quality and quantity of services to be provided by the Landlord, the uses that can be made of the Premises, what happens if there is damage and destruction, what needs to be done to protect the parties as to current and future lenders and purchasers which involve SNDAAs, Estoppel Certificates, and Limitation of Liability and the rights of a Tenant to expand or contract its Premises and renew its Lease, rights of a Landlord and Tenant to transfer their interest in the Building and Lease to a purchaser, assignee or sublessee, the rights of a Landlord and Tenant when the other party does not do what it agreed to do, and a host of what is referred to as boilerplate provisions such as the condition of the Premises must be in when at the end of the Lease Term, the Applicable Laws, waivers of jury trial and use of arbitration, attorneys' fees and dispute costs, how, when and where notices are to be sent, waivers, integration and the like. Examples of those provisions are set forth in the sample leases included in this Book.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

After Dover, R. Rauch and Miscione, lenders, landlords and tenants need to focus with renewed vigor on the issues involved with subordination, non-disturbance and attornment. What is clear, is that if the parties do their homework and write the correct provision, that provision will be enforced.

Sample Lease Provision

[from the Lease Addendum]

Non-disturbance Agreement and Memorandum of Lease.

A. Landlord agrees that, prior to the earlier of: i) the Commencement Date, ii) the exhaustion by Tenant of its Tenant Improvement Allowance (as defined in the Work Letter Agreement attached to the Lease as Exhibit "__"), or iii) twenty (20) days after the date of full execution of the Lease, it will provide Tenant with commercially reasonable non-disturbance, subordination and attornment agreements ("non-disturbance agreement") in favor of Tenant from any ground lessors, mortgage holders or lien holders (each, a "Superior Mortgagee") then in existence, substantially in the form of Exhibit "__" attached to the Lease. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense. In the event Landlord fails to provide such commercially reasonable non-disturbance agreements within the time frame set forth in this Addendum Provision, Tenant shall have the right, exercisable at any time thereafter, to give ten (10) business days' written notice to Landlord terminating the Lease. In the event Landlord does not provide Tenant with the applicable non-disturbance agreements within such ten (10) day period, the Lease shall terminate and Landlord shall reimburse Tenant all of Tenant's out-of-pocket costs incurred in connection with the design and construction of the Tenant Improvements and Tenant's legal fees incurred in connection with the review and negotiation of the Lease and this provision, together with Section __ of the Lease, pertaining to attorneys' fees, shall survive the termination of the Lease.

B. Landlord agrees to provide Tenant with commercially reasonable non-disturbance agreement(s) substantially in the form of Exhibit "__" attached to the Lease, in favor of Tenant from any Superior Mortgagee(s) of Landlord who later come(s) into existence at any time prior to the expiration of the Term of the Lease, as it may be extended, in consideration of, and as a condition precedent to, Tenant's agreement to be bound by Lease Section __ **[*Subordination*]**. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense.

C. Notwithstanding anything to the contrary set forth in this Addendum or the Lease, in the event that Landlord fails to pay to Tenant iv) the Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, v) the Lease Takeover Payment (as hereinafter defined), vi) any final arbitration award or court judgment, or vii) return to Tenant any Security Deposit, the Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to Tenant, together with interest at the Interest Rate (as defined in the Lease), such unpaid amounts and shall recognize and honor any remaining credit of Base Rent and/or Operating Expenses. In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker, together with interest thereon at

the Interest Rate. With respect to all such payments, interest thereon shall be computed from the date such amounts should have been paid until the date such amounts are in fact paid.

D. All commercial reasonable non-disturbance agreements shall acknowledge that, and Landlord hereby independently agrees that, to the extent Landlord has failed to fulfill its obligations with respect to the payment of any viii) Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, ix) monetary obligations arising out of Tenant's existing lease at **[*existing location*]** which Landlord has agreed to directly or indirectly assume ("Lease Takeover Payment"), x) unpaid arbitration or court award, xi) unrefunded Security Deposit, xii)remaining credit of Base Rent and/or Operating Expenses, or xiii) unpaid commission due and owing to Tenant's real estate broker ("Key Obligations"), and to the extent Superior Mortgagee has failed to fulfill its obligations with regard to the payment of such Key Obligations as provided in (3) above, Tenant may deduct the amount of the Key Obligation which Landlord has not paid, together with interest thereon at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease.

In addition to the foregoing, Landlord agrees that in the event Landlord has failed to pay its Key Obligations, Tenant may deduct the amount of the Key Obligations which Landlord has not paid, together with interest at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease.

Sample SNDA Agreement

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Agreement is made on _____, 200_, between _____ _____ ("Superior Mortgagee"), whose address is _____, _____ ("Landlord"), whose address is _____, and _____, a _____ corporation ("Tenant"), whose address is _____ _____, who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts and objectives:

(a) Superior Mortgagee is, or it is anticipated that Superior Mortgagee will become, the beneficiary under a certain deed of trust ("Trust Deed") on improved property located at _____ ("Property"), more specifically described in Schedule "__" attached hereto and made a part hereof by this reference. Superior Mortgagee shall also be deemed to include any lender who executes this Agreement and subsequently acquires title to the Building pursuant to a bankruptcy proceeding involving Landlord.

(b) On or about _____, 200_, Landlord leased to Tenant, and Tenant leased from Landlord, a portion of the Property. A copy of the lease between Landlord and Tenant ("Lease") is attached hereto as Schedule "__" and made a part hereof by this reference.

(c) The parties desire, under the provisions set forth in this Agreement, to assure Tenant that in the event of the foreclosure of the Trust Deed, or in the event of a sale in lieu of such foreclosure, or in the event that Superior Mortgagee directly or indirectly becomes the new landlord of the Building because of its providing financing to Landlord, the terms of the Lease shall not be terminated, disturbed, or adversely affected, provided an Event of Default has not occurred under Section 15.1 of the Lease and subject to the cure rights set forth in Section 15.1 of the Lease ("Tenant Default").

2. Attornment. If Landlord is in default under the Trust Deed after expiration of the applicable period that landlord has in which to cure its default, and if a foreclosure sale takes place due to such default, or if Superior Mortgagee shall notify Tenant of such transfer of title to the Property or if Superior Mortgagee becomes the new Landlord of the Building, after receipt of such notice, upon the effective date of such transfer of title, and after Tenant has received written notice of such transfer of title, Tenant shall attorn to Superior Mortgagee and shall recognize Superior Mortgagee as Tenant's landlord under the Lease, and Tenant agrees to execute any instruments reasonably requested to evidence such attornment. Upon attornment, the Lease shall continue in full force and effect, so long as a Tenant Default has not occurred, and Tenant shall perform all Tenant's obligations under the Lease directly to Superior Mortgagee, as if Superior Mortgagee were the landlord under the Lease. Tenant agrees to make any modifications of the Lease requested by Superior Mortgagee hereunder, provided that such modifications do not adversely affect any right of Tenant under the Lease or increase any of Tenant's monetary obligations under the Lease.

3. Non-Disturbance by Superior Mortgagee. If a Tenant Default is not in existence at the time of the transfer of title as provided in the above paragraph, the Lease shall continue with the same force and effect as if Superior Mortgagee and Tenant had entered into a lease with the same provisions

as those contained in the Lease, and the terms of the Lease and Tenant's leasehold estate in the Property shall not be terminated, disturbed, or adversely affected, except according to the terms of the Lease.

4. Conditions of Superior Mortgagee's Recognition. Until a Tenant Default occurs, Superior Mortgagee or such other purchaser shall recognize the leasehold estate of Tenant under all of the terms, covenants and conditions of the Lease for the remaining balance of the term and any renewals thereof with the same force and effect as if Superior Mortgagee or such other purchaser were the landlord under the Lease, and Superior Mortgagee and Tenant shall immediately enter into a written agreement with the same provisions as those in the Lease, except for any technical changes that are necessary because of the substitution of Superior Mortgagee in place of Landlord; provided, however, that Superior Mortgagee, or such other purchaser, shall not be (i) liable for any act or omission of Landlord or any other prior lessor which occurred prior to the time the Superior Mortgagee purchased or acquired its interest under the Lease, except with respect to Tenant's right to deduct from rents next due under the Lease, together with interest thereon at the Interest Rate, as defined in the Lease, any (a) remaining credit of Base Rent, or Operating Expenses, (b) unpaid Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant in constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (c) unpaid arbitration or court award, (d) unpaid obligation of Landlord arising out of Tenant's existing Lease at **[*Existing Location*]** which Landlord has agreed to directly or indirectly assume, (e) unrefunded security deposit, or (f) unpaid commission due and owing to Tenant's real estate broker all as set forth in the Lease, (ii) except as provided in (i) to the contrary, obligated to cure any defaults of Landlord or any other prior lessor under the Lease which occurred prior to the time that Superior Mortgagee purchased or acquired its interest under the Lease (except to the extent that the default is not monetary and remains in existence at the time the Superior Mortgagee purchased or acquired its interest under the Lease), (iii) except as provided in (i) to the contrary, subject to any offsets or defenses which Tenant may be entitled to assert against Landlord or any other prior lessor; (iv) bound by any payment of rent or additional rent by Tenant to Landlord or any other prior lessor for more than one month in advance, (v) bound by any amendment or modification of the Lease which would adversely affect any right of Landlord under the Lease made without the written consent of Superior Mortgagee or such other purchaser who has first, in writing, notified Tenant of its interest, which consent cannot be unreasonably withheld, or (vi) except as provided in (i) to the contrary, liable or responsible for or with respect to the retention, application and/or return to Tenant of any security deposit paid to Landlord or any other prior lessor, whether or not still held by Landlord, unless and until Superior Mortgagee or such other purchaser has actually received for its own account as landlord the full amount of such security deposit, or any portion thereof (such liability and responsibility being limited to the amount received, if any).

5. Special Payment. Notwithstanding anything to the contrary set forth in this Agreement or in the Lease, in the event that the Landlord fails to pay to Tenant (a) the Tenant Improvement Allowance, (b) unpaid final arbitration award or court judgment, (c) unpaid obligation of Landlord with respect to a Lease Takeover or similar agreement, or (d) unrefunded security deposit, Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to the Tenant, together with interest at the Interest Rate, such unpaid amounts and shall recognize and honor any remaining credit of (or so called free) Base Rent and Operating Expenses ("Outstanding Credit"). In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker together with interest at the Interest Rate.

With respect to all such payments, interest shall be computed from the date such amounts are in fact paid.

In the event Landlord, Superior Mortgagee or such other successor to the interests of Landlord and/or Superior Mortgagee shall fail to pay to Tenant such unpaid amounts, honor any Outstanding Credit, or pay to Tenant's broker any unpaid commission that was due and not paid by Landlord to Tenant's broker, Tenant may deduct such amounts, together with interest thereon at the Interest Rate and computed as set forth above, from the rent next becoming due and payable under the Lease.

6. Covenants of Superior Mortgagee.

(a) Superior Mortgagee shall, at the request of Tenant, oppose any rejection of this Lease in the event a bankruptcy proceeding is instituted involving Landlord as the debtor.

(b) Superior Mortgagee shall serve Tenant, in the same manner and at the same time, with a copy of all notices it serves on Landlord with respect to any default by Landlord on any obligation of Landlord to Superior Mortgagee.

7. Miscellaneous.

(a) No Effect on Trust Deed. Nothing in this Agreement shall be deemed to change in any manner the provisions of the Trust Deed as between Superior Mortgagee and Landlord, to waive any right that Superior Mortgagee may now have or later acquire against Landlord by reason of the Trust Deed.

(b) Attorneys' Fees. If any party commences an action against any of the other parties arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of such action.

(c) Notice. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other party shall be addressed to the other party at the address set forth in the introductory paragraph of this Agreement. Any party may change its address by notifying the other parties of the change of address. Notice shall be deemed communicated within two (2) business days from the time of mailing, if mailed as provided in this paragraph.

(d) Successors. This Agreement shall be binding on and inure to the benefit of the parties and their successors.

(e) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of **[*California*]**.

(f) No Modifications Unless in Writing. This Agreement contains all of the agreements and understandings between the parties regarding this Agreement relating to the leasing of the Premises and the obligations of Landlord and Tenant in connection with such Lease. This Agreement supersedes any and all prior agreements and understandings between Landlord, Tenant and Superior Mortgagee and alone expresses the agreement of the parties. This

Agreement shall not be amended, changed or modified in any way unless in writing executed by Landlord, Tenant and Superior Mortgagee. Landlord, Tenant and Superior Mortgagee shall not have waived or released any of their rights hereunder unless in writing and executed by Landlord, Tenant and Superior Mortgagee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LANDLORD:

_____,
a _____

By: _____
Its: _____

TENANT:

_____,
a _____ corporation

By: _____
Its: _____

SUPERIOR MORTGAGEE:

_____,
a _____

By: _____
Its: _____

SUGGESTED TENANT APPROACH TO THE REVIEW OF ESTOPPEL CERTIFICATES

AVOIDANCE OF COMMON MISTAKES

A. Introduction to Estoppel Certificates

Estoppel Certificates involve significant legal issues and rights. Given the legal consequences which arise from the Tenant's failure to properly review and respond to an Estoppel Certificate, the purpose of this article is to alert the Tenant to the typical problems the Tenant will encounter when responding to an Estoppel Certificate. The Estoppel Certificate should set forth the critical facts that could impact the value of a Lease and the desirability of a Purchaser or Lender to enter into a transaction. Once the Tenant signs the Estoppel Certificate confirming the facts that are set forth in the Estoppel Certificate, the Tenant is usually estopped (precluded or stopped) from claiming otherwise, at least against the Purchaser and Lender).

B. Legitimate Intended Purpose

Estoppel Certificates are typically utilized when a Landlord desires to sell the Building or to refinance the Building. When purchasing a Building, or making a loan with a Building as the collateral, the Purchaser and Lender want to confirm certain facts that could influence their decision to either purchase the Building or accept the Building as collateral for a loan. In particular, a potential Purchaser or Lender will be very interested in knowing whether or not the Tenant of the Building is current on its rent, in default under the Lease, claiming that the Landlord is in breach or default under the Lease, whether the Tenant has options to purchase the Building, renew or extend the Lease, expand its space, terminate the Lease, or contract its space, what the rental rate is, whether any rent has been prepaid, whether there are any remaining free rental periods, and of course, confirmation of the commencement date of the Lease, the expiration date of the Lease, and the length of the Lease Term. A sample moderate Estoppel Certificate is attached to the end of this article containing the customary changes typically made by Tenants.

While it is typically the Landlord that initiates the request for an Estoppel Certificate to be signed by a Tenant, sophisticated Tenants bargain for a reciprocal right to obtain an Estoppel Certificate from the Landlord. By bargaining for the right to require the Landlord to provide an Estoppel Certificate, the Tenant will not only be in a position to provide perspective merger partners, assignees, subtenants, and major Lenders the level of comfort of knowing that a Lease remains in a place and confirmation of the material facts of the Lease, the ability to require a Landlord to also fill out and submit an Estoppel Certificate aids the Tenant in negotiating what is contained in an Estoppel Certificate. For example, once a Landlord knows that it too will be required to submit an Estoppel Certificate, the Landlord is much more realistic about the time periods for responding to a request for an Estoppel Certificate and the language (such as "to the best of Tenant's actual knowledge, without a duty to investigate) that is contained in the Estoppel Certificate.

C. Illegitimate Intended Purposes

Frequently, in connection with a potential purchase of a Building or in connection with making a loan on a Building, the Purchaser or Lender will review the existing Leases and find that there are certain provisions that the Purchaser or Lender would have preferred to have been included in the Lease. These typically will be provisions pertaining to extended cure rights for the Landlord, Lender or Purchaser, special hazardous material provisions, certain issues regarding solvency, provisions regarding

the distribution of additional notices, terrorist insurance requirements, telecommunications provisions, provisions regarding the use of insurance proceeds and condemnation proceeds, etc. While there is nothing wrong with a Purchaser or Lender wanting to improve their protections under the Lease, most lawyers believe that it is not appropriate to seek modifications to a Lease in connection with an Estoppel Certificate. This will be equally true if a Tenant sent out a request for an Estoppel Certificate and wanted to provide modifications to the Lease.

The purpose of the Estoppel Certificate is to confirm the existence of certain rights and obligations, not to change such rights and obligations. Nevertheless, there are a few Landlords, probably at the urging of their Lenders or Purchasers, who cannot resist the temptation to utilize the request for an Estoppel Certificate as a disguised attempt to modify the rights and obligations of the Tenant under the Lease. Sophisticated Tenants are aware of this tactic and simply delete provisions that constitute a modification and a waiver of significant rights of the Tenant. However, sophisticated Tenants, on the theory of what goes around comes around, will frequently consent to a minor modification to the Lease in an Estoppel Certificate where significant rights are not at issue. This is particularly true with requests for additional notices, slightly longer cure periods, etc.

D. Do Not Assume That the Initial Draft of the Estoppel Certificate Has Been Carefully Drafted or is Correct

There are very few things in life that are absolutely certain. However, it is absolutely certain that you need not save your money to buy World Series tickets to watch the Chicago Cubs or NBA Final tickets to watch the Los Angeles Clippers. It is equally accurate to state that the first draft of almost any Estoppel Certificate is likely to be incorrect. In fact, it is likely to be very incorrect. The inaccuracies contained in the Estoppel Certificate are not usually the result of a Landlord trying to be devious but rather the result of the typical procedure followed by Landlords, Purchasers and Lenders when sending out an Estoppel Certificate. Estoppel Certificates are generally (and we think incorrectly) considered to be "commodity legal work" at its lowest end, and accordingly, the initial drafts of the Estoppel Certificates are usually prepared by the newest addition to the Landlord staff or the lowest man or woman on the totem pole working for the Landlord's outside counsel or property management company. It is not unusual for an Estoppel Certificate to be incorrect on the commencement date, the existence of termination rights and renewal rights, the existence of expansion rights, etc. Accordingly, a Tenant must approach a review of an Estoppel Certificate as an important legal document that has probably been incorrectly drafted and which if not responded to properly by the Tenant, could cause the Tenant to waive significant legal rights and/or incur adverse economic consequences.

E. Responding Correctly to the Estoppel Certificate

The only way to properly review an Estoppel Certificate is simply to take each item in the Estoppel Certificate that is set forth as a fact and look to the Lease (and all amendments) to find where each fact is set forth in the Lease. Essentially, the best method of review is to essentially annotate the Estoppel Certificate so that the party responding to the request for an Estoppel Certificate can confirm that every provision set forth in the Estoppel Certificate is correct by reference to a particular section in the Lease document, or, to the extent that a provision is not correct, the person responding to the Estoppel Certificate will know how to make the appropriate changes to the Estoppel Certificate.

F. Resist the Temptation to Vent or Get Even

The only purpose of an Estoppel Certificate is to allow the sender to confirm the existence of the Lease and the essential provisions of the Lease. Occasionally, a Tenant with a vivid imagination or a hidden agenda (too much space at above market rents) will try to gain leverage with the Landlord by responding to the Estoppel Certificate with statements that are either not factual or embellished. When a Tenant responds to an Estoppel Certificate by falsely claiming that the Landlord is in breach of the Lease because it does not properly maintain the Building or for other imagined reasons, the Tenant is in danger of creating significant liabilities to itself. If a Landlord loses the opportunity to secure an advantageous loan or to make an advantageous sale because a Tenant has intentionally or negligently made inaccurate statements in response to the Estoppel Certificate, the Tenant runs a significant risk of being held responsible for damages caused by its negligent acts or willful misconduct.

G. Do Not Procrastinate

Normally there is no good time to be the recipient of an Estoppel Certificate. Responding to an Estoppel Certificate involves locating the file, finding the Lease and all the amendments, and taking the time to review the Lease and the amendments to make sure that the information set forth in the Estoppel Certificate is accurate, and if not accurate, correcting the inaccuracies. Typically, when a lawyer receives an Estoppel Certificate, the lawyer will place the Estoppel Certificate on the outer edge of the left hand corner of his or her desk where it will sit until the lawyer gets a reminder call. The lawyer, when it gets the reminder call, will not have any greater amount of time to respond to the Estoppel Certificate. The best approach is for the lawyer to find the file and review the Lease and any amendments to the Lease on the day the Estoppel Certificate comes in with a request from the client to respond, and send out the response promptly. Procrastinating will not make it easier or better. In addition, most Leases have a time period to respond to an Estoppel Certificate, and it is important to respond within the time period set forth in the Lease.

H. Follow Certain Golden Rules

Golden Rule 1. In any Estoppel Certificate there is usually a provision that requires the Tenant to certify that the Landlord is not in breach of its obligations under the Lease. The Tenant can certainly affirm this statement but should qualify its affirmation by stating that: "The Tenant, to the best of its actual knowledge, but without having done any investigation, is not presently aware of any conduct by the Landlord which constitutes, or with the giving of notice and the passage of time, would constitute a default by the Landlord under the Lease." Certainly, in every Lease situation, once a Lease is signed and several months have passed, the Landlord and the Tenant are in breach of various obligations under the Lease, almost always of a minor nature and almost always unintentionally. Almost no one would expect the Landlord and the Tenant to conduct an investigation as to the facts underlying each other's performance under the Lease to respond to an Estoppel Certificate. Therefore, it is prudent and fair to insert the qualifications "to the best of its actual knowledge but without a duty of investigation."

Golden Rule 2. To avoid any future misunderstandings, the Tenant should always add a provision which provides in sum and substance the following: "The Tenant, by responding to this Estoppel Certificate, does not waive any of its rights to contest operating expenses in accordance with the provisions of Section __ of the Lease." This qualification should be made to section in the Estoppel Certificate that states the Tenant does not have any claims against Landlord, etc.

Golden Rule 3. Tenants should make sure that they have actually received all tenant improvement dollars and other allowances before certifying that they have received such amounts. This is obvious but tenants forget.

ADDITIONAL THOUGHTS ON SNDA

THE MOST COMMON MISTAKE

The most common mistake lawyers make is forgetting one of the requirements of a previously executed SNDA. Almost all SNDAs contain a provision that provides that the SNDA will not extend to any amendment or modification to the Lease made without the Lenders consent. Typically, a Tenant will cause this provision in an SNDA to be modified to provide that the Lender's consent is not required for any amendment or modification made to document the exercise by the Tenant or the Landlord of an existing right under the Lease. Typically, this modification to a SNDA is necessary where a Tenant has bargained for a right to terminate the Lease early, a right to contract space, a right to expand, a right to renew, and/or a right to terminate the Lease under certain circumstances involving damage and destruction or eminent domain.

However, a Tenant will often make a modification to the Lease which is not pursuant to an existing right and will forget to request the Lender's consent. This could have disastrous consequences to a Tenant who pays $2 million to terminate a Lease early, forgets to get the Lender's consent, and then finds that the Landlord defaults under its loan to the Lender after pocketing the $2 million. In that case, the termination agreement signed between the Tenant and its Landlord may not be effective at all against the Lender thereby causing significant economic damage to the Tenant and perhaps a malpractice claim against the Tenant's lawyer. In addition, a Tenant will often enter into an agreement to extend the Lease Term or to take additional space which is not pursuant to an existing right under the Lease or does not involve the exercise of the actual rights under the Lease. Under these circumstances, a prudent Tenant should be extremely careful to make sure that it obtains the Lender's consent to these amendments extending the Lease Term or adding space in situations where it might be argued that the Tenant either did not have a right under the Lease to extend the Lease Term or add additional space or did not add the space or renew the Lease strictly in accordance with the rights contained in the Lease.

RECOGNITION AGREEMENTS

For a Tenant to be in a position to effectively sublease space, it needs to be in a position to provide reasonable assurances to the Subtenant that if the Tenant defaults under its Master Lease, the Subtenant will be allowed to remain in the Sublease Premises pursuant to the provisions of the Sublease. No sophisticated Subtenant will sign a Sublease for any considerable period of time and/or invest significant dollars in the form of tenant improvements unless it had such assurances not only from the Tenant as a Sublessor, but also from the Landlord. Accordingly, when Tenants negotiate their initial Lease, Tenants should request that the Landlord agree to provide any Subtenant who is leasing its entire Premises or one or more floors of its Premises an agreement from the Landlord providing in sum and substance that if the Tenant defaults under the Master Lease, the Landlord will recognize the Sublease as a direct Lease between the Landlord and the Subtenant to the extent that the Sublease does not contain terms that are contrary to the terms of the Master Lease and at a rent which is equal to the higher of the rent under the Sublease and the rent under the Master Lease. Under these circumstances, it is not particularly painful for a Landlord to grant such a right, and actually, it will be advantageous to the Landlord to grant such a right under many circumstances. If the unimaginable happens and a Tenant defaults under the Master Lease, a Landlord should be delighted to have a significant Subtenant remain in the Sublease Premises at a rent equal to the higher of the rent due under the Master Lease or the Sublease. The Landlord avoids the sublease terminating and having the space empty while looking for another tenant, etc. While a Landlord could agree in its consent to the Sublease that the Landlord has the option to require the Subtenant to attorn to the Landlord, in reality no sophisticated user of space is

going to enter into a Sublease in today's soft marketplace without obtaining the promise of a recognition agreement. While the Subtenant will not be thrilled that the rent will be at the higher of the rent due under the Master Lease and the rent due under the Sublease, it will allow the Tenant, as the Sublessor, to provide credit enhancements, etc. to satisfy the sophisticated Subtenant.

RESISTING ONE-SIDED SNDA'S

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An Overview.

Institutional lenders were once the traditional source of one-sided SNDA's. That appears to be changing as credit tenants have become more knowledgeable about the risks inherent in such instruments. Moreover, tenants whose creditworthiness may be more suspect, have begun to attempt to piggy-back on forms of SNDA's that may be appropriate only for tenants of with established credit.

A sophisticated credit tenant will have its own idea of what an SNDA should say and will typically negotiate this without too much distress on the part of the lender, so long as the lease does not include any provisions that would obligate a successor landlord to come out of pocket for cash. Most commercial leases include subordination and attornment provisions that purport to obligate the tenant, contractually, to subordinate the priority of its lease to the liens of future lenders to the landlord and, at the same time, obligating the tenant to attorn to its landlord' s successor in interest at the foreclosure purchaser's election should the landlord lose the property as a result of its default in the performance of its obligations under the loan. Such lease provisions are rarely relied upon by lenders who are second in time (i.e. whose liens will be junior) to the tenant's. But see, Miscione v Barton Development Company, 52 Cal. App..4th 1320 61 Cal Rptr .2d 280 (1997) and Principal Mutual Life Insurance Company v. Vars, Pave, McCord & Freedman, 65 Cal App 4th 1469 (2nd Dist. 1998) which are authorities for the principle that a foreclosure purchaser may, in deed, enforce a lease provision that obligates the tenant to attorn at the foreclosure purchaser's request, even if the lease was theoretically wiped out upon foreclosure as a consequence of the provision in the lease subordinating it to future lenders.

On its face, the lender whose lien has priority, of course, does not need a subordination agreement to have priority over a lease that is junior in time. Nonetheless, tenant attornment to a foreclosure purchaser is deemed by lenders to be desirable and may be required from high credit tenants (or tenants whose continued occupancy is otherwise important to the project being financed), in order to assure that the tenant will be in "privity of contract" with the foreclosing lender who wants such tenants to continue to operate and pay rent after the lender or a third party succeeds to title to the property that is the subject of the lease. High credit, so called "Big Box" tenants may insist on the landlord's attornment, too, not just a promise "not to disturb", likewise to assure "privity of contract." While California case law supports the conclusion that privity of estate insures the enforceability of a covenant to pay rent and make other payments such as insurance , repairs and taxes [See Kelly v. Tri Cities Broadcasting, Inc., 147 Cal App 3d 666 (1983)], the enforceability of other tenant obligations and tenant rights under a lease may be in a gray area in the absence of privity of contract.

The large and/or credit tenants will, most likely, be ones that the lender is relying upon for rent to service the loan; therefore, nondisturbance protection for such tenants should be readily available. Although, historically, SNDA forms were rarely included as exhibits to a lease, in recent years many sophisticated Big Box tenants insist upon inclusion of a form of SNDA as an exhibit to their leases, to be used should they ever be asked to subordinate their lease to future lenders of the landlord, and many lenders will acquiesce in the use of such forms without further negotiation.

Usually, nondisturbance and/or attornment protection is negotiated only with the tenants with the leverage to demand such protection as the price of their subordination. Typically, the small tenants (absent high credit) have a much more difficult time getting this protection, as a foreclosing lender may want to preserve maximum marketing flexibility to either keep existing tenants or to re lease the building to accommodate a different tenant mix or if "market" rents are substantially higher.

It goes without saying, that careful lawyers who represent even small tenants should always request nondisturbance agreements from lenders of record in situations where the small tenant client will be investing a significant sum of money in tenant improvements or the good will that may be generated in that location is not portable. However, if a nondisturbance agreement cannot be obtained from the landlord's lender, the risk should be carefully explained in writing to the client and the acquiescence by the client, if any, should be based on business considerations after a careful assessment of the risk. Small tenants spending a significant sum of money on their tenant improvements in a market favorable to tenants may have the leverage to insist upon receiving nondisturbance protection from the landlord's lender.

Typical Controversial Issues in SNDA Forms

A. Lenders and foreclosure purchasers (hereinafter collectively "lenders") desire to condition a tenant's nondisturbance protection on the absence of any tenant breaches or events of default under the terms of the lease and the SNDA as of the date the lender succeeds to the landlord's interest under the lease. Alternatively, tenants do not wish to permit their nondisturbance protection to be conditioned upon *anything* unless the lease has already been terminated in accordance with its terms at the time the lender succeeds to the interest of the landlord.

Typical compromises:

(1) *No breaches by tenant in the payment of monthly rent that have continued beyond the applicable cure or grace period;*

(2) *No monetary breaches of any kind by the tenant that have continued beyond the applicable cure or grace period;*

(3) *No breaches of any kind that have continued beyond the applicable cure or grace period that would entitle landlord to terminate the lease.*

B. Lenders desire, upon succeeding to the rights of the landlord under the lease -- even if they must: (a) recognize the tenant's leasehold rights thereunder, or (b) attorn to the tenant under the lease –that they be deemed not to have assumed certain obligations under the lease that otherwise would be required to be performed by the successor landlord or for which the successor landlord would otherwise be liable. For example:

(1) The acts or omissions of the lender's predecessor in interest as landlord;

Typical compromises:

"...unless pertaining to the landlord's obligations under the lease."

"...unless the ongoing rights of tenant are materially and adversely affected thereby."

"...except to the extent the default is nonmonetary and is still in existence at the time lender succeeded to landlord's interest in the lease."

"...except for any continuing act or omission of which lender had prior notice and failed to cure."

(2) Any rights of offset or defenses under the lease that the tenant may have had against the lender's predecessor in interest as landlord to the extent the same arise prior to the date title to the property was transferred to lender;

Typical compromises:

"...except as expressly required under the lease."

"...except for offsets pertaining to rent abatement, tenant improvement allowances or other credits, expressly provided for in the lease."

"...except for offsets or defenses related to any continuing act or omission of which lender had prior notice and failed to cure."

"...except pursuant to the exercise of rights by tenant that are expressly set forth in the lease."

"...except that the tenant's right of offset may be "recaptured" from Percentage Rent."

"...provided, however, that tenant shall have the right to offset up to _____% per month of the Fixed Rent until Landlord's obligation under the lease has been satisfied in full."

"...other than rights of offset to the extent expressly provided in the lease for costs incurred by tenant in making repairs, alterations or replacements to the premises attributable to landlord's failure to comply with its obligations under paragraphs __ or __ of the lease, so long as (i) tenant gave lender written notice of such work at least 30 days prior to the commencement thereof, and (ii) at the same time gave lender the same opportunity to cure."

(3) Agreements or amendments to the lease between the landlord and tenant that may be made subsequent to the recordation of the loan without the lender's prior written consent;

Typical compromises:

"...unless effectuated by landlord and tenant in accordance with the express terms of the lease."

"...which consent shall not unreasonably be withheld."

"provided, however, that lender may withhold such consent only if in lender's discretion the effect of such agreement or amendment could materially and adversely impair the value of lender's collateral."

"...other than agreements or amendments to the lease that do not reduce the value of landlord's interest in the lease, materially, and do not materially impair the lender's collateral for the loan."

"...or that do not materially decrease landlord's rights or tenant's obligations and that do not materially increase tenant's rights or landlord's obligations."

"Lender shall not be bound by any agreements or amendments to the lease that purport to change the terms, rights or remedies set forth in Exhibit "A" hereto made without lender's prior written consent, which consent shall not unreasonably be withheld."

"Either landlord or tenant may deliver a request for lender's consent and, absent lender's written objection to such request within ___ days after the delivery thereof, such consent shall be deemed to have been granted by lender. Lender may not condition its consent on the payment of a fee or other consideration; provided that lender shall be entitled to reimbursement for reasonable attorneys fees actually incurred, if any, in reviewing such request for consent."

"Any dispute between lender and tenant with respect to the reasonableness of lender's withholding consent shall be settled by binding arbitration in accordance with the Expedited Procedures in the Real Estate Valuation Arbitration Rules of the American Arbitration Association."

(4) Credits for more than one month's advance rent or any security deposits paid by tenant that were not actually transferred or otherwise credited to the lender when it succeeded to the landlord' s rights under the lease;

Typical compromise:

"...except for monthly payments of estimated common area maintenance charges and property taxes."

"...except for so called "free rent" or rental abatement as expressly provided pursuant to section ___ of the lease."

"...except to the extent that the lease expressly requires such advance payment."

(5) Landlord warranties in the lease, particularly respecting use, zoning, title, the landlord's authority, habitability, or fitness for the tenant's use;

"...unless lender had actual or constructive knowledge of the breach of the warranty at the time that the lease was signed or the loan was recorded, whichever was last to occur."

(6) Completion of landlord's site work, tenant improvements, or the payment of unpaid TI allowances;

Typical compromises:

"...except as specifically set forth in paragraphs ___ and ___ of the lease."

"...absent the existence of a reserve for such purposes in any [undisbursed] portion of the lender's loan."

(7) Honoring any provisions in the lease that are inconsistent with the SNDA or the recorded loan documents; in particular, compliance with the lease in respect to the disposition of casualty insurance or condemnation proceeds if different than as provided under the terms of the trust deed or mortgage;

Typical compromises:

"Lender agrees that, to the extent it can demonstrate that its security will be impaired unless such proceeds or awards are applied in accordance with the terms of its deed of trust, the terms and provisions of the lease shall in all instances control the disposition of insurance proceeds and condemnation awards."

"...provided, however, that lender agrees that all condemnation awards and insurance proceeds payable to landlord or lender with respect to the premises or the shopping center shall be applied to and paid for restoration of the premises and shopping center in accordance with the provisions of sections ___ and ___ of the lease."

"Lender shall not be bound to commence or complete restoration of improvements following any casualty not required to be insured under the lease or for the costs of restoration in excess of any proceeds recovered under insurance carried or required to be carried under the lease."

"Notwithstanding any provision of the deed of trust or any renewal, substitution, extension or replacement thereof, all condemnation awards paid as a result of a taking of all or any part of the premises and all proceeds of insurance paid as a result of damage to the premises shall be applied in a manner consistent with the lease."

"...Notwithstanding the foregoing, lender agrees that all condemnation and insurance proceeds shall be made available for restoration and/or repair in a manner consistent with the terms of the lease provided that (a) customary disbursement controls are established to lender's reasonable satisfaction, (b) anticipated line item shortfalls are covered by tenant and/or landlord, and (c) the consequent curtailment of operation of the

property pending completion of the restoration and/or repair will not trigger the exercise of co tenancy termination rights by other tenants."

(8) Remediating contamination from hazardous materials; and

Typical compromise:

"If lender declines to perform Landlord's remediation obligations pursuant to paragraph __, tenant's exclusive remedies shall be either to cancel the lease upon at least 90 days prior written notice, or, itself to cause the remediation to be performed and to deduct the reasonable cost thereof from Minimum Rent."

(9) Any provision in the lease that obligates the landlord to (a) consent to an assignment of the lease, or (b) release the tenant from liability under the lease after an assignment of the tenant's interest in the lease irrespective, in either instance, of lender's absolute discretion to withhold such consent.

Typical compromises:

"...except in the ordinary course of business and consistent with good leasing practices"

"Such consent shall not, however, be withheld if the capability of the assignee to generate percentage rent, self insure, pay deductibles on insurance policies, pay minimum rent, pay CAM charges and satisfy potential mechanics lien claims, is at least as great as the capability of the assigning tenant to do so at the time of the assignment and as of the date the loan was recorded, whichever is greater."

"...so long as the assignor shall continue to be liable under the lease, such consent by lender to an assignment of the lease shall not unreasonably be withheld."

"...provided, however, that such consent shall not be withheld unless the financial strength of the assignee is less than what would ordinarily be deemed commercially reasonable in the same market place, taking into account the extent and character of the liabilities under the lease being assumed."

(10) Recognizing an option or a right of first refusal in a lease that entitles a lessee to purchase all or any portion of the landlord's interest in the fee title to the property.

Typical compromise:

"...unless, as of the date of transfer of title pursuant to the option or the right of first refusal, the terms of the loan permit it to be prepaid, the option price is at least equal to the unpaid balance of the loan plus senior liens and prepayment penalties, if any, and at the lenders option the loan is in fact repaid in full from the proceed of sale at closing"

C. **The lender's desire for not only written and simultaneous notice from tenant of all landlord defaults, but also for the additional time required by the lender to recover possession of the property in order to take whatever action may be required in order to cure the landlord's default and thereby preclude rental abatement or a termination or forfeiture of the lease by the tenant. Tenants will want to limit the amount of additional time lenders may have to cure their landlord's defaults if the nature of the default is such as would interfere materially with the operation of their business.**

"Tenant will notify lender (at its last address furnished to tenant by landlord or lender) of any claimed defaults under the lease by landlord at the same time as tenant notifies landlord of such claim, and will not seek to terminate the lease by reason of any act or omission of landlord until tenant shall have given written notice of such act or omission to lender (at its last address furnished to tenant by landlord or lender) and until sixty (60) days shall have elapsed following the giving of such notice, during which period lender shall have the right but shall not be obligated, to remedy such act or omission.

D. **The lender's desire that the tenant expressly waive the provisions of any statute or rule of law which may give tenant the right or election to terminate the lease by reason of the lender's exercise of any of its remedies pursuant to the loan documents. Tenants will, as a matter of principle, resist waiving rights that they have as a matter of law.**

"...provided that the exercise of lender's remedies pursuant to the loan documents do not materially and adversely affect tenant's ability to operate its business in the premises."

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENTS

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SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENTS

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A. THE RELATIVE PRIORITY OF LIENS AND LEASES

1. *The Basic Priority Rules*

2. *The Effect of Lease Provisions on the Basic Priority Rules (See Attachment A)*

3. *Developing Case Law (See Attachment B)*

B. SNDA'S: GOALS AND OBJECTIVES

1. *Alter the Basic Priority Rules*

2. *Clarify the Obligations of the Parties*

3. *Exculpate Lenders/Limit Lender Liability*

4. *SNDA's as Estoppel Certificates?*

5. *Provide Recognition to Subtenants?*

C. PRACTICE TIPS AND STRATEGIES

1. *Tips for Borrowers/Landlords*

- As a borrower, always negotiate a relatively even-handed form of subordination, nondisturbance and attornment agreement to be attached to and made a part of the loan documents. A landlord should have the right to obtain this form of SNDA for any tenant who requests it in the course of their lease negotiations. Increasingly, lenders are charging for providing SNDA's to a borrower's tenants. This issue should be discussed and negotiated.

- A standard form SNDA (approved by lender and in the loan documents) and a standard form estoppel should be attachments to your standard lease form. Tenants should be obligated to execute an SNDA and estoppel in the standard form at any time upon request.

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2. *Tips for Lenders*

- Take the time to do a meaningful lease analysis prior to making the loan and prior to proceeding with a possible foreclosure. Identify any obligations the lender is not willing to assume.

- Negotiate tight controls in loan documents with respect to project leases. For instance, a lender should have the right to approve the project lease form, with no material modifications being made to the form without the lender's prior written consent.

- A lender should have a right to approve "major" leases meeting certain criteria (long-term, over a threshold level of square footage, etc.).

- Make sure that the tenant's approved lease form has favorable subordination language, as well as an obligation on the part of the tenant to execute a subordination agreement and new lease upon request. The lease should also require the tenant to execute an estoppel upon request.

- Lender should also have the right to hold a lease prior to its deed of trust, so that the lease will survive any foreclosure.

- See optional estoppel provision in form SNDA (*Attachment C*). Beware of provisions which state that in the event of a conflict between the terms of the lease and the terms of the SNDA/estoppel, the terms of the lease prevail. This could eliminate the benefit a current clear estoppel can provide.

3. *Tips for Tenants*

- Request a SNDA as a condition to signing a lease (*See Attachments C and D* for sample SNDA form with selected comments).

- Any "automatic" subordination provision in a lease should be conditioned upon and made subject to a tenant's receipt of recognition and nondisturbance by any prospective foreclosure sale purchaser.

- Avoid lease provisions giving a lender the option to preserve or wipe out a lease. It will always be used to the tenant's disadvantage.

- Make sure the SNDA form recognizes important option rights, offset rights and other valuable rights the tenant has negotiated into its lease.

- Provisions regarding payment of rent to the lender should be consistent with California Civil Code Section 2938 (the assignment of rents law). (*See Attachment E*).

- Although it is customary, and in most cases fair, to provide the lender with notice of a landlord default before taking action to terminate its lease, a tenant should (i) build in some reasonable self-help and offset rights which can be unilaterally exercised by the tenant, (ii) require the lender to promptly commence and proceed with diligence to obtain the necessary possession or control and/or to

cure the breach or default (or cause it to be cured), and (c) provide for some outside cutoff date for lender to act. (Note, however, that if a landlord is the subject of bankruptcy proceedings, and the "automatic stay" is in effect, a tenant's remedies vis à vis the landlord will be limited.) (See *Attachment F)*

4. *Tips for Subtenants*

- Consider the need for a "recognition" agreement from a landlord and perhaps a nondisturbance agreement from the landlord's lender.

- Take special care when providing a large cash security deposit to a tenant/sublandlord which may be suffering economic difficulty (or near disaster). Consider posting a letter of credit in a sublease scenario. If appropriate, request that the landlord, rather than the tenant/sublandlord, hold the subtenant's security (pursuant to a written agreement among the parties).

- *See Attachment G* for sample "recognition provisions."

ATTACHMENT A

SAMPLE FORM LEASE PROVISION REGARDING SUBORDINATION

XX. Subordination.

XX.X Subordination. This Lease is subject and subordinate to all mortgages, trust deeds, and ground and underlying leases (the "**Underlying Mortgages**") which now exist or may hereafter be executed affecting the Land, Project and/or the Building and to all renewals, modifications, consolidations, replacements and extensions of any such Underlying Mortgages. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee, ground lessor or beneficiary, affecting any Underlying Mortgage in order to make such subordination effective. Tenant, however, shall execute promptly any certificate or document that Landlord may request to effectuate, evidence or confirm such subordination, and failure to do so shall be an Event of Default under this Lease. Notwithstanding the forgoing, the mortgagee, ground lessor or beneficiary of an Underlying Mortgage may elect, at any time by notice given to Tenant, to subordinate such Underlying Mortgage to this Lease, and no further instrument of subordination shall be required to make such subordination of the Underlying Mortgage effective. Tenant, however, shall execute promptly any certificate or document requested to effectuate, evidence or confirm such subordination, and failure to do so shall be an Event of Default under this Lease.

XX.X Attornment. If Landlord's interest in the Building and/or the Land is sold or conveyed upon the exercise of any remedy provided for in any Underlying Mortgage, or otherwise by operation of law: (a) at the election of the new owner, Tenant will attorn to and recognize the new owner as Tenant's landlord under this Lease, and upon request, Tenant shall enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remaining term hereof, or, at the election of such new owner, this Lease shall automatically become a new lease between Tenant and such new

owner, upon the terms and provisions hereof for the remaining term hereof, and Tenant will confirm such attornment and new lease in writing within ten (10) days after request (Tenant's failure to do so will constitute an Event of Default); and (b) the new owner shall not be (i) liable for any act or omission of Landlord under this Lease occurring prior to such sale or conveyance, (ii) subject to any offset, abatement or reduction of rent because of any default of Landlord under this Lease occurring prior to such sale or conveyance, and (iii) liable for the return of any security deposit paid by Tenant except to the extent that the security deposit has actually been paid to such person or entity.

XX.X Notice from Tenant. Tenant shall give written notice to the holder of any Underlying Mortgage whose name and address have been previously furnished to Tenant of any act or omission by Landlord which Tenant asserts as giving Tenant the right to terminate this Lease or to claim a partial or total eviction or any other right or remedy under this Lease or provided by law. Tenant further agrees that if Landlord shall have failed to cure any default within the time period provided for in this Lease, then the holder of any Underlying Mortgage shall have an additional sixty (60) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within such sixty (60) days such holder has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

ATTACHMENT B

SUMMARY OF RELEVANT CALIFORNIA CASE LAW RELATING TO LIENS AND LEASES

***Dover Mobile Estates v. FiberForm Products,* 220 Cal. App. 3d 1494 (1990)**

The *Dover* court held that foreclosure of a senior deed of trust extinguishes a subordinate lease, with the result that, following foreclosure, neither the new owner nor the subordinate tenant is bound to perform under the lease. In *Dover*, the lease was actually senior to the deed of trust, but was made subordinate through an "automatic subordination" provision upheld by the court.

***R-Ranch Markets No. 2, Inc. v. Old Stone Bank,* 16 Cal. App. 4th 1323 (1993)**

In *R-Ranch*, the Court of Appeal held that a material modification of a senior lease is not binding upon a purchaser at a foreclosure sale held pursuant to a junior deed of trust. Although the original lease preceded the recordation of the lien, the court assigned independent priority status to the lease amendment (holding it subordinate to the deed of trust).

Miscione v. Barton Development Company*, 52 Cal. App. 4th 1320 (1997) *cert. denied

By operation of a rather vague lease provision, it was held that a subordinate tenant was still bound by its lease even after the foreclosure of a senior deed of trust. In *Miscione*, the lease was junior to the deed of trust but contained a subordination, nondisturbance and attornment provision which was upheld by the court.

Principal Mutual Life Insurance Co. v. Vars, Pave, McCord & Freedman*, 65 Cal. App. 4th 1469 (1998) *cert. denied

In *Principal*, the court held that an automatic subordination/attornment clause in a junior lease can be enforced by a purchaser at a foreclosure sale. The foreclosure purchaser, acting as a third party beneficiary, is able to enforce a lease against the tenant. *Principal* also held that once the lease extinguished by foreclosure was validly reinstated by a foreclosure purchaser, the guarantee of the extinguished lease was extended to the reinstated lease. The *Principal* court also held that a lender cannot unilaterally subordinate its deed of trust to a lease containing an automatic subordination clause.

***California Commerce Bank v. Prudential Insurance Co. of America*, California Court of Appeal, 2d App. Dist., Div. 3, case no. B104018, opinion filed February 2, 1999 [Note: Prudential was not certified for publication].**

In *Prudential*, it was held that foreclosure purchaser may enforce an attornment clause in a junior lease. The court stated "[w]hen a Lease obligates a tenant to attorn to a new landlord in the event of a foreclosure by a senior encumbrancer, the terms of the attornment provision will govern how that is to occur and its effect on the existing lease."

***Vallely Investments L.P. v. Bancamerica Commercial Corp.*, 88 Cal.App. 4th 816 (2001).**

In *Vallely*, the Court of Appeals held that an assignee of a mortgaged ground lease, expressly assuming the obligations of the lease (where the original lease made any leasehold

mortgage subordinate to the lease), remains liable to the lessor after foreclosure of the senior mortgage.

***Goldilocks Corporation of Southern California, Inc. v. Ramkabir Motor Inn, Inc*, 26 Fed.Appx. 693 (9th Cir. 2002) [Note: *Goldilocks* was not selected for publication in the Federal Reporter].**

In *Goldilocks*, the Court of Appeals held that an attornment provision is automatically triggered by the foreclosure unless conditions precedent are expressly provided in the provision.

***C.H.E.G., Inc. v. Millenium Bank*, 99 Cal.App. 4th 505 (2002).**

In *C.H.E.G.*, the Court of Appeals said *in dicta* that the principle of attornment may be applicable in a bankruptcy proceeding because of its similarity to foreclosures. However, the court held that, in this instance, the attornment was not applicable because the condition precedent that the bank make a written demand on the tenant to attorn was not satisfied. Additionally, the court noted that if the attornment was applicable, a successor landlord would not be responsible for a third party's commission because an attornment would not bind a succeeding landlord to the original landlord's promise to pay the broker fee for services performed prior to the succeeding landlord acquiring the property.

***Syufy Enterprises L.P. v. City of Oakland*, 104 Cal.App. 4th 869 (2002).**

In this case, the subtenant did not have the right to remain in possession after the sublessor rejected the lease in its bankruptcy proceedings. Neither in the master lease or any supplemental agreement did the master landlord agree to allow any subtenant to remain in possession of the property after termination of the master lease.

Lessons Learned from Developing California Case Law

- Consider a balanced and fair approach to discussions regarding subordination, non-disturbance and attornment. Uncertainty and unfair results should be avoided.

- SNDA's provide certainty for both lenders and tenants. Subtenants can also benefit from SNDA's and recognition agreements granted by a "master landlord."

- Complicated or vague attornment provisions can lead to confusion and litigation.

- A lender or ground lessor may subordinate its interest to an otherwise subordinate lease only if the subordinate lease contains language permitting such action.

- A foreclosure purchaser may enforce a lease provision that obligates the tenant to attorn at the foreclosure purchaser's request, even if the lease was extinguished by the foreclosure.

- If the attornment provision lacks details regarding the required timing and manner for requesting attornment, then the request may be made in any reasonable manner, within a reasonable time. If the attornment provision does not contain a notice requirement (condition precedent) it is automatically triggered by the foreclosure sale.

- Whether a guarantee of a lease will continue with respect to a lease that has been restored pursuant to an attornment provision depends on the language of the guaranty, but specific language addressing such continuation is not necessary.

- Always consider the impact of existing or prospective bankruptcy proceedings upon the respective rights of lenders, landlords, tenants and subtenants. Incorporate protections into your documents to the extent practicable.

- If subtenants negotiate for nondisturbance protection from the master landlord and consider methods to safeguard your leasehold security to the extent possible.

EXHIBIT C

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

(WITH SELECTED TENANT COMMENTS)

RECORDING REQUESTED BY	
WHEN RECORDED MAIL TO	

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Tenant Name: _____
Trade Name: _____
Suite: _____

THIS AGREEMENT ("**Agreement**") is dated this _____ day of _____, 20___, and is made by and among _____, having an address at _____, Suite _____, Los Angeles, California _____ ("**Lender**"), _____, having an address at _____ ("**Tenant**"), and _____, having an address of _____ ("**Landlord**").

RECITALS:

A. Tenant has entered into a lease ("**Lease**") dated _____, _____ with Landlord, covering the premises known as _____ (the "**Premises**") within the property known as _____, more particularly described as shown on Exhibit A, attached hereto (the "**Real Property**").

B. Lender made a loan to Landlord secured by a Deed of Trust, Security Agreement with Assignment of Rents and Leases and Fixture Filing of the Real Property (the "**Deed of Trust**"), and the parties desire to set forth their agreement herein.

THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Lease and all extensions, renewals, replacements or modifications thereof are and shall be subject and subordinate to the Deed of Trust and to all terms and conditions thereof insofar as it affects the Real Property to which the Premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, to the full extent of amounts secured thereby and interest thereon.

2. Subject to the terms and conditions of this Agreement, Tenant shall attorn to and recognize any purchaser at a foreclosure sale under the Deed of Trust, any transferee who acquires the Premises by deed in lieu of foreclosure, and the successors and assigns of such purchaser(s), as its landlord for the unexpired balance (any extensions, if exercised) of the term of the Lease on the same terms and conditions set forth in the Lease, and Tenant shall be bound to such parties under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if such parties were the landlord under the Lease. Without limiting the generality of the foregoing, within twenty (20) days after a request by any of the foregoing parties, Tenant will execute an instrument in confirmation of the foregoing provisions, satisfactory to such party, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy and which shall be consistent with the terms of this Agreement.

3. So long as Tenant complies with the terms of this Agreement and is not in default in the payment of rent or of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Premises pursuant to the terms of the Lease, shall not be diminished, disturbed or interfered with by Lender, and Lender agrees to honor the terms and conditions in the Lease for the remainder of the term thereof as if Lender were the landlord thereunder and (b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust and then only for such purpose and not for the purpose of terminating the Lease.

4. If Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), subject to Tenant's offset and self-help rights set forth in Sections X and XX of the Lease [or: unless Tenant shall have delivered notice of such act or omission to Beneficiary prior to the date of any foreclosure or deed in lieu thereof];

~~(b) liable for the return of any security deposit unless such deposit has been delivered to Lender by Landlord or is an escrow fund available to Lender;~~

(b) [Intentionally Omitted]

(c) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord), except as permitted pursuant to Sections X and XX of the Lease;

(d) bound by any rent or additional rent that Tenant might have paid for more than the current month to any prior landlord (including Landlord);

(e) bound by any amendment, modification, or termination of the Lease made without Lender's consent, which decreases the rent or materially increases the rights of Tenant under the Lease [or: except for those amendments, modifications

or extensions contemplated by the Lease]. [***Tenants may wish to specify that Lender's consent is not required for amendments that confirm/implement Tenant's rights under the Lease, such as exercise of expansion or renewal options.***];

(f) personally liable under the Lease, Lender's liability thereunder being limited to its interest in the Real Property [consider "Limitation of Liability" provision in the Lease];

(g) bound by any notice of termination given by Landlord to Tenant without Lender's prior written consent thereto; or

(h) bound by any provision in the Lease which obligates the landlord to erect or complete any building, to perform any construction work or to make any improvements to the Premises, to expand or rehabilitate any existing improvements or to restore any improvements following any casualty or to make a future capital contribution to Tenant. [Notwithstanding anything to the contrary herein, if improvements are required in order for Landlord to comply with its obligations under the Lease with respect to services to be provided to tenants, condition of the Property and the Premises or similar obligations, Landlord agrees to make such improvements as reasonably necessary. Nothing contained herein shall be deemed to limit or otherwise affect Tenant's remedies in the event the Landlord under the Lease (whether Landlord or any successor of Landlord) fails to comply with its obligations under Section X of the Lease and the Work Letter for Tenant Improvements.]

5. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their successors and assigns.

6. Tenant shall give Lender, by certified mail, return receipt requested, or by commercial overnight delivery service, a copy of any notice of default served on Landlord, at Lender's address set forth above or at such other address as to which Tenant has been notified in writing. If Landlord shall have failed to cure such default within the time provided for in the Lease, then Lender shall have an additional ten (10) days within which to cure any default capable of being cured by the payment of money and an additional thirty (30) [twenty (20)] days within which to cure any other default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued. In the event Lender cannot legally cure the breach or default by Landlord under the Lease and provided that such breach does not result in Tenant being unable to operate its business in the Premises, the period for Beneficiary to cure Landlord's act or omission shall be extended for so long as Beneficiary is diligently pursuing such cure, but in no event will such cure period be extended for more than ninety (90) days. [***See sample provision attached regarding lender's right to cure landlord defaults in context of landlord/borrower bankruptcy.***]

7. Landlord has agreed under the Deed of Trust and other loan documents that rentals payable under the Lease shall be paid directly by Tenant to Lender upon an "Event of Default" by Landlord under the Deed of Trust. After receipt of notice from Lender to Tenant, at the address set forth above or at such other address as to which Lender has been notified in writing, that rentals under the Lease should be paid to Lender, Tenant shall pay to Lender, or at the direction of Lender, all monies due

or to become due to Landlord under the Lease. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Deed of Trust, or to inquire into the existence of a default. Landlord hereby waives any right, claim, or demand it may now or hereafter have against Tenant by reason of such payment to Lender, and any such payment shall discharge the obligations of Tenant to make such payment to Landlord. Beneficiary agrees to indemnify, defend and hold harmless Tenant from and against any losses, liabilities, claims or causes of action Tenant may suffer as a result of compliance with Beneficiary's notice. [***Some tenants negotiate for right to put rent in escrow if a dispute exists regarding who is entitled to payment.***]

8. Subject to the terms and conditions of this Agreement, Tenant declares, agrees and acknowledges that:

(a) Lender, in making disbursements pursuant to any agreement relating to the Loan is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement shall not defeat the subordination herein made in whole or in part.

(b) It intentionally and unconditionally waives, relinquishes and subordinates the Lease and its leasehold interest thereunder in favor of the lien or charge upon said land of the Deed of Trust, and that in consideration of this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender to Landlord and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into by Landlord and Lender which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

[OPTIONAL PROVISION: 9. Estoppel Certification. Tenant hereby certifies that:

(a) The Lease is in full force and effect and is unmodified, except as otherwise noted herein;

(b) A true copy of the Lease [is attached hereto] [verified as such by Tenant has separately been provided to Mortgagee];

(c) To the best of Tenant's knowledge, but without undertaking any investigation in the matter, Landlord is not in default in the observance or performance of any covenant or condition to be observed or performed by Landlord, as Lessor under the Lease [except as follows: _____];

(d) To the best of Tenant's knowledge, but without undertaking any investigation in the matter, no event has occurred which authorizes, or with the lapse of time will authorize, Tenant to terminate the Lease;

(e) No lease rental (except security deposits and Tenant's share of monthly installments of estimated [additional rent] [common area maintenance charges] and real property taxes) has been paid more than thirty (30) days in advance of its due date; and

(f) To the best of Tenant's knowledge, but without undertaking any investigation in the matter, Tenant has no charge, lien or claim of offset, under the Lease or otherwise, against rents or other charges due or to become due thereunder [except as follows: _____].]

10. All notices, consents and other communications pursuant to the provisions of this Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a reputable commercial overnight carrier that provides a receipt, such as Federal Express of Airborne, and shall be deemed given when postmarked and addressed as follows:

If to Lender: _____
_____
_____

With a copy to: _____
_____
_____

If to Tenant: _____
_____
_____

If to Landlord: _____
_____
_____

With a copy to: _____
_____
_____

or to such other address as shall from time to time have been designated by written notice by such party to the other parties as herein provided. Lender may designate a servicing agent as an additional addressee.

11. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease and the leasehold interest of Tenant thereunder to the lien or charge of the Deed of Trust in favor of Lender, and shall supersede and control any prior agreements as to such, or any, subordination, including, but not limited to, those provisions, if any, contained in the Lease, which provide for the subordination of the Lease and the leasehold interest of Tenant thereunder to a deed or deeds of trust or to a mortgage or mortgages to be thereafter executed, and shall not be modified or amended and no provision herein shall be waived except in writing signed by the party against whom enforcement of any such modification or amendment is sought.

12. The use of the neuter gender in this Agreement shall be deemed to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

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

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

Lender: Date: _____

_____,
a _____

By: _____
Its: _____

Tenant: Date: _____

_____,
a _____

By: _____
Its: _____

Landlord: Date: _____

_____,
a _____

By: _____
Its: _____

[ATTACH LEGAL DESCRIPTION; ACKNOWLEDGEMENT BLOCKS]

ATTACHMENT D

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

[ANNOTATED]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

[BANK]

_____

_____

_____

Attn:_____

SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ('Agreement') is made _____ and between _____ ("**Owner**"), _____ ("**Lessee**") and [BANK] ("**Lender'**).

RECITALS

A. Pursuant to the terms and provisions of a lease dated [_____] ("**Lease**"), Owner, as "**Lessor**", granted to Lessee a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "**Property**").

B. Said Lease contains provisions and terms granting Lessee an option to purchase the Property (the "**Option To Purchase**").

C. Owner has executed, or proposes to execute, a deed of trust with absolute assignment of leases and rents, security agreement and fixture filing ("**Deed of Trust**") securing, among other things, a promissory note ("**Note**") in the principal sum of [_____] ($_____), dated _____ in favor of Lender, which Note is payable with interest and upon the terms and conditions described therein ("**Loan**"). The Deed of Trust is to be recorded concurrently herewith.

D. As a condition to making the Loan secured by the Deed of Trust, Lender requires that the Deed of Trust be unconditionally and at all times remain a lien on the Property, prior and superior to all

the rights of Lessee under the Lease and the Option To Purchase and that the Lessee specifically and unconditionally subordinate the Lease and the Option To Purchase to the lien of the Deed of Trust.

E. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

AGREEMENT

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

1. SUBORDINATION. Owner and Lessee hereby agree that:

a. **Prior Lien.** The Deed of Trust securing the Note in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease and the Option To Purchase;

b. **Subordination.** Lender would not make the Loan without this agreement to subordinate; and

c. **Entire Agreement**. This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease and the Option To Purchase to the lien of the Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease and the Option To Purchase, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease and the Option To Purchase to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

d. **Use of Proceeds**. Lender, in making disbursements pursuant to the Note, the Deed of Trust or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part;

e. **Waiver, Relinquishment and Subordination.** Lessee intentionally and unconditionally waives, relinquishes and subordinates all of Lessee's right, title and Interest in and to the Property to the lien of the Deed of Trust and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2. ASSIGNMENT. Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.

