THIRD AMENDMENT

TO

OFFICE BUILDING LEASE

THIS THIRD AMENDMENT TO OFFICE BUILIDNG LEASE (this "**Third Amendment**") dated as of July 8, 2011 for reference purposes only, is entered into by and between N.E.W. Milvia Property, LLC, a California limited liability company, the successor in interest to Nora E. Wagner, Trustee UTD dated July 27,1989 ("**Landlord**") and the City of Berkeley ("**Tenant**"). Landlord and Tenant are sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Landlord and Tenant entered into that certain Office Building Lease, including Addenda #1 and #2, dated November 6, 1995 (the "**Original Lease**"), which was amended by that certain First Amendment to Lease dated August 31, 2006 (the "**First Amendment**") and that certain Second Amendment to Lease dated January 18, 2008 (the "**Second Amendment**"). The Original Lease, as amended by the First Amendment and the Second Amendment is collectively referred to herein as the "**Lease**".

B. Pursuant to the terms of the Lease, Landlord leased to Tenant certain premises consisting of approximately 23,034 square feet of rentable square feet (the "**Premises**") within the office building located at 2118 Milvia Street, in the City of Berkeley, County of Alameda, State of California (the "**Building**").

C. Pursuant to the terms of the First Amendment, Landlord and Tenant extended the term of the Lease ("**Lease Term**") to August 31, 2011 (the "**Current Expiration Date**"). Landlord and Tenant now desire to modify the Lease to further extend the Lease Term, to grant Tenant an additional option to extend the Lease Term, and for other purposes more particularly described in this Third Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Defined Terms. Capitalized terms used and not otherwise defined herein shall have the same meanings ascribed to them in the Lease.

2. Commencement Date. All of the terms of this Third Amendment shall become effective as of September 1, 2011 (the "**Commencement Date**").

3. Definition of Premises. As a result of Tenant taking occupancy of and becoming the sole Tenant of the Building pursuant to the Second Amendment, the term "Premises" is hereby modified to include the entire Building, including but not limited to those areas previously defined as "Common Areas" under Paragraph 1.e of the Original Lease.

Notwithstanding the foregoing, however, the square footage used for purposes of calculating Base Rent shall continue to be 23,034 square feet of Rentable Area.

4. Condition of Premises. Tenant acknowledges that it has been in continuous possession of the Original Premises (as defined in the Second Amendment) since 1996, and the Additional Second Space (as defined in the Second Amendment) since January 18, 2008. Tenant further acknowledges that, other than as expressly provided in Section 15, below, it accepts the Premises in its "as-is" physical condition and "as-is" state of repair. Neither Landlord, nor anyone acting for or on behalf of Landlord, has made any representation, statement, warranty or promise to Tenant concerning the physical aspects or condition of the Premises. Tenant represents to Landlord that: (i) the Premises and facilities appurtenant thereto are in good, clean, safe and tenantable condition; (ii) Landlord completed all construction obligations as set forth in the Lease, if any; (iii) Landlord is not in default under the Lease, and no facts or conditions exist which, with the passage of time, could constitute a default by Landlord under the Lease.

5. Extension of Lease Term. Paragraph 2 of the Lease is hereby amended to reflect that, the term of the Lease (the "**Term**") shall be extended to August 31, 2018 (the "**Expiration Date**"), subject to Tenant's right to further extend the Term pursuant to Section 7 of this Third Amendment, below.

6. New Base Rent. Commencing on the Commencement Date, Tenant shall pay Monthly Installments of Base Rent in the following amounts:

Period:	**Monthly Installment of Base Rent per Rentable Square Foot:**	**Monthly Installment of Base Rent:**
September 1, 2011 – September 30, 2011	$0.00	$0.00
October 1, 2011 – August 31, 2012	$2.05	$47,219.70
September 1, 2012 – August 31, 2013	$2.11	$48,601.74
September 1, 2013 – August 31, 2014	$2.17	$49,983.78
September 1, 2014 – August 31, 2015	$2.24	$51,596.16
September 1, 2015 – August 31, 2016	$2.31	$53,208.54
September 1, 2016 – August 31, 2017	$2.38	$54,820.92
September 1, 2017 – August 31, 2018	$2.45	$56,433.30

7. Option to Further Extend.

A. Option. The option to renew for a three-year period provided in the last sentence of Section 1 of the First Amendment is hereby deleted. Subject to the terms and conditions of this Section 7, Tenant shall have a one-time option to renew the Lease Term (**"Renewal Option"**) for one (1) additional period of five (5) years beginning on September 1, 2018 and expiring on August 31, 2023 (the **"Renewal Term"**), on the same terms and conditions set forth in the Lease, except that the Base Rent payable during the Renewal Term shall be as set forth in Section 7.B, below. Tenant shall exercise the Renewal Option, if at all, by delivering written notice thereof (the **"Renewal Notice"**) to Landlord no earlier than May 31, 2017 and no later than August 31, 2017. If Tenant fails to deliver the Renewal Notice to Landlord between May 31, 2017 and August 31, 2017, Tenant shall be conclusively presumed to have elected not to exercise the Renewal Option, and Tenant shall have no further right to extend the Lease Term.

B. Base Rent During Renewal Term. If Tenant timely exercises its Renewal Option, Base Rent payable by Tenant during the Renewal Term shall be the Fair Market Rent (as defined herein). For purposes of this Third Amendment, the term **"Fair Market Rent"** means the annual amount per rentable square foot projected during the Renewal Term that a willing, comparable non-equity renewal tenant (excluding sublease and assignment transactions) would pay, and a willing landlord of comparable office space located in Berkeley, California (the **'Comparison Area'**) would accept, in an arm's length transaction for space of comparable size, quality and floor height as the Premises, taking into account the age, quality and layout of the existing improvements in the Premises and taking into account and establishing for the Renewal Term items that professional appraisers customarily consider, including, but not limited to, rental rates, office space availability, tenant size, operating expenses and allowance, parking charges and any other lease considerations, if any, then being charged or granted by Landlord or the lessors of such similar office buildings in the Comparison Area. Following Tenant's exercise of the Renewal Option, Landlord will deliver to Tenant notice of Landlord's determination of the applicable Fair Market Rent for the Premises for