3. ***[Optional]*** **ESTOPPEL**. Lessee acknowledges and represents that:

a. **Lease Effective.** The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;

b. **No Default.** To the best of Lessee's knowledge, as of the date hereof: (I) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; ***[***"To the best of Lessee's knowledge" might imply a duty of investigation and should be avoided. Typical compromises are " to Lessee's actual knowledge" or "to the best of Lessee's actual knowledge with no duty of investigation."***]*** and (II) there are no existing claims, defenses or offsets against rental due or to become due under the Lease; ***[***By agreeing to clause (ii) without modification, the lessee may inadvertently estop itself from any rights it may have to question operating costs under the Lease. Accordingly, clause (ii) should be "subject to any rights Lessee may have to contest operating costs or expenses, as more particularly set forth in Section X of the Lease" or similar language. Also, to the extent lessee has any offset claims or defenses, they should be identified.***]***

c. **Entire Agreement**. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Property and Lessee claims no rights with respect to the Property other than as set forth in the Lease; and

d. **No Prepaid Rent**. No deposits or prepayments of rent have been made in connection with the Lease, except as follows: (if none, state "None")

4. **ADDITIONAL AGREEMENTS**. Lessee covenants and agrees that, during all such times as Lender is the Beneficiary under the Deed of Trust:

a. **Modification, Termination and Cancellation.** Lessee will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lendees prior written consent and will not make any payment to Lessor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent; ***[***This provision raises several concerns for the lessee: the lender's reasonableness, how quickly it will respond, whether costs or fees will be incurred and the scope of the lender's approval. Solutions may include identifying the specific provisions that require lender's consent before modification or to limit the lender's approval rights to agreements that materially reduce the value of the lender's collateral (i.e. causes a decrease rent or a material increase in the lessee's rights). Other common modifications are: (i) providing a limited time period for the lender to respond (with failure to respond being deemed an approval); (ii) a cap or prohibition on fees, (iii) no lender approval required for amendments that confirm or implement existing tenant rights in the Lease, such as exercising an existing option, and/or (iv) an obligation for lender to be reasonable.***]***

b. **Notice of Default**. Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence; ***[***Practice note: It is important for lessees and lessees' counsel to always check the notice requirements of any SNDA as well as the notice requirements under the Lease when sending out a***

notice of default to the lessor under the Lease.] [***See sample provision attached regarding lender's right to cure landlord defaults in context of landlord/borrower bankruptcy.***]***

c. **No Advance Rents**. Lessee will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and

d. **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Deed of Trust, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor is in default under the Loan and/or the Deed of Trust. ***[It is a good idea for a lessee to request an indemnification from the lender, protecting the lessee against losses, damages, or claims arising from the lessee's compliance with this provision. Lessees will sometimes also ask for the right to put rent in escrow if a dispute exists regarding to is entitled to payment.]***

5. **ATTORNMENT**. In the event of a foreclosure under the Deed of Trust, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Deed of Trust) as follows,

a. **Payment of Rent**. Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;

b. **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Lessee hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessees interest in the Lease and giving written notice thereof to Lessee;

c. **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease, nor for the return of any sums which Lessee may have paid to Lessor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender; and ***[***If a lessee has negotiated to have "free rent" or to be entitled to offset its tenant improvement costs against rent (or other offset rights, self-help rights or similar arrangements), but then is no longer entitled to such benefits after the lender forecloses, the lessee, through no fault of its own, is not receiving the benefit of its bargain. In addition, the cost of such benefits have usually been amortized into the rent paid by the lessee throughout the term, so the lender is receiving payment for it. Accordingly, lessees will commonly negotiate to make this provision "subject to those offset and self-help rights expressly set out in Sections X and XX of the Lease and Lessee's right to receive [4] months of free rent as set out in Section XY of the Lease" or similar language.***]***

d. **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.

6. **NON-DISTURBANCE**. In the event of a foreclosure under the Deed of Trust, so long as there shall then exist no breach, default, or event of default on the part of Lessee under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Lessee as tenant under the Lease subject to the

terms and provisions of the Lease except as modified by this Agreement. *[***Because a lessee's leasehold security depends upon the lender honoring its agreement not to disturb the lessee in the event of a foreclosure, the caveat above conditioning lender's obligation on "no breach, default, or event of default on the part of lessee" is too broad for most lessees' comfort. Lessees would prefer the lender be obligated to recognize them regardless of any default. However, the typical compromise is to recognize lessees so long as no default exists beyond any applicable notice and cure period.***]* Notwithstanding the foregoing, Lessee and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any option to purchase with respect to the Property; any right of first refusal with respect to the Property; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Deed of Trust. *[***A right to purchase the Property or a right of first refusal on the Property, is likely not one that the lessee wants removed by a foreclosure. The lender may, however, be willing to allow the lessee to retain its purchase rights, so long as the purchase price paid by lessee will be enough to pay all amounts owed to the lender. (Practice note: When negotiating a purchase right, consider asking for a limitation on encumbering the property beyond a certain percentage of the purchase price.)***] [***With respect to the application of insurance or condemnation proceeds referenced above, a lessee could be significantly harmed if the lender does not honor the lessor's reconstruction obligations under the terms of the Lease, particularly if the damage is not significant enough to allow the lessee the right to terminate. In such event, the lessee may not have the right to offset due to the waiver of offset rights above and any repairs would have to be paid for by the lessee (either directly or through operating costs) or remain damaged. Accordingly, it is reasonable for lessees to ask the lender to perform the obligations of lessor under the lease (as opposed to lender's rights under the Deed of Trust or other security documents) with respect to casualty and condemnation insurance proceeds, unless it can show that failing to do so will impair its security.***]*

*[***<u>Additional Covenants/Revisions Frequently Requested by Lessees</u>:*

[i] If lender forecloses, lender will cure continuing defaults as of the day the lender takes title.

[ii] If lender forecloses, the lender will complete any tenant improvements lessor is obligated to make under the terms of the Lease

*[iii]. All affirmative obligations of lessee under the SNDA should be subject to the terms and conditions of the SNDA.***]*

7. **<u>MISCELLANEOUS</u>**.

a. **<u>Successors.</u>** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto.

b. **<u>Notices.</u>** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Lessee or Lender appearing below:

"OWNER"

_____
_____
_____
Attn:_____

"LENDER"

_____
_____
_____
Attn:_____

"LESSEE"

_____
_____
_____
Attn:_____

Provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement.

c. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

d. **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others.

e. **Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

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

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

"TENANT"

_____,
a _____

By: _____
Name: _____
Title: _____

(SIGNATURES CONTINUED ON NEXT PAGE)

"LANDLORD"

a _____

By: _____
Name: _____
Title: _____

"LENDER"

_____,
a _____

By: _____
Name: _____
Title: _____

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

LEASE GUARANTOR'S CONSENT

The undersigned ("**Lease Guarantor**") consents to the foregoing Subordination Agreement; acknowledgment of Lease Assignment, Estoppel, Attornment and Non-Disturbance Agreement and the transactions contemplated thereby and reaffirms its obligations under the lease guaranty ("**Lease Guaranty**") dated [DATE OF LEASE GUARANTY HERE]. Lease Guarantor further reaffirms that its obligations under the Lease Guaranty are separate and distinct from Lessee's obligations.

AGREED:

Dated as of: _____

LEASE GUARANTOR

_____
a _____,

By: _____
Name: _____
Title: _____

[ATTACH LEGAL DESCRIPTION AND NOTARY BLOCKS]

ATTACHMENT E

CALIFORNIA CIVIL CODE SECTION 2938 (THE ASSIGNMENT OF RENT LAWS)

§ 2938. Assignment of rents; recordation; enforcement; demand; cash proceeds; application of section

(a) A written assignment of an interest in leases, rents, issues, or profits of real property made in connection with an obligation secured by real property, irrespective of whether the assignment is denoted as absolute, absolute conditioned upon default, additional security for an obligation, or otherwise, shall, upon execution and delivery by the assignor, be effective to create a present security interest in existing and future leases, rents, issues, or profits of that real property. As used in this section, "leases, rents, issues, and profits of real property" include the cash proceeds thereof. The term "cash proceeds" means cash, checks, deposit accounts, and the like.

(b) An assignment of an interest in leases, rents, issues, or profits of real property may be recorded in the records of the county recorder in which the underlying real property is located in the same manner as any other conveyance of an interest in real property, whether the assignment is in a separate document or part of a mortgage or deed of trust, and when so duly recorded in accordance with the methods, procedures, and requirements for recordation of conveyances of other interests in real property, (1) the assignment shall be deemed to give constructive notice of the content of the assignment with the same force and effect as any other duly recorded conveyance of an interest in real property and (2) the interest granted by the assignment shall be deemed fully perfected as of the time of recordation with the same force and effect as any other duly recorded conveyance of an interest in real property, notwithstanding any provision of the assignment or any provision of law that would otherwise preclude or defer enforcement of the rights granted the assignee under the assignment until the occurrence of a subsequent event, including, but not limited to, a subsequent default of the assignor, or the assignee's obtaining possession of the real property or the appointment of a receiver.

(c) Upon default of the assignor under the obligation secured by the assignment of leases, rents, issues, and profits, the assignee shall be entitled to enforce the assignment in accordance with this section. On and after the date the assignee takes one or more of the enforcement steps described in this subdivision, the assignee shall be entitled to collect and receive all rents, issues, and profits that have accrued but remain unpaid and uncollected by the assignor or its agent or for the assignor's benefit on that date, and all rents, issues, and profits that accrue on or after the date. The assignment shall be enforced by one or more of the following:

(1) The appointment of a receiver.

(2) Obtaining possession of the rents, issues, or profits.

(3) Delivery to any one or more of the tenants of a written demand for turnover of rents, issues, and profits in the form specified in subdivision (j), a copy of which demand shall also be delivered to the assignor; and a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the real property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording.

(4) Delivery to the assignor of a written demand for the rents, issues, or profits, a copy of which shall be mailed to all other assignees of record of the leases, rents, issues, and profits of the real

property at the address for notices provided in the assignment or, if none, to the address to which the recorded assignment was to be mailed after recording.

Moneys received by the assignee pursuant to this subdivision, net of amounts paid pursuant to subdivision (g), if any, shall be applied by the assignee to the debt or otherwise in accordance with the assignment or the promissory note, deed of trust, or other instrument evidencing the obligation; provided, however, that neither the application nor the failure to so apply the rents, issues, or profits shall result in a loss of any lien or security interest which the assignee may have in the underlying real property or any other collateral, render the obligation unenforceable, constitute a violation of Section 726 of the Code of Civil Procedure, or otherwise limit any right available to the assignee with respect to its security.

(d) If an assignee elects to take the action provided for under paragraph (3) of subdivision (c), the demand provided for therein shall be signed under penalty of perjury by the assignee or an authorized agent of the assignee and shall be effective as against the tenant when actually received by the tenant at the address for notices provided under the lease or other contractual agreement under which the tenant occupies the property or, if no address for notices is so provided, at the property. Upon receipt of this demand, the tenant shall be obligated to pay to the assignee all rents, issues, and profits that are past due and payable on the date of receipt of the demand, and all rents, issues, and profits coming due under the lease following the date of receipt of the demand, unless either of the following occurs:

(1) The tenant has previously received a demand which is valid on its face from another assignee of the leases, issues, rents, and profits sent by the other assignee in accordance with this subdivision and subdivision (c).

(2) The tenant, in good faith and in a manner which is not inconsistent with the lease, has previously paid, or within 10 days following receipt of the demand notice pays, the rent to the assignor.

Payment of rent to an assignee following a demand under an assignment of leases, rents, issues, and profits shall satisfy the tenant's obligation to pay the amounts under the lease. If a tenant pays rent to the assignor after receipt of a demand other than under the circumstances described in this subdivision, the tenant shall not be discharged of the obligation to pay rent to the assignee, unless the tenant occupies the property for residential purposes. The obligation of a tenant to pay rent pursuant to this subdivision and subdivision (c) shall continue until receipt by the tenant of a written notice from a court directing the tenant to pay the rent in a different manner or receipt by the tenant of a written notice from the assignee from whom the demand was received canceling the demand, whichever occurs first. Nothing in this subdivision shall affect the entitlement to rents, issues, or profits as between assignees as set forth in subdivision (h).

(e) No enforcement action of the type authorized by subdivision (c), and no collection, distribution, or application of rents, issues, or profits by the assignee following an enforcement action of the type authorized by subdivision (c), shall do any of the following:

(1) Make the assignee a mortgagee in possession of the property, except if the assignee obtains actual possession of the real property, or an agent of the assignor.

(2) Constitute an action, render the obligation unenforceable, violate Section 726 of the Code of Civil Procedure or, other than with respect to marshaling requirements, otherwise limit any rights available to the assignee with respect to its security.

(3) Be deemed to create any bar to a deficiency judgment pursuant to any provision of law governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or

security interest, notwithstanding that the action, collection, distribution, or application may reduce the indebtedness secured by the assignment or by any deed of trust or other security instrument.

The application of rents, issues, or profits to the secured obligation shall satisfy the secured obligation to the extent of those rents, issues, or profits, and, notwithstanding any provisions of the assignment or other loan documents to the contrary, shall be credited against any amounts necessary to cure any monetary default for purposes of reinstatement under Section 2924c.

(f) If cash proceeds of rents, issues or profits to which the assignee is entitled following enforcement as set forth in subdivision (c) are received by the assignor or its agent for collection or by any other person who has collected such rents, issues, or profits for the assignor's benefit, or for the benefit of any subsequent assignee under the circumstances described in subdivision (h), following the taking by the assignee of either of the enforcement actions authorized in paragraph (3) or (4) of subdivision (c), and the assignee has not authorized the assignor's disposition of the cash proceeds in a writing signed by the assignee, the rights to the cash proceeds and to the recovery of the cash proceeds shall be determined by the following:

(1) The assignee shall be entitled to an immediate turnover of the cash proceeds received by the assignor or its agent for collection or any other person who has collected the rents, issues, or profits for the assignor's benefit, or for the benefit of any subsequent assignee under the circumstances described in subdivision (h), and the assignor or other described party in possession of such cash proceeds shall turn over the full amount of cash proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee in writing. The assignee shall have a right to bring an action for recovery of the cash proceeds, and to recover the cash proceeds, without the necessity of bringing an action to foreclose any security interest which it may have in the real property. This action shall not violate Section 726 of the Code of Civil Procedure or otherwise limit any right available to the assignee with respect to its security.

(2) As between an assignee with an interest in cash proceeds perfected in the manner set forth in subdivision (b) and enforced in accordance with paragraph (3) or (4) of subdivision (c) and any other person claiming an interest in the cash proceeds, other than the assignor or its agent for collection or one collecting rents, issues, and profits for the benefit of the assignor, and subject to subdivision (h), the assignee shall have a continuously perfected security interest in the cash proceeds to the extent that the cash proceeds are identifiable. For purposes hereof, cash proceeds are identifiable if they are either (A) segregated or (B) if commingled with other funds of the assignor or its agent or one acting on its behalf, can be traced using the lowest intermediate balance principle, unless the assignor or other party claiming an interest in proceeds shows that some other method of tracing would better serve the interests of justice and equity under the circumstances of the case. The provisions of this paragraph are subject to any generally applicable law with respect to payments made in the operation of the assignor's business.

(g)(1) If the assignee enforces the assignment under subdivision (c) by any means other than the appointment of a receiver and receives rents, issues, or profits pursuant to this enforcement, the assignor or any other assignee of the affected real property may make written demand upon the assignee to pay the reasonable costs of protecting and preserving the property, including payment of taxes and insurance and compliance with building and housing codes, if any.

(2) On and after the date of receipt of the demand, the assignee shall pay for the reasonable costs of protecting and preserving the real property to the extent of any rents, issues, or profits actually received by the assignee; provided, however, that no such acts by the assignee shall cause the assignee to become a mortgagee in possession and the assignee's duties under this subdivision, upon receipt of a demand from the assignor or any other assignee of the leases, rents, issues, and profits pursuant to

paragraph (1), shall not be construed to require the assignee to operate or manage the property, which obligation shall remain that of the assignor.

(3) The obligation of the assignee hereunder shall continue until the earlier of (A) the date on which the assignee obtains the appointment of a receiver for the real property pursuant to application to a court of competent jurisdiction, or (B) the date on which the assignee ceases to enforce the assignment.

(4) Nothing in this subdivision shall be construed to supersede or diminish the right of the assignee to the appointment of a receiver.

(h) The lien priorities, rights, and interests among creditors concerning rents, issues, or profits collected before the enforcement by the assignee shall be governed by subdivisions (a) and (b). Without limiting the generality of the foregoing, if an assignee who has recorded its interest in leases, rents, issues, and profits prior to the recordation of such interest by a subsequent assignee seeks to enforce its interest in those rents, issues, or profits in accordance with this section after any enforcement action has been taken by a subsequent assignee, the prior assignee shall be entitled only to the rents, issues, and profits that are accrued and unpaid as of the date of its enforcement action and unpaid rents, issues, and profits accruing thereafter. The prior assignee shall have no right to rents, issues, or profits paid prior to the date of the enforcement action, whether in the hands of the assignor or any subsequent assignee. Upon receipt of notice that the prior assignee has enforced its interest in the rents, issues, and profits, the subsequent assignee shall immediately send a notice to any tenant to whom it has given notice under subdivision (c). The notice shall inform the tenant that the subsequent assignee cancels its demand that the tenant pay rent to the subsequent assignee.

(i) This section shall apply to contracts entered into on or after January 1, 1997. Sections 2938 and 2938.1, as these sections were in effect prior to January 1, 1997, shall govern contracts entered into prior to January 1, 1997, and shall govern actions and proceedings initiated on the basis of these contracts.

(j) "Real property," as used in this section, shall mean real property or any estate or interest therein.

(k) The demand required by paragraph (3) of subdivision (c) shall be in the following form:

DEMAND TO PAY RENT TO
PARTY OTHER THAN LANDLORD
(SECTION 2938 OF THE CIVIL CODE)

Tenant: [Name of Tenant]
Property Occupied by Tenant: [Address]
Landlord: [Name of Landlord]
Secured Party: [Name of Secured Party]
Address: [Address for Payment of Rent to Secured Party and for Further Information]:

The secured party named above is the assignee of leases, rents, issues, and profits under [name of document] dated _____, and recorded at [recording information] in the official records of _____ County, California. You may request a copy of such assignment from the secured party at _____ (address).

THIS NOTICE AFFECTS YOUR LEASE OR RENTAL AGREEMENT RIGHTS AND OBLIGATIONS. YOU ARE THEREFORE ADVISED TO CONSULT AN ATTORNEY CONCERNING THOSE RIGHTS AND OBLIGATIONS IF YOU HAVE ANY QUESTIONS REGARDING YOUR RIGHTS AND OBLIGATIONS UNDER THIS NOTICE.

IN ACCORDANCE WITH SUBDIVISION (C) OF SECTION 2938 OF THE CIVIL CODE, YOU ARE HEREBY DIRECTED TO PAY TO THE SECURED PARTY, _____ (NAME OF SECURED PARTY) AT _____ (ADDRESS), ALL RENTS UNDER YOUR LEASE OR OTHER RENTAL AGREEMENT WITH THE LANDLORD OR PREDECESSOR IN INTEREST OF LANDLORD, FOR THE OCCUPANCY OF THE PROPERTY AT _____ (ADDRESS OF RENTAL PREMISES) WHICH ARE PAST DUE AND PAYABLE ON THE DATE YOU RECEIVE THIS DEMAND, AND ALL RENTS COMING DUE UNDER THE LEASE OR OTHER RENTAL AGREEMENT FOLLOWING THE DATE YOU RECEIVE THIS DEMAND UNLESS YOU HAVE ALREADY PAID THIS RENT TO THE LANDLORD IN GOOD FAITH AND IN A MANNER NOT INCONSISTENT WITH THE AGREEMENT BETWEEN YOU AND THE LANDLORD. IN THIS CASE, THIS DEMAND NOTICE SHALL REQUIRE YOU TO PAY TO THE SECURED PARTY _____, (NAME OF THE SECURED PARTY), ALL RENTS THAT COME DUE FOLLOWING THE DATE OF THE PAYMENT TO THE LANDLORD.

IF YOU PAY THE RENT TO THE UNDERSIGNED SECURED PARTY, _____ (NAME OF SECURED PARTY), IN ACCORDANCE WITH THIS NOTICE, YOU DO NOT HAVE TO PAY THE RENT TO THE LANDLORD. YOU WILL NOT BE SUBJECT TO DAMAGES OR OBLIGATED TO PAY RENT TO THE SECURED PARTY IF YOU HAVE PREVIOUSLY RECEIVED A DEMAND OF THIS TYPE FROM A DIFFERENT SECURED PARTY.

[For other than residential tenants]. IF YOU PAY ANY RENT TO THE LANDLORD THAT BY THE TERMS OF THIS DEMAND YOU ARE REQUIRED TO PAY TO THE SECURED PARTY, YOU MAY BE SUBJECT TO DAMAGES INCURRED BY THE SECURED PARTY BY REASON OF YOUR FAILURE TO COMPLY WITH THIS DEMAND, AND YOU MAY NOT BE DISCHARGED FROM YOUR OBLIGATION TO PAY SUCH RENT TO THE SECURED PARTY. YOU WILL NOT BE SUBJECT TO SUCH DAMAGES OR OBLIGATED TO PAY SUCH RENT TO THE SECURED PARTY IF YOU HAVE PREVIOUSLY RECEIVED A DEMAND OF THIS TYPE FROM A DIFFERENT ASSIGNEE.

Your obligation to pay rent under this demand shall continue until you receive either (1) a written notice from a court directing you to pay the rent in a manner provided therein, or (2) a written notice from the secured party named above canceling this demand.

The undersigned hereby certifies, under penalty of perjury, that the undersigned is an authorized officer or agent of the secured party and that the secured party is the assignee, or the current successor to the assignee, under an assignment of leases, rents, issues, or profits executed by the landlord, or a predecessor in interest, that is being enforced pursuant to and in accordance with Section 2938 of the Civil Code.

Executed at _____, California, this _____ day of _____, _____.

[Secured Party]

Name: _____

Title: _____

ATTACHMENT F

SAMPLE NEGOTIATED SNDA PROVISION

Lender Right to Cure Landlord Defaults

xx. Notices and Defaults. A copy of any notice of breach, default, termination or forfeiture under the Lease, sent by Landlord to Tenant or by Tenant to Landlord shall be simultaneously sent by the sender thereof to Agent. Agent and Foreclosing Party shall each have the option, but no obligation, to cure any default by Landlord and Tenant shall accept cure by Agent or Foreclosing Party of any such default. Tenant shall not take any action with respect to any default by Landlord under the Lease (excluding Tenant's rights under the Lease to pursue arbitration of certain matters and to exercise the self-help remedies provided under the Lease), including without limitation any action in order to terminate, rescind, forfeit or void the Lease, unless such default has not been cured within 120 days following receipt by Agent of such notice of default, provided, however, that if the curing of such default requires possession of the Property and such default does not result in the Leased Premises being untenantable, Agent may, by delivering written notice to Tenant within such 120-day period and providing Tenant with written assurances that it is diligently proceeding, using commercially reasonable efforts, to effect a cure of the existing default (through obtaining possession or control of the Property through a receiver or other legal means), cause such grace period to be extended for such period of time (including without limitation any period during which the exercise of remedies by Foreclosing Party is stayed by operation of law) as is necessary for Foreclosing Party to obtain possession of (through the appointment of a receiver or otherwise) and (if Foreclosing Party in its sole discretion deems it to be advisable) title to the property (either in its own name or through a nominee, by judicial or non-judicial foreclosure, deed or assignment in lieu of foreclosure or otherwise), provided that in such notice the Agent commits to Tenant that Agent or the Foreclosing Party will cure such default upon taking possession of the Property. Notwithstanding the foregoing, in no event shall the 120-day grace period referenced above be extended beyond the period which is reasonably required for Foreclosing Party, exercising commercially reasonable diligence, to obtain the possession and/or control of the Property as necessary to effect a cure of the existing default, it being agreed that Foreclosing Party must at all times proceed diligently and use commercially reasonable efforts to effect cure, but may use its reasonable discretion in exercising its rights and remedies against Landlord in order to obtain the right to effect such cure. Any defaults that are inherently incurable by definition (such as the failure to give notice within a prescribed time period that has elapsed or bankruptcy) shall be deemed cured by Foreclosing Party following acquisition by Foreclosing Party of title to and possession of the Property. Unless Tenant shall have fully complied with the provisions of this Paragraph, no termination (except pursuant to Paragraph xx of this Agreement), cancellation, surrender or acceptance of surrender of the Lease (for whatever reason, and whether by mutual agreement of Landlord and Tenant or otherwise) shall be binding upon any Foreclosing Party or affect any assignment, lien or mortgage in favor of any Foreclosing Party, unless Agent shall have given its prior written consent. Tenant acknowledges and agrees that any Foreclosing Party may from time to time advance additional sums to Landlord and that such advances shall be secured by the lien of such Foreclosing Party's Deed of Trust, but Foreclosing Party shall have no duty to require Landlord to use such funds for the improvement or maintenance of the Property or Leased Premises. Nothing contained in this Paragraph xx is intended to or shall be construed or interpreted to limit, modify, or otherwise affect the rights and obligations of the parties under Paragraph xx.

ATTACHMENT G

SAMPLE SUBLEASE RECOGNITION CLAUSE

1.1 **Sublease Recognition**. If Landlord elects to terminate this Lease due to the occurrence of an Event of Default, or if Tenant rejects this Lease in the course of a bankruptcy proceeding, Landlord agrees to recognize any sublease that Tenant entered into during the Term pursuant to the requirements set forth in Section Y **[assignment/subletting clause]** of this Lease (the "**Authorized Sublease**") as a contract between Landlord and the subtenant. Such recognition shall be effective as of the date of the termination or rejection of this Lease, as applicable (the "**Recognition Date**"), and Landlord shall not disturb the subtenant's possession and occupancy of the sublet premises during the term of the Authorized Sublease; provided that:

(a) The subtenant, on the Recognition Date, meets or exceeds the standards set forth in Section Y of this Lease;

(b) On the Recognition Date, the subtenant is neither:

(1) In default under the Authorized Sublease; nor

(2) An affiliate of Tenant;

(c) The Rent per square foot to be paid by the subtenant under the Authorized Sublease (the "**Recognition Rent**") equals or exceeds the higher of:

(1) The Rent per square foot then due under this Lease;

(2) The Rent per square foot then due under the Authorized Sublease; or

(3) The prevailing market rent for comparable space in the **[Building/Center]**;

(d) If the square footage of the sublet premises equals less than one hundred percent (100%) of the square footage of the Premises, Landlord determines, in its sole discretion, that:

(1) The sublet premises are of a size and configuration that is leasable; and

(2) The remaining space within the Premises is of a size and configuration that is leasable;

(e) The subtenant agrees in the Authorized Sublease that as of the Recognition Date it shall:

(1) Attorn to and accept Landlord as its direct sublandlord under the Authorized Sublease for the remainder of the term under the Authorized Sublease;

(2) Comply with the applicable terms and conditions of this Lease and perform all obligations of Tenant under this Lease with respect to the sublet premises; and comply with all the terms and conditions of the Authorized Sublease, and perform all of its obligations thereunder;

(3) Pay directly to Landlord the Recognition Rent and all other amounts payable under the Authorized Sublease, when due thereunder;

(4) Pay directly to Landlord Tenant's proportionate share of Additional Rent, escalations, and all other amounts required to be paid by Tenant under this Lease with respect to the sublet, when due hereunder;

(5) Deliver to Landlord a security deposit equal to **[insert #, e.g., 2]** months' Recognition Rent; and

(6) Neither exercise, nor cause Tenant to exercise on the subtenant's behalf, the rights of Tenant that are set forth in Sections **[insert #s of sections that grant special rights or options to tenant]** of this Lease;

(f) The subtenant agrees in the Authorized Sublease that Landlord, its successors, and assigns shall not be:

(1) Subject to any credits, offsets, defenses, or claims that the subtenant might have against Tenant;

(2) Liable for any act or omission of Tenant;

(3) Bound by any covenant to undertake, complete, or pay for any improvement to the sublet premises; or

(4) Required to account for any security deposit other than the security deposit actually received by Landlord or its successors and assigns;

(g) As of the Recognition Date, the subtenant agrees in the Authorized Sublease that Landlord may communicate directly with and proceed directly against the subtenant, with or without notice to or the involvement of Tenant, to enforce all of the obligations of Tenant under this Lease or the obligations of subtenant under the Authorized Sublease with respect to the sublet premises;

(h) The subtenant agrees in the Authorized Sublease that Landlord shall not be bound by any provision in the Authorized Sublease that:

(1) Creates any rights or remedies in the subtenant that are greater than the rights of Tenant under this Lease; or

(2) Increases Landlord's obligations under this Lease;

(i) If this Lease terminates due to the occurrence of an Event of Default, Tenant remains primarily liable for the performance of all of its agreements, covenants, obligations under this Lease (including, without limitation, the obligation to pay the full amount of all Minimum Rent, Additional Rent, and other sums, charges, and reimbursements set forth in this Lease), and any payment obligations that arise in connection with any act or omission of any subtenant;

(j) If Landlord, in its sole discretion, agrees to amend, transfer, renew, extend, or modify the Authorized Sublease, or to sign a lease with the subtenant directly, Tenant remains primarily liable for all payment and performance obligations of Tenant under this Lease; and

(k) Landlord's lender, if any, has approved the Authorized Sublease, if such approval is necessary.

1.2 **Personal Right**. This right of recognition of an Authorized Sublease is personal to the initial Tenant under this Lease and is not transferable to any assignee or subtenant of the initial Tenant.

1.3 **Indemnification**. Tenant hereby indemnifies Landlord from and against any brokerage commissions, finders' fees, or any other charges that may arise in connection with the Authorized Sublease.

1.4 **Survival**. This Clause shall survive the expiration or earlier termination or rejection of this Lease.

SAMPLE TENANT CHECKLIST FOR OFFICE LEASE

DLA Piper Rudnick Gray Cary US LLP

1. **TENANT:** Set forth exact legal entity

2. **LANDLORD**: Set forth exact legal entity and financing statements of the entity signing the Lease

3. **ADDRESS OF BUILDING:**

4. **DESCRIPTION OF PREMISES AND FLOOR PLAN:**

5. **METHOD OF MEASUREMENT**:

   A. If BOMA seeks to exclude space below ground floor, on roof, patios, and outside perimeter walls.

   B. Right to remeasure or stipulate.

   C. See Exhibit A for remeasurement rights.

   D. If Building and Premises exist, the parties should measure such space prior to Lease execution and stipulate as to the square footage.

6. **COMMENCEMENT DATE:**

   A. If Landlord constructs the Tenant Improvements, the Commencement Date should be the earlier of (1) x number of weeks (depending on size of Lease) after Landlord has substantially completed, or would have substantially completed, had Tenant Delays not occurred, the Tenant Improvements and obtained a certificate of occupancy (or its equivalent) for the Premises and the Building or (2) the day Tenant commences business operations from the Premises.

   B. If Tenant constructs the Tenant Improvements, the Commencement Date should be the earlier of (1) the date Tenant commences business operations from the Premises and (2) x number of months (depends on size of lease) which is normally referred to as the design, construction and move-in period ("DCMI Period") after the later of the date that (a) the lease is fully signed (b) Tenant receives a

fully-executed SNDAA, (c) Tenant receives the "as built" plans and specifications for the Premises and the Building, (d) Tenant receives Landlord's Building Standards, (e) Tenant receives Landlord's Construction Rules and Regulations and (f) Tenant receives access to the Building and possession of the Premises so it can constructs its Tenant Improvements and move into the Premises without disruption. Almost always, Tenant should receive items (c), (d) and (e) at least 30 days prior to lease execution and (f) need not occur until _x_ weeks after Lease execution.

The DCMI Period should be extended one (1) day for each day Tenant is actually delayed in designing, constructing and moving into its Premises as a result of a Landlord Delay and/or Force Majeure Delays.

C. Notices: Regardless of whether Landlord constructs or Tenant constructs, no Landlord Delay, Tenant Delay or Force Majeure Delay should be deemed to have occurred until and unless the party claiming the delay has sent a factually correct notice of the facts, events and/or circumstances that caused the delay and the party receiving such notice has not corrected same on the same day it receives the notice.

D. Delays: Force Majeure Delays, Landlord Delays and Tenant Delays need to be carefully defined. See Exhibit B for typical work letters provisions that sets forth the sample definition and notice provisions.

E. Drop Dead Cancellation Dates: Tenant needs to have cancellation rights if Landlord does not deliver possession, etc. on certain dates and a series of milestone cancellation rights needs to be considered for new buildings to be constructed and/or "penalties" for late delivery.

7. **PRO RATA SHARE**: RSF in Premises divided by RSF in the Building.

8. **RENT**: Set forth exact rates (and increases, if any): net, modified gross, or gross (be specific).

9. **TERM AND EARLY TERMINATION RIGHTS**: The length of the Lease Term needs to be precisely set forth. For Leases of 10 years or longer, Tenant should seek right to terminate Lease on 12 months' notice anytime after 7th anniversary of Commencement Date and pay unamortized Tenant Improvement Allowance, free rent and commission.

10. **ESCALATION**: In Net Lease, Tenant pays its Pro Rata Share of all Operating Costs, Taxes and Insurance (collectively, "Operating Expenses"). In Gross Lease, Tenant pays its Pro Rata Share of all increases in Operating Expenses over a Base Year.

11. **BASE YEAR**: Only in Gross Lease and is typically either the first 12 months following the Commencement Date or the calendar year in which the Commencement Date is expected to occur (if during the first six (6) months of a calendar year) or the first full calendar year following the Commencement Date (if expected to occur during the last four (4) months of the calendar year).

12. **GROSS-UP PROVISION**: Unless Tenant is leasing an entire building on a net basis, the gross-up provision should always be 100% of the Operating Expenses that would have been incurred if the Building was 100% leased and occupied during the entire calendar year, with all occupants paying full rent as contracted with free rent, half rent and the like and the Building fully assessed. Make sure Base Year is grossed up.

13. **OPERATING EXPENSE EXCLUSIONS AND NUANCES**: See Exhibit C attached which addresses these exclusions, including Proposition 13, Proposition 8, Capital Expenditures, Vacancy Credits and Base Year Protections.

14. **AUDIT RIGHTS**: Depending on size of the Lease, Tenant should insist on having one (1) to three (3) years to inspect, audit and copy Landlord records using whomever it chooses as long as a confidentiality agreement is signed. Tenant to be paid back for overcharges, typically with interest if overcharge exceeds 2% and typically to be reimbursed its audit fee if overcharge exceeds 5%. If dispute, have dispute decided by arbitration.

15. **USE**: Tenant wants as broad as possible including permission for incidental uses to its operation (kitchens, classrooms, printing facilities, health facilities, dining areas, etc.). Tenant also should want to be able to expand its uses, and remove restrictions, to the extent Landlords start to lease above-ground floor space to governmental entities, schools, doctors, dentists, etc.

16. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("SNDAA")**: For any lease of significant size, duration or economic investment by Tenant where Tenant does not want its lease to terminate because Landlord defaults on its obligations to a lender, ground lessor, lienholder or major encumbrance holdover (individually

and collectively, "Lienholders"), Tenant must obtain an SNDAA from each such Lienholder existing on the date Tenant executes the Lease and as a condition precedent to any subsequent subordination.

A. Make sure Lease contains certain offset rights for Landlord's failure to pay T.I. allowance (or fund other concession) or Landlord's failure to construct T.I.'s with such rights not waived, and in fact recognized in, the SNDAA.

B. See Exhibit D for SNDA form to be used by Tenant and Exhibit D1 for separate provisions to be inserted in the Lease.

17. **TITLE REPORT**: Tenant should obtain Title Report to verify ownership by Landlord and existence of all major Lienholders.

18. **NAME OF LENDER AND OTHER LIENHOLDERS**: Prior to entering into serious lease negotiations, Tenant needs to confirm the names of the Lender and Lienholders and that they will grant the appropriate SNDA protection to Tenant.

19. **LANDLORD SERVICES**: Tenant should require Landlord to keep the Building in first-class condition and repair and to operate the Building in a first-class manner and to provide and set forth:

A. Normal Business Hours and Holidays typically 8 to 6 M-F and 9 to 2 on Saturday (obviously longer hours are better).

B. Janitorial Services (attach specifications) and see Exhibit E for sample.

C. Electricity (attach specifications).

D. HVAC (attach specifications). In soft markets, some Landlords are granting 10 free after-hours HVAC per week.

E. Elevator Service (set forth specifications and/or standards). Make sure in major high rise buildings that 2 elevators are in operation after normal business hours.

F. Security Specifications. Allow Tenant to install own security system and to interface with Landlord's system as long as a Design Problem does not exist. Seek right for security guard escort to vehicles after hours. Seek right to use Base Building stairwells to move between floors.

G. Access to Building, Premises and Parking 24/7

H. Water

I. Remove Mold whenever it appears.

20. **EXCESS SERVICES AND UTILITIES.** Tenant should insist that Landlord provide, upon request by Tenant and to the extent the Building Structure and Building Systems are capable of providing same, extra and after-hour services and utilities.

21. **ACTUAL COSTS:** Tenant should seek to pay Landlord for after-hour, and excess, utilities and services at Landlord's actual incremental out-of-pocket costs incurred in providing same without a mark-up or charge for overhead, profit, depreciation or administrative costs (except to the extent it is not duplicative of administrative costs included in Operating Expenses).

22. **ASSIGNMENT AND SUBLETTING RIGHTS:** Tenant needs:

A. The right to assign or sublease to affiliated companies of Tenant, its parent and its subsidiaries.

B. Tenant needs to limit the right of Landlord to reject transferees. Ideally, Landlord should not have right to reject if use restrictions are complied with, transferee is comparable in quality to other tenants of the Building, the Project or of comparable buildings in the vicinity of the Building and which transferee will not cause Landlord to be in violation of an exclusive grant to others. Tenant should not agree to restrictions on leasing to other tenants in the Building and have a provision in its own Lease allowing Tenant to sublease from, or take an assignment from, other tenants in the Building even if a restriction exists in such other tenant's lease.

C. Tenant should seek to avoid granting Landlord recapture rights and profit-splitting.

D. Tenant should insist that its remedies for Landlord's failure to properly consent will be at least for monetary damages and/or specific performance but never limit to any action for specific performance.

E. Tenant should seek exception for occupancy by others.

F. If Tenant needs to give Landlord rights to "Recapture" make sure it is prior to Tenant going to market place.

(i) If Landlord elects to terminate the Lease, Tenant should be released from liability

(ii) If Landlord only has right to recapture part of space and/or all or part of the space for less than the entire Lease Term, Tenant should seek to impose upon Landlord the obligation to pay for demising walls and to return space required in a bargained for condition.

G. Tenant needs to be able to get recognition agreements for its subtenants in order to be able to effectively find subtenants of quality.

H. If Tenant is required to share profits, make sure Tenant recovers all subleasing and assignment costs up front, inclusive of brokerage commission, attorneys' fees, Tenant Improvement Allowance and other economic concessions, downtime, and unamortized costs of Tenant Improvements paid for by Tenant separate and apart from the Tenant Improvement Allowance contribution by Landlord. See Exhibit F for typical provisions protecting Tenant on definition of profits.

23. **RIGHT TO TERMINATE FOR DAMAGE AND DESTRUCTION, ETC.:**

A. Normally Tenant and Landlord should each have the right to terminate Lease if Building and Tenant Improvements cannot be fully reconstructed within X months. The X months differ based on size of space and whether Landlord accepts the responsibility to also rebuild the Tenant Improvements.

B. If Building and Tenant Improvements can be reconstructed within X months then neither party can terminate and Landlord should reconstruct the Base Building and Tenant Improvements ASAP with Tenant to receive rent abatement dating back to date of damage.

C. If neither party elects to terminate, then Landlord shall reconstruct the Base Building and Tenant Improvements as soon as reasonably possible.

D. If Landlord has obligation to restore or accepts obligation to restore, but does not complete full restoration of Base Building within X months, which should get extended for

Force Majeure Delays, (with a "cap" as to Force Majeure Delays) then Tenant should get 2nd right to terminate.

E. Tenant's right to terminate and/or receive rent abatement should not be tied to "fault" since Landlord receives insurance proceeds for reconstruction and lost rent from insurance policies paid for by Tenant. (See Exhibit G for Rent Abatement and Exhibit H for right to Terminate Provision).

24. **RIGHT TO RENT ABATEMENT FOR DAMAGE AND DESTRUCTION, ETC.:** See Exhibit H.

25. **TENANT SELF-HELP--RIGHT TO REPAIR:** Tenant needs to be in a position to make repairs when Landlord does not fulfill its repair and maintenance obligations. See Exhibit I.

26. **ESTOPPEL CERTIFICATE:**

A. Landlord needs to get right to require Tenant to certify certain specific provisions of the Lease (Term, Premises, Expansion Rights, Exclusive Rights, No Right to Purchase, Rent and Rent Bumps, Signage, Commencement Date, Expiration Date, neither party in default, etc., to assist Landlord in obtaining refinancing and/or to sell the Building.

B. Tenant needs a reciprocal right to receive an Estoppel Certificate to assist Tenant in connection with assignments, subleases, sale of business, mergers, etc.

C. Time limits to return Estoppel Certificate and consequence for failure to timely return are easier to negotiate when right to receive estoppel certificate is mutual.

D. Tenant needs to be careful when reviewing the estoppel certificate to make sure it reconfirms the provision of the Lease rather than amend the Lease.

E. Tenant should consider seeking payment from Landlord if more than 2 requests for Estoppel Certificate are made in any 12-month period or if the provision of the Estoppel Certificate submitted by Landlord are materially incorrect.

27. **EXPANSION AND CONTRACTION RIGHTS:**

A. Fixed Expansion Rights

1) How many

2) When – 4 yrs, 8 yrs, 12 yrs

3) Delivery Date – Window for + or – 6 mo.

4) Notice

5) Size

6) Location

7) Commencement Date

8) Rent – FMRR

9) Non-Subordinate

10) No Event if Default

B. ROFO

1) Once or Continuing

2) Covering _____ Space

3) All or Breakup

4) Subordinate

5) Where Located

6) Delivery Date - Window

7) Commencement Date

8) Rent FMRR

C. Contraction Rights

May give back _x_ square feet anytime after ____ anniversary of Commencement Date on 12 months' notice and payment of unamortized Tenant Improvements, commission and free rent.

FAIR MARKET RENTAL RATE: The term "Fair Market Rental Rate" shall mean the annual amount per rentable square foot that Landlord has accepted in current transactions between non-affiliated parties from new, non-expansion, non renewal and non equity tenants of comparable credit-worthiness, for comparable space, for a comparable use for a comparable period of time ("Comparable Transactions") in the Building, or if there are not a sufficient number of Comparable Transactions in the Building, what a comparable landlord of a comparable building in the vicinity of the Building with comparable vacancy factors would accept in Comparable Transactions. In any determination of Comparable Transactions appropriate consideration shall be given to the annual rental rates per rentable square foot, the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, the type of escalation clause (e.g., whether increases in additional rent are determined on a net or gross basis, and if gross, whether such increases are determined according to a base year or a base dollar amount expense stop), the extent of Tenant's liability under the lease, abatement provisions reflecting free rent and/or no rent during the period of construction or subsequent to the commencement date as to the space in question, brokerage commissions, if any, which would be payable by Landlord in similar transactions, length of the lease term, size and location of premises being leased, building standard work letter and/or tenant improvement allowances, if any, and other generally applicable conditions of tenancy for such Comparable Transactions. The intent is that Tenant will obtain the same rent and other economic benefits that Landlord would otherwise give in Comparable Transactions and that Landlord will make, and receive the same economic payments and concessions that Landlord would otherwise make, and receive in Comparable Transactions. If, for example, after applying the criteria set forth above, Comparable Transactions provide a new tenant with comparable space at Thirty Two Dollars ($32) per rentable square foot, with a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements, four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance, a "lease takeover" obligation in the amount of One Hundred Thousand Dollars ($100,000), a brokerage commission of Fifty Thousand Dollars ($50,000), and certain other generally applicable economic terms, the Fair Market Rental Rate for Tenant shall not be Thirty Two Dollars ($32) per rentable square foot only, but shall be the equivalent of Thirty Two Dollars ($32) per rentable square foot, a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements or three (3) months' additional free rent in lieu of such construction, an

additional four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance or payment in lieu of such allowance, One Hundred Thousand Dollars ($100,000) cash payment in lieu of a lease takeover, a payment to Tenant's then broker of a Fifty Thousand Dollar ($50,000) brokerage commission (or if Tenant is not then represented by a broker, Tenant shall receive a rent credit in the amount of the brokerage commission that Landlord would have otherwise been required to pay) and such other generally applicable economic terms. The Fair Market Rental Rate shall be determined in accordance with non-baseball arbitration with the arbitrator being a real estate leasing lawyer or broker.

28. **CONSENT STANDARD – GENERAL REASONABLENESS:**

Except as otherwise provided herein (and except for matters which (1) could have an adverse effect on the structural integrity of the Building Structure, (2) could have an adverse effect on the Building Systems, or (3) could have an effect on the exterior appearance of the building, whereupon in each such case Landlord's duty is to act in good faith and in compliance with the Lease), any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld, conditioned or delayed. Whenever the lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations (other than decisions to exercise expansion, contraction, cancellation, termination or renewal options), Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated tenant or landlord concerning the benefits to be enjoyed under the lease.

29. **PARKING:**

A. Where Located

B. Reserved

C. Unreserved

D. Single or Tandem

E. Right or Right and Obligation

F. Rights to Give Up and Take Back

G. Valet

H. Call Down

I. Cost – Monthly – (Control Increases)

J. Discount on Validations

K. Security

L. Access 24/7

30. **SIGNAGE:**

A. Building Top

B. Eyebrow

C. Monument

D. Exclusive

E. Transferability

F. Change of Name

G. Locations

H. Lighting

I. How Installed

J. How Removed

K. Restrictions on Other Signage (see Exhibit J)

L. Building Clad (see Exhibit K)

M. Directory Board

31. **SURRENDER CONDITION:**

A. As initially improved and subsequently altered, reasonable wear and tear and damage from casualty excepted.

B. No obligation to repaint.

C. No obligation to repair or replace wall or floor coverings.

D. No obligation to patch or repair small holes in floor or walls.

E. No obligation to remove interconnecting stairwell.

32. **LANDLORD'S BASE BUILDING WORK:**

Landlord will provide the following at its expense:

1. The HVAC distribution main loop shall be in place, tight to the slab above, and provide for the installation of VAV mixing boxes, flex duct and linear slot diffusers installed at the window line.

2. Electrical service to the electrical closed on each floor proposed, with 120/208 volt power panels and circuit breakers in place, along with an isolated grounding system.

3. Interior surfaces of the exterior walls and all columns shall be finished in drywall; taped, speckled and sanded, primed and ready for paint.

4. Risers from street level to Tenant's Premises of sufficient size to accommodate wire, conduits and cables for a major modern business office.

5. All work in common areas of the Building, including, but not limited to, common corridors and common elevator lobbies shall be completed.

6. The automatic sprinkler system main loop shall be fully completed, operational and tested in accordance with NFPA requirements.

7. All building standard restroom work shall be completed and meet all ADA requirements.

8. Floor slabs shall be flash patched to achieve a level, smooth surface and prepped for carpet installation with no more than 1/8 inch deflection per 10 square feet on a non-cumulative basis. All vertical penetrations shall be sealed and fireproofed.

9. Connection "stub outs" shall be available for vent, hot and cold water at all wet columns.

10. Connection point installed on the floor(s) for fire alarm system. The complete core fire detection system shall be installed, operating and tested in accordance with NFPA requirements.

11. Exterior window coverings to be furnished and installed by Landlord.

33. **T. I. ALLOWANCE:**

A. How Much

B. Restriction on Use

C. Use for F, F & E

D. Credit Against Rent for Unused

E. Non-Forfeiture

F. Offset with Interest for Non-Payment

G. Exhaust Landlord Allowance First

34. **OTHER WORK LETTER ISSUES:**

A. Have Landlord bid Tenant Improvement work when it is a Landlord construct work letter.

B. Miscellaneous Charges. Have Landlord agree to provide, and not charge Tenant or its contractors, subcontractors, architects and project coordinators, parking, electricity, HVAC, water, freight elevator, hoists and loading dock during the design, construction and move-in period.

C. Have Landlord agree to reimburse Tenant for costs incurred in excess of the costs that would have otherwise been incurred because the Base Building was not in the required condition at the time space was delivered to Tenant, because Hazardous Materials (including Mold and Asbestos) existed in the Premises, because the Premises and Building were not otherwise in compliance with all Applicable Laws (defined as any law, statute, ordinance or other governmental rule, regulation or requirement now or hereafter in effect, including, without limitation, the Americans with Disability Act of 1990 (as amended and supplemented by further laws from time to time) and local enactments thereof and promulgations thereunder) that are applicable to new construction, disregarding variances and grandfathered rights.

D. Staging Area.

E. See Exhibit L for sample Work Letters.

35. **DESIGN PROBLEM APPROVAL CRITERIA**:

Tenant needs to have assurances that once the lease is executed, it can construct its tenant improvement and subsequent alterations in a manner which will allow Tenant to efficiently and effectively operate its business. Accordingly, Landlord may not withhold or condition its consent unless the making or installation of the improvements or alterations (a) adversely affects the Building Structure, (b) adversely affects the Building Systems, (c) do not comply with applicable laws, (d) affect the exterior appearance of the Building, or (e) would unreasonably interfere with the normal and customary business operations of the other tenants in the Building (individually and collectively, a "Design Problem"). Tenant may make cosmetic changes such as painting, wall coverings, floor coverings and movable work stations without Landlord's consent.

36. **HAZARDOUS MATERIALS:**

A. Have Landlord represent that no Hazardous Materials exists except as follows: _____, _____, _____.

B. Have Landlord indemnify Tenant from any liability incurred by Tenant as a result of Hazardous Materials in the Building not placed therein by Tenant.

C. Exclude Tenant from liability to Landlord for Hazardous Materials in Building and/or Premises not placed therein by Tenant.

D. Have Landlord be required to remove Mold immediately upon discovery at Landlord's sole cost and expense except to the extent created by Tenant.

E. Have Landlord not be allowed to include in Operating Expenses costs associated with Hazardous Materials for removal, remediating, reporting and monitoring to the extent such Hazardous Materials existed in the Project prior to Lease execution.

37. **HOLDING OVER**: Keep at 10% for first 30 days,
25% for next 30 days,
50% thereafter,
plus no consequential damages for first 30 days.

38. **WAIVER**: Make mutual.

39. **INSURANCE**:

A. Make sure Landlord insures Building and has Rent Continuation Insurance.

B. Make sure there is a Waiver of Subrogation.

C. Test for Insurance Company Rating by Best should be A-VII.

D. If Tenant is big enough, allow for self insurance.

E. Tenant to insure Tenant Improvements, furniture, fixtures and equipment, personal property.

F. Both Landlord and Tenant to carry Commercial General Liability Coverage

40. **DEFAULTS** Any time a payment is due from Landlord to Tenant or from Tenant to Landlord, and if a specific time period is not set forth in the Lease, the payment will be deemed due in thirty (30) days. There shall be only one event of default by Landlord (see Exhibit M). There shall be only two events of default by Tenant (nonpayment or nonperformance of a lease provision) (see Exhibit N). If Landlord files for bankruptcy protection, Tenant may remain in the Premises even if the lease is rejected (see Exhibit O).

41. **USE OF ROOF**: As long as a Design Problem is not created, Tenant should be allowed to install on the roof, and have access thereto for repairs and maintenance, antenna, satellite dishes, and supplemental HVAC system.

42. **RESTRICTIONS ON LEASING BY LANDLORD:** Landlord agrees that it will not, during the primary lease term (as it may be extended) lease any space in the Building to any other tenant, or consent to a sublease or an assignment, to either (i) any other person or entity whose business is in direct competition with Tenant ("Competitor") or (ii) an entity or person that conducts a business or connotes an image that adversely conflicts with the corporate and public image of Tenant as a major corporation conscious of maintaining a reputation for integrity, financial reliability, and for good corporate and moral citizenship. In the event that Landlord violates its agreement set forth in this Section, Tenant shall have, in addition to all other remedies which it may have under the lease or at law, the right to terminate this lease upon notice to Landlord, in which case this lease shall terminate on the date set forth in Tenant's notice as if that were the date set forth in the lease for the natural expiration thereof.

Exhibit A

BOMA Method of Measurement. The rentable ("RSF") and usable ("USF") areas of the Premises and the Building shall be determined in accordance with the standards set forth in ANSI Z65.1-1996, as promulgated by the Building Owners and Managers Association provided that in no instances shall the RSF or USF include any space below the ground floor, on the roof, or outside the perimeter walk ("BOMA Standard"). Landlord and Tenant shall each have the right, upon notice delivered to the other party within ninety (90) days following the date Tenant commences business operations from the Premises to remeasure the Premises and the Building. Landlord and Tenant shall have a parallel right to remeasure any expansion space leased by Tenant within ninety (90) days following the date Tenant commences conducting business therefrom. In the event that any remeasurement pursuant to the terms of this Section indicates that the square footage measurement previously set forth in the Lease or otherwise agreed upon by Landlord and Tenant is in excess of or lower than the square footage number which would have resulted had the BOMA Standard been properly utilized, any payments due either party (or other rights between Landlord and Tenant) based upon the amount of square feet contained in the Premises shall be proportionally, retroactively and prospectively reduced or increased, as appropriate, to reflect the actual number of square feet as properly remeasured under the BOMA Standard. If either party disagrees with the other party's remeasurement and if a dispute occurs regarding the final accuracy of the measurement of the Premises and the Building in accordance with the BOMA Standard, such dispute will be resolved pursuant to binding arbitration pursuant to the Section __ [Arbitration].

Exhibit B

A. Delay of Commencement Date. The Commencement Date shall be delayed by one (1) day for each day of delay in the substantial completion of the design and construction of the Tenant Improvements and in the move into the Premises that is caused by any Force Majeure Delay or Landlord Delay. No Landlord Delay or Force Majeure Delay shall be deemed to have occurred unless and until the party claiming such delay has provided written notice to the other party specifying the action or inaction that such notifying party contends constitutes a Landlord Delay or Force Majeure Delay, as applicable. If such action or inaction is not cured within one (1) day after receipt of such notice, then a Landlord Delay or Force Majeure Delay, as set forth in such notice, shall be deemed to have occurred commencing as of the date such notice is received and continuing for the number of days the substantial completion of the Premises was in fact delayed as a direct result of such action or inaction.

B. Certain Definitions.

(i) Force Majeure Delay. The term "Force Majeure Delay" as used in the Lease or this Agreement shall mean any delay in the completion of the Tenant Improvements which is attributable to any: (1) actual delay or failure to perform attributable to any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto), civil disturbance, future order claiming jurisdiction, act of a public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (2) delay attributable to the failure of Landlord and/or Tenant to secure building permits and approvals within the same time period that normally prevailed for obtaining such permits at the time this Lease was negotiated, which time period Landlord and Tenant hereby stipulate to be [*_____ (_)*] weeks; (3) delay in completing the Final Plans and/or the construction of the Tenant Improvements because of changes in any Applicable Laws (including, without limitation, the ADA), Base Building Plans or Building Requirements, or the interpretation thereof; or (4) delay attributable to lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry-wide or Building-wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage due to any Force Majeure Delay shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money, including rental and other charges, pursuant to the Lease).

(ii) Landlord Delay. The term "Landlord Delay" as used in the Lease or this Agreement shall mean any delay in the completion of the Tenant Improvements which is due to any act or omission of Landlord (wrongful, negligent or otherwise), its agents or contractors (including acts or omissions while acting as agent or contractor for Tenant). The term Landlord Delay shall include, but shall not be limited to any: (1) delay in the giving of authorizations or approvals by Landlord; (2) delay attributable to the acts or failures to act, whether willful, negligent or otherwise, of Landlord, its agents or contractors, where such acts or failures to act delay the completion of the Tenant Improvements; (3) delay attributable to the interference of Landlord, its agents or contractors with the completion of the Tenant Improvements or the failure or refusal of any such party to permit Tenant, its agents or contractors, priority access to and priority use of the Building or any Building facilities or services, including [***hoists**,*] freight elevators, passenger elevators, and loading docks, which access and use are

required for the orderly and continuous performance of the work necessary to complete the Tenant Improvements; (4) delay attributable to Landlord giving Tenant incorrect or incomplete Building Requirements or Base Building Plans, or revisions made to such Building Requirements or Base Building Plans subsequent to the delivery of such items to Tenant (collectively, "Incomplete Plans") in either case, in addition to such delay being deemed a Landlord Delay, Landlord shall increase the Tenant Improvement Allowance by an amount sufficient to reimburse Tenant for the increased costs incurred by Tenant as a result thereof; (5) failure of Landlord to deliver the Base Building Plans and/or the Building Requirements to Tenant at [*__least one (1) month__*] prior to the execution of the Lease; (6) delay by Landlord in the substantial completion of the Base Building prior to the commencement of the Move-In Period; (7) delay attributable to Landlord's failure to allow Tenant sufficient access to the Building and/or the Premises during the Move-In Period to move into the Premises over one (1) weekend; (8) delay by Landlord in administering and paying when due the Tenant Improvement Allowance (in which case, in addition to such delay being deemed a Landlord Delay, Tenant shall have the right to stop the construction of the Tenant Improvements); and (9) delay caused by the failure of the Base Building to comply with the Applicable Laws which are applicable to new construction. In the event that the use of the freight elevators [*__and/or hoists__*] is not sufficient to meet Tenant's requirements, Landlord shall cause to be made operational, and shall allow Tenant to have priority usage of, [*__two (2)__*] passenger elevators in the elevator bank that services the Premises in order to assist Tenant in the expeditious construction of the Tenant Improvements and the installation of Tenant's fixtures, furniture and equipment. In no event shall Tenant's remedies or entitlements for the occurrence of a Landlord Delay be abated, deferred, diminished or rendered inoperative because of a prior, concurrent, or subsequent delay resulting from any action or inaction of Tenant.

Exhibit C

OPERATING EXPENSE EXCLUSIONS

Notwithstanding anything to the contrary in the Lease, Operating Expenses shall not include the following except to the extent specifically permitted by a specific exception to the following:

(1) Any ground lease rental;

(2) Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied or otherwise ("Capital Items"), except for (A) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, incurred by Landlord after the Commencement Date for any capital improvements installed or paid for by Landlord and required by any new (or change in) laws, rules or regulations of any governmental or quasi-governmental authority which are enacted after the Commencement Date; (B) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, or any equipment, device or capital improvement purchased or incurred as a labor-saving measure or to affect other economics in the operation or maintenance of the Building (provided the annual amortized costs does not exceed the actual cost savings realized and such savings do not redound primarily to the benefit of any particular tenant other than Tenant); or (C) minor capital improvements, tools or expenditures to the extent each such improvement or acquisition costs less than five thousand dollars ($5,000);

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

(4) Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds, and costs of all capital replacements, regardless of whether such repairs are covered by insurance (except if permitted under subsection (ii) above) and cost of earthquake repairs in excess of twenty-five thousand dollars ($25,000) per earthquake (which for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to such initial earthquake);

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

(6) Depreciation, amortization and interest payments, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services' all as determined in accordance

with generally accepted accounting principles, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;

(7) Marketing costs including without limitation leasing commissions, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building;

(8) Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Building;

(9) Overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Building to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis for comparable buildings;

(10) Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or the Land (except as permitted in subsection (ii) above);

(11) Landlord's general corporate overhead and general and administrative expenses;

(12) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord and/or all fees paid to any parking facility operator (on or off site);

(13) Rentals and other related expenses incurred in leasing HVAC systems, elevators or other equipment ordinarily considered to be Capital Items, except for: (A) expenses in connection with making repairs on or keeping Buildings Systems in operation while repairs are being made and (B) costs of equipment not affixed to the Building which is used in providing janitorial or similar services;

(14) Advertising and promotional expenditures and costs of signs in or on the Building identifying the owner of the Building or other tenant's signs;

(15) The cost of any electric power used by any tenant in the Building in excess of the Building-standard amount, or electric power costs for which any tenant directly contracts with the local public service company or of which any tenant is separately metered or sub-metered and pays Landlord directly; provided, however, that if any tenant in the Building contracts directly for electric power service or is separately metered or sub-metered during any portion of the relevant period, the total electric power costs for the building shall be "grossed up" to reflect what those costs would have been had each tenant in the Building used the Building-standard amount of electric power;

(16) Services and utilities provided, taxes attributable to, and costs incurred in connection with the operation of the retail, parking (to the extent same services the retail operations of the

Project), and restaurant operations in the Building, except to the extent the square footage of such operations are included in the rentable square feet of the Building and do not exceed the services, utility and tax costs which would have been incurred had the retail and/or restaurant space been used for general office purposes;

(17) Costs incurred in connection with upgrading the Building to comply with the current interpretation of disability, life, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including, without limitation, the ADA, including penalties or damages incurred due to such non-compliance;

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

(19) Costs for which Landlord has been compensated by a management fee, and any management fees in excess of those management fees which are normally and customarily charged by comparable landlord's of comparable buildings;

(20) Costs arising from the negligence or fault of other tenants or Landlord;

(21) Notwithstanding any contrary provision of the Lease, including, without limitation, any provision relating to capital expenditures, other than normal and customary office building maintenance materials and office supplies, any and all costs arising from the release of hazardous materials or substances (as defined by Applicable Laws in effect on the date the Lease is executed) in or about the Premises, the Building or the Land in violation of applicable law including, without limitation, hazardous substances in the ground water or soil, not placed in the Premises, the Building or the Land by Tenant;

(22) Costs arising from Landlord's charitable or political contributions;

(23) Costs arising during the contractual warranty period from construction defects in the base, shell or core of the Building or improvements installed by Landlord;

(24) Costs arising from any mandatory or voluntary special assessment on the Building or the Land by any transit district authority or any other governmental entity having the authority to impose such assessment in connection with the initial construction of the Building;

(25) Costs for sculpture, paintings or other objects of art;

(26) Costs (including in connection therewith all attorneys' fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitration pertaining to Landlord and/or the Building and/or the Land;

(27) Costs associated with the operation of the business of the partnership or entity which constitutes Landlord as the same are distinguished from the costs of operation of the Building, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be in issue), costs of

selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building, costs of any disputes between Landlord and its employees (if any) not engaged in Building operation, disputes of Landlord with Building management, or outside fees paid in connection with disputes with other tenants;

(28) Any increases of, or reassessment in, Real Property Taxes and assessments in excess of two percent (2%) of the taxes for the previous year, and any increase in Real Property Tax resulting from a change in ownership of Landlord or from major alterations, improvements, modifications or renovations to the Building or the Land (collectively, "Transfers") except that Operating Expenses shall include the portion of Real Property taxes resulting from or attributable to an assessed value of the Building and Land greater than the market value per rentable square foot at the inception of the lease resulting from a change in ownership, or;

(29) Costs of any "tap fees" or any sewer or water connection fees for the benefit of any particular tenant in the Building;

(30) Any expenses incurred by Landlord for use of any portions of the Building to accommodate events including, but not limited to shows, promotions, kiosks, displays, filming, photography, private events or parties, ceremonies and advertising beyond the normal expenses otherwise attributable to providing Building services, such as lighting and HVAC to such public portions of the Building in normal operations during standard Building hours of operation;

(31) Any entertainment, dining or travel expenses of Landlord for any purpose;

(32) Any flowers, gifts, balloons, etc. provided to any entity whatsoever, including, but not limited to, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents;

(33) Any "validated" parking for any entity;

(34) Any "finders fees," brokerage commissions, job placement costs or job advertising cost, other than with respect to a receptionist or secretary in the Building office, once per year;

(35) Any "above-standard" cleaning, including, but not limited to construction cleanup or special cleanings associated with parties/events and specific Tenant requirements in excess of service provided to tenant, including related trash collection, removal, hauling and dumping;

(36) The cost of any "tenant relations" parties, events or promotion not consented to by an authorized representative of Tenant in writing;

(37) "In-house" legal and/or accounting fees;

(38) Any other expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Operating Expenses by comparable landlords of comparable buildings.

(39) To the extent that an expense included in Operating Expenses includes an expense related to the Project and not the Building, then the word "Building" utilized in these exclusions shall mean, and be extended to include, the Project.

OTHER

In the event any facilities, services or utilities used in connection with the Building or the Project are provided from another building or project owned or operated by Landlord or vice versa, the cost incurred by Landlord in connection therewith shall be allocated to Operating Expenses by Landlord on a reasonably equitable basis.

Landlord further agrees that since one of the purposes of Operating Expenses and the gross up provision is to allow Landlord to require Tenant to pay for the costs attributable to its Premises and pro-rata share of Operating Expenses, Landlord agrees that (I) Landlord will not collect or be entitled to collect Operating Expenses from all of its tenants in an amount which is in excess of one hundred percent (100%) of the Operating Expenses actually paid by Landlord in connection with the operation of the Project. All assessments and premiums which are not specifically charged to Tenant because of what Tenant has done, which can be paid by Landlord in installments, shall be paid by Landlord in the maximum number of installments permitted by law if requested by Tenant and not included as Operating Expenses except in the year in which the assessment or premium installment is actually paid; provided, however, that if the prevailing practice in comparable buildings is to pay such assessments or premiums on an earlier basis, and Landlord pays on such basis, such assessments or premiums shall be included in Operating-Expenses as paid by Landlord.

Each time Landlord provides Tenant with an actual and/or estimated statement of Operating Expenses, such statement shall be itemized on a line item by line item basis, showing the applicable expense for the applicable year and the year prior to the applicable year.

In the event Tenant ceases to occupy a contiguous portion of the Premises constituting a full floor on any floor of the Premises for a period of more than thirty (30) consecutive days, then upon Tenant giving Landlord written notice thereof, Tenant shall receive a credit against Tenant's Pro Rata Share of Operating Expenses and Real Property Taxes equal to the charges, on a per square foot of rentable Area basis, for utilities and services (if Tenant has not elected to provide its own utilities and services and receive a separate credit, and HVAC not used by Tenant as a result of such vacancy during the period of such vacancy.

Payment of Taxes and Insurance Premiums: Gross Up. Notwithstanding any Sections of the Lease to the contrary, Tenant shall not be required to pay its Pro Rata Share of Real Property Taxes or insurance premiums on any basis of estimates or in monthly installments. Tenant shall only be required to pay such Pro Rata Share of Real Property Taxes or insurance premiums five (5) days prior to the date Landlord is required to pay such taxes or insurance premiums. Landlord shall bill Tenant for Tenant's Pro Rata Share of Real Property Taxes ten (10) days before Landlord is required to make payment of such taxes to the appropriate taxing authorities. Landlord shall bill Tenant for Tenant's Pro Rata Share of insurance premiums ten (10) days before Landlord is required to make payment of such insurance premiums to the appropriate insurer(s). Landlord shall in any year, including the Base Year, during which the Project is not one hundred percent (100%) occupied during the entire calendar year with all occupants paying full rent (as contrasted with free rent, half rent and the like), adjust such Operating

Expenses to what the Operating Expenses would have been had the Project been one hundred percent (100%) occupied during the entire calendar year and had all occupants been paying full rent (as contrasted with free rent, half rent, etc.).

"Real Property Taxes" shall mean all taxes, assessments (special or otherwise) and charges levied upon or with respect to the Project and ad valorem taxes on personal property used in connection therewith. Real Property Taxes shall include, without limitation, any tax, fee or excise on the act of entering into this Lease, on the occupancy of Tenant, the rent hereunder or in connection with the business of owning and/or renting space in the Project which are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision, public corporation, district or other political or public entity, and shall also include any other tax, assessment, fee or excise, however described (whether general or special, ordinary or extraordinary, foreseen or unforeseen), which may be levied or assessed in lieu of, as a substitute for, or as an addition to, any other Real Property Taxes. Landlord may pay any such special assessments in installments when allowed by law, in which case Real Property Taxes shall include any interest charged thereon. Real Property Taxes shall also include (except as restricted in the exclusion to Operating Expense Exclusions) legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Property Taxes; provided, however, notwithstanding anything to the contrary Real Property Taxes shall not include income, franchise, transfer, inheritance or capital stock taxes, unless, due to a change in the method of taxation, any of such taxes are levied or assessed against Landlord, in whole or in part, in lieu of, as a substitute for or as an addition to, any other tax which would otherwise constitute a Real Property Tax. For purposes of computing rent adjustments pursuant to this Article 5, Real Property Taxes shall be allocated and charged to Tenant in accordance with generally accepted accounting and management practices and expressed as an amount per square foot of Rentable Area. Tenant shall pay Real Property Taxes on any portion of the Tenant Improvements that are constructed by Tenant at a cost in excess of $30.00 per square foot of Rentable Area. Landlord shall seek a reduction in Real Property Taxes to the extent reasonably requested by Tenant, provided that Tenant shall pay directly for all of the costs of seeking such reduction in Taxes and Tenant shall be reimbursed for the amount of such costs that it pays out of any actual reduction in Real Property taxes achieved by such effort.

If Landlord receives a reduction in Real Property Taxes attributable to the Base Year as a result of a commonly called Proposition 8 application, the Real Property Taxes for the Base Year and each Lease Year shall be calculated as if no Proposition 8 reduction in Real Property Taxes was applied for and/or received.

If Landlord provided Tenant pursuant to this Lease a service or utility, the cost of which was included in Operating Expenses during the Base Year, then to the extent Tenant provides such service or utility itself, the cost of which was included in Operating Expenses during the Base Year, then to the extent Tenant provides such service or utility itself, the cost of providing same may be deducted by Tenant from the Rents next due and owing under this Lease, but not in an amount in excess of the corresponding amount included in Operating Expenses during the Lease Year that was attributable to Tenant's use of such service and/or utility during the Lease Year.

In the event Landlord incurs, subsequent to the Base Year, costs or expenses associated with or relating to separate items or categories or subcategories of Operating Expenses which were not part of Operating Expenses during the entire Base Year, Operating Expenses for the Base Year shall be deemed

increased by the amounts Landlord would have incurred during the Base Year with respect to such costs and expenses had such separate items or categories or subcategories of Operating Expenses been incurred in Operating Expenses during the entire Base Year.

In the event any portion of the Project is covered by a warranty or service agreement at any time during the Base Year and to the extent the Project is not covered by such warranty or service agreement during a subsequent Lease year, Operating Expenses for the Base Year shall be deemed increased by such amount as Landlord would have incurred during the Base Year with respect to the items or matters covered by the subject warranty, had such warranty or service agreement not been in effect at the time during the Base Year.

In the event that the property management agreement attributable to the Base Year changes, and a service that was previously performed pursuant to, and as a part of, such property management agreement, then such cost shall either be excluded from Operating Expenses or the Base Year shall be grossed up to reflect such cost of such performance.

If the Project is not fully assessed for Real Property Taxes during the Base Year, the Real Property Taxes shall be grossed up during the Base Year to reflect what they would have been had such Real Property Taxes been fully assessed.

In the event a service is added subsequent to the Base Year, and is included in Operating Expenses, the Base Year shall be grossed up to reflect what Operating Expenses would have been had such service been provided during the Base Year.

Landlord shall cause retail and restaurant operations in the Project to be separately metered in order to facilitate the computation and allocation of Project Expenses.

Exhibit D

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Agreement is made on _____, 200_, between _____ _____ ("Superior Mortgagee"), whose address is _____, _____ ("Landlord"), whose address is _____, and _____, a _____ corporation ("Tenant"), whose address is _____ _____, who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts and objectives:

(a) Superior Mortgagee is, or it is anticipated that Superior Mortgagee will become, the beneficiary under a certain deed of trust ("Trust Deed") on improved property located at _____ ("Property"), more specifically described in Schedule "__" attached hereto and made a part hereof by this reference. Superior Mortgagee shall also be deemed to include any lender who executes this Agreement and subsequently acquires title to the Building pursuant to a bankruptcy proceeding involving Landlord.

(b) On or about _____, 200_, Landlord leased to Tenant, and Tenant leased from Landlord, a portion of the Property. A copy of the lease between Landlord and Tenant ("Lease") is attached hereto as Schedule "__" and made a part hereof by this reference.

(c) The parties desire, under the provisions set forth in this Agreement, to assure Tenant that in the event of the foreclosure of the Trust Deed, or in the event of a sale in lieu of such foreclosure, or in the event that Superior Mortgagee directly or indirectly becomes the new landlord of the Building because of its providing financing to Landlord, the terms, covenants and conditions of the Lease shall not be terminated, disturbed, or adversely affected, provided an incurable Event of Default has not occurred under Section __ of the Lease and subject to the cure rights set forth in Section __ of the Lease ("Tenant Default").

2. Attornment. If Landlord is in default under the Trust Deed after expiration of the applicable period that Landlord has in which to cure its default, and if a foreclosure sale takes place due to such default, or if Superior Mortgagee shall notify Tenant of such transfer of title to the Property or if Superior Mortgagee becomes the new Landlord of the Building, after receipt of such notice, upon the effective date of such transfer of title, and after Tenant has received written notice of such transfer of title, Tenant shall attorn to Superior Mortgagee and shall recognize Superior Mortgagee as Tenant's landlord under the Lease, and Tenant agrees to execute any instruments reasonably requested to evidence such attornment. Upon attornment, the Lease shall continue in full force and effect, so long as a Tenant Default has not occurred, and Tenant shall perform all Tenant's obligations under the Lease directly to Superior Mortgagee, as if Superior Mortgagee were the landlord under the Lease. Tenant agrees to make any modifications of the Lease requested by Superior Mortgagee hereunder, provided that such modifications do not materially or adversely affect any right of Tenant under the Lease or increase any of Tenant's monetary obligations under the Lease.

3. Non-Disturbance by Superior Mortgagee. If a Tenant Default is not in existence at the time of the transfer of title as provided in the above paragraph, the Lease shall continue with the same force and effect as if Superior Mortgagee and Tenant had entered into a lease with the same provisions as those contained in the Lease, and the terms of the Lease and Tenant's leasehold estate in the Property shall not be terminated, disturbed, or adversely affected, except according to the terms, covenants or conditions of the Lease.

4. Conditions of Superior Mortgagee's Recognition. Until a Tenant Default occurs, Superior Mortgagee or such other purchaser shall recognize the leasehold estate of Tenant under all of the terms, covenants and conditions of the Lease for the remaining balance of the term and any renewals thereof with the same force and effect as if Superior Mortgagee or such other purchaser were the landlord under the Lease, and Superior Mortgagee and Tenant shall immediately enter into a written agreement with the same provisions as those in the Lease, except for any technical changes that are necessary because of the substitution of Superior Mortgagee in place of Landlord; provided, however, that Superior Mortgagee, or such other purchaser, shall not be (1) liable for any act or omission of Landlord or any other prior lessor which occurred prior to the time the Superior Mortgagee purchased or acquired its interest under the Lease, except for the obligations of Landlord or any other prior lessor to perform under the Lease those obligations which are in the nature of on-going obligations under the Lease, and except with respect to Tenant's right to deduct from rents next due under the Lease, together with interest thereon at the Interest Rate, as defined in the Lease, any (i) remaining credit of Base Rent, or operating expenses, (ii) unpaid Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant in constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (iii) unpaid arbitration or court award, (iv) unpaid obligation of Landlord arising out of Tenant's existing Lease at **[*Existing Location*]** which Landlord has agreed to directly or indirectly assume, (v) unrefunded security deposit, or (vi) unpaid commission due and owing to Tenant's real estate broker all as set forth in the Lease, (2) except as provided in (i) to the contrary, obligated to cure any defaults of Landlord or any other prior lessor under the Lease which occurred prior to the time that Superior Mortgagee purchased or acquired its interest under the Lease (except to the extent that the default is not monetary and remains in existence at the time the Superior Mortgagee purchased or acquired its interest under the Lease), (3) except as provided in (i) to the contrary, subject to any offsets or defenses which Tenant may be entitled to assert against Landlord or any other prior lessor; (4) bound by any payment of rent or additional rent by Tenant to Landlord or any other prior lessor for more than one month in advance, (5) bound by any amendment or modification of the Lease which would adversely affect any right of Landlord under the Lease made without the written consent of Superior Mortgagee or such other purchaser who has first, in writing, notified Tenant of its interest, which consent cannot be unreasonably withheld, or (6) except as provided in (i) to the contrary, liable or responsible for or with respect to the retention, application and/or return to Tenant of any security deposit paid to Landlord or any other prior lessor, whether or not still held by Landlord, unless and until Superior Mortgagee or such other purchaser has actually received for its own account as landlord the full amount of such security deposit, or any portion thereof (such liability and responsibility being limited to the amount received, if any).

5. Special Payment. Notwithstanding anything to the contrary set forth in this Agreement or in the Lease, in the event that Landlord fails to pay to Tenant (a) the Tenant Improvement Allowance, (b) unpaid final arbitration award or court judgment, (c) unpaid obligation of Landlord with respect to a Lease Takeover or similar agreement, or (d) unrefunded security deposit, Superior Mortgagee or such

other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to Tenant, together with interest at the Interest Rate, such unpaid amounts and shall recognize and honor any remaining credit of (or so called free) Base Rent and operating expenses ("Outstanding Credit"). In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker together with interest at the Interest Rate. With respect to all such payments, interest shall be computed from the date such amounts are in fact paid.

In the event Landlord, Superior Mortgagee or such other successor to the interests of Landlord and/or Superior Mortgagee shall fail to pay to Tenant such unpaid amounts, honor any Outstanding Credit, or pay to Tenant's broker any unpaid commission that was due and not paid by Landlord to Tenant's broker, Tenant may deduct such amounts, together with interest thereon at the Interest Rate and computed as set forth above, from the rent next becoming due and payable under the Lease.

6. Covenants of Superior Mortgagee.

(a) Superior Mortgagee shall, at the request of Tenant, oppose any rejection of this Lease in the event a bankruptcy proceeding is instituted involving Landlord as the debtor.

(b) Superior Mortgagee shall serve Tenant, in the same manner and at the same time, with a copy of all notices it serves on Landlord with respect to any default by Landlord on any obligation of Landlord to Superior Mortgagee.

7. Miscellaneous.

(a) No Effect on Trust Deed. Nothing in this Agreement shall be deemed to change in any manner the provisions of the Trust Deed as between Superior Mortgagee and Landlord, to waive any right that Superior Mortgagee may now have or later acquire against Landlord by reason of the Trust Deed.

(b) Attorneys' Fees. In the event of any suit under this Lease, reasonable attorneys' fees and costs shall be awarded by a court or arbitrator to the prevailing party and are to be included in any judgment or award. In addition, the prevailing party shall be entitled to recover reasonable attorneys fees and costs incurred in enforcing any judgment arising from a suit under this Lease including but not limited to post judgment motions, contempt proceedings, garnishment, levy and debtor and third party examinations, discovery and bankruptcy litigation, without regard to schedule or rule of court purporting to restrict such award. This post judgment or award of attorneys' fees and costs provision shall be severable from any other provisions of this Lease and shall survive any judgment on such suit and is not to be deemed merged into the judgment or award. For the purpose of this provision, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of internal/external legal counsel to the parties hereto, which include printing, photocopying, duplicating, mail, overnight mail, messenger, court filing fees, cost of discovery, fees billed for law clerks, paralegals, investigators and other persons not admitted to the bar but performing services under the supervision or direction of an attorney. For the purpose of determining in-house counsel fees, the same shall be considered as those fees normally applicable to a partner in a law firm with like experience in such field.

(c) Notice. All written notices, statements, or other communications required or permitted to be given hereunder shall be given by letter, telex, telegram, mailgram, cable or fax and shall be deemed delivered if dispatched by certified or registered mail, return receipt requested, postage prepaid or personal delivery or telex or fax transmission or other form of electronic transmission, addressed to the parties as set forth opposite their respective names in the Fundamental Lease Provisions A or B, as is appropriate.

If personally delivered, such notice shall be effective upon delivery. If notice is sent by telex or fax transmission or other form of electronic transmission, such notice shall be effective upon transmission (if prior to 6:00 p.m. in the recipient's time zone. If after 6:00 p.m., the notice shall be effective at 9:00 a.m. on the next business day after such transmission). If mailed, notice shall be deemed given on the third day after it is deposited in the mail in accordance with the foregoing. Any party may change the address at which to send notices by notifying the other party of such change of address in writing in accordance with the foregoing. Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger, officer of the law or overnight delivery service.

(d) Successors. This Agreement shall be binding on and inure to the benefit of the parties and their successors.

(e) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of **[*California*]**.

(f) No Modifications Unless in Writing. This Agreement contains all of the agreements and understandings between the parties regarding this Agreement relating to the leasing of the Premises and the obligations of Landlord and Tenant in connection with such Lease. This Agreement supersedes any and all prior agreements and understandings between Landlord, Tenant and Superior Mortgagee and alone expresses the agreement of the parties. This Agreement shall not be amended, changed or modified in any way unless in writing executed by Landlord, Tenant and Superior Mortgagee. Landlord, Tenant and Superior Mortgagee shall not have waived or released any of their rights hereunder unless in writing and executed by Landlord, Tenant and Superior Mortgagee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LANDLORD:

_____,
a _____

By: _____
Its: _____

TENANT:

_____,
a _____ corporation

By: _____
Its: _____

SUPERIOR MORTGAGEE:

_____,
a _____

By: _____
Its: _____

Exhibit D1

Non-Disturbance, Attornment and Subordination Agreement. Landlord agrees that, prior to the earlier of: (1) the Commencement Date, (2) the exhaustion by Tenant of its Tenant Improvement Allowance (as defined in the Work Letter Agreement), or (3) twenty (20) days after the date of full execution of the Lease, it will provide, without cost to or charge of, Tenant with non-disturbance, subordination and attornment agreements ("non-disturbance agreement") in favor of Tenant from any ground lessors, mortgage holders or lien holders (each, a "Superior Mortgagee") then in existence, substantially in the form of Exhibit "A" attached hereto. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense. In the event Landlord fails to provide such commercially reasonable non-disturbance agreements within the time frame set forth in this Section, Tenant shall have the right, exercisable at any time thereafter, to give ten (10) business days' written notice to Landlord terminating the Lease. In the event Landlord does not provide Tenant with the applicable non-disturbance agreements within such ten (10) day period, the Lease shall terminate and Landlord shall reimburse Tenant all of Tenant's out-of-pocket costs incurred in connection with the design and construction of the Tenant Improvements and Tenant's legal fees incurred in connection with the review and negotiation of the Lease and this provision shall survive the termination of the Lease.

Landlord agrees to provide Tenant with non-disturbance agreement(s) substantially in the form of Exhibit "A" attached hereto, in favor of Tenant from any Superior Mortgagee(s) of Landlord who later come(s) into existence at any time prior to the expiration of the Term of the Lease, as it may be extended, in consideration of, and as a condition precedent to, Tenant's agreement to be bound by Lease Section __. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense.

Notwithstanding anything to the contrary set forth in this Lease, in the event that Landlord fails to pay to Tenant (i) the Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (ii) **[*the Lease Takeover Payment*]** (as hereinafter defined), (iii) any final arbitration award or court judgment, or (iv) **[*return to Tenant any Security Deposit*]**, the Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to Tenant, together with interest at the Interest Rate (as defined in Section __) , such unpaid amounts and shall recognize and honor any remaining credit of Base Rent and/or Operating Expenses. In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker, together with interest thereon at the Interest Rate. With respect to all such payments, interest thereon shall be computed from the date such amounts should have been paid until the date such amounts are in fact paid.

All non-disturbance agreements shall acknowledge that, and Landlord hereby independently agrees that, to the extent Landlord has failed to fulfill its obligations with respect to the payment of any (i) Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (ii) **[*monetary obligations arising out of Tenant's existing lease at**

_____ **which Landlord has agreed to directly or indirectly assume ("Lease Takeover Payment")***], (iii) unpaid arbitration or court award, (iv) **[*unrefunded security deposit*]**, (v) remaining credit of Base Rent and/or Operating Expenses, or (vi) unpaid commission due and owing to Tenant's real estate broker ("Key Obligations"), and to the extent Superior Mortgagee has failed to fulfill its obligations with regard to the payment of such Key Obligations as provided in the preceding paragraph, Tenant may deduct the amount of the Key Obligation which Landlord has not paid, together with interest thereon at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease.

In addition to the foregoing, Landlord agrees that in the event Landlord has failed to pay its Key Obligations, Tenant may deduct the amount of the Key Obligations which Landlord has not paid, together with interest at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease. Landlord further agrees that, upon Tenant's request, Landlord will provide Tenant with a preliminary title report within [*_____ (__)*] business days following such request by Tenant.

Exhibit E
JANITORIAL SCHEDULE

Premises

Daily

1. All desks and other furniture will be dusted with specially treated dust cloths.
2. All window sills, chair rails, baseboards, moldings, partitions, and picture frames fewer than six feet in height will be hand dusted and wiped clean.
3. All floors will be dust mopped with specially treated dust mops.
4. All bright metal work will be maintained and kept in a clean, polished condition.
5. All drinking fountains will be thoroughly cleaned and sanitized.
6. All stairways will be swept with a chemically treated dust mop and wet mopped as needed.
7. Replacement of light bulbs as needed.
8. All elevators will be wet mopped, on coat of finish applied to floor and machine buffed. If floors are carpeted, carpet will be vacuumed nightly. Interior of cabs will be wiped clean and all metal hardware polished.
9. Empty, clean and dust all wastepaper baskets, ash trays, receptacles, etc.
10. Remove trash and wastepaper to designated areas.
11. Carpeting and rugs to be vacuum cleaned nightly.
12. All tile floors in all areas will maintain a satin finish. Trafficked areas to receive regularly programmed floor maintenance to insure luster and remove black marks and scuffs.

Lavatories

13. Floors to be swept and washed, using antiseptic liquid detergent.
14. Bowls, urinals and basins will be cleaned nightly. A safe antiseptic and deodorant bowl cleaner will be used.
15. All metal and mirrors will be cleaned and polished.
16. Fill and maintain mechanical operations of all tissue, towel, soap and sanitary napkin dispensers. Materials to be supplied from contractor's stock.

17. Remove wastepaper and refuse.

Weekly

1. Spot clean all interior partition glass as required.

2. Remove fingerprints, smudges and scuff marks from all vertical and horizontal surfaces (doors, walls, and sills) under six feet in height.

3. Wash and refinish resilient floors in public areas, strip, wash and polish as needed.

4. Clean all elevator cabs and door tracks.

Monthly

1. Polish and buff (no wax) resilient floors in tenant areas as needed.

2. Dust all louvers, grills and other than flush light fixtures.

Quarterly

1. Dust clean all vertical surfaces; such as, walls, partitions, doors, etc. not reached in nightly cleaning.

2. Dust and wipe clean all venetian blinds.

Every Four (4) Months

1. Wax and buff all resilient flooring in tenant areas, or as needed. Floors shall be stripped, re-waxed and buffed when required. Unusual traffic conditions will receive special attention.

2. Wash windows, inside and outside.

Every Six (6) Months

Dust and damp wipe all ceiling vents.

Exhibit F

Definition of Profits. Whenever Landlord is entitled to share in any excess income resulting from an assignment or sublease of the Premises, the following shall constitute the definition of "Profits": the gross revenue received from the assignee or sublessee during the sublease term or during the assignment, with respect to the space covered by the sublease or the assignment ("Transferred Space") less: (a) the gross revenue paid to Landlord by Tenant during the period of the sublease term or during the assignment with respect to the Transferred Space; (b) the gross revenue as to the Transferred Space paid to Landlord by Tenant for all days the Transferred Space was vacated from the date that Tenant first vacated the Transferred Space until the date the assignee or sublessee was to pay Rent; (c) any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee; (d) brokers' commissions; (e) attorneys' fees; (f) lease takeover payments; (g) costs of advertising the space for sublease or assignment; (h) unamortized cost of initial and subsequent improvements to the Premises by Tenant; and (i) any other costs actually paid in assigning or subletting the Transferred Space or in negotiating or effectuating the assignment or sublease; provided, however, under no circumstance shall Landlord be paid any Profits until Tenant has recovered all the items set forth in subparts (a) through (i) for such Transferred Space, it being understood that if in any year the gross revenues, less the deductions set forth in subparts (a) through (i) above (the "Net Revenues"), are less than any and all costs actually paid in assigning or subletting the affected space (collectively "Transaction Costs"), the amount of the excess Transaction Costs shall be carried over to the next year and then deducted from Net Revenues with the procedure repeated until a Profit is achieved.

Exhibit G

Abatement of Rent When Tenant Is Prevented From Using Premises. In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, for three (3) consecutive business days or ten (10) business days in any twelve (12) month period (the "Eligibility Period") as a result of (1) any damage or destruction to the Premises, the Parking Facility and/or the Building, (2) any repair, maintenance or alteration performed by Landlord after the Commencement Date, which substantially interferes with Tenant's use of the Premises, the Parking Facility and/or the Building, (3) any failure by Landlord to provide Tenant with services or access to the Premises, the Parking Facility and/or the Building, (4) because of an eminent domain proceeding or (5) because of the presence of hazardous substances (inclusive of Mold and Asbestos) in, on or around the Premises, the Building or the Site which could pose a health risk to occupants of the Premises, then Tenant's Rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. However, in the event that Tenant is prevented from conducting, and does not conduct, its business in any portion of the Premises for a period of time in excess of the Eligibility Period, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Rent for the entire Premises shall be abated; provided, however, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence. If Tenant's right to abatement occurs during a free rent period (for these purposes, free rent shall be deemed to include half rent, etc.) which arises after the Commencement Date, Tenant's free rent period shall be extended for the number of days that the abatement period overlapped the free rent period ("Overlap Period"). Landlord shall have the right to extend the Expiration Date for a period of time equal to the Overlap Period if Landlord sends a notice to Tenant of such election within ten (10) days following the end of the extended free rent period. If Tenant's right to abatement occurs because of an eminent domain taking and/or because of damage or destruction to the Premises, the Parking Facility, the Building and/or Tenant's property, Tenant's abatement period shall continue until Tenant has been given sufficient time, and sufficient access to the Premises, the Parking Facility and/or the Building, to rebuild such portion it is required to rebuild, to install its property, furniture, fixtures, and equipment to the extent the same shall have been removed and/or damaged as a result of such damage or destruction and/or eminent domain taking and to move in over a weekend. To the extent Tenant is entitled to abatement without regard to the Eligibility Period, because of an event covered by Sections __ [Damage or Destruction] and __ [Eminent Domain] of the Lease, then the Eligibility Period shall not be applicable. To the extent Tenant has prepaid rent (as it does each month since Rent is due on the first day of each month) and Tenant is subsequently entitled to an abatement, such prepaid, and subsequently abated, Rent should be refunded to, and paid by Landlord to, Tenant within thirty (30) days after the end of the appropriate month.

Exhibit H

Right to Terminate.

(a) Notwithstanding anything in either Section __ [Damage or Destruction] and __ [Eminent Domain] to the contrary, and except as expressly set forth in Subsection (b) below, in the event that Tenant is notified or becomes aware of the fact that as a result of:

(i) damage or destruction of the Premises, the Parking Facility and/or the Building or any part thereof so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building;

(ii) a taking by eminent domain or exercise of other governmental authority of the Premises, the Parking Facility and/or the Building or any part thereof so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building;

(iii) the inability of Landlord to provide services to the Premises, the Parking Facility and/or the Building so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building; or

(iv) any discovery of hazardous substances (inclusive of Mold and Asbestos) in, on or around the Premises, the Building and/or the Site not placed in, on or around the Premises, the Building and/or the Site by Tenant, that may, considering the nature and amount of the substances involved, interfere with Tenant's use of all or a portion of the Premises or which may present a health risk to any occupants of the Premises); or

(v) the discovery of any other hazardous condition with respect to the Premises, the Parking Facility and/or the Building which would make it dangerous or unsafe for Tenant and its employees to conduct their normal and customary business operations from the Premises (each of the items set forth in provision (a)(i), (ii), (iii), (iv) and (v) being referred to herein as a "Trigger Event"),

Tenant cannot, within six (6) months ("Non-Use Period") of the occurrence of the Trigger Event, be given reasonable use of, and access to, a fully repaired, restored, safe and healthful Premises, Parking Facility and Building (except for minor "punch-list" items which will be repaired promptly thereafter), and the utilities and services pertaining to the Premises, the Parking Facility and the Building, all suitable for the efficient conduct of Tenant's business therefrom, then Tenant may thereafter elect at any time to exercise an on-going right to terminate the Lease upon ten (10) days' written notice sent to Landlord at any time following the expiration of the Non-Use Period.

(b) In the event of any Trigger Event occurring during the last year of the Lease Term or, if an applicable renewal option has been exercised, during the last year of any renewal term, should the Non-Use Period continue for thirty (30) days, Tenant may elect to exercise an on-going right to terminate the Lease upon ten (10) days' written notice sent to Landlord at any time following the expiration of the Non-Use Period.

Exhibit I

Right to Repair. Notwithstanding any provision set forth in this Lease to the contrary, if Tenant provides written notice (or oral notice in the event of an emergency such as damage or destruction to or of any portion of the Building Structure and/or the Building Systems and/or anything that could cause material disruption to Tenant's business) to Landlord of an event or circumstance which requires the action of Landlord with respect to repair and/or maintenance, and Landlord fails to provide such action within a reasonable period of time, given the circumstances, after the receipt of such notice, but in any event not later than seven (7) days after receipt of such notice, then Tenant may proceed to take the required action upon delivery of an additional three (3) business days' notice to Landlord specifying that Tenant is taking such required action (provided, however, that neither of the notices shall be required in the event of an emergency which threatens life or where there is imminent danger to property or a possibility that a failure to take immediate action could cause a material disruption in Tenant's normal and customary business activities), and if such action was required under the terms of the Lease to be taken by Landlord and was not taken by Landlord within such ten (10) day period (unless such notice was not required as provided above), then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable costs and expenses in taking such action plus interest thereon at the Interest Rate (as defined in Section __) below plus rent abatement to the extent Tenant would have otherwise been entitled to rent abatement under Section __ of this Lease. Landlord agrees that Tenant will have access to the Building, Building Systems, Building Structure and Site to the extent necessary to perform the work contemplated by this provision. In the event Tenant takes such action, and such work will affect the Building Structure and/or the Building Systems, Tenant shall use only those contractors used or approved by Landlord in the Building for work on such Building Structure or Building Systems unless such contractors are unwilling or unable to perform (and are able to immediately perform), or timely and competitively perform, such work, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in Comparable Buildings. Furthermore, if Landlord does not deliver a detailed written objection to Tenant within thirty (30) days after receipt of an invoice by Tenant of its costs of taking action which Tenant claims should have been taken by Landlord, and if such invoice from Tenant sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking such action on behalf of Landlord, then Tenant shall be entitled to deduct from Rent payable by Tenant under the Lease, the amount set forth in such invoice. If, however, Landlord delivers to Tenant, within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of the Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not then be entitled to such deduction from Rent, but as Tenant's sole remedy, Tenant may proceed to claim a default by Landlord or, if elected by either Landlord or Tenant, the matter shall proceed to resolution by the selection of an arbitrator to resolve the dispute, which arbitrator shall be selected and qualified pursuant to the procedures set forth the arbitration provision in the Lease, and whose costs shall be paid for by the losing party, unless it is not clear that there is a "losing party", in which event the costs of arbitration shall be shared equally. If Tenant prevails in the arbitration, the amount of the award which shall include interest at the Interest Rate (from the time of each expenditure by Tenant until the date Tenant receives such amount by payment or offset and attorneys' fees and related costs) may be deducted by Tenant from the Rents next due and owing under the Lease.

Exhibit J

Offensive and Objectionable Entities. Subject to the provisions of this Article, Landlord shall not grant any rights to any identity signage on any exterior surface of the Building (or in the ground floor lobby of the Building) or in any plaza area, to any tenant in the Project which constitutes an Offensive and Objectionable Entity (defined in this Section, below) as of the date of execution of the lease for such tenant. An entity shall constitute an "Offensive and Objectionable Entity" on a particular date if, on such date, such entity is known to Landlord to be identified by a majority of adult American citizens as an entity that either: (a) is synonymous with the propagation of racist violence or racist hatred (and holds itself out to the general public as doing so), such as the American Nazi Party or the Ku Klux Klan, or (b) as its primary business, creates and distributes to the general public pornographic materials, such as Hustler magazine.

Exhibit K

Use of Exterior Portion of Building for Promotional and Advertising Purposes. Landlord agrees that, except for bona fide identity signage and/or logos installed on the Building for the benefit of bona fide tenants in the Building (to the extent not prohibited or restricted by this Article), Landlord shall not grant any rights to any tenant or other third party to utilize the exterior surfaces (or any material portion thereof) of the Building to be utilized for the purpose of advertising, promoting or identifying a person, sign, cause, project, product, service or the like by the placement of a billboard or similar advertising on the walls of the Building.

Exhibit L

Work Letter

(attached)

Exhibit M

Default by Landlord. Landlord shall be in default in the performance of any obligation required to be performed by Landlord under the Lease if Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) calendar days are required for its performance, Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon any such default by Landlord, Tenant may exercise any of its rights provided in law or at equity and shall have the right, but not the obligation, to cure any such default by Landlord and to deduct the costs incurred by Tenant to cure such default, including legal fees and expenses, from the amounts next due and owing under the Lease.

Exhibit N

Default by Tenant. Lease Section __ pertaining to defaults by Tenant, is hereby deemed deleted, and the following paragraph is deemed inserted in its place:

"A. The occurrence of any of the following shall constitute an event of default ("Event of Default") hereunder on the part of Tenant:

"(1) Nonpayment of Rent. Failure to pay any installment of Base Rent due and payable hereunder, upon the date when payment is due, such failure continuing for a period of ten (10) business days after written notice of such failure; or

"(2) Other Obligations. Failure to perform any obligation, agreement or covenant under the Lease, other than Tenant's obligation to pay Base Rent, such failure continuing for thirty (30) calendar days after written notice of such failure or such longer period as is reasonably necessary to remedy such failure, provided that Tenant shall continuously and diligently pursue such remedy until such failure is cured.

"B. All notices to be given pursuant to this Section ___ shall be in addition to, and not in lieu of, the notice requirements of **[*California Code of Civil Procedure Section 1161*]**.

"C. Tenant shall have, and under no circumstances shall Tenant be deemed to have waived, the rights set forth in Sections 1174 and 1179 of the California Civil Code of Procedure."

Exhibit O

Landlord Bankruptcy Proceeding. In the event that the obligations of Landlord under the Lease are not performed during the pendency of a bankruptcy or insolvency proceeding involving the Landlord as the debtor, or following the rejection of this Lease in accordance with Section 365 of the United States Bankruptcy Code, then notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to set off against Rents next due and owing under this Lease (a) any and all damages caused by such non-performance of Landlord's obligations under the Lease by Landlord, debtor-in-possession, or the bankruptcy trustee, and (b) any and all damages caused by the non-performance of Landlord's obligations under the Lease following any rejection of the Lease in accordance with Section 365 of the United States Bankruptcy Code.

Exhibit P

Tenant Improvement Agreement and Rent Commencement

INTER-RELATIONSHIP BETWEEN THE COMMENCEMENT DATE AND THE TENANT IMPROVEMENT AGREEMENT

The ABC's of What You Need to Know to Draft the Correct Tenant Improvement Agreement And Its Interrelationship With the Commencement Date

Philosophical Perspectives - Yogi Berra: "You Don't Know What You Don't Know"

Discussion

The interrelationship between the Commencement Date and the Tenant Improvement Agreement is, in many respects, the most important challenge facing the lawyer and the real estate professional and also the most difficult. The reason for its importance should be obvious. The lawyer/real estate professional can draft the finest assignment and subletting provision, damage and destruction provision, and default provision, but there may never be an assignment or a sublease, damage and destruction, or a default. The lawyer/real estate professional will simply take pride in knowing that they drafted a provision that was great even though it never came into play and was never utilized.

However, the provisions pertaining to the Commencement Date and the Tenant Improvement Agreement will actually be tested. The Tenant Improvements will be built out and the Commencement Date (as used in this Article, the date the Tenant is to pay rent) should eventually occur. If the Tenant paid more to have its Tenant Improvements constructed than it originally anticipated, then the Tenant will be mad at someone and normally will not look in the mirror but will look accusingly at its lawyer, facilities person or broker. Likewise, if the Landlord paid more money out of its pocket in connection with the construction of the Tenant Improvements than it anticipated, the Landlord will also have a difficult time looking in the mirror but rather will look accusingly at its project manager, attorney and/or real estate broker. Similarly, if the Commencement Date occurs before the Tenant has had a fair chance to have its Tenant Improvements constructed and move into the Premises, all sorts of bad problems and accusations will be made because Tenants hate to pay rent before they actually conduct business operations from the Premises. Likewise, Landlords have an expectation as to when rent starts and have made various representations and commitments to lenders, investors and others, and if these expectations are not met, then the Landlord encounters a host of difficult explanations and problems.

The purpose of a well-drafted Tenant Improvement Agreement is to minimize surprises by correctly and clearly defining who does what, when, and the related cost and how the construction of the Tenant Improvements relates to the Commencement Date.

KEYS TO THE TENANT IMPROVEMENT AGREEMENT/COMMENCEMENT DATE

1. Define Who Designs And Who Constructs. Normally, for any Lease of a significant size, the Tenant will hire the designer to design the Tenant Improvements. In smaller deals, the Tenant does not usually have the time or the sophistication to do this and the Landlord takes upon itself the role of coordinating the design of the Tenant Improvements. When a Landlord elects to design the Tenant Improvements, the Landlord should

do so only in rather small transactions and only when it can make sure that design will be approved by the Tenant on a realistic basis. Under these circumstances, the Landlord retains a designer to talk to the Tenant, usually agree upon a "plain vanilla" build-out which consists of carpet, paint, electrical outlets and telephone outlets and has the Tenant "sign off" on that design in connection with the execution of the Lease. This presents all kinds of risks, not the least of which is when the Tenant states that it never knew what it was signing and asked the designer if it was "okay" to sign. While risks exist, for practical reasons, the Landlord in smaller deals usually causes the Tenant Improvements to be both designed and built out and it seems to work.

When the Tenant is to design the Tenant Improvements, the Tenant's primary goal is to make sure that it can design and construct in its Premises the type of Tenant Improvements that will allow the Tenant to efficiently, economically and effectively conduct its anticipated business operations. Accordingly, the Tenant would like to require and compel the Landlord to approve all of its Tenant Improvements unless the Tenant would do something in connection with the Tenant Improvements which would adversely affect the Building Structure, the Building Systems (mechanical, electrical, HVAC, etc.), affect the exterior appearance of the Building, violate any applicable law, or unreasonably interfere with another Tenant's business operations. The exact approval language is set forth in the provisions included at the end of this Article and is defined as a Design Problem. The sophisticated Tenant's position is rather inflexible in this respect since the worst thing that could happen to a Tenant would be to a ten-year Lease and then find it is unable to construct the type of Tenant Improvements it envisioned.

2. Define Who Constructs The Tenant Improvements. Every Tenant Improvement Agreement should define clearly who is to construct the Tenant Improvements. Historically, Landlords used to prefer to construct the Tenant Improvements. Landlords would argue that they were better equipped to construct the Tenant Improvements because they "know the Building better" and "we're in the business". While there are some truths to both of those statements, in many instances, the primary motive for the Landlord to desire to construct the Tenant Improvements is to make a significant profit in connection with the construction of the Tenant Improvements. In many instances, the Landlord would simply grant the Tenant a Tenant Improvement Allowance, allow the Tenant to design the space, and then advise the Tenant that the Landlord would construct the Tenant Improvements with the Tenant paying for all costs of constructing and designing the Tenant Improvements in excess of the Tenant Improvement Allowance. On the surface this sounds, like many things in connection with the construction of Tenant Improvements, simple and reasonable. However, what the Tenant did not focus upon, even though it is usually clearly set out in the Tenant Improvement Agreement, is that the Landlord would charge a fee for profit, overhead and general conditions of 21% in connection with the construction of the Tenant Improvements and would also allow the contractor to charge a similar fee. Frequently, the contractor selected by the Landlord to construct the Tenant Improvements would have a business relationship with, or would even be an affiliate of, the Landlord. Nowadays, sophisticated Tenants are aware of all of the hidden cost items and when a Landlord is permitted to construct the Tenant Improvements, it normally involves a situation where a Tenant Improvement Allowance is agreed upon, a Base Building description is agreed upon, the Landlord is required to approve the design of the Tenant Improvements pursuant to a "design problem criteria" (again, this definition is set forth in the provisions included at the end of this Article). In addition, the Landlord is then required to bid the Tenant Improvements to three contractors, all who had been pre-qualified on the basis of reputations for integrity, quality of work and timeliness of performance, and those bids are required to be submitted in a sealed form, opened in front of the Tenant, reconciled for inconsistent assumptions, and the low bidder selected.

A Tenant Improvement Agreement negotiated by a sophisticated Tenant with leverage will also eliminate any fee to the Landlord or will provide a minimum fee of 1% or 2% or an amount which is designed to reimburse the Landlord for costs incurred by the Landlord but not to allow the Landlord to make a profit in connection with the construction of the Tenant Improvements. Under these circumstances, since the profit is eliminated or significantly reduced on major transactions involving sophisticated Tenants, and since there are always risks involved in the construction of the Tenant Improvements, many sophisticated Landlords no longer prefer to

construct the Tenant Improvements and many Tenants prefer to handle the construction of their own Tenant Improvements.

When a Tenant is going to construct the Tenant Improvements, the Tenant simply bargains for a Base Building description that it finds acceptable, a Tenant Improvement Allowance, a procedure for approving the Tenant's plans and specifications pursuant to the Design Problem criteria, and then the Tenant takes upon itself the responsibility for constructing the Tenant Improvements, controlling the designer, bidding out or negotiating the construction contract, and simply making sure that the Tenant Improvements are done on a timely basis, preserving the quality, and assuring cost effectiveness.

3. How To Establish The Commencement Date. The Lease is normally effective on the date it is signed by the Landlord and the Tenant with the Rent commencing on the Commencement Date. The Commencement Date basically differs depending on who will have the responsibility for constructing the Tenant Improvements.

When the Landlord constructs the Tenant Improvements, it normally will establish the Commencement Date as the earlier of the date the Landlord sends Tenant a factually correct notice ("Completion Notice") that the Tenant Improvements are completed or the date the Landlord notifies the Tenant that the Tenant Improvements would have been completed had there not been Tenant Delays (this definition is set forth in the provisions included at the end of this Article). Under these circumstances, the Landlord will count as Tenant Delays the failure of the Tenant to timely approve the design of the Tenant Improvements or to submit to the Landlord by a pre-agreed upon date approved and permittable final plans for the Tenant Improvements. The Landlord will also define as a Delay any changes requested by the Tenant. Sophisticated Tenants, knowing that there almost always will be change orders bargain for a "grace period" as to change orders so that the first ten (10) days of delays resulting from change orders are forgiven. These sophisticated Tenants will also bargain for a period of time after receipt of the Completion Notice for the Tenant to install its furniture, fixtures and equipment and move into the Premises over a weekend prior to the commencement of Tenant's obligation to pay Rent. A typical Tenant Delay provision is set forth in the provisions included at the end of this Article as well as a typical Commencement Date provision for when the Landlord constructs the Tenant Improvements.

When a Tenant is to construct the Tenant Improvements, the Commencement Date normally will be a time period that is negotiated by the Landlord and the Tenant which will be sufficient in length to allow the Tenant to design its Tenant Improvements, obtain permits, construct its Tenant Improvements, install its furniture, fixtures and equipment, and move into the Premises. Under these circumstances, the Tenant will also have that time period defined as a number of days (for example, for a 100,000 square feet Lease, a six-month period may be agreed upon with the six-month period not commencing until the later of (i) the date that the Lease is signed, (ii) the date Tenant has been given access to the Base Building description, (iii) the date the Tenant has received possession of the Premises and (iv) the date Tenant has received the appropriate non-disturbance agreements. Sophisticated Tenants will also bargain to have that six-month time period extended for Delays caused by the Landlord and Force Majeure Delays. Sample provisions for Landlord Delays and Force Majeure Delays are attached at the end of this Article.

4. The Base Building Description. The Base Building description is of critical importance to both the Landlord and the Tenant. The better and more comprehensive the Base Building description is and the more things are included in the Base Building description, the better it will be for the Tenant. If the Tenant receives a $30 Tenant Improvement Allowance, that $30 Tenant Improvement Allowance will go a lot further in a brand new building with state of the art HVAC, electricity, primary and secondary loops already in place, all walls and columns drywalled, taped and ready for paint, etc. A typical Base Building description favorable to the Tenant is attached at the end of this Article.

The Landlord, on the other hand, would prefer to have the Tenant accept the Building in its "as is" condition. The Landlord (assuming the Building has already been constructed) will tell the Tenant that "here's the Building, please inspect it and look at it with your designer and contractor, and then you must accept the Building in its 'as is' condition" subject to the Tenant's receipt of a Tenant Improvement Allowance." In many instances, unsophisticated Tenants will simply accept the Landlord's first draft which will provide that the Building will be delivered to the Tenant with the Base Building in its "as-is/where-is" condition. However, what will be going through a typical Tenant's mind, even when they are accepting it in the "as-is" condition, is that the Tenant is assuming that the HVAC system is functioning and is in good working order, the electrical system is functioning and is in good working order, etc. And so even when a Tenant accepts the Building in "as-as/where-is" condition, sophisticated Tenants will require the Landlord to agree that the Building Structure and the Building Systems (typical definitions of Building Structure and Building Systems is attached at the end of this Article) will be delivered in good condition and working order.

In addition, particularly in older buildings, Tenants should insist, even if they are accepting the Premises "as-is/where-is" that the Building Systems and the Building Structure will be not only in good working order and condition but will be delivered in compliance with all laws applicable to new construction, disregarding variances and grandfathered/grandmothered rights. The reason why this is of such critical importance to a Tenant is that a Building may be technically in compliance with laws at the time that it is delivered to a Tenant but will only be in compliance with such laws because the Landlord has obtained variances or because of grandfathered/ grandmothered rights whereby the Landlord is not currently required to, for example, renovate the wash rooms, to cause the wash rooms to be in compliance with ADA, but immediately upon the commencement of Tenant Improvements or alterations the variance of the grandfathered/grandmothered rights would disappear and whoever was going to do the construction will be required to re-do the washrooms, corridors, elevators, etc. to comply with ADA. If the Tenant was not contemplating that it would incur that cost, the Tenant may find that its Tenant Improvement Allowance was virtually exhausted by simply bringing the Base Building up to compliance with laws applicable to new construction rather than spending it on Tenant Improvements. Typical provisions regarding this issue, historical designation, etc. are set forth in the provisions set forth at the end of this Article.

5. The Tenant Improvement Allowance. The Tenant Improvement Allowance is usually an amount that is agreed upon by the Landlord and the Tenant in connection with the establishment of the rental rate. Most Landlords will claim that they are "giving" the Tenant the Tenant Improvement Allowance but sophisticated Tenants understand that the Tenant Improvement Allowance is amortized into the rental rate. A creditworthy Tenant such as General Motors could get a $10 per RSF Tenant Improvement Allowance or no Tenant Improvement Allowance if it desired and have a very low rental rate or, because of its credit standing, could receive a $100 per RSF Tenant Improvement Allowance with that $100 per RSF cost being amortized into the rental rate with an interest factor that makes the Landlord whole and sometimes even makes the Landlord a profit. Accordingly, the Tenant must make sure that since it is paying for the Tenant Improvement Allowance in the form of a higher Rent, the Tenant should be able to use the Tenant Improvement Allowance for almost any reasonable purpose, particularly where the Tenant's credit rating is impeccable. Under these circumstances, the Tenant must define that it can use its Tenant Improvements for all design costs, the cost of project managers and other consultants, the cost of constructing its Tenant Improvements, and for some sophisticated and powerful Tenants, the cost of furniture, fixtures, and equipment and moving into the Premises.

6. Disbursement Of The Tenant Improvement Allowance/The Non-Disturbance Agreement. The disbursement of the Tenant Improvement Allowance is usually a simply procedure whereby the Tenant will initially incur the costs when it is going to do the construction, submit to the Landlord conditional and unconditional lien releases, as appropriate, and the Landlord will then pay the Tenant Improvement Allowance as directed by the Tenant. Many Tenants prefer the Landlord to pay the contractors and subcontractors directly because of the tax implications of the Tenant receiving the Tenant Improvement Allowance directly.

The worst thing that could happen to the Tenant is to have the Landlord not pay the Tenant Improvement Allowance. Under those circumstances, the Tenant is already paying a rental rate which reflected the anticipation of the Tenant would receive the Tenant Improvement Allowance and if the Landlord does not pay the Tenant Improvement Allowance, then the Tenant must have a right to fund that Tenant Improvement Allowance itself and deduct the cost thereof, together with interest, from the rents next due and owing under the Lease. A typical provision giving the Tenant this right is included in the provisions set forth at the end of this Article. However, of equal importance, is the Tenant gaining the right to have the Landlord's lender recognize this right in the Non-Disturbance Agreement. The typical Lease will almost always include a provision that provides that the Landlord's liability to the Tenant is limited to the Landlord's equity interest in the Building. If the Landlord defaults on its loan to the Lender, the Lender will then come in and foreclose or take a deed in lieu of foreclosure and the Landlord will have no equity interest in the project and therefore no money to pay to Tenant the Tenant Improvement Allowance. It is for this reason, and many other reasons, that sophisticated Tenants will almost always insist on receiving a non-disturbance agreement from the Lender whereby the Lender will agree that in the event that it forecloses upon the Lease, the Lender will recognize the Lease as a direct Lease between the Lender and the Tenant. At first blush, this will seem to solve the problem but every Lender's form Non-Disturbance Agreement will contain a provision that will provide that the Lender is not responsible for any prior defaults by the Landlord. If the prior default by the Landlord was a failure to pay the Tenant Improvement Allowance, then the Tenant, unless it was careful, could find itself in a position where it was fortunate enough to have the Lender now required to assume the Lease but unfortunate enough to have the Lender not obligated to pay the Tenant Improvement Allowance and, as mentioned earlier, the Landlord has no money to pay the Tenant Improvement Allowance. It is therefore critical that the Tenant obtain in a non-disturbance agreement a recognition and agreement by the Lender that while it will not be responsible for most prior defaults by the Landlord, it will at least allow the Tenant to offset against Rents, together with interest, the amount of the Tenant Improvement Allowance not paid by the Landlord. A typical Tenant-oriented offset provision for a non-disturbance agreement is set forth in the provisions included at the end of this Article.

COMMENCEMENT DATE

(*OPTION A: Use when tenant improvements are to be constructed by tenant in the premises.)

A. Commencement Date. The Term of this Lease and Tenant's obligation to pay the Rent, as such term is defined below, or, when appropriate, shall commence on the earlier of (i) the date Tenant, or any person occupying any portion of the Premises with Tenant's permission, commences business operations from the Premises, and (ii) the first (1st) business day of the week following the expiration of the Move-In Period (as that term is defined in the Work Letter Agreement) ("Commencement Date"). The Commencement Date shall be delayed by one (1) day for each day of delay in the substantial completion of the Tenant Improvements that is caused by any Force Majeure Delay or Landlord Delay (as those terms are defined in the Work Letter Agreement).

(*OPTION B: Use when tenant improvements are to be constructed by landlord in the premises.)

A. Commencement Date. The Term of this Lease and Tenant's obligation to pay the Rent, as such term is defined below, shall commence on the earlier of (i) the date Tenant, or any person occupying any portion of the Premises with Tenant's permission, commences business operations from the Premises, and (ii) the first (1st) business day of the week following the date which is [*_____ (__)*] business days (which period is referred to as the " Move-In Period") after the earlier of (a) the date Landlord delivers to Tenant a factually correct written notice stating that the Tenant Improvements to the Premises are Substantially Complete, and (b) the date Landlord delivers to Tenant a factually correct written notice stating the date the Tenant Improvements to the Premises would have been Substantially Complete were it not for any Tenant Delay ("Commencement Date"). The Commencement Date shall be extended by one (1) day for each day of delay in the design of, or Tenant's move into, the Premises that is caused by any Force Majeure Delay or Landlord Delay (as those terms are defined in the Work Letter Agreement).

(OPTION A: Use when tenant improvements are to be constructed by tenant in the premises)

Exhibit "B"

Work Letter Agreement

This **Work Letter Agreement** ("Agreement") is being entered into as of _____, **[20__],** between _____, a _____ ("Landlord") and _____, a _____ ("Tenant"), in connection with the execution of the Lease between Landlord and Tenant of even date herewith ("Lease"), who hereby agree as follows:

1. General.

(a) The purpose of this Agreement is to set forth how the Tenant Improvements (as defined in Section 5 below) in the Premises are to be constructed, who will undertake the construction of the Tenant Improvements, who will pay for the construction of the Tenant Improvements, and the time schedule for completion of the construction of the Tenant Improvements.

(b) Except as defined in this Agreement to the contrary, all terms utilized in this Agreement shall have the same meaning ascribed to them in the Lease. When work, services, consents or approvals are to be provided by or on behalf of Landlord, the term "Landlord" shall include Landlord's Employees.

(c) The provisions of the Lease, except where clearly inconsistent or inapplicable to this Agreement, are incorporated into this Agreement.

(d) The Tenant Improvements shall be constructed pursuant to this Agreement by Tenant. Landlord shall provide the Tenant Improvement Allowance (as defined in Section 6 below) and shall cause the Premises to be in the Required Condition, as more particularly set forth in Section 17 below.

2. Commencement Date. The "Commencement Date" shall have the definition set forth in Section 2.3 of the Lease.

(a) Design Period. Tenant shall have a _____ (__) day "Design Period" commencing on the latest of the date Tenant receives (i) the Base Building Plans (as defined in Section 3(b)) for the Building and the Premises sufficient to allow Tenant to prepare the Working Drawings (as defined in Section 3(d) below); (ii) the Lease executed by an authorized representative of Landlord; (iii) a Non-Disturbance Agreement substantially in the form attached to the Lease as Exhibit "H," signed by each lien holder, ground lessor or mortgage holder of record; and (iv) all rules, regulations, instructions and procedures promulgated by Landlord with respect to Tenant design and/or construction in the Building dated as of _____ (collectively, "Building Requirements"). **[NOTE TO TENANT: Do not sign Lease until Base Building Plans and Building Requirements have been reviewed and approved by Tenant.]**

(b) Construction Period. Tenant shall have a _____ (__) day "Construction Period" commencing on the latest of the (i) expiration of the Design Period; (ii) delivery by Landlord to Tenant of the Premises in the condition described on Schedule 3 ("Required Condition") and complete and uninterrupted access to the Premises (and other required portions of the Building and the Site) sufficient to allow Tenant to construct the Tenant Improvements; and (iii) date on which the Base Building and the shell and core of the Building are sufficiently complete and in compliance with all Applicable Laws (including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. ("ADA")), Landlord has obtained the appropriate permits

pertaining to same to allow Tenant to construct the Tenant Improvements continuously and without interruption, and Landlord has completed a punch-list of minor incomplete items which Landlord shall thereafter promptly complete on or before the date of the commencement of installation of Tenant's ceiling grid.

(c) Move-In Period. Tenant shall have a "Move-In Period" of _____ (___) days **[*multiplied by the number of floors Tenant is leasing*]** following the later of (i) the expiration of the Construction Period, or (ii) the obtaining by Landlord of a certificate of occupancy (temporary or unqualified) for the Premises and Building, for the purpose of continuous, uninterrupted access to the Premises and Building. During the Move-In Period, Tenant shall be allowed to install its freestanding workstations, fixtures, furniture, equipment, and telecommunication and computer cabling systems, which period will be extended one (1) day for each day Tenant is delayed in such installations because of any Force Majeure Delay or Landlord Delay.

(d) Delay of Commencement Date. The Commencement Date shall be delayed by one (1) day for each day of delay in the substantial completion of the design and construction of the Tenant Improvements and in the move into the Premises that is caused by any Force Majeure Delay or Landlord Delay. No Landlord Delay or Force Majeure Delay shall be deemed to have occurred unless and until the party claiming such delay has provided written notice to the other party specifying the action or inaction that such notifying party contends constitutes a Landlord Delay or Force Majeure Delay, as applicable. If such action or inaction is not cured within one (1) day after receipt of such notice, then a Landlord Delay or Force Majeure Delay, as set forth in such notice, shall be deemed to have occurred commencing as of the date such notice is received and continuing for the number of days the substantial completion of the Premises was in fact delayed as a direct result of such action or inaction.

(e) Certain Definitions.

(i) Force Majeure Delay. The term "Force Majeure Delay" as used in the Lease or this Agreement shall mean any delay in the completion of the Tenant Improvements which is attributable to any: (1) actual delay or failure to perform attributable to any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto), civil disturbance, future order claiming jurisdiction, act of a public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (2) delay attributable to the failure of Landlord and/or Tenant to secure building permits and approvals within the same time period that normally prevailed for obtaining such permits at the time this Lease was negotiated, which time period Landlord and Tenant hereby stipulate to be [*_____ (_)*] weeks; (3) delay in completing the Final Plans and/or the construction of the Tenant Improvements because of changes in any Applicable Laws (including, without limitation, the ADA), Base Building Plans or Building Requirements, or the interpretation thereof; or (4) delay attributable to lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry-wide or Building-wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage due to any Force Majeure Delay shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money, including rental and other charges, pursuant to the Lease).

(ii) Landlord Delay. The term "Landlord Delay" as used in the Lease or this Agreement shall mean any delay in the completion of the Tenant Improvements which is due to any act or omission of Landlord (wrongful, negligent or otherwise), its agents or contractors (including acts or omissions while acting as agent or contractor for Tenant). The term Landlord Delay shall include, but shall not be limited to any: (1) delay in the giving of authorizations or approvals by Landlord; (2) delay attributable to the acts or failures to act, whether willful, negligent or otherwise, of Landlord, its agents or contractors, where such acts or failures to act delay the completion of the Tenant Improvements; (3) delay attributable to the interference of Landlord, its agents or contractors with the completion of the Tenant Improvements or the failure or refusal of any such party to permit

Tenant, its agents or contractors, priority access to and priority use of the Building or any Building facilities or services, including **[*hoists,*]** freight elevators, passenger elevators, and loading docks, which access and use are required for the orderly and continuous performance of the work necessary to complete the Tenant Improvements; (4) delay attributable to Landlord giving Tenant incorrect or incomplete Building Requirements or Base Building Plans, or revisions made to such Building Requirements or Base Building Plans subsequent to the delivery of such items to Tenant (collectively, "Incomplete Plans") in either case, in addition to such delay being deemed a Landlord Delay, Landlord shall increase the Tenant Improvement Allowance by an amount sufficient to reimburse Tenant for the increased costs incurred by Tenant as a result thereof; (5) failure of Landlord to deliver the Base Building Plans and/or the Building Requirements to Tenant at **[*least one (1) month*]** prior to the execution of the Lease; (6) delay by Landlord in the substantial completion of the Base Building prior to the commencement of the Move-In Period; (7) delay attributable to Landlord's failure to allow Tenant sufficient access to the Building and/or the Premises during the Move-In Period to move into the Premises over one (1) weekend; (8) delay by Landlord in administering and paying when due the Tenant Improvement Allowance (in which case, in addition to such delay being deemed a Landlord Delay, Tenant shall have the right to stop the construction of the Tenant Improvements); and (9) delay caused by the failure of the Base Building to comply with the Applicable Laws which are applicable to new construction. In the event that the use of the freight elevators **[*and/or hoists*]** is not sufficient to meet Tenant's requirements, Landlord shall cause to be made operational, and shall allow Tenant to have priority usage of, **[*two (2)*]** passenger elevators in the elevator bank that services the Premises in order to assist Tenant in the expeditious construction of the Tenant Improvements and the installation of Tenant's fixtures, furniture and equipment. In no event shall Tenant's remedies or entitlements for the occurrence of a Landlord Delay be abated, deferred, diminished or rendered inoperative because of a prior, concurrent, or subsequent delay resulting from any action or inaction of Tenant.

3. Preparation of Plans and Construction Schedule and Procedures. Delivery of all plans and drawings referred to in this Section 3 shall be by messenger service or personal hand delivery, unless otherwise agreed by Landlord and Tenant. Tenant shall arrange for the construction of the Tenant Improvements in accordance with the following schedule:

(a) Selection of Designer **[NOTE: We recommend that Landlord never uses the Landlord's engineer]**. Tenant shall select an architect or designer ("Designer") **[*and an engineer ("Engineer")*]** familiar with all Applicable Laws and Building Requirements to the extent such Building Requirements have been provided to Tenant at least **[*one (1) month*]** prior to the date the Lease is executed by Tenant. The Designer **[*and the Engineer*]** shall be selected by Tenant subject to Landlord's consent, which consent shall not be unreasonably withheld, and which consent (or refusal to consent for reasonable reasons) shall be granted within three (3) days after Tenant has submitted the name of the Designer **[*and the Engineer*]** to Landlord. This procedure shall be repeated until the Designer **[*and the Engineer*]** is **[*are*]** finally approved by Landlord and written consent has been delivered to and received by Tenant. The following Designer, _____ _____, if used by Tenant, is hereby deemed consented to by Landlord. **[*The following Engineer, _____, if used by Tenant, is hereby deemed consented to by Landlord.*]**

(b) Base Building Plans. Landlord shall submit instructions and Building plans and specifications described as _____, dated _____, and prepared by _____ ("Base Building Plans") to the Designer sufficient to allow the Designer to complete a Space Plan (as defined in Subsection (c) below). Landlord shall have submitted to Tenant the Base Building Plans and the Building Requirements at least **[*one (1) month*]** prior to the execution of the Lease. In the event that Tenant incurs increased costs because of Incomplete Plans, such increased costs will be reimbursed to Tenant by Landlord, and any delay caused thereby shall be deemed to constitute a Landlord Delay. The Design Period, Construction Period, or Move-In Period, as applicable, shall be extended by one (1) day for each day Tenant is delayed in completing its Space Plan, Working Drawings, or Final Plans (all as defined below), as applicable, due to any Force Majeure Delay and/or Landlord Delay.

(c) Preparation and Approval of Space Plan. Tenant shall submit to the Designer all additional information, including occupancy requirements for the Premises ("Information"), necessary to enable the Designer to prepare a space plan showing all demising walls, corridors, entrances, exits, doors, interior partitions, and the locations of all offices, conference rooms, computer rooms, mini-service kitchens, and the reception area, library, and file room ("Space Plan") and the Working Drawings (as defined below). The Designer shall incorporate the items described in Schedule 2 attached hereto into the Space Plans, which Tenant is required to utilize in the construction of the Tenant Improvements.

Tenant shall cause the Designer to submit to Landlord the Space Plan for Landlord's review and approval. Within two (2) days after Landlord receives the Space Plan, Landlord shall either approve or disapprove the Space Plan for reasonable and material reasons (which shall be limited to the following: (i) adverse effect on the Building Structure; (ii) possible damage to the Building Systems; (iii) non-compliance with applicable codes; (iv) effect on the exterior appearance of the Building or ***(v) unreasonable interference with the normal and customary business operations of other tenants in the Building*** (each, a "Design Problem")) and return the Space Plan to Tenant. In such event, Landlord shall require, and Tenant shall make the minimum changes necessary in order to correct the Design Problems and shall return the Space Plan to Landlord, which Landlord shall approve or disapprove within one (1) day after Landlord receives the revised Space Plan. This procedure shall be repeated until the Space Plan is finally approved by Landlord and written approval has been delivered to and received by Tenant. The Space Plan may be submitted by Tenant in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

(d) Preparation and Approval of Working Drawings. After the Space Plan is finally approved by Landlord, Tenant shall submit to Landlord drawings prepared by the Designer ("Working Drawings") which shall be compatible with the design, construction and equipment of the Building, comply with all Applicable Laws, be capable of logical measurement and construction, contain all such information as may be required for the construction of the Tenant Improvements, and the preparation of the Engineering Drawings (as defined in Subsection (e) below), and contain all partition locations, plumbing locations, air conditioning system and duct work, special air conditioning requirements, reflected ceiling plans, office equipment locations, and special security systems. Such Working Drawings must incorporate such items as have been specified by Landlord as required for use in the Building, as set forth in Schedule 2 attached to this Agreement. The Working Drawings may be submitted in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

Landlord shall approve the Working Drawings, or such portion as has from time to time been submitted, within three (3) days after receipt of same or designate by notice given within such time period to Tenant the specific changes reasonably required to be made to the Working Drawings in order to correct any Design Problem and shall return the Working Drawings to Tenant. Tenant shall make the minimum changes necessary in order to correct any such Design Problem and shall return the Working Drawings to Landlord, which Landlord shall approve or disapprove within two (2) days after Landlord receives the revised Working Drawings. This procedure shall be repeated until all of the Working Drawings are finally approved by Landlord and written approval has been delivered to and received by Tenant.

[*WHERE LANDLORD PREPARES ENGINEERING DRAWINGS*]

[*(e) Preparation and Approval of Engineering Drawings. Within _____ (__) days after the Working Drawings are finally approved by Landlord, Landlord shall submit to the Designer, for Tenant's review and approval, engineering drawings prepared by an engineer designated by Landlord, showing complete mechanical, electrical, plumbing, HVAC, telecommunication, and computer cabling plans ("Engineering Drawings"). The engineer designated by Landlord to prepare the Engineering Drawings or any portion thereof shall not charge Tenant a higher price per RSF for preparing such plans than such engineer would charge Landlord for preparing comparable plans for Landlord's building management

office located in the Building. The Engineering Drawings may be submitted in one or more stages and at one or more times, and the time periods for Tenant's approval shall apply with respect to each such portion submitted.

Tenant shall approve the Engineering Drawings, or such portion as has from time to time been submitted, within three (3) days after receipt of same or designate by notice given within such time period to Landlord the specific changes required to be made to the Engineering Drawings and shall return the Engineering Drawings to Landlord. Landlord shall make the changes and shall return the Engineering Drawings to Tenant, which Tenant shall approve or disapprove within two (2) days after Tenant receives the revised Engineering Drawing. This procedure shall be repeated until all of the Engineering Drawings are finally approved by Tenant and written approval has been delivered to and received by Landlord.*]

[*WHERE TENANT PREPARES ENGINEERING DRAWINGS*]

[*e. Preparation and Approval of Engineering Drawings. After the Working Drawings are finally approved by Landlord, Tenant shall submit to Landlord, for Landlord's review and approval, engineering drawings prepared by the Engineer, showing complete mechanical, electrical, plumbing, HVAC, telecommunication, and computer cabling plans ("Engineering Drawings"). The Engineering Drawings may be submitted in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

Landlord shall approve the Engineering Drawings, or such portion as has from time to time been submitted, within three (3) days after receipt of same or designate by notice given within such time period to Tenant the specific changes reasonably required to be made to the Engineering Drawings in order to correct any Design Problem, and shall return the Engineering Drawings to Tenant. Tenant shall make the minimum changes necessary in order to correct any such Design Problem and shall return the Engineering Drawings to Landlord, which Landlord shall approve or disapprove within two (2) days after Landlord receives the revised Engineering Drawings. This procedure shall be repeated until the Engineering Drawings are finally approved by Landlord and written approval has been delivered to and received by Tenant.*]

(f) Integration of Working Drawings and Engineering Drawings into Final Plans. After [*Tenant/Landlord*] has approved the Engineering Drawings, Tenant shall cause the Designer to integrate the approved Working Drawings with the approved Engineering Drawings (collectively "Final Plans") and deliver the Final Plans to Landlord. Tenant may submit the Final Plans in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

Landlord shall approve the Final Plans within one (1) day after receipt of same or designate by notice given within such time period to Tenant the specific changes reasonably required to be made to the Final Plans in order to correct any Design Problem, and shall return the Final Plans to Tenant. Tenant shall make the minimum changes necessary in order to correct any such Design Problem and shall return the Final Plans to Landlord, which Landlord shall approve or disapprove within one (1) day after Landlord receives the revised Final Plans. This procedure shall be repeated until all of the Final Plans are finally approved by Landlord and written approval has been delivered to and received by Tenant.

(g) Suspension of Tenant Improvements. In the event that, at any time and from time to time and for any reason, Tenant elects not to proceed with or to suspend (i) the design or construction of the Tenant Improvements, or (ii) the move into the Premises, then, such election shall not excuse any performance of Landlord under the Lease or this Agreement, and shall not result in an Event of Default. The only economic consequence to Tenant as a result of such election shall be that the Commencement Date shall occur in accordance with the terms of Section 2 above and Tenant's obligation to pay **[*Base Rent,*] [*Operating Expenses,*] [*and any parking expenses*] shall begin [*(subject to the free Rent period)*].**

4. Contractor and Review of Plans.

(a) Selection of Contractor. Tenant shall select a contractor ("Contractor") familiar with all Applicable Laws and Building Requirements to the extent such Building Requirements have been provided to Tenant at least **[*one (1) month*]** prior to the date the Lease is executed by Tenant, subject to the approval of Landlord, which approval will not be unreasonably withheld and shall be granted (or refused for reasonable reasons) within _____ (_____) days after Tenant's request for such approval. Tenant may have Landlord approve three (3) or more Contractors prior to competitive bidding. The following Contractors, _____, _____, and _____, if used by Tenant, are hereby deemed consented to by Landlord. Tenant may enter into a construction contract with the Contractor at a mutually agreed upon price, or, at Tenant's election, in the exercise of its sole discretion, Contractor shall be selected by Tenant pursuant to competitive bidding. The construction contract shall provide for progress payments, and Tenant shall pay for the entire cost of the Tenant Improvements in excess of the Tenant Improvement Allowance (as defined in Section 6(a) below) after the Tenant Improvement Allowance has first been exhausted.

(b) Landlord's Review Responsibilities. Tenant agrees and understands that the review of all plans pursuant to this Agreement by Landlord is solely to protect the interests of Landlord in the Building and the Premises, and, with the exception of the Base Building Plans **[*and the Engineering Drawings*],** Landlord shall not be the guarantor of, nor responsible for, the correctness or accuracy of any such plans or compliance of such plans with Applicable Laws.

(c) Review Costs. Tenant shall not reimburse to Landlord costs incurred in approving the Space Plan, Working Drawings, **[*Engineering Drawings*]** and Final Plans.

5. Tenant Improvements. The term "Tenant Improvements" shall mean all improvements shown in the Final Plans as integrated by the Designer, and, to the extent specified in the Final Plans, all signage, freestanding workstations, built-ins, related cabinets, reception desks, conference room tables to the extent specified in the mill work or comparable contracts, all telecommunication equipment and related wiring, and all carpets and floor coverings, but, except as provided above, Tenant Improvements shall not include any personal property of Tenant.

6. Tenant Improvement Allowance.

(a) Amount. Landlord will pay on behalf of Tenant an amount equal to _____ **Dollars ($_____) per** [*rentable/usable*] square foot ("**[*RSF/USF*]**") attributable to the Premises which totals _____ Dollars ($_____) ("Tenant Improvement Allowance") over and above the items included in the Base Building, as set forth in Schedule 1 attached hereto, expendable for the costs of the design and construction of the Tenant Improvements, and for Tenant's moving expenses, including any amount paid to a project coordinator, construction consultant or similar consultant, and for Tenant's legal fees in negotiating the Lease. In addition, Tenant may use the Tenant Improvement Allowance for any additional freestanding workstations, furniture, fixtures, and/or equipment ("Permitted Items"). **[*In addition to the Tenant Improvement Allowance, Landlord will pay Tenant an amount equal to _____ Dollars ($_____) per [*RSF/USF*] attributable to the Premises for a total amount of _____ Dollars ($_____) ("Moving Allowance") expendable for costs and expenses relating to the relocation of Tenant's business (including, but not limited to, costs of moving Tenant's fixtures, furniture and equipment) from its current space to the Premises. The Moving Allowance shall be promptly paid by Landlord to Tenant upon Landlord's receipt of Tenant's written demand therefor, accompanied by, as applicable, invoices documenting and evidencing such costs and expenses.*]** The Tenant Improvement

Allowance shall be increased by any amounts required to be expended by Tenant as specifically approved elsewhere in this Exhibit B.

(b) Disbursement. The Tenant Improvement Allowance shall be first utilized to pay for all Tenant Improvements and Permitted Items. The Tenant Improvement Allowance shall be disbursed by Landlord **[*every two (2) weeks*]** pursuant to requests for disbursement which shall include (i) invoices only, with respect to any line item draw request less than _____ Dollars ($_____) and (ii) invoices and conditional lien releases, with respect to any line item draw request in excess of _____ Dollars ($_____), which shall be approved by Tenant and/or the Designer and submitted to Landlord for payment by Tenant relating to completed work.

(c) Unused or Unfunded Amount. Any unused or unfunded portion of the Tenant Improvement Allowance **[*or the Moving Allowance*]** shall be available to Tenant as a credit against the initial **[*Base Rent*] [*and Operating Expenses*] [*and parking expenses*]** commencing with the **[*Base Rent*] [*and Operating Expenses*] [*and parking expenses*]** due for the _____ (_____) month after the Commencement Date.

7. Change Orders. In the event that Tenant requests any changes to the Final Plans, Landlord shall not unreasonably withhold its consent to any such changes, and shall grant its consent to such changes within one (1) business day after Landlord's receipt of same, provided the changes do not create a Design Problem. If such changes increase the cost to Tenant of constructing the Tenant Improvements shown on the Final Plans, Tenant shall pay Contractor such increased costs, on a monthly basis according to the invoices for the items relating to the changes provided by Contractor, but only after the Tenant Improvement Allowance has been completely disbursed.

8. No Fee to Landlord. Landlord shall receive no fee for supervision, profit, overhead or general conditions in connection with the Tenant Improvements.

9. Clean-Up Expenses. Landlord shall clean the Premises (a) prior to delivering the Premises to Tenant for the commencement of the construction of the Tenant Improvements, and (b) following Tenant's move into the Premises, including removal of all rubbish and debris. The cleaning referenced in (b) shall leave the Premises clean in a manner consistent with the commencement of businesses from comparable premises in Comparable Buildings, such that Tenant may commence its business operations from the Premises immediately after Landlord completes such clean-up. The costs of any cleaning to be provided by Landlord pursuant to this Section 9 shall not be included in Operating Expenses for the Building prior to Tenant's occupancy of the Premises.

10. No Miscellaneous Charges. Neither Tenant nor the Contractor shall be charged for, and Landlord shall provide, parking (to the extent parking is available) for Tenant's architects, designers, contractors and subcontractors (including those people working on the Tenant Improvements), electricity, water, toilet facilities, HVAC, security, elevators **[*and/or hoists*]** during the Construction Period or the Move-In Period. All such equipment, areas, elevators and utilities shall be made reasonably available to the Contractor and the subcontractors during the Construction Period and the Move-In Period. In this connection the HVAC systems for the Premises shall be run continuously twenty-four (24) hours per day, seven (7) days per week during the Move-In Period to flush out and purge new finish odors.

11. Bonding. Notwithstanding anything to the contrary set forth in the Lease, Tenant shall not be required to obtain or provide any completion or performance bond in connection with any construction, alteration, or improvement work performed by or on behalf of Tenant.

12. Demolition. In the event that the Premises have been previously built out, then to the extent that, because of the existence of existing improvements in the Premises, Tenant is required to pay for the demolition of the

existing tenant improvements, then all demolition costs shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such costs. The amount of such reimbursement shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay in the design or construction of the Tenant Improvements because of the required demolition shall constitute a Landlord Delay.

13. Presence of Hazardous Substances. In the event that at any point in time the Premises and/or the Common Areas of the Building are determined to contain hazardous substances (as defined by Applicable Laws), Tenant shall have the right, by notice to Landlord, to require Landlord to remove, at Landlord's sole cost and expense, all hazardous substances within sixty (60) days following receipt of such notice. If Landlord does not remove such hazardous substances within such time period, Tenant shall have the right to remove, encapsulate, contain, or otherwise dispose of such hazardous substances, and the cost incurred by Tenant in connection therewith shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such costs. In addition, any costs incurred by Tenant because of the presence of Hazardous Materials in the Building that would not have been incurred had the Building not contained Hazardous Materials ("H.M. Costs") shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such H.M. Costs. The amount of such reimbursements shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay incurred by Tenant in the design or construction of its Tenant Improvements because of the presence of hazardous substances shall constitute a Landlord Delay.

14. Life-Fire Safety Codes/Disabled Access Codes/Earthquake Safety Codes. In the event that, because the Premises and/or the Building do not comply with current Applicable Laws which pertain to new construction, including but not limited to life-fire safety codes, disabled access codes (including, without limitation, the ADA), and/or earthquake safety codes, Tenant incurs increased design or construction costs that it would not have incurred had the Premises and/or the Building already been in compliance with the then Applicable Laws which are applicable to new construction, then such costs shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such increased costs. The amount of such reimbursement shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay in the design or construction of the Tenant Improvements because of the non-compliance of the Building and/or the Premises with the then Applicable Laws which are applicable to new construction shall constitute a Landlord Delay.

15. Historical Designation. In the event that the Premises or the Building has been declared an historical landmark or has other historical significance, and, if because of same, Tenant incurs increased design or construction costs, or increased costs relating to obtaining permits and approvals, then such costs shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such increased costs. The amount of such reimbursement shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay in the design or construction of the Tenant Improvements as a result of the Premises and/or the Building being declared an historical landmark, or as a result of the Premises and/or Building having other historical significance, shall constitute a Landlord Delay.

16. Base Building. Landlord hereby agrees that the Base Building of the Building shall include the items set forth in the "Base Building description" attached hereto as Schedule 1 and shall otherwise be in accordance with the Base Building Plans, and the cost thereof shall not be deducted from the Tenant Improvement Allowance. Landlord may make further revisions to such Base Building Plans as long as the Building, when constructed, will be comparable in appearance, design, efficiency, and quality to the building initially described in the unmodified Base Building Plans.

17. Delivery of Premises to Tenant and Condition of Premises. Landlord shall deliver possession of the Premises to Tenant in the condition described in Schedule 3 attached to this Agreement and in compliance with all laws applicable to new construction, disregarding variances and grandfathered and grandmothered rights ("Required Condition") at the time set forth in the Lease, or if no time is set forth in the Lease, then on execution of the Lease by Landlord.

18. Work Performed by Landlord or by Contractors or Entities Designated by Landlord. In the event that Landlord performs at the request of Tenant any work for Tenant in connection with the Tenant Improvements, Landlord shall be paid an amount equal to the actual costs reasonably incurred by Landlord in performing such work. **[In the event that Landlord is permitted to require Tenant to use specified contractors or entities (such as mechanical, electrical, plumbing, engineering, or other contractors, all of whom will be deemed agents of Landlord), Landlord shall cause such contractors or entities to charge Tenant for such work an amount equal to the lower of the cost such contractors or entities charge Landlord for similar work performed for Landlord's own account, or the cost that comparable first-class, reputable, and reliable contractors or entities would have charged Tenant if selected pursuant to competitive bidding procedures. To the extent the design or construction of the Tenant Improvements is delayed because of the untimeliness of, or errors or omissions committed by, such contractors or entities, such delay will constitute a Landlord Delay.]** To the extent Tenant incurs increased design or construction costs because of the untimeliness of, or errors or omissions committed by, such contractors or entities, such increased costs will be reimbursed by Landlord to Tenant within ten (10) days of receipt of an invoice from Tenant documenting and evidencing such costs and such reimbursement shall be in addition to, and not deducted from, the Tenant Improvement Allowance.

19. Staging Area. During the period prior to the Commencement Date, Tenant shall have the right, without the obligation to pay Rent, to use empty space in the Building designated by Landlord for the purposes of storing and staging its furniture and equipment only. With respect to this free storage space, Tenant shall be responsible for providing all insurance and for providing any necessary fencing or other protective facilities. Tenant shall hold Landlord harmless and shall indemnify Landlord from and against any and all loss, liability or cost arising out of or in connection with use of such storage space by Tenant. ******Tenant shall be obligated to remove all of the stored materials and its fencing and other facilities within thirty (30) days after Tenant's receipt of written notice from Landlord stating that such staging area is needed by Landlord for construction of another tenant's premises in which event comparable space, to the extent such space is available, shall be made available to Tenant as a substitute staging area.*****

20. *****Move-In Priority. Provided that Tenant moves into the Building during the Move-In Period, or, in the event Tenant moves into the Building at some time other than the Move-In Period, and provided that Tenant has provided Landlord at least two (2) weeks' prior written notice of Tenant's move into the Building, Tenant shall have the exclusive right to use the passenger and freight elevators during the weekend that it moves into the Building, but only to the extent such exclusive use is necessary for Tenant to complete its move into the Building in one (1) weekend in an orderly and efficient manner.*****

21. Post Commencement Date Events. If any event occurs after the Commencement Date but prior to the expiration of the Move-In Period and Tenant's commencement of business operations from the Premises which would have otherwise constituted a Force Majeure Delay or a Landlord Delay had it occurred prior to the Commencement Date, such event shall be deemed a "Force Majeure Event" and/or a "Landlord Delay Event" and shall entitle Tenant to all the protections set forth in the Lease (including without limitation, General Conditions F and J) and Tenant shall receive one (1) day of gross rent abatement for each day of any such Force Majeure Event or Landlord Delay Event.

22. Unions. Tenant, in the exercise of its sole discretion, may utilize union or non-union contractors and/or subcontractors.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

LANDLORD:	TENANT:
_____,	_____,
a _____	a _____
By: _____	By: _____
Its: _____	Its: _____

SCHEDULE 1

BASE BUILDING DESCRIPTION

At no cost to Tenant, Landlord either has, or shall, supply, furnish, install and finish the following items in full compliance with all applicable laws (including, without limitation, the ADA), regulations and building codes applicable to new construction, disregarding variances and grandfathered/grandmothered rights, all at Landlord's sole cost and expense, which shall not be deducted from the Tenant Improvement Allowance, and which shall comprise, and are hereby defined as, the "Base Building":

1. Service Core.

(a) Landlord shall build the Building and the Base Building pursuant to this Schedule 1, which obligation shall be deemed satisfied when the Building and the Base Building have been substantially completed, substantially in accordance with the requirements of this Schedule 1 as supplemented and increased (but not decreased) by the Base Building Plans and Building Requirements (as defined in Sections ___ and ___, respectively, of the attached Work Letter Agreement), the most current copies of which have been provided to Tenant. It shall be understood that Landlord may make modifications to the Base Building Plans and Building Requirements, some of which may affect the Premises, as long as such modifications do not affect the quality of the construction or the materials or equipment used, or substantially and adversely affect the operation of the Building's basic services in such a manner as would interfere with Tenant's quiet and peaceful use, possession and enjoyment of the Building.

(b) Stairways in compliance with code, the Base Building Plans, and Tenant's type of occupancy and use.

(c) Electrical, telephone, janitorial and mechanical rooms to the extent located on the floor as shown on the Base Building Plans.

(d) Men's and women's washrooms on each floor (except lobby) in compliance with the Base Building Plans, all applicable laws (including, without limitation, the ADA) and codes and finished with:

(i) Ceramic tile or better on floors (but not in the vestibule) and wet walls at least up to the height of the wainscot;

(ii) Other walls and ceilings finished;

(iii) Vanities, cubicles, accessories, fixtures, trim lighting and all mechanical and plumbing services completed; and

(iv) Other lighting sufficient for first class washrooms.

(e) Water and drainage on each floor (except first floor).

(i) Access at the core to domestic water, drainage and vent systems.

(ii) One drinking fountain, "chilled" water installed in compliance with all applicable laws (including, without limitation, the ADA) and codes.

(f) Elevator lobbies and corridors installed and complete on multi-tenant floors which are occupied by Tenant.

2. Core Doors.

(a) Building Standard core doors for stairwells, electrical, mechanical, janitorial and telephone rooms and washrooms all installed, primed, sanded, dusted, and ready to receive paint or other Tenant finish.

(b) Doors finished and complete with frame, trim, hardware, locking devices, electric door releases and/or magnetic hold-open devices where applicable and closers.

3. Walls and Windows.

(a) Curtain wall installed and sealed.

(b) Exterior windows installed and sealed.

(c) Insulation where applicable (from slab-to-slab), installed and sealed.

(d) Core walls (except all levels below-grade), service core walls, perimeter walls, elevator lobby walls, and columns (exterior columns extended slab-to-slab) all installed, clad with properly rated sheetrock, taped, sanded, patched, filled, dusted and ready to receive paint or other Tenant finish.

4. Floors.

(a) Smooth and level concrete floors with troweled finish which shall be level at least to the tolerance of (i) one-quarter inch (1/4") per ten (10) feet on a non-cumulative basis and (ii) three-eighths inch (3/8") on an overall basis.

(b) Design to support a minimum live load of 100 lbs. per square foot and an additional partition load of 20 lbs. per square foot for a total of 120 lbs. per square foot.

(c) Smooth, level and ready to receive carpeting, tile, marble or wood without additional Tenant preparation.

5. HVAC.

(a) HVAC systems shall have the capacity to service not less than fifty (50) separate zones per floor without expense to Tenant in excess of the cost of the equipment referred to in subparagraph (d) below.

(b) HVAC systems to service cores on all floors.

(c) Main air distribution system with main cold and/or hot air loop, as applicable around the floor and connected to the core with all applicable and required fire dampers.

(d) HVAC (or fan coil) boxes with associated duct work and controls will be installed **[*at the rate of one (1) per every 1,000 usable square feet of the Premises*].**

(e) Condenser and/or chilled water loop on each floor. If Landlord allows any other tenant to tap into the Building's condenser and/or chilled water, Landlord shall allow Tenant to do so on the same terms and conditions.

6. Acoustics. Landlord agrees that the Building will be constructed in a manner which shall comply with the sound production standards attached as Appendix 1 hereto.

7. General Exhaust.

(a) Access at core above first floor to an installed general exhaust system for toilets only.

(b) Access on floor to general exhaust system available to serve kitchens and pantries, and computer, reproduction, and conference rooms, including exhaust for halon gas if applicable and other office equipment normally and customarily requiring special exhaust.

8. Lighting.

(a) Installed and operating in main lobby, all stairwells, elevators, lobbies, mechanical rooms, utility rooms, other lighting as required by code.

(b) Exterior lighting installed as required by design.

9. Electrical/Power.

(a) Building equipped per specifications dated _____ and prepared by _____.

(b) Three electrical panels (one lighting, two power) per floor and additional panels as required by Tenant and approved by Landlord **[*including ____ circuits per panel and ____ circuit breakers*]** and electrical power available to Tenant as set forth in **[*Lease Section ___*] [*or*] [*Addendum Provision ____*].**

10. Life Safety.

(a) Landlord shall install, or has installed, life safety improvements including life safety panel(s) and controls (the cost of which will be paid by Landlord and not deducted from the Tenant Improvement Allowance) to the extent required by shell and core construction for a temporary certificate of occupancy for the Building, or, if greater, to the extent already constructed in the Premises and Building as of _____.

(b) A sprinkler system installed in compliance with code for floors, including main loop connected to core and drops in place with heads installed per code for an unimproved (non-occupied) floor.

(c) Firehose and extinguisher cabinets finished and installed at each stairwell or as required by code for shell and core construction.

(d) Exit signs at all stairwells.

(e) Smoke detectors on both sides of all doors in all elevator lobbies and all other areas as required by code.

(f) Fire extinguishers as required by code for shell and core construction.

(g) Fire horns and exit signs as required by code for shell and core construction.

(h) Electric door releases and magnetic hold-open devices, as applicable installed for all fire doors.

(i) Speakers, cameras and such other life safety equipment as required by code to obtain a final building inspection and/or permanent certificate of occupancy for the Premises.

11. Communication System.

(a) Access to main telephone service on the first floor or lower level of the building by approved personnel only.

(b) Sleeves in core telephone rooms for Tenant telephone access. Tenant to provide conduit and backboard from telephone rooms to Tenant's suite.

12. Elevators and Freight Facilities.

(a) At least four (4) passenger elevators servicing Tenant's floor installed and operational as designed to operate at 800 FPM.

(b) All freight elevators installed and operational as designed.

(c) Freight vestibules installed as designed per code.

(d) Loading dock facilities installed as designed.

13. Parking. Garage construction complete with all equipment operational and spaces lined.

14. Landscaping.

(a) Installed per design.

(b) Automatic sprinklers installed per design.

15. Security.

(a) Guard station/reception desk installed and operational per Landlord's design on Main Lobby of the Building only.

(b) Electronic surveillance installed and operational per Landlord's design.

(c) Landlord's design of surveillance system covers garage entrances and exits only.

(d) Electronic pass systems installed and operational per Landlord's design for:

(i) Entrances to main lobby of the Building.

(ii) Elevators.

(iii) Garage entrances (may be separate card).

16. Directory. Installed with sufficient lines for Tenant's needs as specified in the Lease.

17. General.

(a) To the extent there are improvements to the Base Building in excess of the foregoing, such improvements will remain as part of the Base Building work at no cost to Tenant, and shall be in accordance with the Base Building Plans.

(b) The cost of installing all demising walls (including the corridor wall separating the Premises from the corridor), fire dampers and transfer boots shall be borne by Landlord.

(c) Notwithstanding anything to the contrary in Section 1.f. above, Landlord will allow Tenant to install carpet, and paint the walls in the common areas of the corridors and elevator lobbies, and Tenant shall receive a credit toward such costs equal to the costs that would have been incurred for Building Standard carpet and paint, but such color and material selections shall be subject to Landlord's reasonable approval.

Appendix I to Schedule 1

The Base Building shall be constructed so that the noise produced by, but not limited to, the operation of the HVAC, plumbing, electrical, and elevator systems or systems installed for other tenants shall not exceed the following:

All floors --

Areas adjacent to the core -- noise criteria ("NC")-40. All other areas -- NC-35 except in areas immediately under fan powered mixing boxes where a value of NC-40 shall apply out to a radius of five feet from the box center. The noise level of NC-35 shall apply in a partitioned office located just outside the five foot radius.

The octave band sound pressure levels corresponding to the noise criteria (NC) shall be defined in accordance with the ASHRAE Guide.

In the event that Tenant perceives that a noise problem exists, and measurements performed by an independent acoustical consultant indicate that the sound pressure levels indicated above are exceeded, and the source is due to the operation of the systems described above, Landlord shall take reasonable measures as soon as reasonably possible, at Landlord's expense, to reduce the noise levels so that they do not exceed the values tabulated above.

All sound level measurements shall be performed on a sound level meter meeting the standards ANSI S1.4 Type S1. The octave band filter set shall meet ANSI S1.71 - 1966 Class II.

SCHEDULE 2

BUILDING STANDARD TENANT IMPROVEMENT ITEMS

[*To Be Provided By Landlord*]

All items listed below, except those items which are preceded by an asterisk (*), may be substituted for items of equal or higher quality at Tenant's election, and Tenant shall receive a credit toward the costs of such substituted items equal to the costs that would have been incurred for the items listed below.

SCHEDULE 3

REQUIRED CONDITION OF PREMISES UPON DELIVERY TO TENANT BY LANDLORD

[*To Be Attached*]

(OPTION B: Use When Tenant Improvements are to be constructed by landlord in the premises)

EXHIBIT "B"

43. WORK LETTER AGREEMENT

This Work Letter Agreement("Agreement") is made and entered into as of _____, **[200_],** between _____, a _____ ("Landlord") and _____, a _____ ("Tenant"), in connection with the execution of the Lease between Landlord and Tenant of even date herewith ("Lease"), who hereby agree as follows:

1. General.

(a) The purpose of this Agreement is to set forth how the Tenant Improvements (as defined in Section 7 below) in the Premises are to be constructed, who will undertake the construction of the Tenant Improvements, who will pay for the construction of the Tenant Improvements, and the time schedule for completion of the construction of the Tenant Improvements.

(b) Except as defined in this Agreement to the contrary, all terms utilized in this Agreement shall have the same meaning ascribed to them in the Lease. When work, services, consents or approvals are to be provided by or on behalf of Landlord, the term "Landlord" shall include Landlord's Employees.

(c) The provisions of the Lease, except where clearly inconsistent or inapplicable to this Agreement, are incorporated into this Agreement.

(d) The Tenant Improvements shall be constructed pursuant to this Agreement by Landlord. Landlord shall provide the Tenant Improvement Allowance (as defined in Section 8 below) and shall provide possession of the Premises to Tenant with the Tenant Improvements completed therein.

2. Commencement Date. The "Commencement Date" shall have the definition set forth in Section 2.3 of the Lease.

(a) Design Period. Tenant shall have a _____ (_____) day "Design Period" commencing on the latest of the date Tenant receives (i) the Base Building Plans (as defined in Section 5(b) below) for the Building and the Premises sufficient to allow Tenant to prepare the Working Drawings (as defined in Section 5(d) below); (ii) the Lease executed by an authorized representative of Landlord; (iii) a Non-Disturbance Agreement substantially in the form attached to the Lease as Exhibit "H," signed by each lien holder, ground lessor or mortgage holder of record; and (iv) all rules, regulations, instructions and procedures promulgated by Landlord with respect to Tenant design and/or construction in the Building dated as of _____ (collectively, "Building Requirements"). **[NOTE: Do no sign Lease until Base Building Plans and Building Requirements have been reviewed and approved by Tenant.]**

(b) Move-In Period. Tenant shall have a "Move-In Period" of _____ (_____) days **[*multiplied by the number of floors Tenant is leasing*]** following the later of (x) the earlier of (i) the date Landlord delivers to Tenant a factually correct written notice stating that the Tenant Improvements to the Premises are Substantially Complete, (ii) the date Landlord delivers to Tenant a factually correct written notice stating the date the Tenant Improvements to the Premises would have been Substantially Complete were it not for any Tenant Delay and (y) the date the Landlord has received a certificate of occupancy (or the equivalent) for the Premises and the Building, for the purpose of continuous, uninterrupted access to the Premises in order to install

its freestanding workstations, fixtures, furniture, equipment and telecommunication and computer cabling systems.

(c) Delay of Commencement Date. The Commencement Date shall be delayed by one (1) day for each day of delay in the design of or Tenant's move-in into the Premises that is caused by any Force Majeure Delay or Landlord Delay. No Landlord Delay, Force Majeure Delay or Tenant Delay shall be deemed to have occurred unless and until the party claiming such delay has provided written notice to the other party specifying the action or inaction that such notifying party contends constitutes a Landlord Delay, Force Majeure Delay or Tenant Delay, as applicable. If such actions or inaction is not cured within one (1) day after receipt of such notice, then a Landlord Delay, Force Majeure Delay or Tenant Delay, as set forth in such notice, shall be deemed to have occurred commencing as of the date such notice is received and continuing for the number of days the design of the Tenant Improvements and/or Tenant's move-in into the Premises was in fact delayed as a direct result of such action or inaction.

(d) Certain Definitions.

(i) Substantially Complete. The term "Substantially Complete" or "Substantial Completion" as used in the Lease or this Agreement shall mean: (1) the shell and core of the Building are complete and in compliance with all Applicable Laws, and all of the Building Systems are operational to the extent necessary to service the Premises; (2) Landlord has sufficiently completed all the work required to be performed by Landlord in accordance with this Agreement (except minor punch list items which Landlord shall thereafter promptly complete) such that Tenant can conduct normal business operations from the Premises; (3) Landlord has obtained a certificate of occupancy for the Building, or a temporary certificate of occupancy for that portion of the Building that includes all of the Premises, or its equivalent (except to the extent delayed by any Tenant Delay); (4) Tenant has been provided with the number of parking privileges and spaces to which it is entitled under the Lease; (5) Tenant has been delivered complete and uninterrupted access to the Premises (and other required portions of the Building and the Site) sufficient to allow Tenant to install its freestanding work stations, fixtures, furniture, equipment, and telecommunication and computer cabling systems and to move into the Premises over one (1) weekend, and (6) Tenant has received the Non-Disturbance Agreement substantially in the form attached to the Lease as Exhibit "H", signed by Landlord and each lien holder, ground lessor or mortgage holder of record, as required by the Lease.

(ii) Tenant Delay. The term "Tenant Delay" as used in the Lease or this Agreement shall mean any delay that Landlord may encounter in the performance of Landlord's obligations under this Agreement because of any act or omission of any nature by Ten-ant or its agents or contractors, including any: (1) delay attributable to changes in or additions to the Final Plans (as defined in Section 5(f) below) or to the Tenant Improvements requested by Tenant; (2) delay attributable to the postponement of any Tenant Improvements at the request of Tenant; (3) delay by Tenant in the submission of information or the giving of authorizations or approvals within the time limits set forth in this Agreement; and (4) delay attributable to the failure of Tenant to pay, when due, any amounts required to be paid by Tenant pursuant to this Agreement.

In addition, since in any project there are always change orders, the first [*_____ (___)*] days of any delay which results from a change order initiated by Tenant shall constitute a grace period and shall not constitute a Tenant Delay. Tenant shall give Landlord written notice of latent defects in the Premises which would not have been discovered by a reasonably diligent inspection of the Premises at the time Tenant took possession thereof. Upon receipt of such notice, Landlord will, with reasonable diligence, bring the Premises into satisfactory condition as required by the Lease.

(iii) Force Majeure Delay. The term "Force Majeure Delay" as used in the Lease or this Agreement shall mean any delay incurred by Tenant in the design of its Tenant Improvements or its move-in into the Premises attributable to any: (1) actual delay or failure to perform attributable to any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employee of either party hereto), civil disturbance, further order claiming jurisdiction, act of public enemy, war, riot, sabotage, blockade, embargo; (2) delay due to changes in any Applicable Laws (including, without limitation, the ADA), Base Building Plans (as defined in Section 5(b)) or Building Requirements, or the interpretation thereof; or (3) delay attributable to lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry-wide or Building-wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage due to any Force Majeure Delay shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money, including rental and other charges, pursuant to the Lease).

(iv) Landlord Delay. The term "Landlord Delay" as used in the Lease or this Agreement shall mean any delay in the design of the Tenant Improvements or Tenant's move-in into the Premises during the Move-In Period which is due to any act or omission of Landlord (wrongful, negligent or otherwise), its agents or contractors (including acts or omissions while acting as agent or contractor for Tenant). The term Land-lord Delay shall include, but shall not be limited to any: (1) delay in the giving of authorizations or approvals by Landlord; (2) delay attributable to the acts or failures to act, whether willful, negligent or otherwise, of Landlord, its agents or contractors; (3) delay attributable to the interference of Landlord, its agents or con-tractors with the design of the Tenant Improvements or the failure or refusal of any such party to permit Tenant, its agents or contractors, access to and priority use of the Building or any Building facilities or services, including **[*hoists*,]** freight elevators, passenger elevators, and loading docks, which access and use are required for the orderly and continuous performance of the work necessary for Tenant to complete its move-in into the Premises during the Move-In Period; (4) delay attributable to Landlord giving Tenant incorrect or incomplete Building Requirements or Base Building Plans, or revisions made to such Building Requirements or Base Building Plans subsequent to the delivery of such items to Tenant (collectively, "Incomplete Plans") in either case, in addition to such delay being deemed a Landlord Delay, Landlord shall increase the Tenant Improvement Allowance by an amount sufficient to reimburse Tenant for the increased costs incurred by Tenant as a result thereof; (5) failure of Landlord to deliver the Base Building Plans and/or the Building Requirements to Tenant at least **[*one (1) month*]** prior to the execution of the Lease; (6) delay by Landlord in the substantial completion of the Base Building prior to the commencement of the Move-In Period; (7) delay attributable to Landlord's failure to allow Tenant sufficient access to the Building and/or the Premises during the Move-In Period to move into the Premises over one (1) weekend; (8) delay by Landlord in administering and paying when due the Tenant Improvement Allowance (in which case, in addition to such delay being deemed a Landlord Delay, Tenant shall have the right to stop the design of the Tenant Improvements); and (9) delay caused by the failure of the Base Building to comply with the ADA (in which case, in addition to such delay being deemed a Landlord Delay, Landlord shall increase the Tenant Improvement Allowance by an amount sufficient to reimburse Tenant for the increased costs incurred by Tenant as a result thereof). In the event that the use of the freight elevators **[*and/or hoists*]** is not sufficient to meet Tenant's requirements, Landlord shall cause to be made operational, and shall allow Tenant to have priority usage of **[*two (2)*]** passenger elevators in the elevator bank that services the Premises in order to assist Tenant in the installation of Tenant's fixtures, furniture and equipment. In no event shall Tenant's remedies or entitlements for the occurrence of a Landlord Delay be abated, deferred, diminished or rendered inoperative because of a prior, concurrent, or subsequent delay resulting from any action or inaction of Tenant.

3. Tenant's Representative. Tenant shall designate to Landlord in writing the name of one individual representative who will work with Landlord's representatives through-out the period of construction of the Tenant Improvements in the Premises.

4. Delivery of Premises to Tenant and Notice of Substantial Completion. Landlord shall deliver possession of the Premises to Tenant when the Tenant Improvements have been constructed so that Tenant will have uninterrupted access to the Premises during the Move-In Period. Landlord shall deliver to Tenant one (1) week's prior written notice stating the date that the Premises are expected to be Substantially Complete, or would be Substantially Complete were it not for any Tenant Delay. Delay of the Commencement Date, to the extent not caused by a Tenant Delay, and Tenant's right to cancel pursuant to Section 2.8 of the Lease shall be Tenant's sole remedy for any delay in the construction by Landlord of the Tenant Improvements or making the Premises Substantially Complete.

5. Preparation of Plans and Construction Schedule and Procedures. Delivery of all plans and drawings referred to in this Section 5 shall be by messenger service or personal hand delivery, unless otherwise agreed by Landlord and Tenant. Landlord shall arrange for the construction of the Tenant Improvements in accordance with the following schedule:

(a) Selection of Designer **[*and Engineer*].** Tenant shall select an architect or designer ("Designer") **[*and an engineer ("Engineer")*]** familiar with all Applicable Laws and Building Requirements to the extent such Building Requirements have been provided to Tenant at least **[*one (1) month*]** prior to the date the Lease is executed by Tenant. The Designer **[*and the Engineer*]** shall be selected by Tenant subject to Landlord's consent, which con-sent shall not be unreasonably withheld, and which consent (or refusal to consent for reasonable reasons) shall be granted within three (3) days after Tenant has submitted the name of the Designer **[*and the Engineer*]** to Landlord. This procedure shall be repeated until the Designer **[*and the Engineer*]** is **[*are*]** finally approved by Landlord and written consent has been delivered to and received by Tenant. The following Designer, _____, if used by Ten-ant, is hereby deemed consented to by Landlord. **[*The following Engineer, _____ if used by Tenant, is hereby deemed consented to by Landlord.*]**

(b) Base Building Plans. Landlord shall submit instructions and Building plans and specifications described as _____, dated _____, and prepared by _____ ("Base Building Plans") to the Designer sufficient to allow the Designer to complete a Space Plan (as defined in Subsection (c) below). Landlord shall have submitted to Tenant the Base Building Plans and the Building Requirements at least **[*one (1) month*]** prior to the execution of the Lease. In the event that Tenant incurs increased costs because of Incomplete Plans, such increased costs will be reimbursed to Tenant by Landlord, and any delay caused thereby shall be deemed to constitute a Landlord Delay. The Design Period or Move-In Period, as applicable, shall be extended by one (1) day for each day Tenant is delayed in completing its Space Plan, Working Drawings or Final Plans (all as defined below), as applicable, due to any Force Majeure Delay and/or Landlord Delay.

(c) Preparation and Approval of Space Plan. Tenant shall submit to the Designer all additional information, including occupancy requirements for the Premises ("Information"), necessary to enable the Designer to prepare a space plan showing all demising walls, corridors, entrances, exits, doors, interior partitions, and the locations of all offices, conference rooms, computer rooms, mini-service kitchens, and the reception area, library, and file room ("Space Plan") and the Working Drawings (as defined below). The Designer shall incorporate the items described in Schedule 2 attached hereto into the Space Plans, which Landlord is required to utilize in the construction of the Tenant Improvements.

Tenant shall cause the Designer to submit to Landlord the Space Plan for Landlord's review and approval. Within two (2) days after Landlord receives the Space Plan, Landlord shall either approve or disapprove the Space Plan for reasonable and material reasons (which shall be limited to the following: (i) adverse effect on the Building Structure; (ii) possible damage to the Building Systems; (iii) non-compliance with applicable codes; (iv) effect on the exterior appearance of the Building or (v) unreasonable interference with the normal and customary business operations of other tenants in the Building (each, a "Design Problem")) and return the Space Plan to Tenant. In

such event, Landlord shall require, and Tenant shall make the minimum changes necessary in order to correct the Design Problems and shall return the Space Plan to Landlord, which Landlord shall approve or disapprove within one (1) day after Landlord receives the revised Space Plan. This procedure shall be repeated until the Space Plan is finally approved by Landlord and written approval has been delivered to and received by Tenant. The Space Plan may be submitted by Tenant in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

(d) Preparation and Approval of Working Drawings. After the Space Plan is finally approved by Landlord, Tenant shall submit to Landlord drawings prepared by the Designer ("Working Drawings") which shall be compatible with the design, construction and equipment of the Building, comply with all Applicable Laws, be capable of logical measurement and construction, contain all such information as may be required for the construction of the Tenant Improvements and the preparation of the Engineering Drawings (as defined in Subsection (e) below), and contain all partition locations, plumbing locations, air conditioning system and duct work, special air conditioning requirements, reflected ceiling plans, office equipment locations, and special security systems. Such Working Drawings must incorporate such items as have been specified by Landlord as required for use in the Building, as set forth in Schedule 2 attached to this Agreement. The Working Drawings may be submitted in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

Landlord shall approve the Working Drawings, or such portion as has from time to time been submitted, within three (3) days after receipt of same or designate by notice given within such time period to Tenant the specific changes reasonably required to be made to the Working Drawings in order to correct any Design Problem and shall return the Working Drawing to Tenant. Tenant shall make the minimum changes necessary in order to correct any such Design Problem and shall return the Working Drawings to Landlord, which Landlord shall approve or disapprove within two (2) days after Landlord receives the revised Working Drawings. This procedure shall be repeated until all of the Working Drawings are finally approved by Land-lord and written approval has been delivered to and received by Tenant.

[*WHERE LANDLORD PREPARES ENGINEERING DRAWINGS*]

[NOTE: We recommend that Tenant never allows Landlord to prepare Engineering Drawings]

[*(e) Preparation and Approval of Engineering Drawings. Within _____ (_____) days after the Working Drawings are finally approved by Landlord, Landlord shall submit to the Designer, for Tenant's review and approval, engineering drawings prepared by an engineer designated by Landlord, showing complete mechanical, electrical, plumbing, HVAC, telecommunication, and computer cabling plans ("Engineering Drawings"). The engineer designated by Land-lord to prepare the Engineering Drawings or any portion thereof shall not charge Tenant a higher price per RSF for preparing such plans than such engineer would charge Landlord for preparing comparable plans for Landlord's building management office located in the Building. The Engineering Drawings may be submitted in one or more stages and at one or more times, and the time periods for Tenant's approval shall apply with respect to each such portion submitted.

Tenant shall approve the Engineering Drawings, or such portion as has from time to time been submitted, within three (3) days after receipt of same or designate by notice given within such time period to Landlord the specific changes required to be made to the Engineering Drawings and shall return the Engineering Drawings to Landlord. Landlord shall make the changes and shall return the Engineering Drawings to Tenant, which Tenant shall approve or disapprove within two (2) days after Tenant receives the revised Engineering Drawing. This procedure shall be repeated until all of the Engineering Drawings are finally approved by Tenant and written approval has been delivered to and received by Landlord.*]

[*WHERE TENANT PREPARES ENGINEERING DRAWINGS*]

[*e. Preparation and Approval of Engineering Drawings. After the Working Drawings are finally approved by Landlord, Tenant shall submit to Landlord, for Landlord's review and approval, engineering drawings prepared by the Engineer, showing complete mechanical, electrical, plumbing, HVAC, telecommunication, and computer cabling plans ("Engineering Drawings"). The Engineering Drawings may be submitted in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

Landlord shall approve the Engineering Drawings, or such portion as has from time to time been submitted, within three (3) days after receipt of same or designate by notice given within such time period to Tenant the specific changes reasonably required to be made to the Engineering Drawings in order to correct any Design Problem, and shall return the Engineering Drawings to Tenant. Tenant shall make the minimum changes necessary in order to correct any such Design Problem and shall return the Engineering Drawings to Landlord, which Landlord shall approve or disapprove within two (2) days after Landlord receives the revised Engineering Drawings. This procedure shall be repeated until the Engineering Drawings are finally approved by Landlord and written approval has been delivered to and received by Tenant.*]

(f) Integration of Working Drawings and Engineering Drawings into Final Plans. After **[*Tenant/Landlord*]** has approved the Engineering Drawings, Tenant shall cause the Designer to integrate the approved Working Drawings with the approved Engineering Drawings (collectively "Final Plans") and deliver the Final Plans to Landlord. Tenant may submit the Final Plans in one or more stages and at one or more times, and the time periods for Landlord's approval shall apply with respect to each such portion submitted.

Landlord shall approve the Final Plans within one (1) day after receipt of same or designate by notice given within such time period to Tenant the specific changes reasonably required to be made to the Final Plans in order to correct any Design Problem, and shall return the Final Plans to Tenant. Tenant shall make the minimum changes necessary in order to correct any such Design Problem and shall return the Final Plans to Landlord, which Landlord shall approve or disapprove within one (1) day after Landlord receives the revised Final Plans. This procedure shall be repeated until all of the Final Plans are finally approved by Landlord and written approval has been delivered to and received by Tenant.

(g) Suspension of Tenant Improvements. In the event that, at any time and from time to time and for any reason, Tenant elects not to proceed with or to suspend (i) the design or construction of the Tenant Improvements, or (ii) the move into the Premises, then, such election shall not excuse any performance of Landlord under the Lease or this Agreement, and shall not result in an Event of Default. The only economic consequence to Tenant as a result of such election shall be that the Commencement Date shall occur in accordance with the terms of Section 2 above and Tenant's obligation to pay **[*Base Rent,*] [*Operating Expenses,*] [*and any parking expenses*]** shall begin **[*(subject to the free Rent period)*].**

6. Contractor and Review of Plans.

(a) Selection of Contractor. Landlord's contractor shall be the contractor selected pursuant to a procedure whereby the Final Plans and a construction con-tract approved by Tenant are submitted to three (3) con-tractors, selected by Landlord and approved by Tenant, who are requested to each submit a sealed fixed price contract bid price (on such contract form as Landlord shall designate) to construct the Tenant Improvements designated on the Final Plans, to Landlord and Tenant, who shall jointly open and review the bids. Landlord and Tenant, after adjustments for the inconsistent assumptions to reflect an "apples to apples" comparison, shall select the lowest price bidder and such contractor with the lowest priced bid ("Contractor") shall enter into a construction contract with Landlord consistent with the terms of the bid to construct the Tenant Improvements ("Construction Contract"). The Construction Contract shall not, unless Tenant otherwise directs, require the

Contractor to post a completion bond or contain any provision penalizing the Contractor for not completing the Tenant Improvements within a specific period of time.

(b) Landlord's Review Responsibilities. Tenant agrees and understands that the review of all plans pursuant to this Agreement by Landlord is solely to protect the interests of Landlord in the Building and the Premises, and, with the exception of the Base Building Plans **[*and the Engineering Drawings*],** Landlord shall not be the guarantor of, nor responsible for, the correctness or accuracy of any such plans or compliance of such plans with Applicable Laws.

(c) Actual Review Costs. Tenant shall reimburse to Landlord its actual, reasonable and documented costs incurred in approving the Space Plan, Working Drawings, **[*Engineering Drawings*]** and Final Plans by deducting such costs from the Tenant Improvement Allowance. Tenant shall not pay to Landlord any fee for profit, overhead or general conditions in connection with the construction of the Tenant Improvements.

7. Tenant Improvements. The term "Tenant Improvements" shall mean all improvements shown in the Final Plans as integrated by the Designer, and, to the extent specified in the Final Plans, all signage, freestanding workstations, built-ins, related cabinets, reception desks, conference room tables to the extent specified in the mill work or comparable contracts, all telecommunication equipment and related wiring, and all carpets and floor coverings, but, except as provided above, Tenant Improvements shall not include any personal property of Tenant.

8. Tenant Improvement Allowance.

(a) Amount. Landlord will pay on behalf of Tenant an amount equal to _____ Dollars ($_____) per **[*rentable/usable*]** square foot ("**[*RSF/USF*]**") attributable to the Premises which totals _____ Dollars ($_____) ("Tenant Improvement Allowance") over and above the items included in the Base Building, as set forth in Schedule 1 attached hereto, expendable for the costs of the design and construction of the Tenant Improvements, and for Tenant's moving expenses, including any amount paid to a project coordinator, construction consultant or similar consultant, and for Tenant's legal fees in negotiating the Lease. In addition, Tenant may use the Tenant Improvement Allowance for any additional freestanding workstations, furniture, fixtures and/or equipment ("Permitted Items"). **[*In addition to the Tenant Improvement Allowance, Landlord will pay Tenant an amount equal to _____ Dollars ($_____) per [*RSF/USF*] attributable to the Premises for a total amount of _____ Dollars ($_____) ("Moving Allowance"), expend-able for costs and expenses relating to the relocation of Tenant's business (including, but not limited to, costs of moving Tenant's fixtures, furniture and equipment) from its current space to the Premises. The Moving Allowance shall be promptly paid by Landlord to Tenant upon Landlord's receipt of Tenant's written demand therefor, accompanied by, as applicable, invoices documenting and evidencing such costs and expenses.*]** The Tenant Improvement Allowance shall be increased by any amounts as specifically provided elsewhere in this Exhibit B.

(b) Disbursement. The Tenant Improvement Allowance shall be first utilized to pay for all permitted Tenant Improvements and Permitted Items. The Tenant Improvement Allowance shall be disbursed by Landlord **[*every two (2) weeks*]** pursuant to requests for disbursement which shall include (i) invoices only, with respect to any line item draw request less than _____ Dollars and (ii) invoices and conditional lien releases, with respect to any line item draw request in excess of _____ Dollars ($_____), which shall be approved by Tenant and/or the Designer and submitted to Landlord for payment by Tenant relating to completed work.

(c) Unused or Unfunded Amount. Any unused or unfunded portion of the Tenant Improvement Allowance **[*or the Moving Allowance*]** shall be available to Tenant as a credit against the initial **[*Base Rent]**

[*and Operating Expenses*] [*and parking expenses*] commencing with the **[*Base Rent*] [*and Operating Expenses*] [*and parking expenses*]** due for the _____ (_____) month after the Commencement Date.

9. Change Orders. In the event that Tenant requests any changes to the Final Plans, Landlord shall not unreasonably withhold its consent to any such changes, and shall grant its consent to such changes within one (1) business day after Landlord's receipt of same, pro-vided the changes do not create a Design Problem. If such changes increase the cost to Landlord of constructing the Tenant Improvements shown on the Final Plans, Landlord shall provide Tenant with invoices documenting and evidencing such increased costs, and Tenant shall reimburse Landlord for such increased costs **[*within thirty (30) days after the Commencement Date*] [*on a monthly basis according to the invoices for such costs provided by the Contractor in accordance with the progress payment schedule, but only after the Tenant Improvement Allowance has been completely disbursed*].** The costs charged by Landlord to Tenant pursuant to this Section shall be an amount equal to the actual costs incurred by Landlord to review the requested changes and revise the Final Plans ("Actual Costs") **[*plus the amount required to cause the Tenant Improvements, as reflected by revised Final Plans, to be constructed above the costs that Landlord would have had to pay to cause the Tenant Improvements to be constructed if such changes had not been made ("Differential")*].** Subject to the second paragraph of Section 2(d)(ii) above, if such changes delay Landlord's completion of the work shown on the Final Plans, then such delay shall constitute a Tenant Delay.

Whenever possible and practical, Landlord shall utilize, for the construction of the Tenant Improvements, items and materials specified in Schedule 2 attached hereto.

10. Inspection. After the Tenant Improvements to the Premises are Substantially Completed (excepting punch list items) and prior to Tenant's move-in into the Premises ("First Time"), and within thirty (30) days after the expiration of the Move-In Period ("Second Time"), in each case following two (2) days' advance written notice from Tenant to Landlord, Landlord shall cause the Con-tractor to inspect the Premises with a representative of Tenant and complete a punch list of unfinished items of the Tenant Improvements. Authorized representatives for Landlord and Ten-ant shall execute said punch list to indicate their approval thereof. The items listed on such punch list shall be completed by the Contractor within thirty (30) days after the approval of such punch list or as soon thereafter as reasonably practicable.

11. Qualifications to Commencement Date. Notwithstanding the foregoing, once the Tenant Improvements to the Premises are Substantially Complete or would have been Substantially Complete had a Tenant Delay not occurred, then unless Tenant commences business operations from the Premises, the Commencement Date will not occur until the first Monday (or Tuesday, if Monday is a legal holiday) following the expiration of the Move-In Period.

12. No Fee to Landlord. Landlord shall receive no fee for supervision, profit, overhead or general conditions in connection with the Tenant Improvements.

13. Clean-Up Expenses. Landlord shall clean the Premises (a) prior to the commencement of the Move-In Period, and (b) following Tenant's move-in into the Premises, including removal of all rubbish and debris. The cleaning referenced in (b) shall leave the Premises in a manner consistent with the commencement of business from comparable premises in Comparable Buildings, such that Tenant may commence its business operations from the Premises immediately after Landlord completes such clean-up. The costs of the cleaning provided by Landlord pursuant to this Section 13 shall not be included in Operating Expenses for the Building prior to Tenant's occupancy of the Premises.

14. No Miscellaneous Charges. Neither Tenant nor the Contractor shall be charged for, and Landlord shall provide, parking (to the extent parking is available) for Tenant's architects, designers, contractors and subcontractors (including those people working on the Tenant Improvements), electricity, water, toilet facilities,

HVAC, security, elevators, **[*and/or hoists*]** during the Design Period, the construction of the Tenant Improvements or during the Move-In Period. All such equipment, areas, elevators and utilities shall be made reasonably available to Tenant during the Move-In Period. The HVAC systems for the Premises shall be run continuously twenty-four (24) hours per day, seven (7) days per week during the Move-In Period to flush out and purge new finish odors.

15. Bonding. Notwithstanding anything to the contrary set forth in the Lease, Tenant shall not be required to obtain or provide any completion or performance bond in connection with any construction, alteration, or improvement work performed by or on behalf of Tenant.

16. Demolition. In the event that the Premises have been previously built out, then to the extent that, because of the existence of existing improvements in the Premises, Tenant is required to pay for the demolition of the existing tenant improvements, then all demolition costs shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such costs. The amount of such reimbursement shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay in the design or construction of the Tenant Improvements because of the required demolition shall constitute a Landlord Delay.

17. Presence of Hazardous Substances. In the event that at any point in time the Premises and/or the Common Areas of the Building are determined to contain hazardous substances (as defined by Applicable Laws), Tenant shall have the right, by notice to Landlord, to require Landlord to remove, at Landlord's sole cost and expense, all such hazardous substances within sixty (60) days following receipt of such notice. If Landlord does not remove such hazardous substances within such time period, Tenant shall have the right to remove, encapsulate, contain, or otherwise dispose of such hazardous substances and the cost incurred by Tenant in connection therewith shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such costs. In addition, any costs incurred by Tenant because of the presence of Hazardous Materials in the Building that would not have been incurred had the Building not contained Hazardous Materials ("H.M. Costs") shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such H.M. Costs. The amount of such reimbursements shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay incurred by Tenant in the design of its Tenant Improvements or its move-in into the Premises because of the presence of hazardous substances shall constitute a Landlord Delay.

18. Life-Fire Safety Codes/Disabled Access Codes/Earthquake Safety Codes. In the event that, because the Premises and/or the Building do not comply with current Applicable Laws which pertain to new construction disregarding variances and grandfathered and grandmothered rights, including but not limited to life-fire safety codes, disabled access codes (including, without limitation, the ADA), and/or earthquake safety codes, Tenant incurs increased design or construction costs that it would not have incurred had the Premises and/or the Building already been in compliance with the then Applicable Laws which are applicable to new construction, then such costs shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice documenting and evidencing such increased costs. The amount of such reimbursement shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay in the design or construction of the Tenant Improvements because of the non-compliance of the Building and/or the Premises with the then Applicable Laws which are applicable to new construction shall constitute a Landlord Delay.

19. Historical Designation. In the event that the Premises or the Building has been declared an historical landmark or has other historical significance, and, if because of same, Tenant incurs increased design or construction costs, or increased costs relating to obtaining permits and approvals, then such costs shall be reimbursed by Landlord to Tenant within ten (10) days after receipt by Landlord from Tenant of an invoice

documenting and evidencing such increased costs. The amount of such reimbursement shall be separate and apart from, and in addition to, the Tenant Improvement Allowance and shall not be deducted from the Tenant Improvement Allowance. Any delay in the design or construction of the Tenant Improvements or Tenant's move-in into the Premises as a result of the Premises and/or the Building being declared an historical land-mark, or as a result of the Premises and/or Building having other historical significance, shall constitute a Landlord Delay.

20. Landlord to Construct Base Building. Landlord hereby agrees that the Base Building of the Building shall include the items set forth in the "Base Building description" attached hereto as Schedule 1 and shall otherwise be in accordance with the Base Building Plans and in compliance with all laws applicable to new construction, disregarding variances and grandfathered/grandmothered rights, and the cost thereof shall not be deducted from the Tenant Improvement Allowance. Landlord may make further revisions to such Base Building Plans as long as the Building, when constructed, will be comparable in appearance, design, efficiency, and quality as the building initially described in the unmodified Base Building Plans.

21. Work Performed by Landlord or by Contractors or by Entities Designated by Landlord. In the event that Landlord performs any work for Tenant in connection with the Tenant Improvements, Landlord shall be paid an amount equal to the actual costs reasonably incurred by Landlord in performing such work. In the event that Landlord requires Tenant to use specified contractors or entities (such as mechanical, electrical, plumbing, engineering, or other contractors, all of whom will be deemed agents of Landlord), Landlord shall cause such contractors or entities to charge Tenant for such work an amount equal to the lower of the cost such contractors or entities charge Landlord for similar work performed for Landlord's own account, or the cost that comparable first-class, reputable, and reliable contractors or entities would have charged Tenant if selected pursuant to competitive bidding procedures. To the extent the design or construction of the Tenant Improvements is delayed because of the untimeliness of, or errors or omissions committed by, such contractors or entities, such delay will constitute a Landlord Delay. To the extent Tenant incurs increased design or construction costs because of the untimeliness of, or errors or omissions committed by, such contractors or entities, such increased costs will be reimbursed by Landlord to Tenant within ten (10) days of receipt of an invoice from Tenant documenting and evidencing such costs and such reimbursement shall be in addition to, and not deducted from, the Tenant Improvement Allowance.

22. Pre-Stocked Materials. If Tenant elects to use materials in its construction which Landlord has pre-stocked, Tenant must purchase such pre-stocked materials from Landlord, and Landlord must sell such pre-stocked materials to Tenant. Landlord shall charge Tenant for any pre-stocked items utilized by Contractor in constructing the Tenant Improvements at Landlord's actual cost (purchase price plus tax and shipping charges to Building only, and no other charges, fees or costs), without profit or overhead to Landlord.

23. Staging Area. During the period prior to the Commencement Date, Tenant shall have the right, without the obligation to pay Rent, to use empty space in the Building designated by Landlord for the purposes of storing and staging its furniture and equipment only. With respect to this free storage space, Ten-ant shall be responsible for providing all insurance and for providing any necessary fencing or other protective facilities. Tenant shall hold Landlord harmless and shall indemnify Landlord from and against any and all loss, liability or cost arising out of or in connection with use of such storage space by Ten-ant. ***Tenant shall be obligated to remove all of the stored materials and its fencing and other facilities within thirty (30) days after Tenant's receipt of written notice from Landlord that such staging area is needed by Landlord for construction of another tenant's premises, in which event comparable space, to the extent available, shall be made available to Tenant as a substitute staging area.***

24. ***Move-In Priority. Provided that Tenant moves into the Building during the Move-In Period, or, in the event Tenant moves into the Building at some time other than the Move-In Period, and provided that Tenant has provided Landlord at least two (2) weeks' prior written notice of Tenant's move into the Building, Tenant shall have the exclusive right to use the passenger and freight elevators during the

weekend that it moves into the Building, but only to the extent such exclusive use is necessary for Tenant to complete its move into the Building over one (1) weekend in an orderly and efficient manner.***

25. Post-Commencement Date Events. If any event occurs after the Commencement Date but prior to the expiration of the Move-In Period and Tenant's commencement of business operations from the Premises which would have otherwise constituted a Force Majeure Delay or Landlord Delay had it occurred prior to the Commencement Date, such event shall be deemed a "Force Majeure Event", and/or a "Landlord Delay Event" and shall entitle Tenant to all the protections set forth in the Lease (including without limitation, General Conditions F and J) and Tenant shall receive one (1) day of gross rent abatement for each day of any such Force Majeure Event or Landlord Delay Event.

26. Unions. Tenant, in the exercise of its sole discretion, may utilize union or non-union contractors and/or subcontractors.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

LANDLORD:	TENANT:
_____,	_____,
a _____	a _____
By: _____	By: _____
Its: _____	Its: _____

SCHEDULE 1

BASE BUILDING DESCRIPTION (SAMPLE)

At no cost to Tenant, Landlord either has, or shall, supply, furnish, install and finish the following items in full compliance with all applicable laws (including, without limitation, the ADA), regulations and building codes applicable to new construction, disregarding variances and grandfathered/grandmothered rights, all at Landlord's sole cost and expense, which shall not be deducted from the Tenant Improvement Allowance, and which shall comprise, and are hereby defined as, the "Base Building":

1. Service Core.

(a) Landlord shall build the Building and the Base Building pursuant to this Schedule 1, which obligation shall be deemed satisfied when the Building and the Base Building have been substantially completed, substantially in accordance with the requirements of this Schedule 1 as supplemented and increased (but not decreased) by the Base Building Plans and Building Requirements (as defined in Sections ___ and ___, respectively, of the attached Work Letter Agreement), the most current copies of which have been provided to Tenant. It shall be understood that Landlord may make modifications to the Base Building Plans and Building Requirements, some of which may affect the Premises, as long as such modifications do not affect the quality of the construction or the materials or equipment used, or substantially and adversely affect the operation of the Building's basic services in such a manner as would interfere with Tenant's quiet and peaceful use, possession and enjoyment of the Building.

(b) Stairways in compliance with code, the Base Building Plans, and Tenant's type of occupancy and use.

(c) Electrical, telephone, janitorial and mechanical rooms to the extent located on the floor as shown on the Base Building Plans.

(d) Men's and women's washrooms on each floor (except lobby) in compliance with the Base Building Plans, all applicable laws (including, without limitation, the ADA) and codes and finished with:

(i) Ceramic tile or better on floors (but not in the vestibule) and wet walls at least up to the height of the wainscot;

(ii) Other walls and ceilings finished;

(iii) Vanities, cubicles, accessories, fixtures, trim lighting and all mechanical and plumbing services completed; and

(iv) Other lighting sufficient for first class washrooms.

(e) Water and drainage on each floor (except first floor).

(i) Access at the core to domestic water, drainage and vent systems.

(ii) One drinking fountain, "chilled" water installed in compliance with all applicable laws (including, without limitation, the ADA) and codes.

(f) Elevator lobbies and corridors installed and complete on multi-tenant floors which are occupied by Tenant.

2. Core Doors.

(a) Building Standard core doors for stairwells, electrical, mechanical, janitorial and telephone rooms and washrooms all installed, primed, sanded, dusted, and ready to receive paint or other Tenant finish.

(b) Doors finished and complete with frame, trim, hardware, locking devices, electric door releases and/or magnetic hold-open devices where applicable and closers.

3. Walls and Windows.

(a) Curtain wall installed and sealed.

(b) Exterior windows installed and sealed.

(c) Insulation where applicable (from slab-to-slab), installed and sealed.

(d) Core walls (except all levels below-grade), service core walls, perimeter walls, elevator lobby walls, and columns (exterior columns extended slab-to-slab) all installed, clad with properly rated sheetrock, taped, sanded, patched, filled, dusted and ready to receive paint or other Tenant finish.

4. Floors.

(a) Smooth and level concrete floors with troweled finish which shall be level at least to the tolerance of (i) one-quarter inch (1/4") per ten (10) feet on a non-cumulative basis and (ii) three-eighths inch (3/8") on an overall basis.

(b) Design to support a minimum live load of 100 lbs. per square foot and an additional partition load of 20 lbs. per square foot for a total of 120 lbs. per square foot.

(c) Smooth, level and ready to receive carpeting, tile, marble or wood without additional Tenant preparation.

5. HVAC.

(a) HVAC systems shall have the capacity to service not less than fifty (50) separate zones per floor without expense to Tenant in excess of the cost of the equipment referred to in subparagraph (d) below.

(b) HVAC systems to service cores on all floors.

(c) Main air distribution system with main cold and/or hot air loop, as applicable around the floor and connected to the core with all applicable and required fire dampers.

(d) HVAC (or fan coil) boxes with associated duct work and controls will be installed **[*at the rate of one (1) per every 1,000 usable square feet of the Premises*].**

(e) Condenser and/or chilled water loop on each floor. If Landlord allows any other tenant to tap into the Building's condenser and/or chilled water, Landlord shall allow Tenant to do so on the same terms and conditions.

6. Acoustics. Landlord agrees that the Building will be constructed in a manner which shall comply with the sound production standards attached as Appendix 1 hereto.

7. General Exhaust.

(a) Access at core above first floor to an installed general exhaust system for toilets only.

(b) Access on floor to general exhaust system available to serve kitchens and pantries, and computer, reproduction, and conference rooms, including exhaust for halon gas if applicable and other office equipment normally and customarily requiring special exhaust.

8. Lighting.

(a) Installed and operating in main lobby, all stairwells, elevators, lobbies, mechanical rooms, utility rooms, other lighting as required by code.

(b) Exterior lighting installed as required by design.

9. Electrical/Power.

(a) Building equipped per specifications dated _____ and prepared by _____.

(b) Three electrical panels (one lighting, two power) per floor and additional panels as required by Tenant and approved by Landlord **[*including ____ circuits per panel and ____ circuit breakers*]** and electrical power available to Tenant as set forth in **[*Lease Section ___*] [*or*] [*Addendum Provision ____*].**

10. Life Safety.

(a) Landlord shall install, or has installed, life safety improvements including life safety panel(s) and controls (the cost of which will be paid by Landlord and not deducted from the Tenant Improvement Allowance) to the extent required by shell and core construction for a temporary certificate of occupancy for the Building, or, if greater, to the extent already constructed in the Premises and Building as of _____.

(b) A sprinkler system installed in compliance with code for floors, including main loop connected to core and drops in place with heads installed per code for an unimproved (non-occupied) floor.

(c) Firehose and extinguisher cabinets finished and installed at each stairwell or as required by code for shell and core construction.

(d) Exit signs at all stairwells.

(e) Smoke detectors on both sides of all doors in all elevator lobbies and all other areas as required by code.

(f) Fire extinguishers as required by code for shell and core construction.

(g) Fire horns and exit signs as required by code for shell and core construction.

(h) Electric door releases and magnetic hold-open devices, as applicable installed for all fire doors.

(i) Speakers, cameras and such other life safety equipment as required by code to obtain a final building inspection and/or permanent certificate of occupancy for the Premises.

11. Communication System.

(a) Access to main telephone service on the first floor or lower level of the building by approved personnel only.

(b) Sleeves in core telephone rooms for Tenant telephone access. Tenant to provide conduit and backboard from telephone rooms to Tenant's suite.

12. Elevators and Freight Facilities.

(a) At least four (4) passenger elevators servicing Tenant's floor installed and operational as designed to operate at 800 FPM.

(b) All freight elevators installed and operational as designed.

(c) Freight vestibules installed as designed per code.

(d) Loading dock facilities installed as designed.

13. Parking. Garage construction complete with all equipment operational and spaces lined.

14. Landscaping.

(a) Installed per design.

(b) Automatic sprinklers installed per design.

15. Security.

(a) Guard station/reception desk installed and operational per Landlord's design on Main Lobby of the Building only.

(b) Electronic surveillance installed and operational per Landlord's design.

(c) Landlord's design of surveillance system covers garage entrances and exits only.

(d) Electronic pass systems installed and operational per Landlord's design for:

(i) Entrances to main lobby of the Building.

(ii) Elevators.

(iii) Garage entrances (may be separate card).

16. Directory. Installed with sufficient lines for Tenant's needs as specified in the Lease.

17. General.

(a) To the extent there are improvements to the Base Building in excess of the foregoing, such improvements will remain as part of the Base Building work at no cost to Tenant, and shall be in accordance with the Base Building Plans.

(b) The cost of installing all demising walls (including the corridor wall separating the Premises from the corridor), fire dampers and transfer boots shall be borne by Landlord.

(c) Notwithstanding anything to the contrary in Section 1.f. above, Landlord will allow Tenant to install carpet, and paint the walls in the common areas of the corridors and elevator lobbies, and Tenant shall receive a credit toward such costs equal to the costs that would have been incurred for Building Standard carpet and paint, but such color and material selections shall be subject to Landlord's reasonable approval.

Appendix 1 to Schedule 1 (Sample)

The Base Building shall be constructed so that the noise produced by, but not limited to, the operation of the HVAC, plumbing, electrical, and elevator systems or systems installed for other tenants shall not exceed the following:

All floors --

Areas adjacent to the core -- noise criteria ("NC")-40. All other areas -- NC-35 except in areas immediately under fan powered mixing boxes where a value of NC-40 shall apply out to a radius of five feet from the box center. The noise level of NC-35 shall apply in a partitioned office located just outside the five foot radius.

The octave band sound pressure levels corresponding to the noise criteria (NC) shall be defined in accordance with the ASHRAE Guide.

In the event that Tenant perceives that a noise problem exists, and measurements performed by an independent acoustical consultant indicate that the sound pressure levels indicated above are exceeded, and the source is due to the operation of the systems described above, Landlord shall take reasonable measures as soon as reasonably possible, at Landlord's expense, to reduce the noise levels so that they do not exceed the values tabulated above.

All sound level measurements shall be performed on a sound level meter meeting the standards ANSI S1.4 Type S1. The octave band filter set shall meet ANSI S1.71 - 1966 Class II.

SCHEDULE 2

BUILDING STANDARD TENANT IMPROVEMENT ITEMS

[*To Be Provided By Landlord*]

All items listed below, except those items which are preceded by an asterisk (*), may be substituted for items of equal or higher quality at Tenant's election, and Tenant shall receive a credit toward the costs of such substituted items equal to the costs that would have been incurred for the items listed below.

THE IMPACT OF 9-11 ON LANDLORDS AND TENANTS: A NEW LOOK AT THE LEASE'S INSURANCE, INDEMNITY, DAMAGE AND DESTRUCTION, AND OPERATING EXPENSE PROVISIONS

by

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I. INTRODUCTION

Since 9-11, landlords, lenders, tenants and insurers have revisited the provisions of all leases regarding insurance obligations, damage and destruction clauses, and operating expenses. The issues are interrelated and involve allocation of risks and costs. In order to properly address these issues in drafting and negotiating leases, we need to sort out all of the misinformation that is floating around, be in a position to make practical "street smart" decisions and draft and negotiate lease provisions that not only address issues based on insurance coverages and costs as they exist today, but as they may exist over the next ten to fifteen years.

For these reasons we do not intend to dwell extensively on the types of insurance for terrorist acts that are currently available. Prior to 9-11, generally speaking, there was no exception for terrorist acts in the typical property casualty insurance coverage. Terrorist acts were not considered "Acts of War" (an exclusion in almost all policies) and under prior policies, damage from terrorist acts would be covered much the same way as damage from a fire would be covered.

Immediately after 9-11, many insurers, but interestingly enough, not all (see Chubb), re-wrote their standard policies to put terrorist acts as an exclusion. Many insurers announced that they would not provide coverage for terrorist acts. The situation regarding availability and costs are still in flux and change weekly but one general rule and analogy applies. Just like with bankers making loans, bankers are most willing to loan the most money at the lowest possible interest rates to those who need it the least. Insurers are currently in the same position with respect to providing coverage for terrorist acts. Those who need the insurance the least (owners of 4-story campus-like buildings in Littleton, Colorado, or concrete tilt-up industrial buildings in Fresno, California) should have no problems in finding coverage at reasonable rates, while owners of trophy/icon buildings in New York and Los Angeles struggle to get coverage, deal with deductibles, deal with re-insurance issues, and deal with great price fluctuations.

Most knowledge experts recognize that major landlords generally purchase some amounts of terrorism insurance, trying to "equitably" spread the cost over multiple assets. The five markets generally writing the majority of terrorism coverage (London, Lexington, ACE, Axis and Berkshire Hathaway) underwrite based on zip code, asset class, tenant mix and perceived exposure ("Risk Analysis"). Owners and landlords who are most successful in dealing with terrorism insurance are pro-active in purchasing insurance on a realistic basis from companies who will only commit to lenders and/or tenants to purchase insurance coverage to the extent such coverage is available on a commercially reasonable basis (as reasonably determined by the landlord). They try to treat insurance costs on a net lease basis. (Even in gross leases, sophisticated landlords are trying to go on a "modified" gross basis treating all components of operating costs on a gross lease basis with the exception of insurance and energy costs which are treated on a net basis).

At the present time, there is $450,000,000 stand-alone insurance available at various price ranges depending on the outcome of the Risk Analysis. The costs can sometimes be as high as one percent (1%) of the coverage

II. POSSIBLE WORLD TRADE CENTER PROPERTY INSURANCE ISSUES

Before discussing the general issues that need to be considered in drafting and negotiating adequate protections in any lease, we would like to touch on a few of the questions that are somewhat particular to the destruction of the buildings at the World Trade Center.

Generally, looking backward at the policies of insurance that were in existence as of 9-11, the property damage (and rental income) coverage that was readily available and carried by almost all major landlords in the United States typically would cover the damage to each building damaged or destroyed by the terrorist act and provide for net rental income for (typically) one year. That means that each landlord would receive from its insurance carrier a sufficient amount of money to rebuild each damaged or destroyed building (and with the proper endorsements, in compliance with all current laws applicable to new construction) and would receive for one year an amount of rent equal to one year of gross rent less the variable expenses the landlord would not have to pay to provide HVAC, electricity, water, janitorial and other services that need not be provided under the circumstances. All of this flows from the fact that pre-9-11, generally speaking, damage and/or destruction by a terrorist act was treated the same as damage and/or destruction by a typical, ordinary major fire.

First, the "Act of War" exclusion does not apply to terrorist acts not sanctioned by a sovereign nation and, as of today, we are not aware of any insurance carrier taking a contrary position. Typically, the property insurance policy that covers a high-rise office building is a policy that has been historically referred to as an "all-risk" policy. Since insurers correctly point out that "all-risk" could not mean everything under the sun, the phrase "all-risk" is gradually being replaced by phrases such as "Causes of Loss-Special Form" which of course tells you very little unless you specify a specific form. The Insurance Services Office issues various forms and we recommend that the precise form number be specified. Of critical importance to both the landlord and tenant is to have any proposed lease language reviewed by their own risk manager, insurance consultant and/or broker to make sure that the insurance requirements set forth in the lease actually correspond to insurance policies that are readily available. All lawyers, unfortunately, at one time or another, have put forth insurance requirements in leases they have drafted which are unknown and are not available. In any event, the "all-risk" or Causes of Loss-Special Form policies (for the remainder of this article referred to individually and collectively as "all-risk") typically insure against the loss of or physical damage to property arising from any peril, except those that are specifically excluded. It generally includes those perils typically covered in a fire and extended coverage policy, such as fire, wind storm, hail, explosion, riot, riot attending a strike, impact of aircraft and vehicles and smoke damage. In an all-risk policy the burden of proof that a peril causing the loss was excluded falls to the insurer. Generally excluded from coverage under an "all-risk" policy is damage resulting from Acts of War; however, damage caused by terrorist acts is not typically excluded from coverage in the manuscript forms of "all-risk" policies used by most major property insurance carriers in the United States.

Second, what deductible would apply in the case of a terrorist act? The answer is the same deductible as would be applicable in the case of a fire (usually $10,000 - $25,000). Unlike earthquake insurance (where the deductible is typically 5-10% of the amount of the full replacement value of the insured property), there is no special deductible applicable to this casualty.

Third, would the owners of buildings in lower Manhattan which were not physically damaged but which were not available for use as a result of the rescue operations at the World Trade Center be entitled to any property insurance proceeds? Typically an "all-risk" policy would provide a limited period (generally 10 days to 3 months) during which the insured landlord would be entitled to rental continuation insurance proceeds if ingress and egress is denied to its building by order of the government. Since parts of lower Manhattan were closed off by the City of New York in order to aid the rescue efforts, buildings within the closed-off areas should, at least theoretically, be entitled to some relief. However, the practical problem with any such recovery may be that many of the leases in those buildings specifically deny any rent abatement to the tenants except where the building is destroyed and the tenant's premises is unusable. If the tenants are not entitled to rent abatement and must continue to pay rent even though they could not get into their buildings, the landlord would not have a claim for rental continuation insurance proceeds. Another demonstration why, at a minimum, a tenant should always insist (and a landlord should not object) that the tenant gets the benefit of rent abatement any time the landlord is otherwise entitled to receive rental continuation insurance proceeds under the landlord's insurance policy.

While we indicated that at the present time, property insurance providing protection for damage caused by terrorist acts is limited in its availability, the situation is in flux and changes weekly, and the insurance industry has asked the federal government to provide the reinsurance required to make such insurance possible.

III. GENERAL LEASE CONSIDERATIONS

The key to understanding how to draft and negotiate adequate damage and destruction protections in a lease is to combine a practical working knowledge of how long it takes to repair damage to the base building and the tenant improvements with a fundamental awareness of how the waiver of subrogation operates in conjunction with insurance policies covering property damage, rental income and business interruption/extra expense.

A. LIABILITY FOR DAMAGE TO PROPERTY

Liability issues arise in the context of (i) damage to property, such as the building, tenant improvements, and personal property, and (ii) injury or death to persons. This article focuses almost exclusively on the issues pertaining to the consequences of damage and destruction of property. Liability for injuries and death are very rarely subject to the waiver of subrogation provision, and both the landlord and tenant need to obtain separate liability insurance that provides each with insurance in the event someone who is injured (or their estate) seeks to recover from the landlord and/or the tenant. In comparison, the issues pertaining to injury and death are relatively simple to deal with in the context of a lease and appropriate insurance coverage and are not discussed in this article.

In order to be able to negotiate the appropriate protections, rights and obligations, the attorney needs to focus on three factors. The first factor is the fact that the tenant ultimately pays for all costs of insurance. To the extent that the landlord obtains the insurance, the cost is passed on to the tenant. This is expressly provided for in a net lease where the tenant pays for its pro rata share (almost always based on the ratio of the rentable square feet in the premises to the rentable square feet in the building) of all operating expenses, one of which is always insurance. It is implicitly provided in a gross lease where the initial operating expenses (actual or anticipated) are built into the initial gross rent and the tenant pays its pro rata share of all increases in operating expenses over a base amount.

The second factor is the application of the waiver of subrogation. Normally, in a non-real estate lease situation, when an insurance carrier pays for the cost of repairing or replacing property of its insured that is damaged or destroyed, the insurance company becomes subrogated to the insured's rights, which means that the insurance company "inherits" the rights of the insured. This can be illustrated in the normal automobile insurance situation involving property damage. If car A is rear-ended by car B, the insurance company would pay its insured for the damage or destruction to the insured's vehicle and then would become subrogated to (inherit) the rights of the insured. In the situation described above, the insurance company of the driver of car A would pay the driver of car A to have car A repaired or replaced and, having inherited by subrogation the rights of the driver of car A, the insurance company could sue the driver of car B for the negligent damage or destruction of car A.

Every real property lease should have a waiver of subrogation provision. Pursuant to the waiver of subrogation, the landlord should agree that in the event its property (always the building and personal property of the landlord and with increasing frequency, as discussed below, the tenant improvements) and rental income is damaged, destroyed or impacted, the landlord will (i) recover for such damage from its insurance company, (ii) waive its right to proceed against the tenant for such damage, and (iii) cause to be included in the landlord's insurance policy with the landlord's insurance company a waiver of subrogation provision (vis-a-vis the tenant) whereby the landlord's insurance company waives its rights to become subrogated to the rights of the landlord to proceed against the tenant for damage to the landlord's property, even if the property is damaged by the negligent act of the tenant. Waivers of this kind are readily available at no additional cost other than possibly a nominal processing fee. Likewise, the tenant will agree in the lease that, in the event of damage to the tenant's property (always the tenant's personal property including furniture, fixtures and equipment and also including tenant improvements to the extent not insured by landlord) and loss of income, extra expense or business interruption, the tenant will (i) recover for such damage from its insurance company, (ii) waive its right to proceed against the landlord for such damage, and (iii) cause to be included in the tenant's insurance policy with the tenant's insurance company a waiver of subrogation provision (vis-a-vis the landlord) whereby the tenant's insurance company waives its rights to become subrogated to the rights of the tenant to proceed against the landlord for damage to the tenant's property, even if the property is damaged by the negligent act of the landlord.

The third factor is to avoid focusing on the concept of fault and to recognize that in a commercial setting the parties are simply allocating risks while seeking to minimize duplication of coverage and reduce the insurance premium costs incurred by the parties. The mutual waiver of subrogation makes a great deal of sense since it minimizes the duplication of insurance costs and coverage. The tenant does not have to incur the expense of insuring the building because, even if the tenant burns down the building, the landlord will recover from the landlord's insurance company and that insurance company will not be able to sue the tenant. Similarly, even if the landlord burns down the building, the tenant

merely recovers for the damage to the tenant's property and loss of income from the tenant's insurance company, and that insurance company, having waived its rights of subrogation, cannot proceed against the landlord.

In the past, there were some landlords who thought they were being "clever" by requiring the tenant to waive its rights of subrogation and the tenant's insurance company's right to subrogation without mutually waiving the landlord's right to subrogation or causing the landlord's insurance company to include a waiver of subrogation provision in the landlord's insurance policy. The nonsense of this "cleverness" is demonstrated by the fact that the inclusion of the waiver of subrogation provision in an insurance policy costs virtually nothing. In fact, the landlord would feel very foolish if a messenger called to a tenant's office (and hence probably an invitee of the tenant) negligently caused a fire which resulted in a million dollars worth of damage to the landlord's property. Under those circumstances, if the tenant did not carry insurance for such damage, then the landlord would recover from its insurance company and then the landlord's insurance company, not having waived its rights of subrogation, could sue the tenant for such damage, thereby jeopardizing the tenant's ability to pay future rents.

Accordingly, the landlord should always insure the building and the landlord's personal property and the tenant should always insure its furniture, fixtures and equipment and its personal property. While the cost of such insurance is paid by the party obtaining the insurance, the landlord's insurance costs are ultimately passed on to the tenant. When the property is damaged, the landlord and/or tenant, depending on whose property was damaged, recover from their respective insurance companies for the damage to their respective property and the insurance companies are not subrogated to the rights of their insureds. Under normal circumstances, the party obtaining the insurance proceeds rebuilds or replaces the destroyed property and life goes on.

The one area where there is little uniformity as to whether the landlord or the tenant obtains the insurance is with respect to tenant improvements. In situations involving a new building, most sophisticated landlords are seeking to insure the tenant improvements. Almost always, the insurance premium cost of insuring all of the tenant improvements of all of the tenants in the building is significantly lower than the combined cost of each tenant obtaining separate insurance coverage for its tenant improvements. The reason for this significant cost difference is the experience of the insurance companies that damage to tenant improvements is normally confined to the tenant improvements on several floors rather than affecting the building as a whole. Accordingly, a tenant will realize a significant cost savings if the landlord obtains all of the insurance on all of the tenant improvements in the entire building and then have each tenant pay to the landlord its pro rata share of such insurance costs. Most insurance brokers can demonstrate that this cost savings will be significant and real, even to a tenant with tenant improvements valued at only $30 per rentable square foot when compared to other tenants in the building having tenant improvements of $100 per rentable square foot.

As discussed below, the practicalities of the repair and restoration process also make it clear that it is much better for the landlord to obtain insurance for all of the tenant improvements in the building. This also reduces the redundancy of deductibles.

In addition to the foregoing factors, landlords and tenants need to focus their attention on the often overlooked indemnity provisions of the lease to make sure that the indemnification obligations are not overly broad, can be covered by readily available insurance and are consistent with the waivers of

subrogation. The tenant and landlord both need to make sure that their indemnification obligations are carefully reviewed by their respective insurance carriers to be certain that all such obligations that survive a waiver of subrogation are covered by the appropriate insurance.

B. REPAIR, RESTORATION AND RIGHTS TO TERMINATE

In almost all instances, the damage or destruction of property is covered by insurance, and the repair and/or restoration of the property can be completed on a timely basis, provided the landlord and tenant are fair and realistic as to the factors affecting the selection of a time period for completion of such repairs. Almost all well-drafted and well-negotiated leases will include a provision which essentially provides that, to the extent the damaged property can be repaired within an agreed-upon time period, the landlord shall commence to make such repairs as soon as reasonably possible after the damage and destruction has occurred and shall continue on a diligent basis to complete such repairs. In deciding what time period is to be utilized, the parties need to take into account the size of the premises involved and the extent to which the premises have been improved. It is not difficult to comprehend that it will take longer to repair premises that are 200,000 square feet when compared to premises that are 2,000 square feet, or to repair premises which contain numerous offices with sophisticated electrical and HVAC components when compared to a plain vanilla open floor plan space. Almost inevitably, if a tenant is denied use of and access to its premises for more than a few days, the tenant will have to relocate on a temporary basis to premises that are barely tolerable. The tenant would then have to search for new permanent premises. It is seldom possible for a tenant whose premises have been destroyed to find comparable premises that have been already built out and that will satisfy the tenant's needs. It is reasonable to assume that if 100,000 square feet of sophisticated law office space is destroyed, it will take the tenant one or two months to locate new space that would be suitable for the tenant's needs as to size, location of building, and adequacy of the building, another one or two months to negotiate a lease for such office space, another two to three months to design the space, and another four to six months to construct such space. Accordingly, it is reasonable and in fact typical for a landlord and a tenant to agree that the tenant shall not have the right to terminate the lease upon damage or destruction to the building and the tenant improvements, if the landlord can cause, and is obligated to have, the building and the tenant improvements to be repaired and operational within nine to twelve months following such damage and destruction. To the extent that the space is smaller or that the tenant improvements are not particularly sophisticated or complex, the time period could be reduced considerably. A few landlords who pay attention to these issues have different time periods applicable to damage caused by earthquakes, tornadoes, floods and hurricanes.

Another important time period involved in a damage and destruction situation is the amount of time granted to the landlord to make a decision as to whether the repairs and restorations can be completed within an agreed upon time. Not surprisingly, tenants want this time period to be as short as possible in order to firm up future plans, while the landlord wants the time period to be as long as possible in order to make an informed decision. Typically, the decision period agreed upon in most leases is between twenty and ninety days. Obviously the World Trade Center decision(s) will not be made within that short a time period.

Most landlords and tenants see a win-win scenario when the landlord insures not only the building and the landlord's personal property but also the tenant improvements. The tenant, being the ultimate bearer of the cost of the insurance, pays a lower cost to insure its tenant improvements because of the landlord's purchasing power. When it comes time to reconstruct the premises, if the landlord

insured only the building and the tenant insured the tenant improvements, then the landlord, the tenant, and their insurance companies would have the mutual difficulty of determining where the base building left off and the tenant improvements began with the line never being as clear as the lawyers would have preferred. In addition, in a situation where not only the building but also the tenant improvements require repair, there is a difficulty in having multiple contractors repairing the building and restoring the tenant improvements at the same time. This involves issues not only of access to elevators and other building services and equipment, but also the inevitable disputes as to whether subsequent damage was caused by the base building contractors or the tenant improvement contractors. In a situation where the landlord insures both the building and the tenant improvements, many of these problems are avoided or minimized as it is the landlord's responsibility to rebuild per the "as-built" plans relating to the tenant improvements in connection with the completion of the base building and the tenant improvements. When the landlord has the responsibility of restoring the building and the tenant improvements, that restoration is usually completed much more quickly, with fewer problems, and at a lower cost than where the responsibility is divided, because the repairs to the base building and the tenant improvements are performed, or mutually coordinated by, the same contractor and the line between where the base building stops and the tenant improvements begin becomes virtually irrelevant because the same insurance company insures both the base building and the tenant improvements. This becomes of additional importance because, as discussed below, almost inevitably, the tenant will be entitled to rent abatement. In situations where the landlord has not insured the tenant improvements and/or where the tenant has agreed to assume the responsibility for rebuilding its tenant improvements, the tenant needs to make sure that its rent abatement will continue until the tenant has been given sufficient access to the building and the premises and sufficient time to reconstruct the tenant improvements so that it may commence business operations therein.

Normally, the landlord and the tenant will agree that, if the tenant improvements and the building cannot be restored within the agreed upon time period, then the landlord and the tenant will each be given the right to terminate the lease. In situations where the lease is terminated, the issue as to who is entitled to the insurance proceeds for the destroyed tenant improvements becomes the subject of significant negotiations. Most sophisticated tenants argue that the tenant should be entitled to the insurance proceeds for the destroyed tenant improvements because the tenant improvements were paid for by the tenant, either directly (in which case there should be little dispute that the tenant should be entitled to receive those proceeds), or indirectly because the tenant improvement allowance granted by the landlord was reflected in a rent that was higher than the rent would have been had the landlord not granted the tenant improvement allowance. Landlords counter by asserting that, had there been no damage or destruction, the landlord would have had the benefit of all or substantially all of the tenant improvements upon the termination of the lease. There is no "standard" way of resolving this issue.

Issues that are beyond the scope of this article pertain to earthquake insurance and what happens in the event the particular damage or destruction is not covered by insurance. California Civil Code Sections 1932(2) and 1933(4) are not discussed in this article because they are almost always waived by landlords and tenants who prefer to negotiate specific rights and obligations as to termination and repairs.

C. RENT ABATEMENT AND RENTAL INCOME INSURANCE

Most tenants usually bargain for the right to abate rent to the extent the tenant cannot use and does not use its premises because of damage and destruction to the building and/or its premises. With increasing frequency, tenants are also bargaining for rent abatement even in the event of "use denial." Use denial occurs where there is no damage or destruction to the building and/or the premises, but the tenant still cannot use and does not use its premises because the landlord is unable to provide the tenant with access to the building or its premises or because the landlord is unable to provide the tenant with services and utilities to its premises. A typical use denial situation occurs, for example, when a power plant is unable to deliver power to the building or premises but there is no physical damage to the building or premises. As noted above, a less typical use denial situation occurred when lower Manhattan was closed in order to facilitate the rescue operations at the World Trade Center. The bargained-for rent abatement will usually commence on the date the damage or destruction occurs or, in the event of use denial, 72 hours following the date that the tenant ceased business operations from its premises. However, in the event of use denial based on government order there is typically no waiting period. Most of these provisions will provide for a proration as to the rent abatement in the event that the tenant cannot use part of its premises but can and does use the remainder of its premises. Some of the provisions will also provide for rent abatement in the event that the tenant cannot use its premises for 5 consecutive business days or 10 business days in a 12-month period.

In almost all instances, landlords agree to granting the tenant rent abatement when there is damage or destruction and the tenant cannot and does not utilize its premises, and they frequently agree to rent abatement for use denial. Occasionally, landlords will seek to prevent the tenant's right to rent abatement if the damage or destruction was caused by the negligence of the tenant; this type of limitation, however, is becoming recognized as a relic of the past. The reason landlords willingly grant tenants rent abatement under most of these circumstances is that rental income insurance is an integral part of the typical "all-risk" property insurance policy which covers both direct damage (actual physical damage to the building) and indirect damage (actual economic damage suffered by landlord, including loss of rent). Rental income insurance essentially requires the insurance company to pay to the landlord the same rent the landlord would have received from the tenant had the tenant not been entitled to rent abatement because of direct damage and destruction, with the payment to the landlord adjusted for savings to the landlord of costs that the landlord does not have to pay because the tenant does not utilize the premises. In almost all instances, the landlord is required to carry this rental income insurance by its lender or lenders; however, even in situations where no lender exists, prudent landlords almost always carry rental income insurance particularly because it is an adjunct to the typical property policy. The cost of the rental income insurance is usually considered an operating expense and, hence, the cost is passed onto the tenant. Because the tenant is ultimately paying for the cost of rental income coverage and the landlord is entitled to receive the proceeds of such insurance even if the tenant was negligent, it serves no useful purpose to deny the tenant rent abatement simply because the tenant was negligent.

While rental income insurance always applies in the typical damage and destruction situation, many use denial situations can be covered by a low cost endorsement to the rental income insurance policy. Use denial caused by the landlord's voluntary acts (e.g., locking out the tenant or not paying its power bill) are not covered by such insurance but are covered by the tenant's bargained for right to rent abatement. It makes perfect sense and results in a win-win situation (or at least it makes the best of an unfortunate situation) where, when the premises cannot be utilized because of damage and/or destruction (and in most instances use denial), the tenant is relieved of the obligation to pay rent until the premises

can once again be utilized and the landlord is made whole as to such rent by its receipt of rental income insurance proceeds during the rent abatement period. In this connection, it is important for the tenant to make sure that it continues to receive rent abatement until such time as the tenant is given access to the premises and sufficient time to complete the reconstruction of the tenant improvements in situations where the tenant is responsible for construction of the tenant improvements and to reinstall its furniture, fixtures and equipment and personal property.

D. BUSINESS INTERRUPTION/EXTRA EXPENSE INSURANCE

With increasing frequency, landlords now require tenants to carry business interruption/extra expense insurance. Regardless of whether required to do so by the lease, almost all sophisticated tenants now carry business interruption/extra expense insurance. Pursuant to this insurance, the tenant's extra expense incurred as a result of the tenant's inability to utilize its premises as a result of direct damage or destruction and the tenant's lost income (which is difficult to prove) is paid to the tenant by the insurance carrier. In almost every instance, the tenant carries the business interruption/extra expense insurance with the same company that insures its tenant improvements, fixtures, furniture, and equipment. The insurance company then has a significant interest in immediately providing the tenant with replacement furniture, fixtures and equipment so that the tenant's business is interrupted as little as possible, thereby minimizing the consequences of its business interruption.

IV. SUMMARY

While a disaster is always tragic and, at its best, creates only disruption, frustration and aggravation, and at its worst creates injury and death to individuals, the economic consequences of the damage and destruction caused by most disasters can be minimized by landlords and tenants obtaining the appropriate insurance and properly drafting the lease protections, rights and obligations. If the building is damaged, the landlord will simply recover from its insurance company the cost of repairing the damage to the building and its property. The tenant will have no liability for the cost of repairing the building even if it caused such damage and will not have to pay rent while it is denied access to a fully repaired building and restored premises. During the time the tenant does not have to pay rent, the landlord is made whole by receiving replacement rent from the insurance company. To the extent the tenant's property is damaged, the tenant will recover from its insurance carrier for the damage to its property. If the tenant suffers economic loss or extra expense as a result of such damage, the tenant's business interruption and extra expense insurance should keep the tenant whole.

Set forth below are typical negotiated lease provisions pertaining to insurance, repair and restoration, and rent abatement.

ARTICLE 14 - INDEMNIFICATION; INSURANCE

14.1 Insurance.

(a) Tenant's Insurance. Tenant shall have the following insurance obligations:

(i) Liability Insurance. Tenant shall obtain and keep in full force a policy of commercial general liability insurance (including but not limited to automobile, personal injury, broad form contractual liability, owner's (i.e., Tenant's) contractors protective and broad form property damage) under which Tenant is named as the insured and Landlord, Landlord's agent and any lessors and mortgagees (whose names shall have been furnished to Tenant) are named as additional insureds and under which the insurer agrees to indemnify and hold Landlord, its managing agent and all applicable lessors and mortgagees harmless from and against all cost, expense and/or liability arising out of or based upon the Tenant's indemnification obligations of this Lease. The minimum limits of liability shall be a combined single limit with respect to each occurrence of not less than Two Million Dollars ($2,000,000.00). The policy shall, if such is available on a commercially reasonable basis, contain a cross liability endorsement and shall be primary coverage for Tenant and Landlord for any liability arising out of Tenant's and Tenant's Employees' use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall provide that it is primary insurance and that insurance, if any, maintained by Landlord is excess and noncontributing. The policy shall contain a severability of interest clause. Not more frequently than once in any three (3) year period, if, in the opinion of Landlord's lender or of the insurance consultant retained by Landlord, the amount of public liability and property damage insurance coverage at that time is not adequate, Tenant shall increase the insurance coverage as required by either Landlord's lender or Landlord's insurance consultant; provided however, that in no event shall any such insurance coverage be increased in excess of that which is from time to time being required by comparable landlords of comparable tenants leasing comparable amounts of space in other comparable buildings in the vicinity of the Building.

(ii) Tenant's Property Insurance. Tenant at its cost shall maintain on all of its personal property in, on, or about the Premises, an "all risk" property policy including coverage for earthquake and sprinkler leakage and containing an agreed amount endorsement in an amount not less than one hundred percent (100%) of the full replacement cost valuation under which Tenant is named as the insured and Landlord, Landlord's agents and any lessors and mortgagees (whose names shall have been furnished to Tenant) are named as additional insureds as their interests may appear. The proceeds from any such policy shall be used by Tenant for the replacement of such personal property.

(iii) Workers' Compensation Insurance. Tenant shall maintain Workers' Compensation insurance as required by law and Employer's Liability insurance in an amount not less than One Million Dollars ($1,000,000).

(iv) Business Interruption/Extra Expense Insurance. Tenant shall maintain loss of income, business interruption and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings and incurred costs attributable to the perils commonly covered by Tenant's property insurance described above but in no event less

than One Million Dollars ($1,000,000.00). Such insurance will be carried with the same insurer that issues the insurance for the personal property.

(v) Other Coverage. Tenant, at its cost, shall maintain such other insurance as Landlord may reasonably require from time to time, but in no event may Landlord require any other insurance which is (A) not then being required of comparable tenants leasing comparable amounts of space in comparable buildings in the vicinity of the Building or (B) not then available at commercially reasonable rates.

(vi) Insurance Criteria. All the insurance required to be maintained by Tenant under this Lease shall:

(aa) Be issued by insurance companies authorized to do business in the state of California, with a financial rating of at least an A-VII status for any insurance as rated in the most recent edition of Best's Insurance Reports;

(bb) Be issued as a primary policy;

(cc) Contain an endorsement requiring thirty (30) days' written notice from the insurance company to both parties and to Landlord's lender before cancellation or any material change in the coverage, scope, or amount of any policy or because of the failure to pay insurance premium; and

(dd) With respect to property loss or damage, a waiver of subrogation must be obtained, as required by Sections 14.2 and 14.3.

All of the insurance requirements set forth herein on the part of Tenant to be observed shall be deemed satisfied if the Premises are covered by a blanket insurance policy complying with the limits, requirements and criteria contained in this Article 14 insuring all or most of Tenant's facilities in Southern California.

(vii) Evidence of Coverage. A duplicate original policy, or a certificate of the insurance policy shall be deposited with Landlord at the commencement of the term, and on renewal of the policy a certificate of insurance listing the insurance coverages required hereunder and naming Landlord and any other interested parties as additional insured shall be deposited with Landlord not less than two (2) days before expiration of the term of the policy.

(b) Landlord's Insurance. Landlord shall have the following obligations:

Landlord shall maintain in effect at all times fire and hazard "all risk" insurance covering one hundred percent (100%) of the full replacement cost valuation of the Building, the Tenant Improvements, the Alterations, and Landlord's personal property including its business papers, furniture, fixtures and equipment, which shall include loss of rent coverage (also known as rental income coverage) and shall be subject to commercially reasonable deductibles, in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" policies carried by landlords of comparable buildings in the vicinity of the Building. Landlord shall also obtain and keep in full force (a) a policy of commercial general liability and property damage insurance and (b) workers' compensation insurance, all such insurance being in amounts and with deductibles

comparable to the insurance being carried by landlords of other comparable quality office buildings in the vicinity of the Building. Notwithstanding anything herein to the contrary, Landlord shall have the right, but not the obligation, to obtain terrorism coverage to the extent available on a commercially reasonable basis, as reasonably determined by Landlord.

14.2 Assumption of Risk/Waivers of Subrogation/ Minimization of Duplication of Insurance Coverage/Limitations on Liability and Damages.

(a) Purpose. The purpose of this provision is to allow Landlord and Tenant to allocate and assume certain risks to coincide with insurance coverages required to be maintained pursuant to the terms of this Lease. Landlord and Tenant recognize the benefit that each will receive from the waivers of subrogation each is required to obtain pursuant to this Section and Section 14.3 below and that there are significant advantages to each in connection with minimizing duplication of insurance coverage. Landlord and Tenant further agree to accept and place certain limitations on each other's respective liabilities and responsibility for damages to coincide with required insurance coverages.

(b) Property Insurance. Landlord agrees to insure in accordance with Section 14.1 the Building, the Tenant Improvements, the Alterations and Landlord's personal property including its business papers, furniture, fixtures, and equipment (collectively, "Landlord's Property"). Accordingly, Landlord agrees that Tenant will have no liability to Landlord in the event that Tenant damages or destroys, negligently or otherwise, all or any part of Landlord's Property. Landlord will cause to be placed in its insurance policies covering Landlord's Property a waiver of subrogation so that its insurance company will not become subrogated to Landlord's rights and will not be able to proceed against Tenant in connection with any such damage or destruction.

Tenant agrees to insure in accordance with Section 14.1 Tenant's personal property including its business papers, furniture, fixtures, and equipment (collectively, "Tenant's Property"). Accordingly, Tenant agrees that Landlord will have no liability to Tenant in the event Landlord damages or destroys, negligently or otherwise, all or any part of Tenant's Property. Tenant will cause to be placed in its insurance policies covering Tenant's Property a waiver of subrogation so that the insurance company will not become subrogated to Tenant's rights and will not be able to proceed against Landlord in connection with any such damage or destruction.

Tenant shall not be responsible or liable to Landlord for any damage or destruction to Landlord's Property caused by Tenant's employees, agents, visitors, invitees, guests or independent contractors (collectively, "Tenant's Associates"), and Landlord hereby releases Tenant from any claim, demands, losses, damages, consequential damages, and the like (collectively, "Claims") resulting from damage or destruction to Landlord's Property caused directly or indirectly by Tenant and/or Tenant's Associates; provided, however, nothing herein shall be deemed to release Tenant's independent contractors from any such Claims Landlord may have against Tenant's independent contractors. Likewise, Landlord shall not be responsible or liable to Tenant for any damages or destruction to Tenant's Property caused by Landlord's employees, agents, visitors, invitees, guests or independent contractors (collectively, "Landlord's Associates"), and Tenant hereby releases Landlord from any Claims resulting from damage or destruction to Tenant's Property caused directly or indirectly by Landlord and/or Landlord's Associates; provided, however, nothing herein shall be deemed to release

Landlord's independent contractors from any such Claims Tenant may have against Landlord's independent contractors.

(c) Damage to Business and Loss of Rents. Landlord shall carry continuation of rent insurance and Tenant shall be responsible for carrying business interruption insurance (extra expense insurance) all in accordance with this Article 14. Accordingly, in the event that Landlord's Property is damaged or destroyed because of any act or conduct, negligent or otherwise, by Tenant and/or by Tenant's Associates, Landlord shall have no rights against Tenant and hereby releases Tenant from all Claims, including claims for loss of rent, by Landlord directly or indirectly resulting from the damage or destruction of Landlord's Property by conduct by Tenant and/or by Tenant's Associates. Likewise, in the event that Tenant's Property is damaged or destroyed because of any act or conduct, negligent or otherwise, by Landlord and/or by Landlord's Associates, Tenant shall have no rights against Landlord and hereby releases Landlord from all Claims by Landlord directly or indirectly resulting from the damage or destruction of Tenant's Property by the conduct of Landlord and/or Landlord's Associates; provided, however, nothing herein shall be deemed to release Tenant's or Landlord's independent contractors from any liability to Tenant and/or Landlord.

(d) Injury and Death to Individuals. Landlord and Tenant understand that waivers of subrogation do not apply to injury and death to individuals. Landlord and Tenant shall each carry insurance, as provided by this Article 14, in connection with injury and death to individuals. Landlord hereby agrees to indemnify and hold harmless Tenant from any liability which Tenant may otherwise have with respect to injury or death to individuals occurring within the Building but outside the Premises except to the extent that such injury or death is caused by the negligence of Tenant and/or Tenant's Associates and is not covered by the insurance Landlord is required to carry under this Lease. Likewise, Tenant agrees to defend and hold harmless Landlord from any liability for injury or death to persons occurring within the Premises except to the extent such injuries or death are caused by the negligence of Landlord and/or Landlord's Associates and is not covered by the insurance Tenant is required to carry under this Lease.

(e) Abatement of Rent. Except as provided in Articles 15 (Damage or Destruction), 16 (Rent Abatement) and 17 ("Eminent Domain"), Tenant shall not otherwise be entitled to rent abatement and shall not otherwise have, and hereby releases Landlord from, any Claims resulting from Tenant's inability to utilize all or any part of the Premises except to the extent that Tenant is unable to use all or any part of the Premises and does not use all or any part of the Premises as a result of Landlord's intentional decision to refuse to provide access to the Building and/or the Premises and/or to provide services and/or utilities to Tenant as required to be provided by Landlord to Tenant pursuant to this Lease, where such refusal or inability is not caused by a Force Majeure occurrence.

(f) Limitation of Liability and Damages. Landlord and Tenant agree that in the event of a default by Tenant under the Lease, Landlord will have the right to collect damages as provided in California Civil Code Section 1951.2 if the Lease is terminated and Section 1951.4 if the Lease is not terminated but, except in a holdover situation, Landlord may not collect consequential damages and, regardless of any other provisions in this Lease to the contrary, Landlord may not collect any rent which was classified as "free rent" or "partial free rent" or the equivalent. Landlord further agrees that it will use commercially reasonable efforts to mitigate its damages in connection with any default by Tenant. Nothing herein shall be construed to prevent Tenant or Landlord, if it is the prevailing party in connection with any litigation, dispute, or controversy between Landlord and Tenant, from collecting,

and each agrees that under such circumstances the other shall have a right to collect and shall be awarded, (a) its reasonable attorneys' fees, costs, and expenses incurred in connection with any such litigation, dispute, or controversy and (b) interest, at the Interest Rate, on any amounts not paid when due. Landlord's liability to Tenant is limited to its equity interest in the Building as more specifically provided in Section 17.2 of the Lease.

14.3 Allocation of Insured Risks/Subrogation. Landlord and Tenant release each other from any claims and demands of whatever nature for damage, loss or injury to the Premises and/or the Building, or to the other's property in, on or about the Premises and the Building, that are caused by or result from risks or perils insured against under any property insurance policies required by the Lease to be carried by Landlord and/or Tenant and in force at the time of any such damage, loss or injury. Landlord and Tenant shall cause each insurance policy obtained by them or either of them to provide that the insurance company waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any damage covered by any such policy or policies. Neither Landlord nor Tenant shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy required by the Lease. If an insurance policy cannot be obtained with a waiver of subrogation, or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies without waiver of subrogation, the party undertaking to obtain the insurance shall notify the other party of this fact. The other party shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation at no additional cost, or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation with respect to the particular insurance involved.

14.4 Availability of Insurance on a Commercially Reasonable Basis. In the event that any of the insurance obligations of either the Landlord or Tenant are not available on a commercially reasonable basis, Tenant or Landlord, as appropriate, shall obtain in its place insurance that is available on a commercially reasonable basis that most closely approximates the insurance that is no longer available on a commercially reasonable basis and if no such insurance, or approximation thereof, is available on a commercially reasonable basis, Tenant or Landlord, as appropriate, will be relieved of such obligation until such insurance, or approximation thereof, is once again available on a commercially reasonable basis.

ARTICLE 15 - DAMAGE OR DESTRUCTION

15.1 Loss Covered By Insurance. If, at any time prior to the expiration or termination of this Lease, the Premises or the Building is wholly or partially damaged or destroyed by a casualty, which loss to Landlord is (except for any applicable deductible) fully covered by insurance maintained by Landlord or for Landlord's benefit (or required to be maintained by Landlord pursuant to Section 14.1(b)), which casualty renders the Premises totally or partially inaccessible or unusable by Tenant in the ordinary conduct of Tenant's business, then:

(a) Repairs Which Can Be Completed Within Six (6) Months. Within twenty (20) days of notice (which shall be 120 days and not 20 days with respect to casualties caused by earthquakes or where the casualty was of the type where the entire Building is or could be declared a total loss) to Landlord of such damage or destruction, Landlord shall provide Tenant with notice of its determination of whether the damage or destruction can be repaired within six (6) months of such damage or destruction without the payment of overtime or other premiums. If all repairs to such Premises or Building can, in Landlord's judgment, be completed within six (6) months following the date of such damage or destruction without the payment of overtime or other premiums, Landlord shall, at Landlord's expense, repair the same and this Lease shall remain in full force and effect and a proportionate reduction of the Gross Rent shall be allowed Tenant for such portion of the Premises as shall be rendered inaccessible or unusable to Tenant, and which is not used by Tenant, during the period of time that such portion is unusable or inaccessible and not used by Tenant.

(b) Repairs Which Cannot Be Completed Within Six (6) Months. If all such repairs to the Building and Premises cannot, in Landlord's judgment, be completed within six (6) months following the date of notice to Landlord of such damage or destruction without the payment of overtime or other premiums, Landlord shall notify Tenant of such determination and either Landlord or Tenant may, at its option, upon written notice to the other party given within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of the occurrence of such damage or destruction. In the event that neither Landlord nor Tenant elect to terminate the Lease in accordance with the foregoing provisions, then Landlord shall, at Landlord's expense, repair such damage or destruction, and in such event, this Lease shall continue in full force and effect but the Gross Rent shall be proportionately reduced as hereinabove provided in Section 15.1(a); provided, however, that if any such repair is not commenced by Landlord within ninety (90) days after the occurrence of such damage or destruction or is not substantially completed by Landlord within nine (9) months after the occurrence of such damage or destruction, then in either such event Tenant may, at its option, upon written notice to Landlord, elect to terminate this Lease as of the date of the occurrence of such damage or destruction.

15.2 Loss Not Covered By Insurance. If, at any time prior to the expiration or termination of this Lease, the Premises or the Building are totally or partially damaged or destroyed from a peril, which loss to Landlord is not fully covered (except for any deductible) by insurance maintained by Landlord or for Landlord's benefit (or required to be maintained by Landlord pursuant to Section 14.1(b)), which damage renders the Premises inaccessible or unusable to Tenant in the ordinary course of its business, Landlord may, at its option, upon written notice to Tenant within sixty (60) days after notice to Landlord of the occurrence of such damage or destruction, elect to repair or restore such damage or destruction, or Landlord may elect to terminate this Lease so long as Landlord terminates every other lease in the Building which was affected by the casualty. Provided, however, Landlord may not elect to terminate

this Lease if (i) the uninsured portion of the damage is less than ten percent (10%) of the replacement cost of the Building and/or (ii) the Landlord does not elect to terminate the leases of all other tenants in the Building who are similarly affected by such damage and/or destruction. If Landlord elects to repair or restore such damage or destruction, this Lease shall continue in full force and effect but the Gross Rent shall be proportionately reduced as provided in Section 15.1(a). If Landlord does not elect by notice to Tenant to repair such damage the Lease shall terminate. Notwithstanding the foregoing, if all repairs to the Premises or the Building cannot, in Landlord's reasonable judgment, be completed within six (6) months following the date of such damage or destruction without the payment of overtime or other expenses, then either Landlord or Tenant may at its option, upon written notice to the other party given within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this lease as of the date of the occurrence of such damage or destruction.

15.3 Destruction During Final Year. Notwithstanding anything to the contrary contained in Sections 15.1 and 15.2, if the Premises or the Building are wholly or partially damaged or destroyed within the final twelve (12) months of the Term of this Lease, or, if an applicable renewal option has been exercised, during the last year of any renewal term, so that Tenant shall be prevented from using the Premises for thirty (30) consecutive days due to such damage or destruction, then either Landlord or Tenant may, at its option, by notice to the other party within sixty (60) days after the occurrence of such damage or destruction, elect to terminate the Lease.

15.4 Destruction of Tenant's Personal Property, Tenant Improvements or Property of Tenant's Employees. In the event of any damage to or destruction of the Premises or the Building, under no circumstances shall Landlord be required to repair any injury, or damage to, or make any repairs to or replacements of, Tenant's Personal Property. However, as part of Operating Expenses, Landlord shall cause to be insured the Tenant Improvements and Alterations which do not consist of Tenant's Personal Property and shall cause such Tenant Improvements and Alterations to be repaired and restored at Landlord's sole expense except that Tenant shall pay for such portion which is covered by the deductible. Landlord shall have no responsibility for any contents placed or kept in or on the Premises or the Building by Tenant or Tenant's Employees.

15.5 Exclusive Remedy. This Article 15 shall be Tenant's sole and exclusive remedy in the event of damage or destruction to the Premises or the Building, and Tenant, as a material inducement to Landlord entering into this Lease, irrevocably waives and releases Tenant's rights under California Civil Code Sections 1932(2) and 1933(4). No damages, compensation or claim shall be payable by Landlord for any inconvenience, any interruption or cessation of Tenant's business, or any annoyance, arising from any damage to or destruction of all or any portion of the Premises or the Building.

ARTICLE 16 - ABATEMENT OF RENT WHEN TENANT IS PREVENTED FROM USING PREMISES

In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, for five (5) consecutive business days or ten (10) days in any twelve (12) month period (the "Eligibility Period") as a result of any damage or destruction to the Premises or any repair, maintenance or alteration performed by Landlord after the Commencement Date and required or permitted by the Lease, which interferes with Tenant's use of the Premises, or any failure to provide utilities, services or access to the Premises or because of an eminent domain proceeding or because of the presence of hazardous substances in, on or around the Building, the Premises or the Site which could, in Tenant's business judgment and taking into account the standards, guidances and recommendations included in the definition of Applicable Laws above with respect to hazardous substances, pose a health risk to occupants of the Premises, then Tenant's rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. However, in the event that Tenant is prevented from so conducting, and does not conduct, its business in any portion of the Premises for a period of time in excess of the Eligibility Period, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the rent for the entire Premises shall be abated; provided, however, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence. If Tenant's right to abatement occurs during a free rent period which arises after the Commencement Date, Tenant's free rent period shall be extended for the number of days that the abatement period overlapped the free rent period ("Overlap Period"). Landlord shall have the right to extend the expiration date for a period of time equal to the Overlap Period if Landlord sends a notice to Tenant of such election within ten (10) days following the end of the extended free rent period. If Tenant's right to abatement occurs because of an eminent domain taking and/or because of damage or destruction to the Premises or Tenant's property, Tenant's abatement period shall continue until Tenant has been given sufficient time, and sufficient access to the Premises, to rebuild the portion of the Premises it is required to rebuild, to install its property, furniture, fixtures, and equipment and to move in over one (1) weekend. To the extent Tenant is entitled to abatement because of an event covered by Articles 15 [Damage & Destruction] or 17 [Eminent Domain], then the Eligibility Period shall not be applicable. If this Lease terminates because of an event covered by Articles 15 or 17, and Tenant paid its monthly Rent in advance, then concurrently with the termination of the Lease, Landlord shall refund to Tenant an amount equal to the monthly Rent paid in advanced multiplied by a fraction, the numerator being the number of days remaining in the month including and following the date the casualty or taking occurred (and Tenant was prevented from using and did not use the Premises as a result thereof) and the denominator being the actual number of days in such month.

ASSIGNMENT AND SUBLEASING RIGHTS

Tenants who are sophisticated will spend as much time focusing on their entrance strategy as their exit strategy. A key component of the exit strategy is for a tenant to obtain strong assignment and subletting rights. Landlords usually have two major concerns. First, they do not want a transferee to be someone who they would not want to lease space to directly. Second, if there is an economic benefit to be gained as a result of the transfer, the landlord would like to receive the economic benefit. The final result of the assignment and subletting section will depend on market conditions, the sophistication of the landlord and the tenant, and how the issues are framed.

With respect to protecting the landlord's interest, that can simply be done by providing that the tenant will not assign or sublet to anyone who will use the premises for a purpose that would violate the use restrictions set forth in the lease or to an entity who would not be comparable in quality and reputation to the then-existing tenants in the building (assuming that it is a multi-tenant building of significant size) or to tenants leasing comparable space in comparable projects owned or controlled by comparable landlords in the vicinity. The tenant could also agree to other restrictions such as the tenant would not assign or sublet to an entity that would cause the landlord to be in violation of exclusives that it may have granted to another tenant in the building. Finally, the tenant can agree that it would not be released from liability in the event of an assignment or subletting. On very rare occasions, a landlord may be willing to release a tenant from liability if the transferee is an entity that has a net worth of significant proportion, but even under those circumstances, a net worth does not tell the entire story and sophisticated landlords rely on operating history and are almost always unwilling to release the original tenant.

With respect to sharing the economic benefit, the sophisticated tenant's position is always that the landlord will never make a penny less in the event of an assignment or subletting and therefore, it is not fair for the landlord to share in any economic benefit. Somewhat facetiously, but at least to make the negotiating point, these tenants will argue that the landlord can have a right to share in the profits from an assignment or subletting provided that the landlord would be willing to share in the losses from an assignment or subletting. No landlord (at least none that I have ever met) would be willing to share in losses, but at least it emphasizes the point that the landlord really is no longer in the real estate business with respect to that particular amount of space for that particular period of time.

Most landlords have a list of additional conditions that a tenant must meet in order for the landlord to grant its consent. Most of the conditions would be reasonably acceptable to a tenant, but some will cause a tenant a great deal of hardship and are normally rejected by sophisticated tenants. Typical of these restrictions would be the restriction requiring that the tenant sublease or assign at a particular rental rate or not assign or sublease to another tenant in the building or a tenant with whom the landlord is currently in negotiations or has been in negotiations in the recent past. Typically, subleased space will go for significantly less than the rental rate for a direct lease, and since the tenant will generally make all of the profits or a significant percentage of the profits, the tenant has a strong interest to assign or sublet to someone who will pay the highest amount of money consistent with their credit rating. Normally, landlords are soft on this issue. With respect to other tenants in the building or tenants with whom the landlord has been in negotiations, strong tenants are able to get landlords to concede to this issue, but tenants in a strong landlord marketplace are usually able to receive a "pass" with respect to tenants in the same elevator bank or tenants who are on the same floor or on the floor

directly below or directly above the tenant's premises or in situations where a certain percentage of the building has already been leased.

Many landlords seek to advise the tenant that the landlord needs to have a recapture right (a typical recapture right allows the landlord to terminate or suspend the lease as to the space in question for the period of time of the proposed sublease or the entire term in the event of an assignment) in order for the landlord to maintain control over its building and/or to provide space to other existing tenants in the project. The truth is that landlords seeking an aggressive recapture right are motivated, separate and apart from seeking the ability to provide additional space to its existing tenants, by a desire to gain the full advantage of a hot marketplace. For example, if a tenant did not need 40,000 square feet that it had previously leased at $20 per square foot, and the market went up to $100 per square foot, the landlord, by terminating a lease in the event of a proposed assignment or subletting, will be in a situation where the landlord can realize as a profit almost the entire differential.

Tenants, if they have the economic power, will be able to eliminate the landlord's recapture right. But if they do not have the economic power to do so, then most landlords would be willing to agree that the typical recapture provision proposed by a landlord (which involves a tenant first retaining the services of a broker, finding a prospective assignee or sublessee, submitting that proposed assignment or sublease to the landlord, whereupon the landlord can then either approve the proposed transfer, disapprove of it for reasonable reasons, or terminate the lease) could be modified. The typical modified recapture right provides that the tenant can request that prior to the tenant going into the marketplace and retaining the services of a broker and becoming obligated to pay a commission, the tenant could instead simply advise the landlord of what space it does not need (all of the premises for the remainder of the lease term in the event of an assignment or a portion of the space for a specific period of time for the typical sublease), and then have the landlord be obligated to elect to recapture within ten days of receipt of that notice. Under this case scenario, the tenant has minimized aggravation and the economic expense of retaining a broker and marketing the space. Under this compromise, the landlord, in the hot marketplace, can step in and control its own destiny and make all of the profit.

Finally, landlords who ask for recapture rights will also request, in the event that the landlord does not elect to recapture, to share in any profits that the tenant may nevertheless make in connection with a proposed transfer. Typically, landlords will ask to share in a certain percentage of the rent differential. A tenant, if they are required to share profits, will seek to have a broad definition of profits so that the tenant is assured that before the landlord makes one extra nickel in the event of an assignment or sublease (above what it would have made had there been no assignment or sublease), the tenant is made even.

As for remedies for a breach, landlords frequently try to limit the tenant's sole remedy for failure to consent to injunctive relief. Sophisticated tenants who can read and have any leverage expand their remedies to an action for damages plus specific performance.

Attached are a number of landlord provisions and tenant provisions which illustrate various ways landlords and tenants seek to protect their interests in connection with an assignment or sublease.

Landlord provision:

Transfers. Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment or other such foregoing transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or permit the use of the Premises by any persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "Transfers" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "Transferee"). If Tenant shall desire Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "Transfer Notice") shall include (i) the proposed effective date of the Transfer, which shall not be less than forty-five (45) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "Subject Space"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including a calculation of the "Transfer Premium", as that term is defined in Section __, below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, and any other information required by Landlord, which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, (v) an executed estoppel certificate from Tenant in the form attached hereto as Exhibit __ and (vi) such other information as Landlord may reasonably require. 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 Section __ of this Lease. Whether or not Landlord shall grant consent, 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's Consent. Landlord shall not unreasonably withhold its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. The parties hereby agree that it shall be deemed to be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply, without limitation as to other reasonable grounds for withholding consent:

1. The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building, or would be a significantly less prestigious occupant of the Building than Tenant;

2. The Transferee is either a governmental agency or instrumentality thereof;

3. The Transferee's intended use of the Premises is inconsistent with the Permitted Use;

4. The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under the Lease on the date consent is requested;

5. The proposed Transfer would cause Landlord to be in violation of another lease or agreement to which Landlord is a party, or would give an occupant of the Building a right to cancel its lease;

6. The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right);

7. Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) occupies space in the Building at the time of the request for consent, (ii) is negotiating with Landlord to lease space in the Building at such time, or (iii) has negotiated with Landlord during the twelve (12)-month period immediately preceding the Transfer Notice;

8. The Transferee does not intend to occupy the entire Premises and conduct its business therefrom for a substantial portion of the term of the Transfer; or

9. The rent charged by Tenant to such Transferee during the term of such Transfer (the "Transferee's Rent"), calculated using a present value analysis, is less than ninety percent (90%) of the rent being quoted by Landlord at the time of such Transfer for comparable space in the Building for a comparable term (the "Quoted Rent"), calculated using a present value analysis.

In the event Landlord withholds or conditions its consent and Tenant believes that Landlord did so contrary to the terms of this Lease, Tenant may prosecute an action for declaratory relief to determine if Landlord properly withheld or conditioned its consent, but Tenant waives and discharges any claims it may have against Landlord for damages arising from Landlord's withholding or conditioning its consent. In any such action, each party shall bear its own attorneys' fees. Tenant shall indemnify, defend and hold harmless Landlord from any and all liability, losses, claims, damages, costs, expenses, causes of action and proceedings involving any third party or parties (including without limitation Tenant's proposed subtenant or assignee) who claim they were damaged by Landlord's wrongful withholding or conditioning of Landlord's consent. If Landlord consents to any Transfer pursuant to the terms of this Section __ (and does not exercise any recapture rights Landlord may have under Section __ of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section __ of this Lease, provided that if there are any changes in the terms and conditions from those specified in the Transfer Notice (i) such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section __, or (ii) which would cause the proposed Transfer to be more favorable to the Transferee than the terms set forth in Tenant's original Transfer Notice, Tenant shall again submit the Transfer to Landlord for its approval and other action under this Article __ (including Landlord's right of recapture, if any, under Section __ of this Lease).

Transfer Premium. If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium," as that term is defined in this Section __, received by Tenant from such Transferee. "Transfer Premium" shall mean all rent, additional rent or other consideration payable by such Transferee in excess of the Rent and Additional Rent payable by Tenant under this Lease, on a per rentable square foot basis if less than

all of the Premises is transferred. "Transfer Premium" shall also include, but not be limited to, key money and bonus money paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. In the calculations of the Rent (as it relates to the Transfer Premium calculated under this Section __), and the Transferee's Rent and Quoted Rent under Section __ of this Lease, the Rent paid during each annual period for the Subject Space by Tenant, and the Transferee's Rent and the Quoted Rent, shall be computed after adjusting such rent to the actual effective rent to be paid, taking into consideration any and all leasehold concessions granted in connection therewith, including, but not limited to, any rent credit and tenant improvement allowance. For purposes of calculating any such effective rent, all such concessions shall be amortized on a straight-line basis over the relevant term.

Landlord's Option as to Subject Space. Notwithstanding anything to the contrary contained in this Article __, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of any Transfer Notice, to (i) recapture the Subject Space, or (ii) take an assignment or sublease of the Subject Space from Tenant. Such recapture, or sublease or assignment notice shall cancel and terminate this Lease, or create a sublease or assignment, as the case may be, with respect to the Subject Space as of the date stated in the Transfer Notice as the effective date of the proposed Transfer until the last day of the term of the Transfer as set forth in the Transfer Notice. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. If Landlord declines, or fails to elect in a timely manner to recapture, sublease or take an assignment of the Subject Space under this Section __, then, provided Landlord has consented to the proposed Transfer, Tenant shall be entitled to proceed to transfer the Subject Space to the proposed Transferee, subject to provisions of the last paragraph of Section __ of this Lease.

Effect of Transfer. If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from liability under this Lease. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency and Landlord's costs of such audit, and if understated by more than ten percent (10%), Landlord shall have the right to cancel this Lease upon thirty (30) days' notice to Tenant.

Additional Transfers. For purposes of this Lease, the term "Transfer" shall also include (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of twenty-five

percent (25%) or more of the partners, or transfer of twenty-five percent or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant, the sale or other transfer of more than an aggregate of twenty-five percent (25%) of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of more than an aggregate of twenty-five percent (25%) of the value of the unencumbered assets of Tenant within a twelve (12) month period.

Non-Transfers. Notwithstanding anything to the contrary contained in this Lease, neither (i) an assignment to a transferee of all or substantially all of the assets of Tenant, (ii) an assignment of the Premises to a transferee which is the resulting entity of a merger or consolidation of Tenant with another entity, nor (iii) an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant), shall be deemed a Transfer under Article __ of this Lease, provided that Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or information reasonably requested by Landlord regarding such transfer or transferee as set forth in items (i) through (iii) above, that such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease, and that such transferee or affiliate shall have a net worth (not including goodwill as an asset) computed in accordance with generally accepted accounting principles (the "Net Worth") at least equal to the greater of (A) the Net Worth of Tenant immediately prior to such assignment or sublease, or (B) the Net Worth on the date of this Lease of the original named Tenant. "Control," as used in this Section __, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

Tenant provision:

Right to Assign, Sublease and Encumber. Tenant may not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity to occupy or use all or any part of the Premises, without obtaining Landlord's consent which consent shall not be unreasonably withheld, conditioned or delayed beyond ten (10) days. Landlord shall have no right to recapture all or any portion of the Premises in the event of an assignment, encumbrance or sublease. No consent to an assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this Article __. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be deemed to have waived any of its rights under **[*California Civil Code Section 1995.310*]**.

Procedure for Assignment and Sublease. Tenant shall advise Landlord by notice of (i) Tenant's intent to assign, encumber, or sublease this Lease and (ii) the name of, and information with respect to the business operations of, the proposed assignee or sublessee. Landlord shall be deemed to have consented to such proposed assignment or sublease if such assignment or sublease is to any assignee or sublessee that is comparable in quality to other tenants in ***the Building or*** Comparable Buildings and will use the Premises in a manner generally comparable to the use of comparable space in ***the Building or*** Comparable Buildings.

Conditions Regarding Consent to Sublease and Assignment. In the event that Landlord shall be deemed to have consented to an assignment or sublease under the provisions of this Article __, Tenant shall remain directly, primarily and fully responsible and liable for all payments owed by Tenant under the Lease and for compliance with all obligations under the terms, provisions and covenants of the Lease. The Landlord shall not be entitled to share in any profit or economic benefit arising in favor of Tenant from any such assignment or sublease and shall not be required to share in any loses or economic detriment arising from any assignment or sublease. **[*NOTE: In instances where market conditions require Tenant to share profits with the Landlord, delete the preceding sentence and insert the following: With respect to any assignment or sublease which commences subsequent to the _____ (____) anniversary of the Commencement Date, Tenant shall pay Landlord, as additional Base Rent, fifty percent (50%) of any Profits (as defined below) actually received by Tenant pursuant to such approved assignment or sublease. Whenever Landlord is entitled to share in any excess income resulting from an assignment or sublease of the Premises, the following shall constitute the definition of "Profits": the gross revenue received from the assignee or sublessee during the sublease term or during the assignment, with respect to the space covered by the sublease or the assignment ("Transferred Space") less: (a) the gross revenue paid to Landlord by Tenant during the period of the sublease term or during the assignment with respect to the Transferred Space; (b) the gross revenue as to the Transferred Space paid to Landlord by Tenant for all days the Transferred Space was vacated from the date that Tenant first vacated the Transferred Space until the date the assignee or sublessee was to pay Rent; (c) any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee; (d) brokers' commissions; (e) attorneys' fees; (f) lease takeover payments; (g) costs of advertising the space for sublease or assignment; (h) unamortized cost of initial and subsequent improvements to the Premises by Tenant; and (i) any other costs actually paid in assigning or subletting the Transferred Space or in negotiating or effectuating the assignment or sublease; provided, however, under no circumstance shall Landlord be paid any Profits until Tenant has recovered all the items set forth in subparts (a) through (i) for such**

Transferred Space, it being understood that if in any year the gross revenues, less the deductions set forth in subparts (a) through (i) above (the "Net Revenues"), are less than any and all costs actually paid in assigning or subletting the affected space (collectively "Transaction Costs"), the amount of the excess Transaction Costs shall be carried over to the next year and then deducted from Net Revenues with the procedure repeated until a Profit is achieved.*] In the event of an Assignment, then as long as Landlord shall be entitled to receive a portion of the Profits, the payment of Rents shall be paid to Tenant. Provided however, Tenant shall upon request by Landlord, provide Landlord with an assignment of all Rents in excess of the amount of Profits Tenant is entitled to retain and shall execute any documents reasonably requested by Landlord to effectuate such assignment.

Affiliated Companies/Restructuring of Business Organization. Occupancy of all or part of the Premises by parent, subsidiary, or affiliated companies of Tenant or of Tenant's parent or of Tenant's subsidiary shall not be deemed an assignment or subletting provided that such parent, subsidiary or affiliated companies were not formed as a subterfuge to avoid the obligations of this Article __. Furthermore, without limiting the generality of the foregoing, Tenant may assign the Lease at any time, or sublease all or part of the Premises, without receipt of Landlord's consent, to any entity which acquires all or part of Tenant, or which is acquired in whole or in part by Tenant, or which is controlled directly or indirectly by Tenant, or which entity controls, directly or indirectly, Tenant ("Affiliate"), or which owns or is owned by the Affiliate, so long as such transaction was not entered into as a subterfuge to avoid the obligations and restrictions of the Lease.

Recognition Agreement. To the extent that Tenant enters into an assignment of the Lease or enters into a sublease for all or any portion of the Premises [*in excess of the smaller of the entire Premises or one (1) floor of the Building*], Landlord, if it grants its consent to such assignment or sublease, which consent shall not be unreasonably withheld, conditioned or delayed, shall also simultaneously execute and deliver a recognition agreement pursuant to which Landlord shall agree that in the event Tenant defaults under the Lease and the Lease is terminated, the assignment or the sublease shall be recognized as a direct lease between Landlord and the assignee or the subtenant on the terms and conditions of the assignment or sublease to the extent same are not inconsistent with, or contrary to, the provisions of this Lease and at a rental rate which is the higher of the rental rate under the Lease or the rental rate under the assignment or sublease.

Landlord's Right to Assign. Landlord shall have the right to sell, encumber, convey, transfer, and/or assign any of its rights and obligations under the Lease.

Occupancy By Others. Tenant may allow any person or company which is a client or customer of Tenant or which is providing service to Tenant or one of Tenant's clients to occupy certain portions of the Premises without such occupancy being deemed an assignment or subleasing as long as no new demising walls are constructed to accomplish such occupancy and as long as such relationship was not created as a subterfuge to avoid the obligations set forth in this Article __.

Negotiated Assignment and Subleasing Compromise Provision for a Large Lease:

14. Assignment and Subletting.

14.1 Transfer by Tenant. The following provisions shall apply to any assignment, subletting or other transfer by Tenant or any subtenant or assignee or other successor in interest of the original Tenant (collectively referred to in this Section 14.1 as "Tenant"):

A. Tenant shall not do any of the following (collectively referred to herein as a "Transfer"), whether voluntarily, involuntarily or by operation of law, without the prior written consent of Landlord, which consent shall not be unreasonably withheld: (i) sublet all or any part of the Premises or allow it to be sublet, licensed, shared, occupied or used by any person or entity other than Tenant; (ii) assign its interest in this Lease; (iii) mortgage, hypothecate or encumber this Lease (or otherwise use this Lease as a security device) in any manner; or (iv) materially amend or modify an assignment, sublease or other transfer that has been previously approved by Landlord, including consent to a future Transfer of the Premises by a subtenant, assignee or other transferee. Tenant shall reimburse Landlord for all reasonable out-of-pocket costs and attorneys' fees incurred by Landlord in connection with the evaluation, processing, and/or documentation of any requested Transfer, whether or not Landlord's consent is granted, not to exceed Three Thousand Dollars ($3,000.00) per request. Any Transfer so approved by Landlord shall not be effective until Tenant has delivered to Landlord an executed counterpart of the document evidencing the Transfer which (1) is in a form reasonably approved by Landlord, (2) contains the same terms and conditions as stated in Tenant's notice given to Landlord pursuant to Section 14.1B, and (3) in the case of an assignment of this Lease, contains the agreement of the proposed transferee to assume all obligations of Tenant under this Lease arising after the effective date of such Transfer. Any attempted Transfer without Landlord's consent shall constitute a violation of this Lease and shall be voidable at Landlord's option. Landlord's consent to any one Transfer shall not constitute a waiver of the provisions of this Section 14.1 as to any subsequent Transfer or a consent to any subsequent Transfer. No Transfer, 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 hereunder. The acceptance of rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease nor to be a consent to any Transfer.

B. At least thirty (30) days before a proposed Transfer is to become effective, Tenant shall give Landlord written notice of the proposed terms of such Transfer and request Landlord's approval, which notice ("Transfer Notice") shall include the following: (i) the name and legal composition of the proposed transferee; (ii) a current financial statement of the transferee, financial statements of the transferee covering the preceding three (3) years if the same exist, and (if available) an audited financial statement of the transferee for a period ending not more than one (1) year prior to the proposed effective date of the Transfer, all of which statements shall be prepared in accordance with generally accepted accounting principles; (iii) the nature of the proposed transferee's business to be carried on in the Premises; (iv) all consideration to be given on account of the Transfer; (v) a current financial statement of Tenant; and (vi) an accurately filled out response to Landlord's standard hazardous materials questionnaire. Tenant shall provide to Landlord such other information as may be reasonably requested by Landlord within seven (7) days after Landlord's receipt of such notice from Tenant. Landlord shall respond in writing to Tenant's request for Landlord's consent to a Transfer within the later of (a) fifteen (15) days of receipt of such request together with the required accompanying

documentation, or (b) fifteen (15) days after Landlord's receipt of all information which Landlord reasonably requests after it receives Tenant's first notice regarding the Transfer in question. If Landlord fails to respond in writing within such period, Landlord will be deemed to have withheld consent to such Transfer. Tenant shall promptly notify Landlord of any material modification to the proposed terms of such Transfer, which shall also be subject Landlord's consent in accordance with the same process for obtaining Landlord's initial consent to such Transfer.

C. In the event that Tenant contemplates an assignment of this Lease or other Transfer of all or a portion of the Premises for at least five (5) years (including options) or substantially the remainder of the Lease Term, whichever is less ("Contemplated Transfer"), then Tenant shall give Landlord notice ("Intention to Transfer Notice") of such Contemplated Transfer. The Intention to Transfer Notice shall specify the portion and amount of rentable square feet of the Premises which Tenant intends to transfer ("Contemplated Transfer Space") and the contemplated date of the commencement of the Contemplated Transfer ("Contemplated Effective Date") and shall state that it is an assignment or a sublease of the Contemplated Transfer Space for at least five (5) years (including options) or substantially all of the remainder of the Lease Term, and shall specify that such Intention to Transfer Notice is delivered to Landlord pursuant to this Section 14.1C in order to allow Landlord to elect to terminate this Lease as to the Contemplated Transfer Space. Thereafter, Landlord shall have the option, by giving written notice to Tenant within fifteen (15) business days after receipt of such Intention to Transfer Notice, to terminate this Lease as to such Contemplated Transfer Space as of the Contemplated Effective Date. In the event Landlord does not give such written recapture notice to Tenant within such fifteen (15) business day period, Tenant shall have one hundred eighty (180) days thereafter within which to effect the Transfer in accordance with the Intention to Transfer Notice and subject to compliance with the other provisions of this Lease. In the event Tenant does not complete the Transfer within such 180-day period, Tenant shall be required to deliver a new Intention to Transfer Notice to Landlord and repeat the provisions of this section. In the event the recapture option is exercised by Landlord, this Lease shall be canceled and terminated with respect to the Contemplated Transfer Space as of the Contemplated Effective Date. In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, (i) the rent reserved herein, Tenant's Share and Tenant's Allocated Parking Stalls shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon the request of either party, the parties shall execute written confirmation of the same and (ii) Landlord shall install, on a commercially reasonable basis, any corridor and/or demising wall, at Landlord's expense, which is required as a result of the cancellation of this Lease with respect to less than the entire Premises.

D. Notwithstanding anything to the contrary herein, (i) Tenant may not advertise proposed Transfer rates that are less than what Landlord is then listing comparable space in the Building and (ii) it shall be considered reasonable for Landlord to withhold its consent to any proposed Transfer if:

(1) the transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the Project, as reflected by the then existing tenants of the Project with respect to comparable space and of the comparable buildings;

(2) the transferee intends to use the portion of the Premises to be Transferred for purposes which are not permitted under this Lease;

(3) the transferee is either a governmental agency or instrumentality thereof, unless Landlord, with respect to the Project, currently has more than one (1) lease or approved sublease with comparable (in terms of use, security issues, express or implied power of eminent domain, reputation, character and size of space in the Project) governmental agencies or instrumentalities thereof in the office areas of the Project;

(4) the proposed Transfer would cause a violation of another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease;

(5) either the proposed transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed transferee, (i) occupies space in the Project at the time of the request for consent (provided, however, that Tenant may Transfer all or a portion of the Premises to an occupant of the Project if Landlord does not have space within the Project of at least comparable size available for lease at the time of the anticipated commencement of the proposed Transfer), or (ii) is negotiating with Landlord to lease space in the Project at such time, or (iii) has negotiated with Landlord during the sixty (60) day period immediately preceding the Transfer Notice.

E. If Landlord consents to a Transfer proposed by Tenant, Tenant may enter into such Transfer, and if Tenant does so, the following shall apply:

(1) Tenant shall not be released of its liability for the performance of all of its obligations under this Lease.

(2) If Tenant assigns its interest in this Lease, then Tenant shall pay to Landlord fifty percent (50%) of the Transfer Premium (as defined in Section 14.1E(5)) received by Tenant related to such assignment. In the case of an assignment, the amount of Transfer Premium owed to Landlord shall be paid to Landlord on the same basis, whether periodic or in lump sum, that such Transfer Premium is paid to Tenant by the assignee.

(3) If Tenant sublets, licenses or otherwise Transfers any part of the Premises, then with respect to the space to be transferred, Tenant shall pay to Landlord fifty percent (50%) of the Transfer Premium.

(4) Tenant's obligations under this Section 14.1E shall survive any Transfer, and Tenant's failure to perform its obligations hereunder shall be a violation of this Lease. At the time Tenant makes any payment to Landlord required by this Section 14.1E, Tenant shall deliver an itemized statement of the method by which the amount to which Landlord is entitled was calculated, certified by Tenant as true and correct. Landlord shall have the right at reasonable intervals to inspect Tenant's books and records relating to the payments due hereunder. Upon request therefor, Tenant shall deliver to Landlord copies of all bills, invoices or other documents upon which its calculations are based. Landlord may condition its approval of any Transfer upon obtaining a certification from both Tenant and the proposed transferee of all Transfer Premium and other amounts that are to be paid to Tenant in connection with such Transfer.

(5) As used in this Section 14.1E, the term "Transfer Premium" shall mean all rent, additional rent or other consideration payable (in lieu of or in addition to rent) by such transferee in connection with the Transfer in excess of the Base Monthly Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses incurred by Tenant in connection with such Transfer for (i) any improvement allowance or other economic concessions (space planning allowance, moving expenses, etc.) paid by Tenant to transferee in connection with such Transfer; (ii) any brokerage commissions in connection with the Transfer; (iii) reasonable attorneys' fees incurred by Tenant in connection with the Transfer; (iv) out-of-pocket costs of advertising the space subject to the Transfer; and (v) rent as to the transferred space paid to Landlord by Tenant from the later of (a) the date Tenant delivers to Landlord a factually correct written notice that it has vacated the space being transferred and (b) the date Tenant shall have retained the services of a broker to market such space, until the date the sublessee of such space commences to pay rent to Tenant for such space (provided such space remains unoccupied until the sublessee commences its occupancy) (collectively, "Subleasing Costs"). "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to transferee in connection with such Transfer. Under no circumstances shall Landlord be paid any Transfer Premium until Tenant has recovered all Subleasing Costs for such Transfer.

(6) Tenant's obligations under this Section 14.1E shall apply to any subleases or other Transfers that exist as of the Commencement Date.

F. If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request not more than once every twelve (12) months a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of this Lease from any liability under this Lease, including, without limitation, in connection with the portion of the Premises to be Transferred. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof.

G. Notwithstanding anything contained in Section 14.1, so long as Tenant otherwise complies with the provisions of Section 14.1 and as long as such Transfer is not a subterfuge to avoid the obligations and restrictions of this Lease, Tenant may enter into any of the following Transfers without Landlord's prior written consent, and Landlord shall not be entitled to terminate this Lease pursuant to Section 14.1C or to receive any part of any Transfer Premium resulting therefrom that would otherwise be due it pursuant to Section 14.1E:

(1) Tenant may sublease all or part of the Premises or assign its interest in this Lease to any corporation which controls, is controlled by, or is under common control with the original Tenant to this Lease or its parent or its subsidiary;

(2) Tenant may assign its interest in this Lease to a corporation which results from a merger, consolidation or other reorganization, so long as the surviving corporation has a net worth at the time of such assignment that is at least $100,000,000; or

(3) Tenant may assign this Lease to a corporation which purchases or otherwise acquires all or substantially all of the assets of Tenant or Tenant's parent or subsidiary, so long as such acquiring corporation, together with Tenant, has a net worth at the time of such assignment that is at least $100,000,000.

14.2 Occupancy by Others. Notwithstanding any contrary provision of this Article 14, Tenant shall have the right without the payment of a Transfer Premium and without the receipt of Landlord's consent, but with prior notice to Landlord, to permit the occupancy of portions of the Premises not to exceed ten percent (10%) of the Premises, in the aggregate, to any individual(s) or entities with a business relationship with Tenant and/or who are providing goods and/or services to Tenant ("Tenant's Occupants") subject to the following conditions: (i) all such individuals or entities shall be of a character and reputation consistent with the types of people generally rendering similar types of services in the legal or business professions, (ii) such occupancy shall not be a subterfuge by Tenant to avoid its obligations under this Lease or the restrictions on Transfers pursuant to this Article 14, and (iii) such occupancy shall be subject to an occupancy or use agreement reasonably acceptable to Landlord. Tenant shall promptly supply Landlord with any document(s) or information reasonably requested by Landlord regarding any such individuals or entities. Any occupancy permitted under this Section 14.2 shall not be deemed a Transfer under this Article 14. Notwithstanding the foregoing, no such occupancy shall relieve Tenant from any liability under this Lease.

14.3 Landlord's Recognition of Transfers upon Lease Termination. At Tenant's written request, Landlord shall, concurrently with the granting of Landlord's consent to the Sublease (as defined below), execute a commercially reasonable recognition agreement (the "Recognition Agreement") in favor of a transferee who is to be a subtenant of Tenant (the "Subtenant"), which provides that in the event this Lease is terminated, Landlord shall recognize the sublease between such Subtenant and Tenant (the "Sublease") and not disturb such Subtenant's possession of the portion of the Premises subleased under such Sublease (the "Subleased Premises") due to such termination; provided that (i) at the time of Tenant's request for Landlord's execution of the Recognition Agreement, such Transfer contains the same economic rent set forth in this Lease (pro rated as to the Subleased Premises), provided, however, the economic terms of such Transfer may be more favorable to Landlord than those set forth in this Lease, or the Sublease provides that upon an Event of Tenant's Default under this Lease which results in the termination of this Lease, the Subtenant receiving the Recognition Agreement shall be subject to the same economic and other terms and conditions set forth in this Lease (pro rated as to the Subleased Premises); (ii) the Subleased Premises consists of one (1) or more contiguous floors of the Premises; (iii) Landlord shall not be liable for any act or omission of Tenant; (iv) Landlord shall not be subject to any offsets or defenses which the Subtenant might have as to Tenant or to any claims for damages against Tenant, nor shall Landlord be obligated to fund to, or for the benefit of, Subtenant, any undisbursed tenant improvement or refurbishment allowance or other allowances or monetary concessions unless same has been granted to Tenant and transferred to Subtenant; (v) Landlord shall not

be required or obligated to credit the Subtenant with any rent or additional rent or security deposit paid by the Subtenant to Tenant, unless actually received by Landlord; (vi) Landlord shall not be bound by any terms or conditions of the Sublease which are inconsistent with the terms and conditions of this Lease; (vii) such recognition shall be effective upon, and Landlord shall be responsible for performance of only those covenants and obligations of Tenant pursuant to the Sublease accruing after, the termination of this Lease; (viii) as a condition to Landlord's obligation to consent to a sublease as to which a Recognition Agreement is being requested, Landlord shall have the right to reasonably approve the creditworthiness and financial strength of the Subtenant, which reasonable approval shall be based upon the creditworthiness and financial strength then generally required by Landlord and landlords of the comparable buildings of a new tenant who is leasing space of a rentable area comparable to the rentable area of the Subleased Premises for a term equal to the proposed Sublease term (which test may be met by the Subtenant providing to Landlord credit enhancements then being accepted by landlords on direct leases with tenants leasing comparable space for a comparable term), who is granted concessions comparable to the concessions, if any, granted to the Subtenant, and who is assuming the monetary obligations under the Sublease; and (ix) the Subtenant shall make full and complete attornment to Landlord, as lessor, pursuant to a written agreement executed by Landlord and the Subtenant, so as to establish direct privity of contract between Landlord and the Subtenant with the same force and effect as though the Sublease was originally made directly between Landlord and the Subtenant. Upon Landlord's written request given any time after the termination of this Lease, the Subtenant shall execute a lease for the Subleased Premises upon the same terms and conditions as set forth in the Recognition Agreement.

14.4 Transfer by Landlord. Landlord and its successors in interest shall have the right to transfer their interest in this Lease and the Project at any time and to any person or entity except that it may not transfer its interest in violation of the Patriot Act. In the event of any such transfer, the Landlord originally named herein (and, in the case of any subsequent transfer, the transferor) from the date of such transfer, shall be automatically relieved, without any further act by any person or entity, of all liability for the performance of the obligations of the Landlord hereunder which may accrue after the date of such transfer to the extent such obligations are assumed by the transferee. After the date of any such transfer, the term "Landlord" as used herein shall mean the transferee of such interest in the Premises.

FAIR MARKET RENTAL RATE; OPTION TO RENEW; OPTION TO EXPAND; RIGHT OF FIRST OFFER; ETC.

DISCUSSION OUTLINE

FAIR MARKET RENTAL RATE

I. WHEN USED

- A. Renewals
- B. Expansions
- C. Mid-Term Bumps

II. WHO BENEFITS

- A. Tenant
- B. Landlord
- C. Broker

III. RESTRICTIONS AND CONDITIONS ON UTILIZATION

- A. Defaults
- B. Notices of Defaults
- C. Waive Future Termination and Contraction Rights
- D. Occupancy Requirement
- E. Existence of Subleases
- F. Personal to Named Tenant

IV. PROCEDURE FOR DETERMINATION

- A. Arbitration
  - 1. Baseball – Select Tenant or Landlord's determination, whichever is closer to actual rate
  - 2 Determine actual rate
- B. Landlord Determines, if Tenant Doesn't Agree, Tenant Loses Right to Renew or Expand

C. Floor (as to Minimum Rent)

V. TRIER OF FACT

A. Single Arbitrator

B. Three Arbitrators

C. Qualifications

1. Neutral vs. Advocate

2. Lawyer vs. Broker vs. Appraiser

3. Years of Experience

4. Conflicts of Interests

5. Substantial vs. Majority of Time Spent on Leasing Matters

VI. DEFINITION – KEY FACTORS

A. Rate vs. All Economic Factors

1. Net

2. Gross

3. Base Amount

4. Base Year

5. Operating Expense Protections

B. Landlord Has Accepted vs. Quoted

C. New Tenants

D. Non-Expansion

E. Non-Renewal

F. Non-Equity

G. Comparable Creditworthiness

1. Financial Stability

2. Operating History

H. Comparable Space

1. Size
2. Height in Building
3. Base Building Improvements
4. Value of Existing Improvements

I. Comparable Buildings

1. Location
2. Height
3. Type
4. Amenities
5. Parking

J. Tenant Liability Issues

1. Corporations
2. LLC
3. LLP
4. Partnerships
5. Guaranty
6. Letter of Credit
7. Lease Bond

K. Free Rent

L. Rent Free Period of Time to Design and Construct

M. How Rentable Square Footage is Determined

N. Ratio of RSF to USF and Efficiency of Building

O. Presence or Absence of Brokers' Commission

P. Other Economic Concessions

VII. RIGHT OF TENANT TO CANCEL LEASE IF UNHAPPY WITH ARBITRATION RIGHT (RARE)

EXHIBIT "J"

OPTIONS TO EXTEND

1. Options. Provided that an Event of Default by Tenant under Section 15.1 is not then in existence under the Lease, either at the time of the exercise of the options set forth herein or at the time of the commencement of the extension periods hereunder, Tenant may elect to extend the Term of this Lease ("Extension Option(s)") for all or any portion of the Premises for six (6) additional periods of three (3) years each (collectively, the "Extension Periods"; individually, the "First Extension Period," "Second Extension Period," etc.), by delivering to Landlord not later than six (6) months before the end of the initial Term of this Lease or the First Extension Period, etc., as applicable, a written notice (the "Option Notice") of such election. The First Extension Period shall commence on the day immediately following the last day of the Term and the Second Extension Period, etc., shall commence on the day immediately following the last day of the First Extension Period, etc., and shall be subject to all the terms and conditions of this Lease except that (a) the rent for the applicable Extension Period shall be determined in accordance with Section 3 below (and (b) the Base Year for each Extension Period shall be the first full twelve (12) calendar months thereof).

2. Options Not Personal. The Extension Options set forth herein are not personal to Tenant and may be exercised by any assignee of the Lease permitted under the terms of the Lease or by any subtenant to which this right is specifically granted. However, no such Extension Option is assignable separate and apart from the Lease.

3. Rent During Extension Periods. The Base Rent for each Extension Period shall be *_____ **percent (___%)*** of the Fair Market Rental Rate (as hereinafter defined) as of the commencement of the applicable Extension Period.

4. Fair Market Rental Rate. For the purposes of this Exhibit "J" the term "Fair Market Rental Rate" shall mean the annual amount per rentable square foot that Landlord has accepted in current transactions (those transactions where the essential economic terms and conditions were agreed upon _x_ months prior to the commencement date for the applicable renewal term or the expansion space, as applicable) between non-affiliated parties from new, non-expansion (unless the expansion is pursuant to a comparable definition of Fair Market Rental Rate), non-renewal (unless the renewal is pursuant to a comparable definition of Fair Market Rental Rate) and non-equity tenants of comparable credit-worthiness, for comparable space (size and height), for a comparable use for a comparable period of time ("Comparable Transactions") in the Building, or to the extent there are not a sufficient number of Comparable Transactions in the Building, then Comparable Transactions will also include what a comparable landlord of a Comparable Building with comparable vacancy factors would accept in Comparable Transactions. "Comparable Buildings" shall be buildings of comparable size and vintage and construction in the geographical area bounded by _____, _____, _____ and _____. In any determination of Comparable Transactions appropriate consideration shall be given to the annual rental rates per rentable square foot, the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, the type of escalation clause (e.g.,

whether increases in additional rent are determined on a net or gross basis, and if gross, whether such increases are determined according to a base year or a base dollar amount expense stop), the extent of Tenant's liability under the Lease, parking rights and obligations, signage rights, abatement provisions reflecting free rent and/or no rent during the period of construction or subsequent to the commencement date as to the space in question, brokerage commissions, if any, which would be payable by Landlord in similar transactions, length of the lease term, size and location of premises being leased, building standard work letter and/or tenant improvement allowances, if any, the condition of the base building and the Landlord's responsibility with respect thereto, the value, if any, of the existing tenant improvements (with such value being judged with respect to the utility of such existing tenant improvements to the general business office user and not this particular Tenant) and other generally applicable conditions of tenancy for such Comparable Transactions. The intent is that Tenant will obtain the same rent and other economic benefits that Landlord would otherwise give in Comparable Transactions and that Landlord will make, and receive the same economic payments and concessions that Landlord would otherwise make, and receive in Comparable Transactions. If, for example, after applying the criteria set forth above, Comparable Transactions provide a new tenant with comparable space at Thirty-Two Dollars ($32) per rentable square foot, with a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements, four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance, a "lease takeover" obligation in the amount of One Hundred Thousand Dollars ($100,000), a brokerage commission of Fifty Thousand Dollars ($50,000), and certain other generally applicable economic terms, the Fair Market Rental Rate for Tenant shall not be Thirty-Two Dollars ($32) per rentable square foot only, but shall be the equivalent of Thirty-Two Dollars ($32) per rentable square foot, a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements or three (3) months' additional free rent in lieu of such construction, an additional four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance or payment in lieu of such allowance, One Hundred Thousand Dollars ($100,000) cash payment in lieu of a lease takeover, a payment to Tenant's then broker of a Fifty Thousand Dollar ($50,000) brokerage commission (or if Tenant is not then represented by a broker, Tenant shall receive a rent credit in the amount of the brokerage commission that Landlord would have otherwise been required to pay) and such other generally applicable economic terms.

Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within fifteen (15) days (but in no event later than twenty (20) days) after Tenant provides the notice to Landlord exercising Tenant's option rights which require a calculation of the Fair Market Rental Rate. Tenant shall have thirty (30) days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental in writing. In the event Tenant fails to accept the new rental proposed by Landlord, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period ("Outside Agreement Date"), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below. Failure of Tenant to so elect in writing within Tenant's Review Period shall conclusively be deemed its disapproval of the Fair Market Rental Rate determined by Landlord.

In the event that Landlord fails to timely generate the initial written notice of Landlord's opinion of the Fair Market Rental Rate which triggers the negotiation period of this Section 4, then Tenant may commence such negotiations by providing the initial notice, in which event Landlord shall have fifteen (15) days ("Landlord's Review Period") after receipt of Tenant's notice of the new rental within which to accept such rental. In the event Landlord fails to accept in writing such rental proposed by Tenant, then such proposal shall be deemed rejected, and Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Landlord's Review Period (which shall be, in such event, the "Outside Agreement Date" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below.

(a) Landlord and Tenant shall meet with each other within five (5) business days of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Fair Market Rental Rate within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate lawyer or broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable commercial properties in the vicinity of the Building. Neither Landlord nor Tenant shall consult with such broker or lawyer directly or indirectly as to his or her opinion as to Fair Market Rental Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Premises is the closer to the actual Fair Market Rental Rate for the Premises as determined by the arbitrator, taking into account the requirements of this Section 4. Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion, determines is necessary. In addition, Landlord or Tenant may submit to the arbitrator with a copy to the other party within five (5) business days after the appointment of the arbitrator any market data and additional information that such party deems relevant to the determination of Fair Market Rental Rate ("FMRR Data") and the other party may submit a reply in writing within five (5) business days after receipt of such FMRR Data.

(b) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental Rate, and shall notify Landlord and Tenant of such determination.

(c) The decision of the arbitrator shall be binding upon Landlord and Tenant, except as provided below.

(d) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(e) The cost of arbitration shall be paid by Landlord and Tenant equally.

In the event that Tenant objects to the Fair Market Rental Rate as determined by the arbitration provision specified above, Tenant may elect to terminate the Lease upon twelve (12) months' written notice sent to Landlord at any time within ninety (90) days following the establishment of the Fair Market Rental Rate as determined by such arbitration. In the event Tenant elects to terminate the Lease, Tenant shall reimburse Landlord for its reasonable attorneys' fees and reasonable costs associated with such arbitration. In the event that the above-referenced twelve (12) month period overlaps beyond the expiration of the Lease Term or any extension thereof, Tenant shall pay rental to Landlord during the period of such overlap at the Fair Market Rental Rate determined pursuant to such arbitration.

5. Documentation. Immediately after the base rent for the applicable Extension Period is determined pursuant to this Exhibit, Landlord and Tenant shall execute an amendment to the Lease stating the new base rent in effect.

6. Terms. All terms used in this Exhibit unless otherwise defined in this Exhibit shall have the same meaning as the terms defined in the Lease.

44. OPTION TO EXTEND TERM.

a. Landlord hereby grants to Tenant one (1) option ("Option") to extend the Term of this Lease for an additional period of ____ (__) years ("Option Term"). The Option must be exercised, if at all, by written notice ("Option Notice") delivered by Tenant to Landlord not later than nine (9) months prior to the end of the initial Term of this Lease. Further, the Option shall not be deemed to be properly exercised if, as of the date of the Option Notice or at the end of the initial Term of this Lease, Tenant (i) is in default under this Lease, (ii)has assigned all or any portion of this Lease or its interest therein, or (iii)has sublet all or any portion of the Premises. Provided Tenant has properly and timely exercised the Option, the initial Term of this Lease shall be extended by the Option Term, and all terms, covenants and conditions of this Lease shall remain unmodified and in full force and effect, except that the Base Rent shall be modified as set forth in Sections 44.b., 44.c. and 44.d. below.

b. The Base Rent payable for the Option Term shall be equal to the greater of (i) the then prevailing fair market rental value of the Premises as determined herein, or (ii) the Base Rent payable by Tenant to Landlord during the final year of the initial Term of this Lease. If Landlord determines that the Base Rent for the Option Term shall be based upon the calculation described in clause (ii) above, such determination shall be conclusive, Tenant shall have no right to object thereto, and the following provisions regarding the determination of fair market rental value shall not apply.

If Landlord determines that the Base Rent for the Option Term shall be the fair market rental value of the Premises pursuant to clause(i) above, Landlord shall determine fair market rental value by using commercially reasonable good faith judgment. As used herein, "fair market rental value" shall mean the projected prevailing rental rate as of the first day of the Option Term for renewal and extension tenants for similar office space situated in the Building. Landlord shall use commercially reasonable efforts to provide written notice of such amount not later than three (3) months prior to the expiration of the initial Term of this Lease. Tenant shall have fifteen (15) days ("Tenant's Review Period") after receipt of Landlord's notice of the fair market rental value within which to accept such fair market rental value or to reasonably object thereto in writing. In the event Tenant objects to the fair market rental value submitted by Landlord, Landlord and Tenant shall attempt in good faith to agree upon such fair market rental value, using their best good faith efforts. If Landlord and Tenant fail to reach agreement on such fair market rental value within fifteen (15) days following Tenant's Review Period (the "Outside Agreement Date"), then each party's determination shall be submitted to arbitration in accordance with Section 44.c. below.

c. (i) Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial properties in the vicinity of the Building. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted fair market rental value for the Premises is closer to the actual fair market rental value for the Premises as determined by the arbitrators, taking into account the requirements of Section 44.b. above

and this Section 44.c. regarding same. Each such arbitrator shall be appointed within fifteen (15) days after the Outside Agreement Date.

(ii) The two arbitrators so appointed shall within fifteen (15) days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth hereinabove for qualification of the initial two arbitrators.

(iii) The three arbitrators shall within thirty (30) days of the appointment of the third arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's submitted fair market rental value, and shall notify Landlord and Tenant thereof. Such decision shall be based upon the factors described in Section 44.b. above.

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

(v) If either Landlord or Tenant fails to appoint an arbitrator within the time period specified in Section 44.c.(i) hereinabove, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

(vi) If the two arbitrators fail to agree upon and appoint a third arbitrator both arbitrators shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association.

(vii) The cost of arbitration shall be paid by Landlord and Tenant equally.

d. Notwithstanding the fair market rental value for the Premises selected by the arbitrators, in no event shall the Base Rent for the Option Term be less than the Base Rent payable by Tenant during the final year of the initial Term of this Lease.

3.3 OPTION TO EXTEND.

a. If Tenant (i) has not at any time during the term of this Lease been in default in any of the terms or provisions of this Lease, (ii) is not in default as of the effective date of the option, (iii) has not been late in payment of rental charges more than three (3) times during the term of this Lease, and (iv) is in occupancy and conducting business from the Premises, Tenant shall have the right to extend the term of this Lease for one (1) period of five (5) years (the "Extended Term"), under the same terms and conditions contained in this Lease, except that the Minimum Rent to be paid by Tenant to Landlord during the Extended Term shall be as provided in Section 3.3(b) hereof. Tenant shall have no further right to automatically extend this Lease at the expiration of the Extended Term.

b. To exercise the option to extend the term of this Lease, Tenant shall serve written notice to Landlord, no more than 360 days and no less than 270 days prior to the expiration of the term of this Lease, indicating its intention to exercise the option to extend. Once Tenant has served the written notice to extend, such notice may not be rescinded.

(i) Minimum Rent. The Minimum Rent for the Premises for the Extended Term shall be the fair market rent, as determined below, for the Premises as of the commencement of the Extended Term, but in no event shall the Minimum Rent ever be less than five percent (5%) in excess of the amount payable immediately preceding such Extended Term. The fair market rent for the Premises shall be determined by taking into account all relevant factors including but not limited to the rents being paid by similar businesses in similarly sized and located retail environments. All other terms and conditions of the Lease, as amended from time to time by the parties in accordance with the provisions of the Lease, shall remain in full force and effect and shall apply during the Extended Term.

(ii) Intentionally Deleted.

(iii) Determination of Rent. The fair market rent for the Extended Term shall be determined by mutual agreement of the parties or, if the parties are unable to agree within thirty (30) days after Tenant's exercise of the option, then fair market rent shall be determined pursuant to the procedure set forth in Section 3.3(b)(iv) and (v).

(iv) Landlord's Initial Determination. If the parties are unable mutually to agree upon the fair market rent pursuant to Section 3.3(b) then the fair market rent initially shall be determined by Landlord by written notice ("Landlord's Notice") given to Tenant promptly following the expiration of the 30-day period set forth in Section 3.3(b). If Tenant disputes the amount of fair market rent set forth in Landlord's Notice, then, within thirty (30) days after the date of Landlord's Notice, Tenant shall send Landlord a written notice ("Tenant's Notice") which clearly (a) disputes the fair market rent set forth in Landlord's Notice, (b) demands arbitration pursuant to Section (3.3)(b)(v), and (c) states the name and address of the person who shall act as arbitrator on Tenant's behalf. Tenant's Notice shall be deemed defective, and not given to Landlord, if it fails strictly to comply with the requirements and time period set forth above. If Tenant does not send Tenant's Notice within thirty (30) days after the date of Landlord's Notice, or if Tenant's Notice fails to contain all of the required information, then the fair market rent for the Extended Term in question shall be the amount specified in

Landlord's Notice. If the arbitration is not concluded prior to the commencement of the Extended Term, then Tenant shall pay Minimum Rent at 125% of the rate payable immediately prior to the commencement of the Extended Term. If the fair market rent determined by arbitration differs from that paid by Tenant pending the results of arbitration, then any adjustment required to adjust the amount previously paid shall be made by payment by the appropriate party within ten (10) days after the determination of fair market rent.

(v) Arbitration. The arbitration shall be conducted in the City of Seattle, Washington in accordance with the then prevailing rules of the American Arbitration Association (or its successor) for the arbitration of commercial disputes, except that the procedures mandated by such rules shall be modified as follows:

(1) Each arbitrator must be a real estate appraiser with at least five (5) years of full-time commercial appraisal experience who is familiar with the fair market rent of shopping center property located in the vicinity of the Premises. Within ten (10) business days after receipt of Tenant's Notice, Landlord shall notify Tenant of the name and address of the person designated by Landlord to act as arbitrator on Landlord's behalf.

(2) The two arbitrators chosen pursuant to Section 3.3 above shall meet with within ten (10) business days after the second arbitrator is appointed and shall appoint a third arbitrator possessing the qualifications set forth in Section 3.3 above. If the two arbitrators are unable to agree upon the third arbitrator within five (5) business days after the expiration of such ten (10) business day period, the third arbitrator shall be selected by the parties themselves. If the parties do not agree on the third arbitrator within five (5) business days after the expiration of such five (5) business day period, then either party, on behalf of both, may request appointment of the third arbitrator by the Real Estate Board of Seattle, Washington. The three arbitrators shall decide the dispute, if it has not been previously resolved, by following the procedures set forth in Section 3.3 above. Each party shall pay the fees and expenses of its respective arbitrator and both shall share the fees and expenses of the third arbitrator. Each party shall pay its own attorney's fees and costs of witnesses.

(3) The three arbitrators shall determine the fair market rent in accordance with the following procedures. Each of Landlord's arbitrator and Tenant's arbitrator shall state, in writing, his or her determination of the fair market rent, supported by the reasons therefor, and shall make counterpart copies for the other arbitrators. All of the arbitrators shall arrange for a simultaneous exchange of the proposed resolutions within ten (10) business days after appointment of the third arbitrator. If either arbitrator fails to deliver his or her own determination to the other arbitrators within such ten (10) business day period, then the determination of the other arbitrator shall be final and binding upon the parties. The role of the third arbitrator shall be to select which of the two resolutions proposed by the first two arbitrators most closely approximates his or her own determination of the fair market rent. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed resolutions. The resolution he or she chooses as that most closely approximating his or her determination of the fair market rent shall constitute the decision of the arbitrators and shall be final and binding upon the parties; provided, however, that if the first two arbitrators independently arrive at the same fair market rent, then such fair market rent shall be the Minimum Rent for the Extended Term. However, the arbitrator selected by Landlord and the arbitrator

selected by Tenant shall not attempt to reach a mutual agreement of the fair market rent; such arbitrators shall independently arrive at their proposed resolutions.

(4) The arbitrators shall have the right to consult experts and competent authorities for factual information or evidence pertaining to a determination of fair market rent, but any such consultation shall be made in the presence of both parties with full right on their part to cross-examine. The arbitrators shall render the decision and award in writing with counterpart copies to each party. The arbitrators shall have no power to modify the provisions of this Lease. In the event of a failure, refusal or inability of any arbitrator to act, his or her successor shall be appointed by him or her, but in the case of the third arbitrator, his or her successor shall be appointed in the same manner as that set forth herein with respect to the appointment of the original third arbitrator.

2. RENEWAL OPTIONS. Provided no Event of Default exists at the time of exercise or as of the commencement date of the Renewal Term (as defined below), Tenant shall have the right to extend the term of this Lease for all, but not any lesser portion of the Premises, for two (2) periods of five (5) years (the "Renewal Terms") upon all of the following terms and conditions:

a. Tenant must provide Landlord notice of its exercise of the option for the applicable Renewal Term not less than six (6) full months and not more than nine (9) full months prior to the expiration date of the Lease Term.

b. The Base Rent for the applicable Renewal Term shall be the current rate, on a per rentable square foot basis for comparable space in comparable, first-class buildings in the downtown Atlanta, Georgia market, for a term of substantially equal duration. Within twenty (20) days after Landlord's receipt of Tenant's written notice exercising the option for a Renewal Term, Landlord shall provide Tenant a written notice setting forth the Base Rent for the applicable Renewal Term. Tenant shall have twenty (20) days following its receipt of such notice from Landlord to either accept or reject the specified Base Rent by written notice to Landlord. If Tenant fails to provide Landlord written notice within such twenty (20) day period, Tenant shall be deemed conclusively to have accepted the Base Rent as stated in Landlord's notice. If Tenant notifies Landlord in writing within such twenty (20) day period that Tenant rejects Landlord's statement of Base Rent for the applicable Renewal Term, then Tenant shall be deemed conclusively to have rescinded its exercise of the right to extend this Lease for the Renewal Term and Tenant shall have no further right whatsoever to extend the Lease Term. If Tenant accepts the Base Rent set forth in Landlord's notice, or is deemed to have accepted the Base Rent set forth in Landlord's notice, Landlord shall prepare, and Landlord and Tenant shall enter into, an amendment to this Lease which evidences and memorializes the extension of this Lease for the applicable Renewal Term at the Base Rent set forth in Landlord's notice and otherwise on all of the terms and conditions set forth in the Lease. The Additional Rent for each Renewal Term shall continue to be subject to adjustment pursuant to Section 4.1 of this Lease.

c. Except for Base Rent at the new rate determined pursuant to subsection b above, all of the terms and conditions of the Lease shall remain the same and shall remain in full force and effect throughout each Renewal Term; provided, however, that any free rent, improvement allowances, moving allowances, lease assumption payments, plan design allowances (or payments), expansion options, opportunity rights or other similar concessions provided for in the Lease shall not apply during any Renewal Term.

OPTION TO RENEW. Tenant shall, provided this Lease is in full force and effect and Tenant is not and has not been in default under any of the terms and conditions of this Lease, have one (1) successive option to renew this Lease for a term of three (3) years each, for the Premises in "as is" condition and on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions set forth below:

(1) If Tenant elects to exercise such option, then Tenant shall provide Landlord with written notice no earlier than the date which is 270 days prior to the expiration of the then current term of this Lease, but no later than 5:00 p.m. (Pacific Standard Time) on the date which is 180 days prior to the expiration of the then current term of this Lease. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the term of this Lease.

(2) The Base Rent in effect at the expiration of the then current term of this Lease shall be increased to reflect the current fair market rental for comparable space in the Building or Project and in other similar buildings in the Redlands rental market as of the date the renewal term is to commence, taking into account the specific provisions of this Lease which will remain constant, annual rental adjustments, and the Building amenities, location, identity, quality, age, condition, term of lease, tenant improvements, services provided, and other pertinent items.

Fair market rental value for the renewal term shall include a rental adjustment each year of each renewal term four percent (4%).

(3) Landlord shall advise Tenant of the new Base Rent for the Premises for the applicable renewal term based on Landlord's determination of fair market rental value, as well as the terms and conditions for the renewal term, no later than fifteen (15) days after receipt of notice of Tenant's exercise of its option to renew.

(4) Landlord and Tenant shall negotiate in good faith to agree on the fair market rental value of the Premises and terms and conditions for each renewal term. If Tenant and Landlord are unable to agree on a mutually acceptable rental rate for any renewal term within thirty (30) days after notification by Landlord to Tenant of Landlord's determination of the new Base Rent for the applicable renewal term, but in any event no later than the date which is ninety (90) days prior to the expiration of the then current term, then on or before such date Landlord and Tenant shall each appoint a licensed real estate broker with at least ten (10) year's experience in leasing office space in the Redlands rental market in which the Building is located to act as arbitrators. The two (2) arbitrators so appointed shall determine the fair market rental value for the Premises for the applicable renewal term based on the above criteria and each shall submit his or her determination of such fair market rental value to Landlord and Tenant in writing, within sixty (60) days after their appointment.

If the two (2) arbitrators so appointed cannot agree on the fair market rental value for the applicable renewal term within such 60-day period, the two (2) arbitrators shall within five (5) days thereafter appoint a third arbitrator who shall be a licensed real estate broker with at least ten (10) year's experience in leasing office space in the Redlands rental market in which the Building is located. The third arbitrator so appointed shall independently determine the fair market rental value for the Premises

for the renewal term within thirty (30) days after appointment, by selecting from the proposals submitted by each of the first two arbitrators the one that most closely approximates the third arbitrator's determination of such fair market rental value. The third arbitrator shall have no right to adopt a compromise or middle ground or any modification of either of the proposals submitted by the first two arbitrators. The proposal chosen by the third arbitrator as most closely approximating the third arbitrator's determination of the fair market rental value shall constitute the decision and award of the arbitrators and shall be final and binding on the parties.

Each party shall pay the fees and expenses of the arbitrator appointed by such party and one-half (1/2) of the fees and expenses of the third arbitrator. Notwithstanding the foregoing, in the event the Base Rent is found to be within fifteen percent (15%) of the original rate quoted by Landlord, then Tenant shall bear the full cost of the arbitration process.

If either party fails to appoint an arbitrator, or if either of the first two arbitrators fails to submit his or her proposal of fair market rental value to the other party, in each case within the time periods set forth above, then the decision of the other party's arbitrator shall be considered final and binding.

In the event the third arbitrator fails to present a fair market rental value within such 30-day period, then by mutual consent of the Landlord and Tenant :

(a) the time period will be extended, or

(b) if either Landlord or Tenant do not wish to extend the time period, a fourth arbitrator shall be selected by the first two arbitrators and a new thirty (30) day period shall begin.

(5) Notwithstanding anything to the contrary contained in this Paragraph, in no event shall the Base Rent for any renewal term be less than the Base Rent in effect at the expiration of the previous term plus expense escalations over the previous years. Landlord shall have no obligation to provide or pay for any tenant improvements or brokerage commissions during any renewal term.

(6) Tenant's right to exercise its option to renew under this Paragraph shall be conditioned upon Tenant occupying the entire Premises and the same not being occupied by any assignee, subtenant or licensee other than Tenant or its affiliate at the time of exercise of any option and commencement of the renewal term. Tenant's exercise of the option to renew shall constitute a representation by Tenant to Landlord that as of the date of exercise of the option and the commencement of the renewal term, Tenant does not intend to seek to assign this Lease in whole or in part, or sublet all or any portion of the Premises.

(7) Any exercise by Tenant of any option to renew under this Paragraph shall be irrevocable. If requested by Landlord, Tenant agrees to execute a lease amendment or, at Landlord's option, a new lease agreement on Landlord's then standard lease form for the Building, reflecting the foregoing terms and conditions, prior to the commencement of the renewal term. The option to renew granted under this Paragraph is/are not transferable; the parties hereto acknowledge and agree that they intend that each option to renew this Lease under this Paragraph shall be "personal" to the specific Tenant named in this Lease and that in no event will any assignee or sublessee have any rights to exercise such option to renew.

1. OPTION. Tenant shall have the option ("Renewal Option") to extend the Term of this Lease, on all the provisions contained in this Lease except as to the Basic Rent. Such Renewal Option shall be for an additional _____ (____) year period (the "Option Term") following the expiration of the initial Term stated in provision (i) of the Detailed Lease Provisions (the "Initial Term"). If Tenant elects to exercise such Renewal Option, such Renewal Option shall be exercised by Tenant giving written notice of its exercise of the Renewal Option (the "Option Notice") to Landlord at least nine (9) months, but not more than one (1) year, before the expiration of the Initial Term. If such Option Notice is not sent during such three (3) month period, such Renewal Option shall be null and void and in no event shall Tenant have any right to extend the Term or renew the Lease beyond the Option Term provided herein.

2. OPTION PERSONAL. The Renewal Option is personal to Tenant and may not be exercised or assigned, voluntarily or involuntarily, by, or to, any person or entity other than Tenant. The Renewal Option is not assignable separate and apart from this Lease. In the event that, at the time the Renewal Option is exercisable by Tenant, this Lease has been assigned, or a sublease exists (as to twenty percent (20%) or more of the Premises), the Renewal Option shall be deemed null and void and Tenant, any assignee, or any sublessee, shall not have the right to exercise the Renewal Option.

3. EFFECT OF DEFAULT ON RENEWAL OPTION. Tenant shall have no right to exercise the Renewal Option, (a) if, at the time permitted for the exercise of such Renewal Option, or at any time prior to the commencement of the Option Term, an Event of Default has occurred under any of the provisions of this Lease, or (b) in the event that Landlord has given to Tenant two (2) or more notices of default under this Lease during the twelve (12) month period prior to the time that Tenant intends to exercise the Renewal Option.

4. BASIC RENT DURING THE OPTION TERM. Tenant shall pay to Landlord, as Basic Rent for the Premises during the Option Term, the higher of (a) the Fair Market Rental Rate (as hereinafter defined) or (b) the Basic Rent paid in the month immediately prior to the beginning of the Option Term. Fair Market Rental Rate shall mean the rental rate being charged to tenants in direct lease, non-equity transactions as of the commencement of the Option Term for comparable unencumbered space by Landlord in the Building or, if not enough comparable transactions exist in the Building, then the rate being charged to tenants in direct lease, non-equity transactions as of the commencement of the Option Term for comparable unencumbered space in first-class buildings in the vicinity of the Building, with similar amenities, taking into consideration the size, location, floor level, the proposed term of the Option Term, the extent of the services to be provided, Taxes and Expenses, the value of existing tenant improvements and any other relevant terms and conditions, in each instance taking into account any so-called "free rent" and any other "tenant concessions" then being offered to prospective renewal tenants in the Building or comparable buildings. All Rent payable during the Option Term shall be payable in the same manner and under the same terms and conditions as Rent is paid during the Initial Term.

5. DOCUMENTATION. Landlord and Tenant shall execute and deliver appropriate documentation to evidence any renewal of the Lease and the terms and conditions of the Lease during the Option Term.

6. TERMS. All terms used in this Exhibit, unless otherwise defined in this Exhibit, shall have the same meaning as the terms defined in the Lease.

7. FAIR MARKET RENTAL RATE. Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall use its best efforts to provide written notice of such amount within thirty (30) days (but in no event later than sixty (60) days) after Tenant sends the Option Notice to Landlord exercising the Renewal Option. Tenant shall have fifteen (15) days (the "Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental or to reasonably object thereto in writing. In the event Tenant objects, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period (the "Outside Agreement Date"), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below. Failure of Tenant to so elect in writing within Tenant's Review Period shall conclusively be deemed its approval of the new rental determined by Landlord. In the event that Landlord fails to timely generate the initial written notice of Landlord's opinion of the Fair Market Rental Rate which triggers the negotiation period of this provision, then Tenant may commence such negotiations by providing the initial notice, in which event Landlord shall have fifteen (15) days ("Landlord's Review Period") after receipt of Tenant's notice of the new rental within which to accept such rental. In the event Landlord does not affirmatively in writing consent to Tenant's proposed rental, such proposed rental shall be deemed rejected and Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Landlord's Review Period (which shall be, in such event, the "Outside Agreement Date" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below.

(a) Landlord and Tenant shall meet with each other within five (5) business days of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Fair Market Rental Rate within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of commercial high-rise properties in the vicinity of the Building. Neither Landlord nor Tenant shall consult with such broker as to his or her opinion as to Fair Market Rental Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Premises is the closer to the actual Fair Market Rental Rate for the Premises as determined by the arbitrator, taking into account the requirements of this Exhibit regarding same. Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion, determines is necessary.

(b) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental Rate, and shall notify Landlord and Tenant thereof.

(c) The decision of the arbitrator shall be binding upon Landlord and Tenant, except as provided below.

(d) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the Los Angeles Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(e) The cost of arbitration shall be paid by Landlord and Tenant equally.

EXHIBIT "I-1"

__RIGHT OF FIRST OFFER__

A. Tenant shall have the right to send to Landlord a notice ("Request Notice") advising Landlord that Tenant is interested in possibly leasing additional space. Within ten (10) days of receipt of a Request Notice, Landlord shall promptly notify Tenant of when and what space is or will be so available within the next six (6) months. Such available space is referred to as the Advice Space. Tenant thereupon shall have the right ("ROFO") to lease all or any part of such Advice Space at the Fair Market Rental Rate for the remaining term of the Lease, except that Tenant shall have no such right, if:

1. Tenant is in default pursuant to Section 15.1 of this Lease; or

2. the portion of the Advice Space not leased by Tenant is not in a rentable configuration.

B. The ROFO shall be exercised by Tenant's notifying Landlord, within ten (10) days after Tenant's receipt of the notice of availability of the Advice Space, of Tenant's exercise of its right to lease such Advice Space (or such portion of such Advice Space identified by Tenant in such notice which thereupon shall be deemed the Advice Space) upon the terms of this Exhibit. If Tenant so notifies Landlord, Landlord shall deliver the Advice Space to Tenant upon the date such space is available and shall prepare an amendment to this Lease adding the Advice Space to the Premises on the date of delivery on the terms set forth in this Exhibit, which amendment shall be delivered to Tenant promptly after exercise and executed by Tenant within thirty (30) days after Tenant's receipt of same from Landlord. The Privileges for parking which Tenant receives in connection with the Advice Space shall be in the Parking Facility and shall be at the higher of _____ privileges per 1,000 RSF or the parking rights determined in accordance with the definition of Fair Market Rental Rate.

C. Tenant may not send a Request Notice until six (6) months have elapsed since the day Tenant previously sent a Request Notice to Landlord following the execution by Tenant of a rejection of the right to lease the Advice Space.

D. If Landlord and Tenant are unable to agree as to the Fair Market Rental Rate within thirty (30) days following Tenant's exercise of each such ROFO, then Landlord must lease such Advice Space to Tenant at the Fair Market Rental Rate determined in accordance with Exhibit J. To the extent Tenant is granted other concessions in accordance with the determination of Fair Market Rental Rate such as any Allowance, etc., such concessions shall be provided to Tenant with Landlord incorporating the appropriate provisions of this Lease in the Amendment to reflect any Allowance, Build Out Periods, disbursement procedures, etc., to reflect the implementation of the Fair Market Rental Rate determination.

E. Rent for the Advice Space shall commence upon the earlier of (i) the date Tenant commences business operations from such Advice Space or (ii) the later of the date determined in accordance with the definition of Fair Market Rental Rate or one hundred twenty (120) days after deliver to Tenant of the Advice Space ("Build Out Period"), which Build Out Period shall be extended one (1) day for each day Tenant is delayed in designing or constructing its Tenant Improvements because of Landlord Delays and Force Majeure Delays.

EXHIBIT "I-2"

*****OPTION TO EXPAND*****

1. Option. Tenant is hereby granted the option to lease additional space as provided herein ("Expansion Option"). Upon _____ (___) months' written notice to Landlord prior to the Delivery Date (as hereinafter defined), Tenant shall have the option to lease an additional _____ RSF on the _____ floor(s) of the Building ("Additional Space") on the _____ (___), _____ (___), _____ (___), _____ (___) and _____ (___) anniversary of the Commencement Date (each a "Delivery Date"). Landlord shall provide Tenant with no more than _____ (___), nor less than _____ (___) months' prior notice of the last day by which Tenant must exercise or lose the Expansion Option.

2. Addition of Additional Space to the Premises. If Tenant duly exercises an Expansion Option, then effective on the Additional Space Commencement Date (as hereinafter defined), the Lease shall be deemed amended in the following respects:

(a) The Additional Space shall be added to the Premises previously demised to Tenant under the Lease for a term commencing on the Additional Space Commencement Date and expiring upon the expiration or earlier termination of the Lease, and the term "Premises" used in the Lease shall be deemed to include the Additional Space.

[*OPTION A: USE WHEN TENANT IMPROVEMENTS ARE TO BE CONSTRUCTED BY TENANT IN THE ADDITIONAL SPACE.*]

[*(b) "Additional Space Commencement Date" for the Additional Space shall be that date which is the earlier of: (i) the date Tenant, or any person occupying any of the Additional Space with Tenant's permission, commences business operations from the Additional Space, or (ii) that date which is _____ (_____) days following the date Landlord delivers to Tenant possession of the Additional Space in the Required Condition for the commencement of Tenant's initial tenant improvement work therein, which date shall be extended one (1) day for each day that substantial completion of Tenant's improvements in the Additional Space is delayed because of a Force Majeure Delay or a Landlord Delay (as such terms are defined in the Work Letter Agreement attached to the Lease as Exhibit "B").*]

[*OPTION B: USE WHEN TENANT IMPROVEMENTS ARE TO BE CONSTRUCTED BY LANDLORD IN THE ADDITIONAL SPACE.*]

[*(b) "Additional Space Commencement Date" for the Additional Space shall be earlier of: (i) the date Tenant, or any person occupying any of the Additional Space with Tenant's permission, commences business operations from the Additional Space, or (ii) six (6) business days after the date Landlord delivers to Tenant the Additional Space with the Tenant Improvements Substantially Complete therein.*]

(c) The Base Rent to be paid by Tenant for the Additional Space shall be the lower of (i) _____ percent (___%) of the Fair Market Rental Rate (as hereinafter defined in Exhibit "J") then in effect, or (ii) the Base Rent then in effect on a rentable square feet basis under the Lease.

(d) Tenant's Pro Rata Share of Operating Expenses shall be appropriately increased to reflect the addition of the Additional Space to the Premises demised hereunder.

(e) Tenant shall receive a Tenant Improvement Allowance for the Additional Space equal to the greater of (i) _____ Dollars ($_____) per RSF of the Additional Space or (ii) _____ Dollars ($_____) per RSF in the Additional Space. In addition, if the Additional Space has been previously developed, then any demolition in the Additional Space which is requested by Tenant shall be performed at Landlord's sole cost and expense.

To the extent applicable, the provisions set forth in the Work Letter Agreement attached to the Lease as Exhibit "B" with respect to the Tenant Improvement Allowance for the Premises initially demised to Tenant under the Lease shall also be applicable to any Tenant Improvement Allowance for the Additional Space, and the tenant improvement work to be performed in the Additional Space shall, if such work is to be performed by **[*Tenant/Landlord*]**, be performed in accordance with the terms and conditions of the Work Letter Agreement.

3. Right Not Personal. The Expansion Option set forth herein is not personal to Tenant and may be exercised by any assignee permitted under the Lease or by any sublessee which is specifically granted such right in the sublease; provided, however, that it is not assignable separate and apart from the Lease.

4. Effect of Default. Tenant shall not have the right to exercise the Expansion Option if at the time of exercise thereof, or on the Additional Space Commencement Date, Tenant is in default beyond any applicable notice and cure period.

5. Documentation. Landlord and Tenant shall execute and deliver appropriate documentation to memorialize the addition of the Additional Space to the Premises hereunder and the terms and conditions of the Lease with respect to the Additional Space but any failure by Landlord or Tenant to execute and deliver any such documentation shall not change any of the terms and conditions provided herein.

6. Terms. All terms used in this Exhibit "I-2," unless otherwise defined in this Exhibit "I-2," shall have the same meaning as the term used in the Lease.

EXHIBIT "I-3"

OPTION TO CONTRACT

I. FIRST DROP SPACE OPTION.

A. Landlord agrees that Tenant shall have the option ("First Drop Space Option") of eliminating from the Premises all or any part of the space depicted on Attachment 1 under the terms and conditions set forth herein, if Landlord receives notice ("First Drop Space Notice") of Tenant's exercise of the First Drop Space Option on or before *_____, **200_***, which notice shall specify a date not less than three (3) months or more than nine (9) months following the date the First Drop Space Notice is delivered ("First Drop Date") and specifying all or a portion of the space shown on Attachment 1 ("First Drop Space").

B. If Tenant is able to and properly exercises its First Drop Space Option, the Premises shall thereafter on the First Drop Date be reduced by the First Drop Space.

C. If Tenant is able to and properly exercises its First Drop Space Option, Annual and Monthly Base Rent for the Premises during the Term of the Lease and Tenant's Pro Rata Share shall be reduced as of the First Drop Date based on a reduction in the Rentable Area of the Premises of an amount equal to the Rentable Area of the First Drop Space.

D. If Tenant is able to and properly exercises its First Drop Space Option:

1. Landlord shall prepare an amendment (the "First Drop Space Amendment") to accurately reflect changes in Premises, Annual and Monthly Base Rent, Tenant's Pro Rata Share and other appropriate terms. A copy of the First Drop Space Amendment shall be:

a. sent to Tenant within a reasonable time after exercise; and

b. executed by Tenant and returned to Landlord.

2. Landlord shall cause Parking Operators to reduce the number of Privileges available to Tenant by _____ Privileges per each 1,000 square feet of Rentable Area of the First Drop Space. There shall be no change in the number of reserved Privileges should Tenant properly exercise its First Drop Space Option.

[3. Tenant shall pay Landlord $_____ on or before the First Drop Date. [NOTE: Add if we are required to pay to drop the First Drop Space.]]

II. SECOND DROP SPACE OPTION.

A. Landlord agrees that Tenant shall have the option ("Second Drop Space Option") of eliminating from the Premises the entire space depicted on Attachment 2 under the terms and conditions set forth herein, if Landlord receives notice ("Second Drop Space Notice") of Tenant's exercise of the Second Drop Space Option on or before *_____, ____,* which notice shall

specify a date not less than three (3) months or more than nine (9) months following the date the Second Drop Space Notice is delivered ("Second Drop Date") and specifying all or a portion of the space shown on Attachment 2 ("Second Drop Space").

B. If Tenant is able to and properly exercises its Second Drop Space Option, the Premises shall thereafter on the Second Drop Date be reduced by the Second Drop Space.

C. If Tenant is able to and properly exercises its Second Drop Space Option, Annual and Monthly Base Rent for the Premises and Tenant's Pro Rata Share shall be reduced as of the Second Drop Date based on a reduction in square feet of the Rentable Area of the Premises of the Second Drop Space.

D. If Tenant is able to and properly exercises the Second Drop Space Option:

1. Landlord shall prepare an amendment (the "Second Drop Space Amendment") to accurately reflect changes in Premises, Annual and Monthly Base Rent, Tenant's Pro Rata Shares, and other appropriate terms. A copy of the Second Drop Space Amendment shall be:

a. sent to Tenant within reasonable time and exercise; and

b. executed by Tenant and returned to Landlord.

2. Landlord shall cause Parking Operators to reduce the number of unreserved Privileges available to Tenant by _____ Privileges per each 1,000 square feet of Rentable Area of the Premises of the Second Drop Space as it is removed from the Premises. There shall be no change in the number of reserved Privileges should Tenant properly exercise its Second Drop Space Option.

[3. Tenant shall pay Landlord $_____ on or before the Second Drop Date. [NOTE: Add if we are required to pay to drop the Second Drop Space.]]

REPRESENTING THE SMALL TENANT IN A SMALL LEASE TRANSACTION – TOP 10 ISSUES

Each practicing lawyer who specializes in commercial real estate leasing has his or her own idea as to what is the most difficult transaction to do really well. Top vote-getters for difficult tasks are build-to-suit Lease transactions and retail shopping center anchor tenant Leases. The transactions that I believe are the most difficult to do well are the sublease and the Small Lease. I will leave the discussions of the complexities of doing a sublease for next year and just concentrate on the Small Lease.

I will, for the purposes of this article, define a Small Lease as a lease of 4,000 square feet for a period of four years at a rental rate of $15.00 per RSF net ("Small Lease"). That means that the Landlord will collect $60,000 in Basic Rent for a year. For those of us who are bad at math, $60,000 divided by 12 months equals $5,000 per month, which is the Basic Rent the Landlord will receive each month and out of which it must service its debt, pay for expenses that can't be passed on to, and recouped from, tenants as Operating Costs and hopefully make a little profit. Under those circumstances, it is not practical for a Landlord to want to enter into meaningful Lease negotiations where, if the parties are not practical, the legal fees could approach six months' Basic Rent.

The difficulty in negotiating a Small Lease arises in part because while the Landlord (and the Tenant) are not in a position to devote the time, and expend the legal fees, necessary to properly negotiate a Lease that will protect the legitimate interests of both the Landlord and the Tenant, the Landlord and Tenant in almost all cases enter negotiations where the following factors are present:

A. The Landlord presents the same form lease to a tenant for the 4,000 RSF Small Lease transaction and for the 100,000 RSF lease transaction;

B. The issues, for the most part are, when dealing with a 4,000 RSF Small Lease transaction are the same issues as the issues one encounters with a 100,000 RSF lease transaction;

C. The typical Tenant can be hurt just as much (proportionally) on a 4,000 RSF Small Lease transaction as a Tenant can be hurt on a 100,000 RSF lease transaction.

A lawyer can of course decide (and many in fact do decide) not to represent a Tenant on a Small Deal. However, if the lawyer accepts the assignment, the lawyer must manage the client's expectations.

I recommend that the lawyer tell its client the facts of life as described above and state that there is little chance the Tenant client can receive all of the necessary and important protections that a large, sophisticated Tenant can typically secure in a typical, level playing field type of market. The client should be told that there are some Landlords who are more reasonable than others and that if the Tenant wants meaningful protections, there are a select few Landlords to be avoided because those Landlords are not flexible. I recommend that the lawyer talk to the client to find out if they have certain hot buttons and, if they do, the lawyer should try to make sure that those hot buttons are addressed in the Lease. The lawyer should make a list of its top ten issues, based on the lawyer's and client's subjective evaluation of how likely it is something will happen, the practical consequences to the Tenant if it does

happen, the client's hot buttons, and the probabilities that the protection can be obtained. Here is my own subjective top ten list.

1. Reasonableness and Good Faith.

In a typical Lease, there are numerous provisions in the Lease where the Landlord has the right to exercise discretion, make an allocation or determination and where the Tenant is prevented from taking certain action without obtaining the Landlord's consent. The Landlord typically has numerous statements in the Lease providing that the Landlord can act in its sole and absolute discretion and a major "markup" of the Lease would have to take place unless the Tenant is successful in asking the Landlord to always act reasonably. Accordingly, for small Tenants and large Tenants alike, we recommend that the following provision be utilized:

> "Regardless of any reference in the Lease to sole and absolute discretion or words to that effect, but except for matters which (1) could have an adverse effect on the structural integrity of the Building Structure, (2) could have an adverse effect on the Building Systems, or (3) could have an effect on the exterior appearance of the building, whereupon in each such case Landlord's duty is to act in good faith and in compliance with the Lease, any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld, conditioned or delayed. Whenever the Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations (other than decisions to exercise expansion, contraction, cancellation, termination or renewal options), Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated Tenant or Landlord concerning the benefits to be enjoyed under the Lease."

2. Approval Criteria for Tenant Improvements.

When a Tenant leases space, the Tenant has in its mind an idea of what it wants to construct in the way of improvements. Some Landlords are more fussy than others, but there are many Landlords who will not want a Tenant to make improvements if they think that those improvements will make the space less attractive to the next Tenant. These issues need to be cleared up right away. Many Tenants like to have exposed ceilings. Would it be reasonable for a Landlord to say deny consent to such a request? We don't want to speculate as to what would be reasonable under the circumstances and instead suggest that the Tenant insert the following provision as the "Approval Criteria" for the Tenant's improvements.

> "Landlord may not withhold or condition its consent to the making of an alternation or improvement unless the making or installation of the improvements or alterations would (a) adversely affect the Building Structure, (b) adversely affect the Building Systems, (c) not comply with applicable laws, (d) affect the exterior appearance of the Building, or (e) unreasonably interfere with the normal and customary business operations of the other Tenants in the Building (individually and collectively, a "Design Problem")."

3. Operating Expenses.

Operating expenses have become more and more complicated. A contest has developed to see which attorney can come up with the longest list of operating expense exclusions. When I look at most of the exclusions, if the item was not listed as an exclusion, then absent a specific provision in the Lease which expressly sets forth that item as an inclusion, the item would still not be considered an operating expense. For example, brokers commissions, tenant improvement allowances, ground lease rent, interest on loan payments, charitable contributions, etc., are almost always listed as operating expense exclusion, but if they were not listed as an exclusion, then they would still not be an operating expense absent a specific reference in the Lease to such item as an inclusion. That being said, there are other exclusions which are imperative in a Lease, otherwise a Tenant can be hurt and surprised. Examples are major increases in operating expenses because of capital expenditures, large deductibles (i.e., in the event of an earthquake), Proposition 13 tax increases, failure to address Proposition 8 decreases (for base year Leases) and failure to include a proper gross-up provision in base years Leases. The following provisions, if included in a Tenant's Lease, will minimize the chances that a Tenant could get hurt on operating expenses.

"A Very Abbreviated List of Operating Expense Exclusions:

A. Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied or otherwise ("Capital Items"), except for (i) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, incurred by Landlord after the Commencement Date for any capital improvements installed or paid for by Landlord and required by any new (or change in) laws, rules or regulations of any governmental or quasi-governmental authority which are enacted after the Commencement Date; or (ii) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, or any equipment, device or capital improvement purchased or incurred as a labor-saving measure or to affect other economics in the operation or maintenance of the Building (provided the annual amortized costs does not exceed the actual cost savings realized and such savings do not redound primarily to the benefit of any particular Tenant other than Tenant);

B. Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds, and costs of all capital replacements, regardless of whether such repairs are covered by insurance (except if permitted under subsection A. above) and cost of earthquake repairs in excess of twenty-five thousand dollars ($25,000) per earthquake (which for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to such initial earthquake);

C. Costs incurred in connection with upgrading the Building to comply with the current interpretation of disability, life, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including, without limitation, the ADA, including penalties or damages incurred due to such non-compliance;

D. Any increases of, or reassessment in, Real Property Taxes and assessments in excess of two percent (2%) of the taxes for the previous year, and any increase in Real Property Tax resulting from a change in ownership of the Landlord or from major alterations, improvements, modifications or renovations to the Building or the Land (collectively, "Transfers") except that Operating Expenses shall include the portion of Real Property taxes resulting from or attributable to an assessed value of the Building and Land greater than the market value per rentable square foot at the inception of the Lease resulting from a change in ownership; or

E. Any other expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Operating Expenses by comparable Landlords of comparable buildings.

If the Building does not have at least one hundred percent (100%) of the rentable area of the Building occupied during any calendar year period (including any calendar year(s) falling within the Base Year), then the variable portion of Operating Expenses for such period shall be deemed to be equal to the total of the variable portion of Operating Expenses which would have been incurred by Landlord if one hundred percent (100%) of the rentable area of the Building had been occupied for the entirety of such calendar year with all tenants paying full rent, as contrasted with free rent, half rent or the like ("Gross-Up Provision").

If Landlord receives a reduction in Real Property Taxes attributable to the Base Year as a result of a commonly called Proposition 8 application, the Real Property Taxes for the Base Year and each Lease Year shall be calculated as if no Proposition 8 reduction in Real Property Taxes was applied for and/or received."

4. Condition of the Premises.

The Tenant wants to make sure it is not surprised by the condition of the Premises or "hidden" costs that it might encounter once it starts to construct its tenant improvements. Any smart Landlord would like to have the Tenant agree that the Tenant will accept the premises in its "as-is" condition. The term "as-is" might mean different things to a Landlord and to a Tenant. What the Tenant needs to do in order to make sure that it is getting a reasonably fair deal is to insist that the Landlord agree that, notwithstanding the fact that the Tenant has otherwise agreed to accept the premises in its "as-as" condition, the Landlord will make sure that when the premises are delivered to the Tenant for the commencement of business operations (in situations where the Landlord is going to construct the tenant improvements at no charge or cost to the Tenant because the Landlord envisions that the cost of doing the improvements is minimal), or at the start of the construction of the tenant improvements (in situations where the Tenant is granted an allowance and either the Landlord or Tenant is constructing the tenant improvements with the Tenant agreeing to pay for the cost of the construction in excess of the allowance), with the Building and the Premises, including the Building Structure and Building Systems (as defined below), seismically sound, in first class condition and operating order and in compliance with all laws applicable to new construction, disregarding variances and grandfathered/grandmothered rights. By obtaining this minimal protection, the Tenant at least knows that the air conditioning and lights will be working and that to the extent the Landlord has received variances for code work (i.e., the ADA) that would be lost once the Tenant started to construct its tenant improvements, the Landlord

would pay for the cost of bringing the building up to code prior to the Tenant paying for the other costs of installing its tenant improvements. Accordingly, the Tenant should seek to have the following provision included in the Lease:

> "Building Structure and Building Systems. Landlord agrees that at all times it will maintain the structural portions of the Building, including the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, parking areas, stairwells, escalators, elevator cabs, plazas, pavement, sidewalks, curbs, entrances, landscaping, art work, sculptures, washrooms, mechanical, electrical and telephone closets, and all Common Areas and public areas (collectively, "Building Structure") and the mechanical, electrical, life safety, plumbing, sprinkler systems (connected to the core) and HVAC systems (including primary and secondary loops connected to the core) ("Building Systems") in first class condition and repair and shall operate the Building as a first class office building. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to make any repair to, modification of, or addition to the Building Structure and/or the Building Systems and/or the Site except and to the extent required because of Tenant's use of all or a portion of the Premises for other than normal and customary business office operations and/or to the extent required because of Tenant's installation of improvements or alterations which do not constitute normal, typical and customary business office improvements."

5. Commencement Date.

It is seldom that the commencement date is properly addressed in a form lease. In a typical Small Lease, the Landlord will construct the tenant improvements. If the Landlord agrees to construct the tenant improvements at no cost to the Tenant, then it is important for both the Landlord and the Tenant to make sure that what constitutes the tenant improvements that will be constructed by the Landlord at no cost to the Tenant is accurately described in the Lease. In a situation where the Tenant pays nothing for the construction of its tenant improvements, then the commencement date on a Small Lease should read as follows:

> "The Commencement Date shall be the earlier of (i) the date that the Tenant commences business operations from the premises or (ii) the first business day of the week following the Tenant's receipt of a five (5) business day factually correct notice that the tenant improvements are substantially completed or would have been substantially completed but for Tenant Delays (as defined in the Lease)."

This provision is fair because the Tenant will not get free rent since the Tenant will start to pay rent on the day it commence business operations, and yet it will make sure that the Tenant isn't sitting at its desk on a Tuesday morning when its receives a telephone call from the Landlord advising that the tenant improvements have been substantially completed and the rent starts. Most Tenants find it more convenient to move in over a weekend and need the five day notice in order to get the telephones installed, to arrange for the delivery and installation of its furniture and equipment and to move into the Premises. The installation of furniture and equipment is seldom included within the work that the Landlord is going to perform.

Tenant Delays under this scenario seldom occur, but to make sure that there is no unanticipated Tenant Delay because the Tenant forgot to sign off on plans, etc., the following provision should be also inserted:

> "No Tenant Delay will be deemed to have occurred unless and until the Landlord provides the Tenant with a notice specifying the Tenant's action or inaction which constitutes the Tenant Delay and Tenant fails to cure such occurrence or non-occurrence on the day that it receives the notice."

The inclusion of this provision will help the Landlord establish that a Tenant Delay occurred and the Tenant was aware of it, but most importantly, it protects the Tenant from surprises.

The same commencement date provisions should be used when the Tenant receives a tenant improvement allowance and the Landlord is going to construct the tenant improvements. To the extent the Tenant receives a tenant improvement allowance and the Landlord is going to construct the tenant improvements, the Tenant needs to ensure that there is some price protection, especially in situations where the cost of construction will exceed the allowance. Normally, it is not practical or realistic to bid out small jobs for a Small Lease. Nevertheless, the Tenant needs to secure reasonable price protection and we recommend that the following provision be utilized:

> "In constructing the tenant improvements, to the extent practical, Landlord agrees to bid out major trade items to three subcontractors, each of whom has a reputation for quality of work, timeliness of performance, integrity and financial stability. After reconciling the bids for inconsistent assumptions, the low bidder shall be selected in each instance. Where it is not practical and/or reasonable to bid out any element of work, then the Landlord shall select a subcontractor for each such item that has a reputation for quality of work, timeliness of performance, integrity and financial stability and cause that subcontractor to charge Tenant on the same basis that the subcontractor charges Landlord when it performs comparable work for the Landlord's own account (where the Landlord absorbs the entire cost and does not pass any of it on to the Tenant). If Landlord hires a contractor, it will cause the contractor to charge the Tenant on the same basis that that contractor would charge the Landlord when it performs similar work for the Landlord's own account (where the Landlord absorbs the entire cost and does not pass any of it on to the Tenant)."

6. <u>After-Hours HVAC/Extra Services/Extra Utilities</u>.

Many Landlords look at the supplying of after-hours HVAC, extra services and extra utilities as a separate profit center. Since the Tenant has no choice as to where it is going to get its after-hours HVAC, the Tenant needs to be protected. We typically ask for, and receive, the following protection for a Tenant:

> "It is to be understood and agreed that any after-hour air conditioning costs will be reduced to the extent that any other tenant has requested utilization of the system, with such overall cost to be prorated. Tenant shall be charged for any after-hour air

conditioning costs, extra utilities and extra services at Landlord's Actual Cost. "Actual Cost" shall mean an amount equal to the actual out-of-pocket incremental extra costs to Landlord to provide such after-hour air conditioning (or other additional services or utilities), without markup for profit, overhead, depreciation or administrative costs."

7. Renewal Rights.

If a Tenant has leased space and the space works for the Tenant, the Tenant may over a period of time put its own money into the space and certainly does not want to be put to the inconvenience of having to move. Accordingly, a Tenant should be comfortable in requesting a right to extend the term of the Lease and asking that the Landlord allow the Tenant to exercise that right at a fair definition of market. Typically, Landlords try to "finesse" this issue by coming up with a definition of market that excludes all concessions, which at a minimum causes a great deal of confusion and at a maximum produces a bad result for the Tenant. In addition, typically Landlords insert a provision stating that the rent will be at the higher of market (which is fair) or the rent in effect during the last month of the Lease term (which is not fair). Under these circumstances, in a marketplace such as the one we are experiencing in 2001, any Tenant who thought they were getting a renewal right finds, because the real estate market has collapsed in many parts of the country, that their right to renew at the higher of market or the rent in effect during the last month of the Lease term is in effect no right to renew at all because market rents are less than half of the rent currently being paid by the Tenant. Accordingly, Tenants should not be bashful about requesting rights to renew, utilizing a realistic definition of fair market rental rate, and not agreeing that the rent cannot be below the rent the Tenant is paying during the last month of the Lease term. In addition, many Landlords want this right to be "personal" to the Tenant, but this is something that a Tenant should resist because the Tenant's ability to find an assignee will be greatly increased if the Tenant can transfer the entire Lease along with the renewal right. However, the Tenant should be very careful about transferring the entire Lease to someone who could renew because the Tenant would not be released from liability in the event of a renewal and the Tenant does not want to be in a position where it seeks to avoid or minimize a rental obligation for the last two years of the Lease term only to find that its assignee exercised the renewal right for another four years and then defaulted, thereby increasing the Tenant's liability to a significant extent. Accordingly, we recommend that the following provision be inserted:

"Tenant shall have Options to Extend the lease for two (2) consecutive four (4) year periods for all or any part of the premises and any space added to the premises pursuant to the exercise of Tenant's expansion rights. Tenant shall be required to give Landlord no less than six (6) months prior written notice of Tenant's election to exercise an Option to Extend. Such extension shall be upon the same terms and conditions as the Lease except that the rental rate for each option period shall be at a Fair Market Rental Rate (as defined below) and the base year for operating expenses shall be adjusted forward to the first full twelve calendar months of the extension term.

The term "Fair Market Rental Rate" shall mean the annual amount per rentable square foot that Landlord has accepted in current transactions between non-affiliated parties from new, non-expansion, non-renewal and non-equity tenants of comparable credit-worthiness, for comparable space, for a comparable use for a comparable period of time ("Comparable Transactions") in the Building, or if there are not a sufficient number of Comparable Transactions in the Building, what a comparable landlord of a comparable building in the vicinity of the Building with comparable vacancy factors would accept in Comparable Transactions. In any determination of Comparable Transactions appropriate consideration

shall be given to the annual rental rates per rentable square foot, the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, the type of escalation clause (e.g., whether increases in additional rent are determined on a net or gross basis, and if gross, whether such increases are determined according to a base year or a base dollar amount expense stop), the extent of Tenant's liability under the lease, abatement provisions reflecting free rent and/or no rent during the period of construction or subsequent to the commencement date as to the space in question, brokerage commissions, if any, which would be payable by Landlord in similar transactions, length of the lease term, size and location of premises being leased, building standard work letter and/or tenant improvement allowances, if any, and other generally applicable conditions of tenancy for such Comparable Transactions. The intent is that Tenant will obtain the same rent and other economic benefits that Landlord would otherwise give in Comparable Transactions and that Landlord will make, and receive the same economic payments and concessions that Landlord would otherwise make, and receive in Comparable Transactions. If, for example, after applying the criteria set forth above, Comparable Transactions provide a new tenant with comparable space at Thirty-Two Dollars ($32) per rentable square foot, with a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements, four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance, a "lease takeover" obligation in the amount of One Hundred Thousand Dollars ($100,000), a brokerage commission of Fifty Thousand Dollars ($50,000), and certain other generally applicable economic terms, the Fair Market Rental Rate for Tenant shall not be Thirty-Two Dollars ($32) per rentable square foot only, but shall be the equivalent of Thirty-Two Dollars ($32) per rentable square foot, a Ten Dollar ($10) base amount expense stop, three (3) months at no rent to construct improvements or three (3) months' additional free rent in lieu of such construction, an additional four (4) months' free rent, Fifty Dollars ($50) per usable square foot tenant improvement allowance or payment in lieu of such allowance, One Hundred Thousand Dollars ($100,000) cash payment in lieu of a lease takeover, a payment to Tenant's then broker of a Fifty Thousand Dollar ($50,000) brokerage commission (or if Tenant is not then represented by a broker, Tenant shall receive a rent credit in the amount of the brokerage commission that Landlord would have otherwise been required to pay) and such other generally applicable economic terms.

Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within fifteen (15) days (but in no event later than twenty (20) days) after Tenant provides the notice to Landlord exercising Tenant's option rights which require a calculation of the Fair Market Rental Rate. Tenant shall have thirty (30) days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental in writing. In the event Tenant fails to accept the new rental proposed by Landlord, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period ("Outside Agreement Date"), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below. Failure of Tenant to so elect in writing within Tenant's Review Period shall conclusively be deemed its disapproval of the Fair Market Rental Rate determined by Landlord.

In the event that Landlord fails to timely generate the initial written notice of Landlord's opinion of the Fair Market Rental Rate which triggers the negotiation period of this Section, then Tenant may commence such negotiations by providing the initial notice, in which event Landlord shall have fifteen (15) days ("Landlord's Review Period") after receipt of Tenant's notice of the new rental within which

to accept such rental. In the event Landlord fails to accept in writing such rental proposed by Tenant, then such proposal shall be deemed rejected, and Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Landlord's Review Period (which shall be, in such event, the "Outside Agreement Date" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below.

(a) Landlord and Tenant shall meet with each other within five (5) business days of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Fair Market Rental Rate within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate lawyer or broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable commercial properties in the vicinity of the Building. Neither Landlord nor Tenant shall consult with such broker or lawyer as to his or her opinion as to Fair Market Rental Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Premises is the closer to the actual Fair Market Rental Rate for the Premises as determined by the arbitrator, taking into account the requirements of this Section. Such arbitrator may hold such hearings and require such briefs as the arbitrator, in his or her sole discretion, determines is necessary. In addition, Landlord or Tenant may submit to the arbitrator with a copy to the other party within five (5) business days after the appointment of the arbitrator any market data and additional information that such party deems relevant to the determination of Fair Market Rental Rate ("FMRR Data") and the other party may submit a reply in writing within five (5) business days after receipt of such FMRR Data.

(b) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental Rate, and shall notify Landlord and Tenant of such determination.

(c) The decision of the arbitrator shall be binding upon Landlord and Tenant.

(d) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(e) The cost of arbitration shall be paid by Landlord and Tenant equally."

8. Assignment and Subleasing.

Tenants frequently have a change in business plan and find that they either have too much space or too little space and need to get rid of the space that they have leased. Most Leases impose unreasonable restraints on a Tenant's ability to assign or sublet. The Landlord's primary concern should be to make sure that in connection with any assignment or subletting, it is not accepting a sublessee or an assignee who would cause the Landlord to be in violation of an exclusive that the Landlord has

granted to another tenant or which would allow the Tenant to sublease or assign to somebody who is not comparable in quality and stature to the then-existing Tenants of the project, or to a Tenant who would violate the use restrictions. Accordingly, the Tenant needs to focus on the assignment and subletting provision and I suggest that the Tenant propose the following provisions:

> "Tenant shall have the right at any time to sublease, assign or otherwise permit occupancy of all or any portion of its space, without Landlord's approval or consent, to (i) any related entity, subsidiary, parent company or affiliate of Tenant, any company in which Tenant has a controlling interest, or to any successor corporation, whether by merger, consolidation or otherwise or to any person who purchases all or substantially all of Tenant's assets and (ii) an entity which, with respect to the people working in the Premises, consists of people which previously worked at the Premises and are now splitting off from Tenant. Tenant may retain one hundred percent (100%) of any revenues derived from the Sublease.
>
> "In addition, notwithstanding any other provision of the Lease to the contrary, Tenant shall have the right to sublease or assign all or any portion of the Premises during the initial or extended lease term to any third-party subtenant (provided such assignment or sublease will not cause the Landlord to be in violation of an exclusive granted to another Tenant) of a type and quality suitable for a first-class office building with Landlord's prior written consent which will not be unreasonably withheld, conditioned or delayed. Tenant may retain fifty percent (50%) of any revenues derived from the sublease.
>
> "Whenever Landlord is entitled to share in any excess income resulting from an assignment or sublease of the Premises, the following shall constitute the definition of "Profits": the gross revenue received from the assignee or sublessee during the sublease term or during the assignment, with respect to the space covered by the sublease or the assignment ("Transferred Space") less: (a) the gross revenue paid to Landlord by Tenant during the period of the sublease term or during the assignment with respect to the Transferred Space; (b) the gross revenue as to the Transferred Space paid to Landlord by Tenant for all days the Transferred Space was vacated from the date that Tenant first vacated the Transferred Space until the date the assignee or sublessee was to pay Rent; (c) any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee; (d) brokers' commissions; (e) attorneys' fees; (f) lease takeover payments; (g) costs of advertising the space for sublease or assignment; (h) unamortized cost of initial and subsequent improvements to the Premises by Tenant; and (i) any other costs actually paid in assigning or subletting the Transferred Space or in negotiating or effectuating the assignment or sublease; provided, however, under no circumstance shall Landlord be paid any Profits until Tenant has recovered all the items set forth in subparts (a) through (i) for such Transferred Space, it being understood that if in any year the gross revenues, less the deductions set forth in subparts (a) through (i) above (the "Net Revenues"), are less than any and all costs actually paid in assigning or subletting the affected space (collectively "Transaction Costs"), the amount of the excess Transaction Costs shall be carried over to the next year and then deducted from Net Revenues with the procedure repeated until a Profit is achieved."

9. Defaults.

Most default sections of the Lease are unreasonably broad and contain many outdated default provisions which are either unenforceable (bankruptcy), unrealistic (vacancy in an office project) or overly harsh (incurable defaults). Accordingly, I recommend the use of the following provisions:

"Default by Tenant. The occurrence of any of the following shall constitute an event of default ("Event of Default") hereunder on the part of Tenant:

(1) Nonpayment of Rent. Failure to pay any installment of Rent due and payable hereunder, upon the date when payment is due, such failure continuing for a period of ten (10) business days after written notice of such failure; or

(2) Other Obligations. Failure to perform any obligation, agreement or covenant under the Lease, other than Tenant's obligation to pay Rent, such failure continuing for thirty (30) calendar days after written notice of such failure or such longer period as is reasonably necessary to remedy such failure, provided that Tenant shall continuously and diligently pursue such remedy until such failure is cured.

All notices to be given pursuant to this Section ___ shall be in addition to, and not in lieu of, the notice requirements of **[*California Code of Civil Procedure Section 1161*]**."

10. Hazardous Materials.

The hazardous materials section of most leases are lengthy and difficult to read. However, the Tenant in a Small Lease can provide for itself the essential protections by negotiating for the inclusion of the following provision: "Notwithstanding anything in this Lease to the contrary, the liability of the Tenant, and any indemnities provided by the Tenant, shall not extend to Hazardous Materials that were not placed on the premises, in the building, or on the land upon which the building is situated by the Tenant, or by any of Tenant's agents, contractors and employees. In addition, Landlord shall not include in operating expenses, or pass on to Tenant directly or indirectly, the cost incurred by Landlord in monitoring, reporting, testing, abating and/or removing Hazardous Materials that were contained in the premises, in the building and/or on the land upon which the building is situated at the time that the Lease was executed."

11. Subordination, Non-Disturbance and Attornment and Subordination Agreement ("SNDAA").

While this article is about my top ten issues, I am throwing in this section about the receipt of an SNDAA as a wildcard issue. While it is very difficult to obtain a SNDAA in a Small Lease transaction, if a Tenant in a Small Lease transaction can obtain one from any current lender, this is a great protection to receive. Typically, if there is a loan, ground lease or prior encumbrance recorded with respect to the building (collectively and individually, "Recorded Encumbrances"), the Lease could terminate in the event of a foreclosure by the lender or holder or the encumbrance. Almost always, the typical Recorded Encumbrance is simply a loan. Since the last downturn in the economy, lenders have been much more willing to enter into SNDAA's with a tenant because most foreclosures occur when there is a downturn in the economy, and lenders want to be in a position where they can make sure that the tenant will not be released from its liability under the lease merely because there has been a foreclosure. Obviously, in a

short term lease, there is less risk. In addition, in situations where the tenant has not paid to construct its tenant improvements, a foreclosure by a lender, even if the lease terminates, is not the unmitigated disaster that would occur with respect to a large transaction where a tenant may have put hundreds of thousands or even millions of dollars into its tenant improvements. Requesting and obtaining a SNDAA from a lender will significantly increase the protections available to a tenant. In a major lease transaction, the inability of a tenant to receive a meaningful SNDAA would be a deal breaker, but in a Small Lease, the Tenant and its lawyer have to evaluate the practical circumstances in order to determine how hard to press to receive an SNDAA. When a tenant desires to obtain an SNDAA, I recommend that the following provision be utilized:

"Landlord agrees that, prior to the earlier of: (1) the Commencement Date, (2) the exhaustion by Tenant of its Tenant Improvement Allowance (as defined in the Work Letter Agreement), or (3) twenty (20) days after the date of full execution of the Lease, it will provide, without cost to or charge of, Tenant with non-disturbance, subordination and attornment agreements ("non-disturbance agreement") in favor of Tenant from any ground lessors, mortgage holders or lien holders (each, a "Superior Mortgagee") then in existence, substantially in the form of Exhibit "__" attached hereto. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense. In the event Landlord fails to provide such commercially reasonable non-disturbance agreements within the time frame set forth in this Section, Tenant shall have the right, exercisable at any time thereafter, to give ten (10) business days' written notice to Landlord terminating the Lease. In the event Landlord does not provide Tenant with the applicable non-disturbance agreements within such ten (10) day period, the Lease shall terminate and Landlord shall reimburse Tenant all of Tenant's out-of-pocket costs incurred in connection with the design and construction of the Tenant Improvements and Tenant's legal fees incurred in connection with the review and negotiation of the Lease and this provision shall survive the termination of the Lease.

Landlord agrees to provide Tenant with non-disturbance agreement(s) substantially in the form of Exhibit "__" attached hereto, in favor of Tenant from any Superior Mortgagee(s) of Landlord who later come(s) into existence at any time prior to the expiration of the Term of the Lease, as it may be extended, in consideration of, and as a condition precedent to, Tenant's agreement to be bound by Lease Section __. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant's election and expense.

Notwithstanding anything to the contrary set forth in this Lease, in the event that Landlord fails to pay to Tenant (i) the Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (ii) **[*the Lease Takeover Payment*]** (as hereinafter defined), (iii) any final arbitration award or court judgment, or (iv) **[*return to Tenant any Security Deposit*]**, the Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to Tenant, together with interest at the Interest Rate (as defined in Section __) , such unpaid amounts and shall recognize and honor any remaining credit of Base Rent and/or Operating Expenses. In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker, together with interest thereon at the Interest Rate. With respect to all such payments, interest thereon shall be computed from the date such amounts should have been paid until the date such amounts are in fact paid.

All non-disturbance agreements shall acknowledge that, and Landlord hereby independently agrees that, to the extent Landlord has failed to fulfill its obligations with respect to the payment of any (i) Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (ii) **[*monetary obligations arising out of Tenant's existing lease at _____ which Landlord has agreed to directly or indirectly assume ("Lease Takeover Payment")*]**, (iii) unpaid arbitration or court award, (iv) **[*unrefunded security deposit*]**, (v) remaining credit of Base Rent and/or Operating Expenses, or (vi) unpaid commission due and owing to Tenant's real estate broker ("Key Obligations"), and to the extent Superior Mortgagee has failed to fulfill its obligations with regard to the payment of such Key Obligations as provided in the preceding paragraph, Tenant may deduct the amount of the Key Obligation which Landlord has not paid, together with interest thereon at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease.

In addition to the foregoing, Landlord agrees that in the event Landlord has failed to pay its Key Obligations, Tenant may deduct the amount of the Key Obligations which Landlord has not paid, together with interest at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease. Landlord further agrees that, upon Tenant's request, Landlord will provide Tenant with a preliminary title report within [*_____ (__)*] business days following such request by Tenant."

CONCLUSION

Every lease transaction is at the same time standard and unique. A good lawyer needs to understand its client's business and the practical needs of the client in order to effectively make the subjective decisions to determine which provisions should make a short list for the negotiation of a Small Lease.

DEFAULTS; REMEDIES

Sample Provisions:

19.1 Events of Default. The occurrence of any of the following shall constitute a default of this Lease by Tenant (a "Default"):

19.1.1 Any failure by Tenant to pay any Base Rent or Tenant's Share of Direct Expenses, within five (5) business days after Notice that the same was not paid when due, or any failure by Tenant to pay any other material amount of Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within ten (10) business days after Notice that the same was not paid when due; or

19.1.2 Any failure by Tenant to observe or perform any other TCC of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after Notice thereof from Landlord to Tenant; provided that if the nature of such failure is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in Default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such failure as soon as reasonably possible; or

19.1.3 The failure by Tenant to observe or perform according to the TCCs of Articles 17 or 18 of this Lease where such failure continues for more than five (5) business days after notice from Landlord; or

19.1.4 The failure by Tenant to observe or perform according to the TCCs of Articles 5 or 14 of this Lease where such failure continues for more than fifteen (15) business days after notice from Landlord.

The Notice periods provided herein are in addition of, and not in lieu of, any notice periods provided by Applicable Law.

19.2 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 (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative, to the extent not resulting in a duplicative recovery, and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, after due process of law, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

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

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

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant but in no event including consequential damages; and

(v) At Landlord's election but subject to the provisions of this Lease, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law.

As used in Sections 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Article 25 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Section 19.2.1(iii) 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%).

19.2.2 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.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law and this Lease, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 Subleases of Tenant. Whether or not Landlord elects to terminate this Lease on account of any Default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements; provided, however, the rights of Landlord to terminate are subject to Section 14.9 regarding Recognition Agreement. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements,

Tenant shall, as of the date of Notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 No Waiver of Redemption by Tenant. Nothing herein shall be deemed to constitute a waiver of Tenant's right to redeem, by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

19.5 Rights of Tenant and Landlord to Specific Performance. Landlord and Tenant shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other TCC of this Lease), without prior demand or Notice except as required by Applicable Law and this Lease, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.6 Landlord Default.

19.6.1 General. Notwithstanding anything to the contrary set forth in this Lease, Landlord shall be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease if (i) in the event a failure by Landlord is with respect to the payment of money, Landlord fails to pay such unpaid amounts within ten (10) business days of Notice from Tenant that the same was not paid when due; (ii) the failure of Landlord to perform according to the TCCs of Article 17 of this Lease for more than five (5) business days after Notice from Tenant; or (iii) in the event a failure by Landlord is other than (i) and (ii) above, Landlord fails to perform such obligation within thirty (30) days after the receipt of Notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if Landlord commences such performance within such thirty (30) day period and thereafter diligently pursue the same to completion. Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary, exercise any of its rights provided at law or in equity.

19.6.2 Abatement of Rent. In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, as a result of (i) any repair, maintenance or alteration performed by Landlord, or which Landlord failed to perform, after the Lease Commencement Date and required by this Lease, which substantially interferes with Tenant's use of or ingress to or egress from the Building, Project, or Premises or the parking facility; (ii) any failure by Landlord to provide services, utilities or ingress to and egress from the Building, Project, or Premises; or (iii) the presence of Hazardous Materials not brought on the Premises by Tenant Parties (any such set of circumstances as set forth in items (i) through (iii), above, to be known as an "Abatement Event"), then Tenant shall give Landlord Notice of such Abatement Event, and if such Abatement Event continues for five (5) consecutive business days after Landlord's receipt of any such Notice, or occurs for ten (10) non-consecutive business days in a twelve (12) month period (provided Landlord is sent a Notice pursuant to Section 29.18 of this Lease of each of such Abatement Event) (in either of such events, the "Eligibility Period"), then the Base Rent, Tenant's Share of Direct Expenses and Tenant's obligation to pay for parking shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises, or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use ("Unusable Area"), bears to the total rentable area of the Premises (taking

into account that the Base Rent payable with respect to each portion of the Premises) and Landlord shall pay to Tenant, to the extent covered by insurance retained by Landlord, any incremental reasonable, out-of-pocket expense that Tenant incurs in relocating the functions previously performed in the Unusable Area to a different location. For this purpose, an incremental expense shall be any expense that Tenant incurs in relocating from the Unusable Area to a temporary location and then relocating back to the Unusable Area after such area has been repaired or restored in accordance with the terms of this Lease, which costs Tenant would not have had to incur but for such relocation. In the event that Tenant is prevented from using, and does not use, the Unusable Area for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Base Rent and Tenant's Share of Direct Expenses for the entire Premises shall be abated for such time as Tenant continues to be so prevented from using, and does not use, the Premises. If, however, Tenant reoccupies any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date Tenant reoccupies such portion of the Premises. Such right to abate Base Rent and Tenant's Share of Direct Expenses shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event; provided, however, that if Landlord has not cured such Abatement Event within eighteen (18) months after receipt of Notice from Tenant, Tenant shall have the right to terminate this Lease during the first ten (10) business days of each calendar month following the end of such eighteen (18) months period until such time as Landlord has cured the Abatement Event, which right may be exercised only by delivery of thirty (30) days' notice to Landlord (the "Abatement Event Termination Notice") during such ten (10) business-day period, and shall be effective as of a date set forth in the Abatement Event Termination Notice (the "Abatement Event Termination Date"), which Abatement Event Termination Date shall not be less than thirty (30) days, and not more than one (1) year, following the delivery of the Abatement Event Termination Notice. Notwithstanding anything contained in this Section 19.6.2 to the contrary, Tenant's Abatement Event Termination Notice shall be null and void (but only in connection with the first notice sent by Tenant with respect to each separate Abatement Event) if Landlord cures such Abatement Event within such thirty (30) day period following receipt of the Abatement Event Termination Notice. If Tenant's right to abatement occurs under Articles 11 or 13 of this Lease because of an eminent domain taking, condemnation and/or because of damage or destruction to the Premises, the Project's parking facility, and/or the Project, Tenant's abatement period shall continue until Tenant has been given sufficient time, and sufficient ingress to, and egress from the Premises, to rebuild such portion it is required to rebuild, to install its property, furniture, fixtures, and equipment to the extent the same shall have been removed as a result of such damage or destruction or temporary taking and to move in over a weekend. To the extent Tenant is entitled to abatement because of an event covered by Articles 11 or 13 of this Lease, then the Eligibility Period shall not be applicable. Except as provided in this Section 19.6.2, nothing contained herein shall be interpreted to mean that Tenant is excused from paying Rent due hereunder. Nothing stated in this Section 19.6.2 shall cause the Lease Term to continue if, according to other TCCs of the Lease, this Lease is to be terminated or ended.

19.6.3 Efforts to Relet. No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same

operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant.

19.6.4 Landlord Bankruptcy Proceeding. In the event that the obligations of Landlord under this Lease are not performed during the pendency of a bankruptcy or insolvency proceeding involving Landlord as the debtor, or following the rejection of this Lease on behalf of Landlord in accordance with Section 365 of the United Sates Bankruptcy Code, then notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to set off against the Rent next due and owing under this Lease (a) any and all damages caused by such non-performance of Landlord's obligations under this lease by Landlord, debtor-in-possession, or the bankruptcy trustee, and (b) any and all damages caused by the non-performance of Landlord's obligations under this lease following any rejection of this Lease in accordance with Section 365 of the United States Bankruptcy Code.

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ARTICLE 15 - DEFAULTS

15.1 Default by Tenant. Each of the following shall be an "Event of Default" by Tenant and a material breach of the Lease:

(a) Tenant shall fail to make any payment owed by Tenant under the Lease, as and when due, and where such failure is not cured within ten (10) business days following receipt of written notice by Tenant from Landlord. Any such notice shall be in addition to, and not in lieu of, any notice required under [*Section 1161 of the California Code of Civil Procedure*]; and

(b) Tenant shall fail to observe, keep or perform any of the terms, covenants, agreements or conditions under the Lease that Tenant is obligated to observe or perform, other than that described in subparagraph (a) above, for a period of thirty (30) days after notice to Tenant of said failure; provided however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default under the Lease if Tenant shall commence the cure of such default so specified within said thirty (30) day period and diligently prosecutes the same to completion. Such thirty (30) day notice shall be in addition to, and not in lieu of, any notice required under [*Section 1161 of the California Code of Civil Procedure*]. Tenant shall have, and under no circumstances shall Tenant be deemed to have waived, the rights set forth in Sections 1174 and 1179 of the California Civil Code of Procedure.

15.2 Default by Landlord. Landlord shall be in default in the performance of any obligation required to be performed by Landlord under this Lease if Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Tenant shall have no rights as a result of any default by Landlord until Tenant gives thirty (30) days' notice to any person who has a recorded interest pertaining to the Building, specifying the nature of the default. Such person shall then have the right to cure such default, and Landlord shall not be deemed in default if such person cures such default within thirty (30) days after receipt of notice of the default, or within such longer period of time as may reasonably be necessary to cure the default. Notwithstanding

anything to the contrary in the Lease, Landlord's liability to Tenant for damages resulting from Landlord's breach of any provision or provisions of the Lease shall not exceed the value of Landlord's equity interest in the Building and its right to insurance proceeds.

ARTICLE 16 - LANDLORD'S REMEDIES AND RIGHTS

16.1 Termination of Lease. In the event of any default by Tenant, Landlord shall have the right, in addition to all other rights available to Landlord under this Lease now or later permitted by law or equity, to terminate this Lease by providing Tenant with a notice of termination. Upon termination, Landlord may recover as damages the Rent that Landlord would have received had Tenant not defaulted, plus attorneys' fees, court costs, additional brokerage costs, additional design and construction costs, and any other costs reasonably incurred by Landlord to mitigate damages. Landlord agrees to use reasonable efforts to mitigate damages. Landlord's damages include (to the extent not duplicative of the foregoing) the worth, at the time of any award, of the amount by which the unpaid Rent for the balance of the term after the time of the award exceeds the amount of the rental loss that the Tenant proves could be reasonably avoided. The worth at the time of award shall be determined by discounting to present value such amount at one percent (1%) more than the discount rate of the Federal Reserve Bank in San Francisco in effect at the time of the award. Other damages to which Landlord is entitled shall earn interest at the Interest Rate; provided, however, in no event shall Tenant be responsible to Landlord for consequential damages.

16.2 Continuation of Lease. In accordance with [*California Civil Code Section 1951.4*] (or any successor statute), Tenant acknowledges that in the event Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession (subject to Tenant's right to sublease and/or assign), and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. In addition to its other rights under this Lease, Landlord has the remedy described in [*California Civil Code Section 1951.4*] (Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Rent (as defined in Section 3.3) as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

16.3 Right of Entry. In the event of any default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to enter the Premises and remove all persons and personal property from the Premises, such property being removed and stored in a public warehouse or elsewhere at Tenant's sole cost and expense. No removal by Landlord of any persons or property in the Premises shall constitute an election to terminate this Lease. Such an election to terminate may only be made by Landlord in writing, or decreed by a court of competent jurisdiction. Landlord's right of entry shall include the right to remodel the Premises and re-let the Premises. All costs incurred in such entry and re-letting shall be paid by Tenant. Rents collected by Landlord from any other tenant which occupies the Premises shall be offset against the amounts owed to Landlord by Tenant. Tenant shall be responsible for any amounts not recovered by Landlord from any other tenant. Any payments made by Tenant shall be credited to the amounts owed by Tenant in the sole order and discretion of Landlord, irrespective of any designation or request by Tenant. No entry by Landlord shall prevent Landlord from later terminating the Lease by written notice.

16.4 Right to Perform. If an Event of Default occurs, Landlord may perform such covenant or condition at its option, after notice to Tenant. All costs incurred by Landlord in so performing shall immediately be reimbursed to Landlord by Tenant, together with interest at the Interest Rate computed from the date incurred by Landlord. Any performance by Landlord of Tenant's obligations shall not waive or cure such default.

16.5 Remedies Not Exclusive. The rights and remedies of Landlord and Tenant set forth herein are not exclusive, and Landlord and Tenant may exercise any other right or remedy available to it under this Lease, at law or in equity except as otherwise expressly set forth herein.

16.6 No Waiver of Redemption by Tenant. Nothing herein shall be deemed to constitute a waiver of Tenant's right to redeem, by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

AUDIT RIGHT PROVISIONS; OPERATING EXPENSES AND CAM/HIDDEN AGENDAS AND CORPORATE GUERRILLA WARFARE TACTICS

I. AUDIT RIGHT PROVISIONS.

A. BACKGROUND AND PURPOSE.

Any responsible tenant will always insist upon the right to audit, review and copy the landlord's books and records pertaining to operating expenses. There are literally thousands of entries that are made during the course of a Lease Year by a landlord in computing operating expenses and it would take a near miracle for someone not to make an unintentional error in connection with the computation and allocation of each component of operating expenses. Apart from the inevitable human errors, there are many items of expenses which are "borderline" and where it is difficult to decide whether such expense item should properly be included or excluded as an operating expense. Even if the correct decision is made to include such item as an operating expense, frequently a secondary decision has to be made as to whether or not such items should be capitalized and amortized, and if so for how long. Accordingly, any tenant and landlord who sign a lease should acknowledge, without guilt, shame or embarrassment, the simple fact that the operating expenses are unlikely ever to be set forth with 100% accuracy in any operating expense statement prepared by a Landlord or even a group of saints (not that the two are necessarily mutually exclusive).

Most landlords today pay a great deal of attention to operating expenses in an effort to have them compiled in a accurate and fair manner consistent with the provisions of the lease. They are willing to cooperate with the legitimate goals of its tenants to review and confirm the accuracy of the compilation of operating expenses and to obtain refunds or credits if operating expenses were overcharged. However, many landlords are scared of the hidden agenda tactics used by some tenants through the audit provision. A hidden agenda for some tenants is to create an audit provision which will not only simply allow a tenant to confirm whether or not the operating expenses have been accurately kept, but rather to give a tenant a right to "extort" a landlord or to terminate its lease merely because the tenant has been overcharged.

In most instances, separate and apart from any demand by a tenant for a provision to review operating expenses, landlords have frequently included in their standard form an audit provision. In many cases, these landlords simply recognize the inevitability of a tenant asking for an audit right and preferred to insert a provision that was favorable to the landlord. However, sophisticated landlords now realize that even if an audit right was not included in a lease, there are obvious ways that a tenant could challenge a bill and a statement for operating expenses. Where the tenant wants to contest whether an expense item was properly included as an operating expense, the tenant could do so under the laws of almost every state and would be subject to the applicable statute of limitations for a written contract as to the "cutoff" time period before such a challenge would be barred. In many states, the statute of limitations for a written contract is four years and hence landlords wanted to include an audit right provision, if for no other reason than to create a contractual statute of limitations which would have a shorter time period than the one provided by statute.

B. TIME PERIOD CUTOFFS.

In the back and forth negotiations as to the appropriate time periods by which an audit must be undertaken and a challenge presented, many tenants did not want to have any time period cutoff other than the applicable statute of limitation. Landlords would frequently argue that they "needed to close their books" and would argue for a short time period of anywhere from thirty days to six months, arguing that the landlord simply could not allow any uncertainty with respect to operating expenses to last for a period in excess of a few months, because it needed to close its books. Sophisticated tenants advise landlords that they might agree to the shortened time period and simply audit within that shortened time period provided that the landlord would agree that the landlord would not submit any item to be subsequently included in operating expenses if such item was not submitted within the negotiated few month time period. However, landlords and tenants would quickly acknowledge that there were many bills and expenses that might be overlooked during a short time period or not even submitted to the landlord within a short time period (this is very typical with respect to items pertaining to taxes) and the typical time period agreed to by a landlord and a tenant as an absolute cutoff as to both sides ranges from two years to three years.

C. WHO PERFORMS THE AUDIT.

The question is to who performs an audit used to be one of great controversy. Typically, landlords used to argue that the audit could only be performed by (in times past) a big eight accounting firm. The landlords would make this argument for the unarticulated reason and their belief that the big eight accounting firms were almost always "naive" and "unsophisticated" when it came to operating expense audits and, in fact, this was frequently true. Landlords feared audits performed by the so-called "contingent fee auditors" who they believe were ruthless, uncouth, and, even worse, excellent and sophisticated in reviewing and auditing records pertaining to operating expenses. Many of these so-called contingent fee auditors consisted of bright accountants and former property managers who knew exactly what landlords did, why they did it, and where to look. This issue has become largely moot because over the last five years the level of expertise, with respect to audits of operating expenses, by the major national accounting firms has reached the same level as the expertise formerly possessed solely by the contingent fee auditors.

D. CONTRACTUAL NEGOTIATED RESTRICTIONS ON TENANT.

Most landlords have now "crossed the bridge" and agree to an extended time period to audit and to allow almost anyone to audit their books and records. In exchange these landlords want to contractually constrict the use of certain "tactics" by tenants with hidden agendas.

In order to eliminate one of the "extortion" tactics used by tenants with a hidden agenda, landlords are willing to grant a tenant an extended period of time to review the operating expense statements and to use almost anyone the tenant desires to perform the audit, provided that the tenant's real purpose is simply to make sure that it was not overcharged and, if the audit determines that the tenant was overcharged, then to only let the tenant recover the amount of the overcharge.

(1) CONFIDENTIALITY AGREEMENT.

Sophisticated landlords will insist upon a confidentiality provision as a condition of the Tenant's exercise of an audit right. Confidentiality provisions simply require the tenant, and any auditor that it

uses, to agree that it will not disclose the results of the audit to anyone. In some cases, landlords even seek to restrict a particular auditor from using those audits results to canvas the other tenants of the building if an error was made. The landlords have done this in response to tactics used by many tenants who have discovered an error, and regardless of whether the error was intentional, threaten to disclose the fact of the error to everyone in an effort to force the landlord into a settlement which may be in fact higher than the tenant would otherwise be entitled to receive simply based on the merits of the issue.

(2) CURE OF DEFAULT AS A CONDITION TO PROCEED WITH AUDIT.

Landlords have also realized that frequently an audit right is not used until the tenant has clearly defaulted with respect to some other provision of the lease (frequently the failure to pay Base Rent) and the Tenant is seeking to create leverage. Therefore landlords frequently insist that no audit may take place if the tenant is then in default under any of the provisions of the lease or if the tenant has refused to make payments that have been billed for under the Base Rent provision or the operating expense provision. Landlords will frequently agree that the payments can be made under protest pending the outcome of the arbitration, but they do not want a tenant to be able to withhold the payment of rent or operating expenses pending the completion of an audit.

(3) LIMITATION ON TERMINATION RIGHT.

Sophisticated landlords have occasionally been burned by tenants who will assert a claim that they have been overcharged for operating expenses and then seek to terminate the lease as a result of the breach, in addition to seeking the normal recovery of the amount of the overcharge, plus interest, plus in some cases audit fees. These tenants will assert that because the landlord overcharged for operating expenses, and did so intentionally (and this is almost always the case because a landlord has made a conscious decision to treat an item as an operating expense and if that decision turns out, with hindsight, to be incorrect, then the decision would have been intentional but not necessarily culpable). These tenants assert that because the landlord has breached its obligations under the lease (by overcharging), then the tenant should have the right to terminate its lease. Some tenants have asserted the right to terminate from time to time because they understand the effect this tactic has on a landlord, especially if the tenant could reach its goal in having an unsophisticated or an inexperienced trier of fact decide the issue. Accordingly, landlords have sought to simply include a provision that limits the defendant's remedy to a right to recover the amount of the overcharge plus interest, and, in some cases, where the overcharge exceeds a certain percentage, its audit fees while specifically requiring the tenant to give up its right to terminate.

(4) ARBITRATION RATHER THAN LITIGATION.

Tenants who make claims that are "suspect" (such as asserting a termination right") need to find an inexperienced (from a real estate leasing standpoint) trier of fact since anyone who actively practices real estate leasing law understands that, by the very nature of the process, it is virtually impossible to calculate operating expenses with precise accuracy. Inevitably, from time to time operating expenses will be overcharged and sophisticated landlords and tenants would have anticipated that under those circumstances, the tenant should be able to recover the amount of the overcharge plus interest (and in some cases audit fees and attorneys' fees). However, it is unrealistic to believe that any landlord or tenant entering into a lease, would ever believe that a remedy available to a tenant for an overcharge of operating expenses by a landlord would be the right of termination for a tenant. This theory, besides

creating heart murmurs for all lenders, simply is unrealistic and the inequities are glaring, especially in situations where the landlord has paid a significant brokers' commission, tenant improvement allowance, free rent and the like. Most lawyers believe that tenants asserting a claim for termination of the lease because of an overcharge are not seeking "justice," but rather are engaging in gamesmanship to get out of a lease under circumstances where the tenant has too much space at above market rents.

E. WHEN TO AUDIT.

Tenants, in negotiating and asserting its rights under an audit provision, need to be careful to make sure that they vigorously pursues their rights. A landlord, with a hidden agenda, certainly would like to delay any audit of its books, in part because landlords go into "denial" because they do not really believe that the tenant is making a legitimate claim or that the landlord has in fact made errors. Apart from these reasons, landlords realize that if an error was made, the longer it takes a particular tenant to discover that error the better it may be for the landlord with respect to any other tenants in the building who have shorter contractual time periods to audit and hence will have their claims for audits barred by the contractual statute of limitations. Most experienced leasing lawyers recommend that a tenant audit the first full year of operating expenses for two reasons. First, if the lease involves a Base Year, the tenant wants to make sure that it causes the landlord to preserve those records and the tenant will be able to establish what items were and were not included during the Base Year. Second, by auditing during the first year, the tenant sends a message to the landlord that it will always be diligent in asserting its rights and hence a landlord will be much more careful in making sure that the operating expenses are carefully and correctly computed and compiled. In many instances, when errors are made in connection with operating expenses, the errors were primarily caused by the individuals who compiled the operating expenses simply following the landlord's standard form lease and not even looking at any of the inclusions or exclusions or restrictions in any particular tenant's lease.

F. REMEDIES.

Careful tenants bargain for the right not only to recover the amount of any overcharge, plus interest at the Interest Rate, but if an overcharge exceeds a certain percentage or amount, to recover the costs of the audit and their attorney fees.

G. SURVIVABILITY.

In order to make sure that the right to recover for overcharge or underpayment of Operating Expense proceeds smoothly, landlord and tenants are including "survivability provisions" in their leases.

H. SELECTING THE TRIER OF FACT.

Landlords and tenants without a hidden agenda should hopefully want to have any dispute pertaining to operating expenses resolved by an arbitrator who is experienced in real estate leasing matters. Most experienced lawyers recommend that the arbitrator be a lawyer who has had 10 or more years of experience representing landlords and tenants in real estate leasing matters as the arbitrator. This will eliminate or minimize the need for "expert testimony" and should minimize the chance for a ridiculous result because an experienced arbitrator will quickly understand what should and should not be included as an operating expense because of his or her knowledge of the custom or practice and a close reading of the bargain for provisions in the lease.

I. CHECKLIST.

When landlords and tenants eliminate any gamesmanship from the process they do not seek to outsmart each other or to pursue hidden agenda goals, then agreeing upon a fair audit provision should result in the following agreements being incorporated into the audit provision.

(1) tenant should have a right to audit, review and copy landlord's books and records;

(2) A tenant may not conduct an audit if it's default under the lease;

(3) a tenant may not conduct an audit if it is withholding base rent or operating expenses until the audit is completed;

(4) a tenant may not conduct an audit unless it agrees to a confidentiality restriction;

(5) an overcharge of operating expenses by landlord shall not entitle tenant to terminate a lease;

(6) tenant and landlord shall be barred from asserting any right to charge additional operating expenses or to claim a refund for operating expenses if such right is not asserted and an arbitration or litigation commenced within three years from the date that landlord furnished tenant with an operating expenses statement or, when appropriate, a supplemental operating expense statement;

(7) the tenant may conduct the audit itself or by utilizing an accounting firm or a firm that simply specializes in auditing operating expenses;

(8) in the event that the audit reveals an overcharge, the amount of the overcharge with interest at the Interest Rate shall be refunded by the landlord to the tenant unless the tenant elects to have such amount credited against the rents next due and owing under the lease;

(9) tenants should be allowed to offset against Base Rent a final award or judgment as to the overpayment of Operating Expenses, if not paid within thirty days;

(10) if the amount of the error by the landlord exceeds a certain percentage (typically 3-5%), then the landlord shall pay for the cost of the audit; and

(11) the procedure for determining any dispute pertaining to operating expense should involve an arbitration where the arbitrator is defined as someone who has had 10 or more years of experience as a lawyer handling real estate leasing matters.

II. OPERATING EXPENSE PROVISIONS.

A. BACKGROUND AND PURPOSE.

The purpose of operating expense provisions is to allow the landlord to recover from its tenants the insurance, taxes and operating expenses incurred by the landlord as to the premises leased by each tenant, and the tenant's pro rata share of the insurance, taxes and operating expenses applicable to the common areas.

Most landlords when drafting leases go to great pains to have a provision for the inclusion of operating expenses which includes anything that is imaginable and occasionally, certain things which are almost unimaginable (reserves and debt service). Tenants and their lawyers fall into the same trap and one of the contests that is entered into year after year by lawyers representing tenants is which lawyer can come up with the largest number of operating expense exclusions. The issues of controversy pertaining to operating expenses are normally very few. Most landlords and tenants would agree, even if there was no provision in the lease providing for the exclusion, that no landlord could include leasing commissions, tenant improvement allowances, litigation costs with other tenants who don't pay rent, etc. as part of Operating Expenses.

B. CONTROVERSIAL EXCLUSIONS.

Currently, the areas where disputes almost always arise that need to be recognized up front and negotiated are as follows:

(1) Items pertaining to the Building Structure and the Building Systems and Capital Expenditures. A tenant leasing a full floor might be "surprised" as to the economic consequences which might result when a new law is enacted, such as the laws in the not so distant past pertaining to the installation of sprinklers and/or ADA work with respect to washrooms. If the lease is not clearly focused, a dispute could arise as to who should perform and pay for such work. Typically, most people would agree that if a tenant was leasing a full floor, and was in the last year of a three-year lease, and a law was enacted during the last year of the lease term requiring sprinklers to be installed within the premises during such year, and/or requiring ADA modifications to be made to the washrooms during the last year of the lease term, that it would be unfair to have the tenant make what would typically be considered capital expenditures, or pay for the entire cost of installing sprinklers in that floor or bringing the washrooms up to ADA compliance. Sprinklers would have a life span of approximately 50 years and modifications to the washroom to comply with ADA would have a long life span. Typically, tenants bargaining over that issue would believe that such items should not be the tenant's responsibility but should be the landlord's responsibility. Similarly, the landlord should have a right to capitalize those expenditures, amortize them over the useful life, and include the amortized portion as the operating expenses.

The provision for operating expense exclusions typically contain a provision which allows landlords to pass through to tenants the cost of capital expenditures made to comply with newly enacted laws and for cost saving purposes provided that with respect to newly enacted laws, the expenditures are amortized over the useful life and provided with respect to cost saving capital expenditures, that the amount of the expenditure does not exceed the amount saved and that such amounts are amortized over the useful life.

C. GROSS-UP PROVISION.

There are many disputes over the gross-up provision. However, parties who are not involved with hidden agendas or gamesmanship, readily agree that it would be fair, in every lease (except where a tenant is leasing the entire building) for a gross-up provision to be included in the lease for the protection of both the landlord and the tenant. Once the parties agree that a gross-up provision should be allowed and should be included, then it is important to have the correct gross-up provision. In order to fully gross up operating expenses, the variable portion of operating expenses should be grossed up to

what they would had been had the building been 100% leased with all tenants in occupancy of the premises and paying full rent (as contrasted with free rent, half rent, and the like). In many instances, older leases have a gross-up provision for 95% which makes little sense. The 95% number was initially utilized by landlords when granting base years since under a 95% gross-up definition, it would be possible for a landlord to only have to gross up the operating expenses to 95% during the base year and if during subsequent lease years the building was 100% occupied, then an unfair (but beneficial to the landlord) comparison would be created. When some landlords converted over to net leases, they forgot why they utilized a 95% gross-up provision and utilized a 95% gross-up provision in net leases which would have the effect of short changing the landlord. Simply grossing up leases for what the variable operating expenses would have been had the building been 100% occupied during a particular lease year will create the correct result.

We have added the phrase "with all tenants paying full rent . . ." to the old gross up provision to clarify an issue which should need no clarification and probably is implied in the standard gross-up provision. In situations where tenants receive free rent, then a landlord should have the right (and the obligation) to gross up operating expenses to what they would have been had such tenants not been receiving free rent. This would make sure that a proper management fee was allocated to the year (in situations where management fees are, as they typically are, calculated as a percentage of gross revenues) and will properly gross up the gross receipts where the gross receipts tax is passed through as an operating expense (as it typically is). Where this is not done, a landlord in certain years would not get the intended benefits that it should have anticipated. In situations where a tenant has a base year, if that tenant and other tenants are receiving free rent, the base year could be grossly understated and significantly harm the tenant for all years during the lease term if there was not imputed into the base year the gross receipts tax and management fee that would have been incurred had all tenants been paying full rent.

III. SAMPLE NEGOTIATED OPERATING EXPENSE AND RELATED PROVISIONS.

A. LANDLORD'S BOOK AND RECORDS.

(1) **In General**. In the event that Tenant disputes the amount of Additional Rent set forth in any annual Statement or Supplemental Statement delivered by Landlord, then subject to the terms and conditions of Section 4.7.2, below, Tenant shall have the right to provide Notice to Landlord that it intends to inspect and copy, or cause the "Tenant Parties," as that term is defined in Section 10.1 of this Lease, to inspect and copy Landlord's accounting records for the Expense Year covered by such Statement or Supplemental Statement during normal business hours ("Tenant Review"), provided, however, that in the event that Tenant shall employ or retain a third party to inspect Landlord's accounting records (a "Third Party Auditor"), then as a condition precedent to any such inspection, Tenant shall deliver to Landlord a copy of Tenant's written agreement with such Third Party Auditor, which agreement shall include provisions which stated that (i) Landlord is an intended third-party beneficiary of such agreement, (ii) such Third Party Auditor will not in any manner solicit or agree to represent any other tenant of the Project with respect to an audit or other review of Landlord's accounting records at the Project, and (iii) such Third Party Auditor shall maintain in strict confidence any and all information obtained in connection with the Tenant Review and shall not disclose such information to any person or entity other than to the management personnel of Tenant. Any Tenant Review shall take place in Landlord's office at the Project or at such other location in Los Angeles County as Landlord may reasonably designate, and Landlord will provide Tenant with reasonable

accommodations for such Tenant Review and reasonable use of such available office equipment, but may charge Tenant for telephone calls and photocopies at Landlord's Actual Cost. Tenant shall provide Landlord with not less than two (2) weeks' prior written notice of its desire to conduct such Tenant Review. In connection with the foregoing review, Landlord shall furnish Tenant with such reasonable supporting documentation relating to the subject Statement as Tenant may reasonably request, including any previous audit conducted by Landlord with respect to the Expense Year in question. In no event shall Tenant have the right to conduct such Tenant Review if Tenant is then in "Default," as that term is defined in Article 19 under the Lease with respect to any of Tenant's monetary obligations, including, without limitation, the payment by Tenant of all Additional Rent amounts described in the Statement which is the subject of Tenant's Review, which payment, at Tenant's election, may be made under dispute. In the event that following Tenant's Review, Tenant and Landlord continue to dispute the amounts of Additional Rent shown on Landlord's Statement or Supplemental Statement and Landlord and Tenant are unable to resolve such dispute, then either Landlord or Tenant may submit the matter to arbitration pursuant to Section 29.17 of this Lease and the proper amount of the disputed items and/or categories of Direct Expenses to be shown on such Statement shall be determined by such proceeding producing an "Arbitration Award" as that term is defined in Section 29.17.3.2 of this Lease. The Arbitration Award shall be conclusive and binding upon both Landlord and Tenant. If the resolution of the parties' dispute with regard to the Additional Rent shown on the Statement, pursuant to the Arbitration Award reveals an error in the calculation of Tenant's Share of Direct Expenses to be paid for such Expense Year, the parties' sole remedy shall be for the parties to make appropriate payments or reimbursements, as the case may be, to each other as are determined to be owing. Any such payments shall be made within thirty (30) days following the resolution of such dispute. At Tenant's election, Tenant may treat any overpayments resulting from the foregoing resolution of such parties' dispute as a credit against Rent until such amounts are otherwise paid by Landlord. Tenant shall be responsible for all costs and expenses associated with Tenant's Review, and Tenant shall be responsible for all reasonable audit fees, attorney's fees and related costs of Tenant relating to an Arbitration Award (collectively, the "Costs"), provided that if the parties' final resolution of the dispute involves the overstatement by Landlord of Direct Expenses for such Expense Year in excess of five percent (5%), then Landlord shall be responsible for all Costs. An overcharge of Operating Expenses by Landlord shall not entitle Tenant to terminate this Lease. Subject to the terms of Section 4.7.2, below, this provision shall survive the termination of this Lease to allow the parties to enforce their respective rights hereunder.

(2) Termination of Rights. In the event that, within two (2) years following receipt of any particular Statement or Supplemental Statement, as applicable, Tenant or Landlord shall fail to either (i) fully and finally settle any dispute with respect to such Statement or Supplemental Statement, as applicable, or (ii) submit the dispute to arbitration in accordance with the terms of Section 4.7.1, above, then Tenant shall have no further right to conduct a Tenant Review or to dispute the amount of Additional Rent set forth in the applicable Statement or Supplemental Statement, as applicable.

B. ARBITRATION.

(1) Arbitration. With the exception of the arbitration provisions which shall specifically apply to the determination of the Fair Market Rental Rate, as set forth in Exhibit "J" attached hereto, the provisions of this General Condition G contain the sole and exclusive method, means and procedure to resolve any and all disputes or disagreements, including whether any particular matter constitutes, or with the passage of time would constitute, an event of default ("Event of Default"). The parties hereby

irrevocably waive any and all rights to the contrary and shall at all times conduct themselves in strict, full, complete and timely accordance with the provisions of this General Condition G. Any and all attempts to circumvent the provisions of this General Condition G shall be absolutely null and void and of no force or effect whatsoever. As to any matter submitted to arbitration to determine whether it would, with or without the passage of time, constitute an Event of Default, such matter shall not constitute an Event of Default and such passage of time shall not commence to run until any such affirmative determination, so long as it is simultaneously determined that the challenge of such matter as a potential Event of Default was made in good faith, except with respect to the payment of money. With respect to the payment of money, such passage of time shall not commence to run only if the party which is obligated to make the payment does in fact make the payment to the other party. Such payment can be made "under protest," which shall occur when such payment is accompanied by a good-faith notice stating why the party has elected to make a payment under protest. Such protest will be deemed waived unless the subject matter identified in the protest is submitted to arbitration as set forth in the following:

(a) Arbitration Panel. Within ninety (90) days after delivery of written notice ("Notice of Dispute") of the existence and nature of any dispute given by any party to the other party, and unless otherwise provided herein in any specific instance, the parties shall each: ((1) appoint one (1) lawyer actively engaged in the licensed and full-time practice of law, specializing in real estate, in the County of San Diego for a continuous period immediately preceding the date of delivery ("Dispute Date") of the Notice of Dispute of not less than ten (10) years, but who has at no time ever represented or acted on behalf of any of the parties, and ((2) deliver written notice of the identity of such lawyer and a copy of his or her written acceptance of such appointment and acknowledgment of and agreement to be bound by the time constraints and other provisions of this General Condition G ("Acceptance") to the other parties hereto. The party who selects the lawyer may not consult with such lawyer, directly or indirectly, to determine the lawyer's position on the issue which is the subject of the dispute. In the event that any party fails to so act, such arbitrator shall be appointed pursuant to the same procedure that is followed when agreement cannot be reached as to the third arbitrator. Within ten (10) days after such appointment and notice, such lawyers shall appoint a third lawyer (together with the first two (2) lawyers, "Arbitration Panel") of the same qualification and background and shall deliver written notice of the identity of such lawyer and a copy of his or her written Acceptance of such appointment to each of the parties. In the event that agreement cannot be reached on the appointment of a third lawyer within such period, such appointment and notification shall be made as quickly as possible by any court of competent jurisdiction, by any licensing authority, agency or organization having jurisdiction over such lawyers, by any professional association of lawyers in existence for not less than ten (10) years at the time of such dispute or disagreement and the geographical membership boundaries of which extend to the County of San Diego or by any arbitration association or organization in existence for not less than ten (10) years at the time of such dispute or disagreement and the geographical boundaries of which extend to the County of San Diego, as determined by the party giving such Notice of Dispute and simultaneously confirmed in writing delivered by such party to the other party. Any such court, authority, agency, association or organization shall be entitled either to directly select such third lawyer or to designate in writing, delivered to each of the parties, an individual who shall do so. In the event of any subsequent vacancies or inabilities to perform among the Arbitration Panel, the lawyer or lawyers involved shall be replaced in accordance with the provisions of this General Condition G as if such replacement was an initial

appointment to be made under this General Condition G within the time constraints set forth in this General Condition G, measured from the date of notice of such vacancy or inability, to the person or persons required to make such appointment, with all the attendant consequences of failure to act timely if such appointed person is a party hereto.

(b) Duty. Consistent with the provisions of this General Condition G, the members of the Arbitration Panel shall utilize their utmost skill and shall apply themselves diligently so as to hear and decide, by majority vote, the outcome and resolution of any dispute or disagreement submitted to the Arbitration Panel as promptly as possible, but in any event on or before the expiration of thirty (30) days after the appointment of the members of the Arbitration Panel. None of the members of the Arbitration Panel shall have any liability whatsoever for any acts or omissions performed or omitted in good faith pursuant to the provisions of this General Condition G.

(c) Authority. The Arbitration Panel shall ((1) enforce and interpret the rights and obligations set forth in the Lease to the extent not prohibited by law, ((2) fix and establish any and all rules as it shall consider appropriate in its sole and absolute discretion to govern the proceedings before it, including any and all rules of discovery, procedure and/or evidence, and ((3) make and issue any and all orders, final or otherwise, and any and all awards, as a court of competent jurisdiction sitting at law or in equity could make and issue, and as it shall consider appropriate in its sole and absolute discretion, including the awarding of monetary damages (but shall not award consequential damages to either party and shall not award punitive damages except in situations involving knowing fraud or egregious conduct condoned by, or performed by, the person who, in essence, occupies the position which is the equivalent of the chief executive officer of the party against whom damages are to be awarded), the awarding of reasonable attorneys' fees and costs to the prevailing party as determined by the Arbitration Panel and the issuance of injunctive relief. If the party against whom the award is issued complies with the award, within the time period established by the Arbitration Panel, then no Event of Default will be deemed to have occurred, unless the Event of Default pertained to the non-payment of money by Tenant or Landlord, and Tenant or Landlord failed to make such payment under protest.

(d) Appeal. The decision of the Arbitration Panel shall be final and binding, may be confirmed and entered by any court of competent jurisdiction at the request of any party and may not be appealed to any court of competent jurisdiction or otherwise except upon a claim of fraud on the part of the Arbitration Panel. The Arbitration Panel shall retain jurisdiction over any dispute until its award has been implemented, and judgment on any such award may be entered in any court having appropriate jurisdiction.

(e) Compensation. Each member of the Arbitration Panel ((1) shall be compensated for any and all services rendered under this General Condition G at a rate of compensation equal to the sum of (1. Two Hundred Fifty Dollars ($250.00) per hour and (2. the sum of Ten Dollars ($10.00) per hour multiplied by the number of full years of the expired Term under the Lease, plus reimbursement for any and all expenses incurred in connection with the rendering of such services, payable in full promptly upon conclusion of the proceedings before the Arbitration Panel. Such compensation and reimbursement shall be borne by the nonprevailing party as determined by the Arbitration Panel in its sole and absolute discretion.

C. SURVIVAL OF PROVISIONS UPON TERMINATION OF LEASE.

This Lease shall survive the expiration of the Term to the extent necessary that any term, covenant or condition of this Lease which requires the performance of obligations or forbearance of an act by either party hereto after the termination of this Lease. Such survival shall be to the extent reasonably necessary to fulfill the intent thereof, or if specified, to the extent of such specification, as same is reasonably necessary to perform the obligations and/or forbearance of an act set forth in such term, covenant or condition. Notwithstanding the foregoing, in the event a specific term, covenant or condition is expressly provided for in such a clear fashion as to indicate that such performance of an obligation or forbearance of an act is no longer required, then the specific shall govern over this general provisions of this Lease.

D. BUILDING STRUCTURE AND BUILDING SYSTEMS.

Landlord agrees that at all times it will maintain the structural portions of the Building, including the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, parking areas, stairwells, escalators, elevator cabs, plazas, pavement, sidewalks, curbs, entrances, landscaping, art work, sculptures, washrooms, mechanical, electrical and telephone closets, and all Common Areas and public areas (collectively, "Building Structure") and the mechanical, electrical, life safety, plumbing, sprinkler systems (connected to the core) and HVAC systems (including primary and secondary loops connected to the core) ("Building Systems") in first class condition and repair and shall operate the Building as a first class office building. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to make any repair to, modification of, or addition to the Building Structure and/or the Building Systems and/or the Site except and to the extent required because of Tenant's use of all or a portion of the Premises for other than normal and customary business office operations.

E. INTEREST RATE.

The "Interest Rate" is defined as the lesser of ((1) the rate publicly announced from time to time, by the largest (as measured by deposits) state chartered bank operating in **[*California*]**, as its Prime Rate or its Reference Rate or other similar benchmark, plus two percent (2%), or ((2) the maximum rate permitted by law.

F. OPERATING EXPENSE ADJUSTMENTS.

[Commencing with the first (1st) day after the Base Year described in provision (n) of the Fundamental Lease Provisions,] Tenant shall pay, in addition to the Base Rent computed and due pursuant to Section 3.1, an additional sum as an operating expense adjustment ("Operating Expense Adjustment") equal to Tenant's Pro Rata Share (as defined in Section 4.3) of [any excess] Operating Expenses (as defined in Section 4.3) [over the Allowance as defined in Section 4.3 hereof]. Base Rent and the sums paid pursuant to Sections 4.1, 4.2, and 4.3 are sometimes collectively referred to as "Gross Rent."

A. Procedure for Payment of Operating Expense Adjustments. Tenant shall pay for Tenant's Pro Rata Share of [any excess] Operating Expenses [over the Allowance] as follows:

1. Landlord may, from time to time by providing at least thirty (30) days advance written notice to Tenant, reasonably estimate in advance the amounts Tenant shall owe on a monthly basis for Operating Expenses **[over the Allowance]** for any full or partial calendar year of the Term. Such estimate shall not exceed 105% of the previous year's Actual Operating Expenses unless evidenced by increases in existing rates or fees with evidence of such increases provided to Tenant ("specifically justified"). In such event, Tenant shall pay such estimated amounts, on a monthly basis, on or before the first day of each calendar month, together with Tenant's payment of Base Rent. Such estimate may be reasonably adjusted from time to time (but not more than once in any twelve (12) month period) by Landlord by written notice to Tenant. **[NOTE: Delete bracketed words for Net Lease in Sections 4.1, 4.2(a), (b), (c), (d) and (f) and 4.3 and 4.4(d).]**

2. Within one hundred twenty (120) days after the end of each calendar year [after the Base Year], or as soon thereafter as practicable, Landlord shall provide a statement itemized on a line item by line item basis (the "Statement") to Tenant showing: a. the amount of actual Operating Expenses for such calendar year and for the preceding calendar year, b. any amount paid on an estimated basis by Tenant toward [excess] Operating Expenses [over the Allowance] during such calendar year and c. any revised estimate of Tenant's obligations for [excess] Operating Expenses [over the Allowance] for the current calendar year, not to exceed 105% of the Actual Operating Expenses for the prior year unless specifically justified.

3. If the Statement shows that Tenant's estimated payments were less than Tenant's actual obligations for [excess] Operating Expenses [over the Allowance] for such year, Tenant shall pay the difference. If the Statement shows an increase in Tenant's estimated payments for the current calendar year, Tenant shall pay the difference between the new and former estimates, for the period from January 1 of the current calendar year through the month in which the Statement is sent. Tenant shall make such payments within thirty (30) days after Tenant receives the Statement.

4. If the Statement shows that Tenant's estimated payments exceeded Tenant's actual obligations for [excess] Operating Expenses [over the Allowance], Tenant shall receive a credit of such difference against payments of Rent next due. If the Term shall have expired and no further Rent shall be due, Tenant shall receive a refund of such difference within thirty (30) days after Landlord sends the Statement. [If the Statement shows the Actual Operating Expenses have fallen below the Allowance, Tenant shall receive a credit for such differential against rents next due and owing or if the Lease has terminated, Tenant shall receive, and Landlord shall pay to Tenant a refund of such differential within thirty (30) days of the date the statement was issued.]

5. So long as Tenant's obligations hereunder are not materially adversely affected, Landlord reserves the right to change, from time to time, but not more frequently than once in any twelve (12) month period, the manner or timing of the foregoing payments. No delay by Landlord in providing the Statement (or separate statements) shall be deemed a default by Landlord but any delay by Landlord (or any successor to Landlord in the event the Building is conveyed to a new owner during the Lease Term) in billing Tenant for any Operating Expenses of more than three (3) years, or two (2) years if this Lease has terminated, from the date Landlord

incurred such Operating Expenses shall be deemed a waiver of Landlord's right to require payment of Tenant's obligations for any such Operating Expenses.

6. If Tenant's obligation to pay Operating Expense Adjustments commences other than on January 1, or ends other than on December 31, Tenant's obligation to pay estimated and actual amounts toward [excess] Operating Expenses [over the Allowance] for such first or final calendar years shall be prorated to reflect the portion of such years included within the period for which Tenant is obligated to pay Operating Expense Adjustments. Such proration shall be made by multiplying the total estimated or actual (as the case may be) [excess] Operating Expenses [over the Allowance] for such calendar years by a fraction, the numerator which shall be the number of days within the period for which Tenant is obligated to pay Operating Expenses Adjustments during such calendar year, and the denominator of which shall be the total number of days in such year.

7. If in any year after the Base Year, Operating Expenses are lower than the Operating Expenses in the Base Year, Tenant shall receive a credit against Base Rent equal to the difference between the Operating Expenses during the Base Year and the Operating Expenses during the subsequent year.

B. Certain Defined Terms. "Tenant's Pro Rata Share" means the ratio, as determined from time to time, of the rentable square feet of the Premises to the rentable square feet in the Building. Subject to Section 1.3 of the Lease, Tenant's Pro Rata Share as of the Commencement Date is stipulated to be the percentage set forth in provision (o) of the Fundamental Lease Provisions. ["Allowance" shall be the total dollar amount of Operating Expenses incurred by Landlord (grossed up as provided below) during the Base Year for the Building, which Base Year is set forth in provision (n) of the Fundamental Lease Provisions.] "Operating Expenses" are defined to be the sum of all costs, expenses, and disbursements, of every kind and nature whatsoever, and the Taxes, incurred by Landlord in connection with the management, maintenance, operation, administration and repair of all or any portion of the Building including, but not limited to, the following, but subject to the exclusions from Operating Expenses listed in Section 4.4 below:

1. ***All costs for materials, utilities, goods and services (but excluding all costs for materials, utilities, goods and services furnished by Landlord which are not required to be furnished by Landlord, and which have been directly paid for by Tenant or other tenants to Landlord and to the extent Tenant directly and separately pays Landlord or the provider of such electric power, and also excluding all costs for electrical power other than the cost of the electrical power required to operate the common areas of the Building)***;

2. All wages and benefits and costs of employees or independent contractors or employees of independent contractors, but only to the extent they are engaged in the operation, maintenance and security of the Building;

3. All expenses for janitorial, maintenance, security and safety services;

4. All repairs to, replacement of, and physical maintenance of the Building, including the cost of all supplies, uniforms, equipment, tools and materials;

5. Any license, permit and inspection fees required in connection with the operation of the Building;

6. Any auditor's fees for accounting provided for the operation and maintenance of the Building;

7. Any legal fees, costs and disbursements as would normally be incurred in connection with the operation, maintenance and repair of the Building;

8. All reasonable fees for management services provided by a management company or by Landlord or an agent of Landlord not to exceed the lower of _____ percent (____%) of office space rental income or the amount that would have been charged by a first class management company unaffiliated with Landlord;

9. The annual amortization (amortized over the useful life but in no event less than five (5) years) of costs, including financing costs, if any, incurred by Landlord after the Commencement Date for any capital improvements installed or paid for by Landlord and required by any new (or change in) laws, rules or regulations of any governmental or quasi-governmental authority (collectively "Laws") which are enacted after the Commencement Date;

10. The annual amortization (amortized over the useful life) of costs, including financing costs, if any, of any equipment, device or capital improvement purchased or incurred as a labor-saving measure or to affect other economies in the operation or maintenance of the Building (provided the annual amortized cost does not exceed the actual cost savings realized ***and such savings do not redound primarily to the benefit of any particular tenant***);

11. All insurance premiums and other charges (including the amount of any deductible payable by Landlord with respect to damage or destruction to all or any portion of the Building but in no event more than $25,000 per year) incurred by Landlord with respect to insuring the Building including, without limitation, the following to the extent carried by Landlord: a. fire and extended coverage insurance, windstorm, hail, and explosion; b. riot attending a strike, civil commotion, aircraft, vehicle and smoke insurance; c. public liability, bodily injury and property damage insurance; d. elevator insurance; e. workers' compensation insurance for the employees specified in Section 4.3(b) above; f. boiler and machinery insurance, sprinkler leakage, water damage, property, burglary, fidelity and pilferage insurance on equipment and materials; g. loss of rent, rent abatement, rent continuation, business interruption insurance, and similar types of insurance (but only to the extent of increases in the cost of such coverage over the cost that would have been incurred for the same coverage in the Base Year); h. earthquake, floor, tornado, and hurricane insurance to the extent available on a commercially reasonable basis; and i. such other insurance as is customarily carried by operators of Comparable Buildings;

12. All actual taxes, assessments, levies, charges, water and sewer charges, rapid transit and other similar or comparable governmental charges (collectively "Taxes") levied or assessed on, imposed upon or attributable to the calendar year in question a. to the Building,

and/or b. to the operation of the Building, including but not limited to Taxes against the Building, personal property taxes or assessments levied or assessed against the Building, together with any costs incurred by Landlord, including attorneys' fees, in contesting any such Taxes but excluding any tax measured by gross rentals received from the Building, any net income, franchise, capital stock, succession, transfer, gift, estate or inheritance taxes imposed by the State of **[*California*]** or the United States or by their respective agencies, branches or departments;

13. Minor capital improvements, tools or expenditures to the extent each such improvement or acquisition costs less than Three Thousand Dollars ($3,000.00) and the total cost of same are not in excess of Ten Thousand Dollars ($10,000) in any twelve (12) month period; and

14. Such other usual costs and expenses which are commonly incurred by other landlords for the purpose of providing for the on-site operation, servicing, maintenance and repair of Comparable Buildings.

*****If the Building does not have at least one hundred percent (100%) of the rentable area of the Building occupied during any calendar year period (including any calendar year(s) falling within the Base Year), then the variable portion of Operating Expenses for such period shall be deemed to be equal to the total of the variable portion of Operating Expenses which would have been incurred by Landlord if one hundred percent (100%) of the rentable area of the Building had been occupied for the entirety of such calendar year with all tenants paying full rent, as contrasted with free rent, half rent or the like ("Gross-Up Provision")***. [NOTE: For leases where Tenant is leasing the entire Building, delete all words, wherever occurring, between triple asterisks (***). NOTE: In this paragraph only, if Tenant is leasing the entire Building and if this Lease is a net lease, substitute the following: *Because this is a net lease and because Tenant is leasing one hundred percent (100%) of the Building, the variable portion of Operating Expenses shall <u>not</u> be grossed up.*]** Notwithstanding the foregoing, Landlord shall not recover as Operating Expenses more than 100% of the Operating Expenses actually paid by Landlord. The annual amortization of costs shall be determined by dividing the original cost of such capital expenditure by the number of years of useful life of the capital item acquired. Operating Expenses shall be computed according to the cash or accrual basis of accounting, as Landlord may elect in accordance with standard and reasonable accounting principles employed by Landlord.

If Landlord receives a refund or credit of Operating Expenses subsequent to the year in which such expense was paid and charged to Operating Expenses, Landlord shall pay to Tenant the amount of such refund or credit to the extent Tenant directly or indirectly was charged for such Operating Expenses during a prior year.

C. <u>Exclusion from Operating Expenses</u>.

1. Notwithstanding anything in the definition of Operating Expenses in the Lease to the contrary, Operating Expenses shall not include the following, except to the extent specifically permitted by a specific exception to the following:

a. Any ground lease rental;

b. Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied or otherwise ("Capital Items"); except for those Capital Items specifically permitted in subitems (i), (j) and (m) in the definition of Operating Expenses set forth in Section 4.3;

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

d. Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is or should be reimbursed by insurance proceeds, and costs of all capital repairs, regardless of whether such repairs are covered by insurance and costs due to repairs resulting from an earthquake or flood to the extent such costs exceed $25,000;

e. ***Costs, including permit, license and inspection costs, incurred with respect to the installation of tenant or other occupants' improvements in the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Building***;

f. Depreciation, amortization and interest payments, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with generally accepted accounting principles, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;

g. Marketing costs, including without limitation, leasing commissions, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with Tenant or present or prospective tenants or other occupants of the Building;

h. ***Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Building***;

i. Costs incurred by Landlord due to the violation by Landlord ***or any tenant*** of the terms and conditions of any lease of space in the Building;

j. Overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in or to the Building to the extent the

same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis;

k. Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or the Site (except as permitted in (ii) above);

l. Landlord's general corporate overhead and general and administrative expenses;

m. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord or in the parking garage of the Building or wherever Tenant is granted its parking privileges and/or all fees paid to any parking facility operator (on or off Site) [*(provided, however, that if Landlord provides such parking to Tenant free of charge or at a reduced rate, to the extent that Tenant's Pro Rata Share of such expenses exceeds any amount paid by Tenant for such parking, these expenses may be included as a part of Operating Expenses)*];

n. Rentals and other related expenses incurred in leasing HVAC systems, elevators or other equipment ordinarily considered to be Capital Items, except for (1) expenses in connection with making minor repairs on or keeping Building Systems in operation while minor repairs are being made and (2) costs of equipment not affixed to the Building which is used in providing janitorial or similar services;

o. Advertising and promotional expenditures, and costs of signs in or on the Building identifying the owner of the Building ***or other tenants' signs***;

p. ***The cost of any electric power used by any tenant in the Building in excess of the Building-standard amount, or electric power costs for which any tenant directly contracts with the local public service company or of which any tenant is separately metered or submetered and pays Landlord directly; provided, however, that if any tenant in the Building contracts directly for electric power service or is separately metered or submetered during any portion of the relevant period, the total electric power costs for the Building shall be "grossed up" to reflect what those costs would have been had each tenant in the Building used the Building-standard amount of electric power***;

q. ***Services and utilities provided, taxes attributable to, and costs incurred in connection with the operation of the retail and restaurant operations in the Building, except to the extent the square footage of such operations are included in the rentable square feet of the Building and do not exceed the services, utility and tax costs that would have been incurred had the retail and/or restaurant space been used for general office purposes***;

r. Costs incurred in connection with upgrading the Building to comply with life, fire and safety codes, ordinances, statutes or other laws [in effect prior to the Commencement Date], including, without limitation, the ADA, including penalties or damages incurred due to such non-compliance;

s. Tax penalties incurred as a result of Landlord's failure to make payments and/or to file any tax or informational returns when due;

t. Costs for which Landlord has been compensated by a management fee, and any management fees in excess of those management fees which are normally and customarily charged by landlords of Comparable Buildings;

u. Costs arising from the negligence or fault of ***other tenants or*** Landlord or its agents, or any vendors, contractors, or providers of materials or services selected, hired or engaged by Landlord or its agents including, without limitation, the selection of Building materials;

v. Notwithstanding any contrary provision of the Lease, including, without limitation, any provision relating to capital expenditures, any and all costs arising from the presence of hazardous materials or substances (as defined by Applicable Laws in effect on the date this Lease is executed) in or about the Premises, the Building or the Site including, without limitation, hazardous substances in the ground water or soil, not placed in the Premises, the Building or the Site by Tenant;

w. Costs arising from Landlord's charitable or political contributions;

x. Costs arising from defects in the base, shell or core of the Building or improvements installed by Landlord or repair thereof;

y. Costs arising from any mandatory or voluntary special assessment on the Building or the Site by any transit district authority or any other governmental entity having the authority to impose such assessment;

z. Costs for the acquisition of (as contrasted with the maintenance of) sculpture, paintings or other objects of art;

aa. Costs (including in connection therewith all attorneys' fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims litigation or arbitrations pertaining to Landlord and/or the Building and/or the Site;

bb. Costs associated with the operation of the business of the partnership or entity which constitutes Landlord as the same are distinguished from the costs of operation of the Building, including partnership accounting and legal matters, costs of defending any lawsuits with or claims by any mortgagee (except as the actions of Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building, costs of any disputes between Landlord and its employees (if any) not engaged in Building operation, disputes of Landlord with Building management, or outside fees paid in connection with disputes with other tenants;

[*cc. Any increase of, or reassessment in, real property taxes and assessments in excess of two percent (2%) of the taxes for the previous year, resulting

from either (1) any sale, transfer, or other change in ownership of the Building or the Site during the Lease Term or from major alterations, improvements, modifications or renovations to the Building or the Site (collectively, "Transfers"), or (2) any action, including, without limitation, judicial action or action by initiative, which serves to repeal, modify and/or limit the application of Article XIIIA of the California Constitution (otherwise known as Proposition 13);*];

dd. Costs of any "tap fees" or any sewer or water connection fees for the benefit of any particular tenant in the Building;

ee. Costs incurred in connection with any environmental clean-up, response action, or remediation on, in, under or about the Premises or the Building, including but not limited to, costs and expenses associated with the defense, administration, settlement, monitoring or management thereof;

ff. Any expenses incurred by Landlord for use of any portions of the Building to accommodate events including, but not limited to shows, promotions, kiosks, displays, filming, photography, private events or parties, ceremonies, and advertising beyond the normal expenses otherwise attributable to providing Building services, such as lighting and HVAC to such public portions of the Building in normal Building operations during standard Building hours of operation;

gg. Any entertainment, dining or travel expenses for any purpose;

hh. Any flowers, gifts, balloons, etc. provided to any entity whatsoever, to include, but not limited to, Tenant, ***other tenants***, employees, vendors, contractors, prospective tenants and agents;

ii. Any "validated" parking for any entity;

jj. Any "finders fees", brokerage commissions, job placement costs or job advertising cost;

kk. Any "above-standard" cleaning, including, but not limited to construction cleanup or special cleanings associated with parties/events and specific tenant requirements in excess of service provided to Tenant, including related trash collection, removal, hauling and dumping;

ll. The cost of any magazine, newspaper, trade or other subscriptions;

mm. The cost of any training or incentive programs, other than for tenant life safety information services;

nn. The cost of any "tenant relations" parties, events or promotion not consented to by an authorized representative of Tenant in writing;

oo. "In-house" legal and/or accounting fees;

pp. Reserves for bad debts or for future improvements, repairs, additions, etc.; and

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

2. It is understood that Operating Expenses shall be reduced by all cash discounts, trade discounts, quantity discounts, rebates or other amounts received by Landlord or Landlord's managing agent in the purchase of any goods, utilities, or services in connection with the operation of the Building. Landlord shall make payments for goods, utilities, or services in a timely manner to obtain the maximum possible discount. If Capital Items which are customarily purchased by landlords of Comparable Buildings are leased by Landlord, rather than purchased, the decision by Landlord to lease the item in question shall not serve to increase Tenant's Pro Rata Share of Operating Expenses beyond that which would have applied had the item in question been purchased. Any repair or maintenance costs which are covered by a warranty or service contract in the Base Year shall be imputed into the Allowance.

3. In the event any facilities, services or utilities used in connection with the Building are provided from another building owned or operated by Landlord or vice versa, the costs incurred by Landlord in connection therewith shall be allocated to Operating Expenses by Landlord on a reasonably equitable basis.

4. For the purpose of payment of Operating Expenses, to the extent Landlord pays Taxes and/or insurance premiums less frequently than monthly, the cost of same shall not be included in Operating Expenses but shall be separately calculated, with Tenant being obligated to pay Tenant's Pro Rata Share of same on the later of five (5) business days after receipt of an invoice from Landlord or ten (10) days prior to the date Landlord is obligated to pay same to the taxing authority or insurance company.

5. In the event Tenant ceases to occupy (but still lease) the entire Premises or one or more floors of the Premises or elects to provide services and utilities to its Premises that Landlord previous provided, Tenant shall receive a credit against Rent equal to the cost of electricity, janitorial service, water, HVAC and any other variable expenses not incurred as a result of such vacancy or because of Tenant's election to provide such services or utilities.

6. In the event that Landlord receives a Proposition 8 reduction in Taxes attributable to the Base Year, then Taxes for the Base Year and any subsequent year shall be computed as if no Proposition 8 tax reduction was obtained during the Base Year and any subsequent year ("Proposition 8 Protection").

G. ACTUAL COSTS.

Landlord shall charge Tenants, and Tenant shall pay Landlord, for all additional services and utilities provided by Landlord to Tenant pursuant to Tenant's request, an amount equal to the incremental extra out of pocket costs incurred by Landlord in providing same, without markup for administrative costs (except the extent not duplicative of operating expenses), profit overhead, or depreciation.

H. CONSENT/DUTY TO ACT REASONABLY.

Regardless of any references to the terms "sole" or "absolute" (but except for matters which ((1) could have an adverse effect on the structural integrity of the Building Structure, as defined in General Condition N, ((2) could have an adverse effect on the Building Systems, as defined in General Condition N, or ((3) could have an effect on the exterior appearance of the Building, whereupon in each such case Landlord's duty is to act in good faith and in compliance with the Lease), any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld, conditioned or delayed. Whenever this Lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations (other than decisions to exercise renewal options), Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated tenant or landlord concerning the benefits to be enjoyed under this Lease.

"The Industrial Lease: Highlighting the Areas in Industrial Leasing That Are Different From Retail and Office Leasing"

prepared by

Reon Roski, Esq.

Christensen Miller Fink Jacobs Glaser Weil & Shapiro
Los Angeles

INDUSTRIAL LEASING

I. LEASE FORMS
   A. Preprinted forms vs. Computer-generated
   B. Single Tenant vs. Multi-Tenant
   C. Gross/NNN
   D. Property/Project/Park

II. TAXES

   A. Tenant's Right to Contest Taxes

Sample Language:

Tenant may attempt to have the assessed valuation of the Property reduced or may initiate proceedings to contest the real property taxes. If required by law, Landlord shall join in the proceedings brought by Tenant. However, Tenant shall pay all costs of the proceedings, including any costs or fees incurred by Landlord. Upon the final determination of any proceeding or contest, Tenant shall immediately pay the real property taxes due, together with all costs, charges, interest and penalties incidental to the proceedings. If Tenant does not pay the real property taxes when due and contests such taxes, Tenant shall not be in default under this Lease for nonpayment of such taxes if Tenant deposits funds with Landlord or opens an interest-bearing account reasonably acceptable to Landlord in the joint names of Landlord and Tenant. The amount of such deposit shall be sufficient to pay the real property taxes plus a reasonable estimate of the interest, costs, charges and penalties which may accrue if Tenant's action is unsuccessful, less any applicable tax impounds previously paid by Tenant to Landlord. The deposit shall be applied to the real property taxes due, as determined at such proceedings. The real property taxes shall be paid under protest from such deposit if such payment under protest is necessary to prevent the Property from being sold under a "tax sale" or similar enforcement proceeding.

III. USE

   A. Industrial Use

Sample Language:

Tenant shall use the Property only for the warehousing and distribution of prepackaged products intended to be sold to and used by consumers (provided that such products: (i) do not create wear and tear on the building, decrease the value of the building, Property, Project or Park nor constitute waste thereof; (ii) are not fabricated, assembled, manufactured or packaged in or about the Property; (iii) do not increase any risk of Environmental Damages or Hazardous Material contamination on the Property; (iv) do not create obnoxious (as to a reasonable person) odors or noise; or (v) do not include storage of tires, chemicals, food products or explosives or other products made with like materials; (vi) do not exceed the load capacity of the floor slab; and (vii) are consistent with the use of other tenants of Landlord in the Park).

B. Outside Storage

C. Public Sales or Auctions

Sample Language:

The Original Tenant shall have the right to conduct a public auction on the Property provided that: (i) complies with all applicable governmental rules and regulations; (ii) such auctions are no more than two (2) days during a twelve (12) month period; and (iii) the goods sold at such auction were previously stored on the Property for at least six (6) months.

D. Fire Department Requirements

(1) Additional Building Improvements

(2) High Pile Stock Permit

(3) Fire rating of the goods

Sample Language:

Notwithstanding the foregoing, Landlord shall, at Tenant's sole cost and expense, cooperate with Tenant in executing permitting applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain a High Pile Stock Permit from the _____ Independent Fire District. Tenant, at Tenant's sole cost and expense, shall be responsible for, if any, fire hose valves, draft curtains, smoke venting and any additional fire protection systems, which may be required by the fire department or any governmental agencies.

E. Signs/Billboards

Sample Language:

Notwithstanding the foregoing, subject to Landlord's prior written approval, which shall not be unreasonably withheld, delayed or conditioned, and provided all signs are in keeping with the quality, design and style of the industrial park within which the Property is located, Tenant, at its sole cost and expense, may install an identification sign ("**sign**") in the Property; provided, however, that (i) the size, color, location, materials and design of such sign shall be subject to Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned; (ii) such sign shall comply with all applicable governmental rules and regulations and the Project's covenants, conditions and restrictions; (iii) such sign shall not be painted directly on the building or attached or placed on the roof or exterior of the building; (iv) such sign shall be personal to the original Tenant named in Section 1.03 of this Lease (and not any assignee, sublessee or transferee of Tenant's interest in this Lease) ("**Original Tenant**"); (v) such sign shall only advertise the Original Tenant's _____ business; (vi) such sign is consistent with Landlord's signage program; (vii) Tenant's continuing signage right shall be contingent upon the Original Tenant actually occupying the entire Property; and (viii) Tenant's continuing signage right shall be contingent upon Tenant maintaining such sign in a first-class condition. Tenant shall be responsible for all costs incurred in connection with the design, construction, installation, repair and maintenance

of Tenant's sign. Upon the expiration or earlier termination of this Lease, Tenant shall cause Tenant's sign to be removed and shall repair any damage caused by such removal (including without limiting to patching and painting). Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord may be removed by Landlord without notice by Landlord to Tenant at Tenant's sole cost and expense.

IV. HAZARDOUS MATERIALS.

Sample Language:

A. DEFINITIONS.

1. **"Hazardous Material"** means any substance, whether solid, liquid or gaseous in nature:

a. the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law; or

b. which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, rule or ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. section 6901 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. section 1801 et seq.), the Federal Water Pollution Control Act (33 U.S.C. section 1251 et seq.), the Clean Air Act (42 U.S.C. section 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. section 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. section 651 et seq.), as these laws have been amended or supplemented; or

c. which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or

d. the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or

e. the presence of which on adjacent properties could constitute a trespass by Tenant; or

f. without limitation which contains gasoline, diesel fuel

or other petroleum hydrocarbons; or

g. without limitation which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or

h. without limitation which contains radon gas.

2. "**Environmental Requirements**" means all applicable present and future:

a. statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items (including, but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation), of all Governmental Agencies; and

b. all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation, all requirements pertaining to emissions, discharges, releases, or threatened releases of Hazardous Materials or chemical substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials or chemical substances.

3. "**Environmental Damages**" means all claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs, and expenses (including the expense of investigation and defense of any claim, whether or not such claim is ultimately defeated, or the amount of any good faith settlement or judgment

arising from any such claim) of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable (including without limitation reasonable attorneys' fees and disbursements and consultants' fees) any of which are incurred at any time as a result of the existence of Hazardous Material upon, about, or beneath the Property or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property and the activities thereon, regardless of whether the existence of such Hazardous Material or the violation of Environmental Requirements arose prior to the present ownership or operation of the Property. Environmental Damages include, without limitation:

a. damages for personal injury, or injury to property or natural resources occurring upon or off of the Property, including, without limitation, lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on real property, interest, penalties and damages arising from claims brought by or on behalf of employees of Tenant (with respect to which Tenant waives any right to raise as a defense against Landlord any immunity to which it may be entitled under any industrial or worker's compensation laws);

b. fees, costs or expenses incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of such Environmental Requirements, including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any Governmental Agency or reasonably necessary to make full economic use of the Property or any other property in a manner consistent with its current use or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing the provisions of this Lease or collecting any sums due hereunder;

c. liability to any third person or Governmental Agency to indemnify such person or Governmental Agency for costs expended in connection with the items referenced in subparagraph (ii) above; and

d. diminution in the fair market value of the Property including without limitation any reduction in fair market rental value or life expectancy of the Property or the improvements located thereon or the restriction on the use of or adverse impact on the marketing of the Property or any portion thereof.

4. "**Governmental Agency**" means all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states, counties, cities and political subdivisions thereof.

5. The "**Tenant Group**" means Tenant, Tenant's successors, assignees, guarantors, officers, directors, agents, employees, invitees, permitees or other parties under the supervision or control of Tenant or entering the Property during the term of this Lease with the permission or knowledge of Tenant other than Landlord or its agents or employees.

B. PROHIBITIONS.

1. Other than normal quantities of general office supplies and except as specified on Exhibit ___ attached hereto, Tenant shall not cause, permit or suffer any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Property by the Tenant Group, or any other person without the prior written consent of Landlord. From time to time during the term of this Lease, Tenant may request Landlord's approval of Tenant's use of other Hazardous Materials, which approval may be withheld in Landlord's sole discretion. Tenant shall, prior to the Commencement Date, provide to Landlord for those Hazardous Materials described on Exhibit___ (a) a description of handling, storage, use and disposal procedures, and (b) all "community right to know" plans or disclosures and/or emergency response plans which Tenant is required to supply to local Governmental Agencies pursuant to any Environmental Requirements.

2. Tenant shall not cause, permit or suffer the existence or the

commission by the Tenant Group, or by any other person, of a violation of any Environmental Requirements upon, about or beneath the Property.

3. Tenant shall neither create or suffer to exist, nor permit the Tenant Group to create or suffer to exist any lien, security interest or other charge or encumbrance of any kind with respect to the Property, including without limitation, any lien imposed pursuant to section 107(f) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. section 9607(l)) or any similar state statute.

4. Tenant shall not install, operate or maintain any above or below grade tank, sump, pit, pond, lagoon or other storage or treatment vessel or device on the Property without Landlord's prior written consent.

C. INDEMNITY.

1. Tenant, its successors, assigns and guarantors, agree to indemnify, defend, reimburse and hold harmless:

a. Landlord; and

b. any other person who acquires all or a portion of the Property in any manner (including purchase at a foreclosure sale) or who becomes entitled to exercise the rights and remedies of Landlord under this Lease; and

c. the directors, officers, shareholders, employees, partners, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, mortgagees, trustees, heirs, devisees, successors, assigns and invitees of such persons, from and against any and all Environmental Damages which exist as a result of the activities or negligence of the Tenant Group or which exist as a result of the breach of any warranty or covenant or the inaccuracy of any representation of Tenant contained in this Section ___, or by Tenant's remediation of the Property or failure to meet its obligations contained in this Section _.

2. The obligations contained in this Section ___ shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings, even if

such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due against such indemnified persons. Landlord, at its sole expense, may employ additional counsel of its choice to associate with counsel representing Tenant.

3. Landlord shall have the right but not the obligation to join and participate in, and control, if it so elects, any legal proceedings or actions initiated in connection with Tenant's activities. Landlord may also negotiate, defend, approve and appeal any action taken or issued by any applicable governmental authority with regard to contamination of the Property by a Hazardous Material.

4. The obligations of Tenant in this paragraph shall survive the expiration or termination of this Lease.

5. The obligations of Tenant under this paragraph shall not be affected by any investigation by or on behalf of Landlord, or by any information which Landlord may have or obtain with respect thereto.

D. OBLIGATION TO REMEDIATE.

In addition to the obligation of Tenant to indemnify Landlord pursuant to this Lease, Tenant shall, upon approval and demand of Landlord, at its sole cost and expense and using contractors approved by Landlord, promptly take all actions to remediate the Property which are required by any Governmental Agency, or which are reasonably necessary to mitigate Environmental Damages or to allow full economic use of the Property, which remediation is necessitated from the presence upon, about or beneath the Property, at any time during or upon termination of this Lease, of a Hazardous Material or a violation of Environmental Requirements existing as a result of the activities or negligence of the Tenant Group. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off the Property, which shall be performed in a manner approved by Landlord. Tenant shall take all actions necessary to restore the Property to the condition existing prior to the introduction of Hazardous Material upon, about or beneath the Property, notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies.

E. RIGHT TO INSPECT.

Landlord shall have the right in its sole and absolute discretion, but not the duty, to enter and conduct an inspection of the Property, including invasive tests, at any

reasonable time to determine whether Tenant is complying with the terms of the Lease, including but not limited to the compliance of the Property and the activities thereon with Environmental Requirements and the existence of Environmental Damages as a result of the condition of the Property or surrounding properties and activities thereon. Landlord shall have the right, but not the duty, to retain any independent professional consultant (the "**Consultant**") to enter the Property to conduct such an inspection or to review any report prepared by or for Tenant concerning such compliance. The cost of the Consultant shall be paid by Landlord unless such investigation discloses a violation of any Environmental Requirement by the Tenant Group or the existence of a Hazardous Material on the Property or any other property caused by the activities or negligence of the Tenant Group (other than Hazardous Materials used in compliance with all Environmental Requirements and previously approved by Landlord), in which case Tenant shall pay the cost of the Consultant. Tenant hereby grants to Landlord, and the agents, employees, consultants and contractors of Landlord the right to enter the Property and to perform such tests on the Property as are reasonably necessary to conduct such reviews and investigations. Landlord shall use commercially reasonable efforts to minimize interference with the business of Tenant.

F. NOTIFICATION.

If Tenant shall become aware of or receive notice or other communication concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, or liability of Tenant for Environmental Damages in connection with the Property or past or present activities of any person thereon, including but not limited to notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claim, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then Tenant shall deliver to Landlord within ten (10) days of the receipt of such notice or communication by Tenant, a written description of said violation, liability, or actual or threatened event or condition, together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of Landlord to defend or otherwise respond to any such notification.

If requested by Landlord, Tenant shall disclose to Landlord the names and amounts of all Hazardous Materials other than general office supplies referred to in Section _____, which were used, generated, treated, handled, stored or disposed of on the Property or which Tenant intends to use, generate, treat, handle, store or dispose of on the Property. The foregoing in no way shall limit the necessity for Tenant obtaining Landlord's consent pursuant to Section _____.

G. ASSIGNMENT AND SUBLETTING.

In the event the Lease provides that Tenant may assign the Lease or sublet the Property subject to Landlord's consent and/or certain other conditions, and if the proposed assignee's or sublessee's activities in or about the Property involve the use, handling, storage or disposal of any Hazardous Materials other than those used by Tenant and in quantities and processes similar to Tenant's uses in compliance with Section __, (i)

it shall be reasonable for Landlord to withhold its consent to such assignment or sublease in light of the risk of contamination posed by such activities and/or (ii) Landlord may impose an additional condition to such assignment or sublease which requires Tenant to reasonably establish that such assignee's or sublessee's activities pose no materially greater risk of contamination to the Property than do Tenant's permitted activities in view of (a) the quantities, toxicity and other properties of the Hazardous Materials to be used by such assignee or sublessee, (b) the precautions against a release of Hazardous Materials such assignee or sublessee agrees to implement, (c) such assignee's or sublessee's financial condition as it relates to its ability to fund a major clean-up and (d) such assignee's or sublessee's policy and historical record respecting its willingness to respond to the clean up of a release of Hazardous Materials.

H. SURVIVAL OF HAZARDOUS MATERIALS OBLIGATION.

Tenant's breach of any of its covenants or obligations under this Section __ shall constitute a material default under the Lease. The obligations of Tenant under this Section __ shall survive the expiration or earlier termination of the Lease without any limitation, and shall constitute obligations that are independent and severable from Tenant's covenants and obligations to pay rent under the Lease.

I. LANDLORD'S HAZARDOUS MATERIALS OBLIGATIONS.

Landlord shall be solely responsible to remediate claims, judgments, damages, penalties, fines, costs, liabilities and losses which arise as a result of any contamination directly arising from the introduction of Hazardous Materials into the Property by Landlord, its agents, employees or contractors in compliance with applicable law. Notwithstanding the foregoing, Landlord shall not be responsible or liable for any consequential damages.

J. STORAGE TANKS.

Without limiting the generality of the above provisions of this Section ___, with respect to any above or underground storage tanks located or to be located on the Property with Landlord's consent, Tenant shall keep all permits and registrations current and shall provide Landlord with copies of all test results regarding such tanks, including without limitation, tightness testing and release detection results, all submissions to and correspondence with any Governmental Agency regarding such tests and provide copies of all plans for responding to releases from such tanks, including any and all SPCC (spill prevention control and countermeasure) plans. Tenant shall, within twenty-four (24) hours, notify Landlord of any release or suspected release from such tanks, and shall immediately commence corrective action and shall remediate any release to the condition existing before the commencement of this Lease, unless Landlord specifically consents in writing to a lesser standard for remediation. Tenant shall comply with all requests by Landlord for modification to any spill prevention, investigation or remediation plan and in connection with any investigation or remediation and shall allow Landlord to conduct its own testing and provide Landlord with split samples.

V. REPAIRS

A. Net vs. Gross

1. Landlord's Obligations for Structural Repairs

Sample Language:

Subject to the provisions of Article _____ (Damage or Destruction) and Article _____ (Condemnation), and except for damage caused by any act or omission of Tenant, or Tenant's employees, agents, contractors or invitees, or as a result of Tenant's alterations, Landlord shall keep the structural portions of the foundation, roof and the exterior walls on the Property in good order, condition and repair. However, Landlord shall not be obligated to maintain or repair the floor, roof membrane, windows, doors, plate glass or the surfaces of walls. Landlord shall not be obligated to make any repairs under this Section ___ until a reasonable time after receipt of a written notice from Tenant of the need for such repairs. Tenant waives the benefit of any present or future law which might give Tenant the right to repair the Property at Landlord's expense or to terminate the Lease because of the condition of the Property. Landlord hereby assigns to Tenant all warranties and guaranties by the contractor who constructed the building and Tenant Improvements located on the Property and Tenant waives all claims against Landlord relating thereto.

2. Tenant's Request for Cap on HVAC and Roof Repairs

B. Condition of Property upon LCD

1. 30 Day Warranty from Landlord

Sample Language:

Notwithstanding the foregoing, Landlord shall, at Landlord's expense, cause the existing **[plumbing, lighting, air conditioning, heating, and ventilating systems, fire sprinkler system, roof membrane, structural portion of the exterior walls, foundation, flooring (not including floor coverings) and loading doors]** in the Property, to be in good operating condition on the Commencement Date, except to the extent such repairs are required due to the negligence or willful misconduct of Tenant or as a result of alterations, additions or improvements to the Property made by Tenant or for Tenant. Landlord shall be deemed to have delivered the Property in the condition required by this Section ____ unless Tenant gives Landlord written notice and sets forth with specificity the nature and extent of any items requiring repair, within thirty (30) days after the Commencement Date.

2. Who Pays When Building Doesn't Comply With Law?

Sample Language:

Tenant shall not do anything or suffer anything to be done in or about the Property [and/or Project] which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated (collectively, "Applicable Laws"). Tenant shall, at its sole cost and expense, promptly comply with any Applicable Laws which relate to (i) Tenant's use of the Property, (ii) any alteration or any tenant improvements or which are triggered by any alteration or any tenant improvement made by Tenant. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by any state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Landlord and Tenant , as applicable, agree, at its sole cost and expense to comply promptly with such standards or regulations. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant. Landlord shall comply with all Applicable Laws relating to the improvements on the Property, as of the Lease Commencement Date if compliance with such Applicable Laws is required by a governmental agency and provided that compliance with such Applicable Laws is not the responsibility of Tenant under this Lease, and provided further that Landlord's failure to comply therewith would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees.

C. Capital Improvements

1. Amortized with Interest
2. Collection of Reserves

D. Condition of Property Upon Lease Termination

Sample Language:

Upon the termination of this Lease, Tenant shall surrender the Property to Landlord, broom clean and in the same condition as received (including without limitation to the removal of all floor striping and the resealing of the floor). However, Tenant shall not be obligated to repair any damage which Landlord is required to repair under Article ___ (Damage or Destruction). In addition, Landlord may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) prior to the expiration of this Lease and to restore the Property to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the expiration or earlier termination of this Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Property. Tenant shall repair, at Tenant's expense, any damage to the Property caused by the removal of any such machinery or equipment (including without limitation to the complete removal of all studs and bolts that penetrate the floor or walls and filling and patching the holes). In no event, however, shall Tenant remove any of the following materials or equipment (which shall be deemed Landlord's property) without Landlord's prior written consent: any power wiring and power panels; lighting and lighting fixtures; wall coverings; drapes, blinds and other window coverings; carpets and other floor coverings; heaters, air conditioners and any other heating and air conditioning equipment; fencing and security gates; load levelers, dock lights, dock locks and dock seals; and other similar building operating equipment and decorations.

E. Landlord's Property vs. Tenant's Property

VI. COMMON AREA MAINTENANCE

See 4.05 in sample Industrial Lease.

VII. PURCHASE OPTION

PURCHASE OPTION

Landlord hereby grants to the original Tenant, whose name is set forth in Section ___ of this Lease (and not any assignee, sublessee or other transferee of Tenant's interest in the Lease) ("Original Tenant"), a one-time right of first offer to purchase the Property, in accordance with the terms of this Article __.

SECTION ____ PROCEDURE FOR OFFER

Landlord shall notify Tenant during the initial Lease Term (the "First Offer Notice") when and if Landlord is going to make a "Transfer of the Real Property"

as that term is defined below. Pursuant to such First Offer Notice, Landlord shall offer to sell to Tenant the Property. The First Offer Notice shall set forth the "Purchase Price" as that term is defined below, and other economic terms and conditions upon which Landlord is willing to sell the Property to Tenant. For purposes of this Article __, the term "Transfer of the Real Property" shall mean a sale of one hundred percent (100%) of the ownership interest in the Property to a party not affiliated or related to Landlord. Notwithstanding the forgoing, a Transfer of the Real Property shall not include any "REIT" transactions or if the Property is part of multiple properties included within a "package sale." The "Purchase Price" shall be equal to the fair market value, as determined in Landlord's sole and absolute discretion.

SECTION ____ PROCEDURE FOR ACCEPTANCE

If Tenant desires to exercise its first offer right, then: (i) within five (5) days of delivery of the First Offer Notice to Tenant, Tenant shall deliver notice to Landlord ("Tenant's Notice") notifying Landlord of Tenant's decision to purchase the entire Property for the Purchase Price on the terms contained in the First Offer Notice and deposit three percent (3%) of the Purchase Price for the Property into escrow (and provide Landlord with satisfactory evidence of same); (ii) the Property must close escrow within thirty (30) days of the date of Landlord's receipt of Tenant's Notice; (iii) Tenant shall pay the Purchase Price for Property in cash before the close of escrow; and (iv) Tenant shall take the Property in its "as is" condition and the purchase and sale agreement shall contain no contingencies to Tenant's obligations to purchase the Property (collectively, the "Purchase Steps"). If any of the Purchase Steps or any of the other requirements of Tenant as set forth in this Article do not occur on a timely basis as set forth herein, then Landlord shall be free to sell the Property to anyone to whom Landlord desires on any terms Landlord desires.

SECTION ___ TERMINATION OF RIGHT OF FIRST OFFER PURCHASE OPTION

The rights contained in this Article ___may only be exercised by the Original Tenant if the Original Tenant occupies the entire Property as of the date of the attempted exercise of the right of first offer by Tenant and as of the closing of escrow. The right of first offer granted herein shall terminate upon the failure by Tenant to exercise its right of first offer in accordance with this Article __. Tenant shall not have the right of first offer, as provided in this Article ___ if, as of the date of the attempted exercise of the right of first offer, or as of the scheduled date of the closing of escrow, Tenant is in default under this Lease.

SECTION ___ 1031 EXCHANGE.

As an accommodation to Landlord, Tenant agrees to cooperate with Landlord in effectuating a like-kind exchange of the Property pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Exchange**"), including the execution of documents related thereto.

WAIVER AND AGREEMENT

WHEREAS, _____ (hereinafter "**Landlord**") is the landlord and _____ (hereinafter "**Tenant**") is the tenant in a lease, dated _____ (hereinafter "**Lease**") covering a portion or all of the real property located at _____ (hereinafter "**Property**"); and

WHEREAS, _____ (hereinafter "**Lender**") has made or will make a certain loan or will sell subject to and be secured by a security interest in Tenant's personal property or equipment described on Exhibit "A" attached hereto (hereinafter "**Personal Property**") which is now or about to be located on the Property.

NOW, THEREFORE, so long as the aforementioned Lease exists on the Property and the loan secured by Lender's security interest in the Personal Property remains outstanding and in consideration of the mutual covenants and agreements herein contained, Landlord, Tenant and Lender hereby covenant and agree as follows:

1. Except as limited in this waiver and agreement, Landlord waives its interest in the Personal Property and agrees that the Personal Property shall not become part of the Property regardless of the manner in which the Personal Property may be attached or affixed to the Property provided that the Property is not materially damaged or altered thereby. This waiver and agreement shall be effective only to the extent of the principal indebtedness owed to the Lender. To the extent such principal indebtedness is less than the fair market value of the Personal Property, this waiver and agreement shall be void and ineffective and Landlord's lien or other interest in or to the Personal Property shall control with respect to such excess. Furthermore, full payment of the principal indebtedness shall terminate this waiver and agreement, and this waiver and agreement is not subject to renewal or modification without a written agreement of the parties hereto.

2. Landlord agrees it will not prevent Lender or its designee from entering upon the Property at all reasonable times (following advance written notice of at least twenty-four (24) hours prior to such intended entry) to inspect or remove the Personal Property and Lender agrees to promptly and fully repair any damage to the Property resulting from either the installation or removal of the Personal Property or Lender's acts or omissions. Landlord shall accompany Lender in a walk-through of the Property and shall identify to Lender the Personal Property. Upon written notification from Landlord ("**Landlord's Notice**") of an early termination of the Lease, Lender agrees to cause the Personal Property to be removed from the Property and any resulting damage to the Property to be promptly repaired. Lender further agrees to pre-pay Landlord rental for the Property during the period from the date of termination of the Lease until the date the Personal Property is removed from the Property ("**Disposition Period**") at the holdover rate set forth in the Lease (prorated on a per diem basis determined on a thirty (30) day month) and shall provide and retain liability and property insurance coverage, and utilities, as required pursuant to the Lease. Rental rate for the Property shall include without limiting to the Base Rent **[(provided, however, not to include any holdover increase, except if Agent or its designee holdover after the Disposition Period)]**, Real Property Taxes, Utilities, Insurance Premiums and Common Area/Maintenance Fee. Within ten (10) days of receipt of Landlord's Notice, Agent shall deliver notice to Landlord ("**Agent's Notice**") setting forth the

date the Personal Property will be removed (not to exceed _____ (___) days from Landlord's Notice) and the rental owed during such Disposition Period. During the Disposition Period Landlord shall have the right, at any time and without notice, to inspect the Property, show the Property to prospective tenants and to construct improvements within the Property. Within fifteen (15) days (as such time period may be extended up to _____ (___) days pursuant to Agent's Notice) after Landlord's Notice to Lender, if the Personal Property has not been removed, then the Personal Property shall be deemed abandoned and Landlord may remove and store and/or sell the same pursuant to applicable law (including California Civil Code Sections 1980-1991 and its successors) and repair any resulting damage to the Property at Lender's expense (which shall be reimbursed by Tenant to Lender) wholly without any Landlord liability to Lender or Tenant. Any notices provided by Landlord to Tenant and/or Lender pursuant to this Paragraph 2 shall be in lieu of, and not in addition to, any notices required under California Civil Code Sections 1980-1991 or any similar or successor laws. Lender hereby covenants not to advertise nor conduct any public auctions or sales at the Property.

3. In no event shall Lender cause to be recorded any financing statements, Uniform Commercial Code filings or their equivalents in connection with this waiver and agreement which affect or otherwise impair title to Landlord's fixtures, personal property or Property.

4. All requests, notices or service provided for or permitted to be given or made pursuant to this waiver and agreement shall be deemed to have been properly given or made by depositing the same in the United States Mail, postage prepaid and registered or certified return receipt requested or by reputable overnight courier and addressed to the addresses set forth below, or to such other addresses as may from time to time be specified in writing by either party to the other:

If to Landlord:

_____
_____
_____
_____

If to Lender:

_____
_____
_____
_____

5. Lender hereby agrees to indemnify, protect, defend and hold Landlord harmless from and against any and all losses, costs, damages, expenses and liabilities (including, without limitation, court costs and reasonable attorneys' fees) arising out of Lender's exercise of its rights under this waiver and agreement, breach of its obligation (including any failure by Lender to repair any damage to the Property) pursuant to this waiver and agreement, and/or Lender's acts or omissions in its entry upon the Property and/or removal of the Personal Property therefrom.

6. This waiver and agreement is binding upon and inures to the benefit of the heirs, successors and assigns of the parties hereto and shall become effective on the date it is fully executed and acknowledged by Landlord, Tenant and Lender and Landlord has been served with a fully executed and acknowledged copy.

7. This waiver and agreement shall be governed by the laws of the State of California.

8. The parties represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

9. This waiver and agreement may be executed in any number of original counterparts. Any such counterpart, when executed, shall constitute an original of this waiver and agreement, and all such counterparts together shall constitute one and the same waiver and agreement.

10. Upon Tenant's execution and delivery of this Agreement, Tenant shall pay Landlord the sum of _____ Dollars ($_____) representing Landlord's costs and reasonable attorneys' fees incurred by Landlord in connection with the preparation of this Agreement.

IN WITNESS WHEREOF, Lender, Landlord and Tenant have caused this waiver and agreement to be executed on the _____day of _____, 200_.

Executed on _____, 2005 "LENDER"

_____,
a _____

By: _____
Its: _____

By:_____
Its: _____

Executed on _____, 2005 "LANDLORD"

_____,
a _____

By: _____
Its: _____

By: _____
Its: _____

Executed on _____, 2005

"TENANT"

_____,
a _____

By: _____
Its: _____

By: _____
Its: _____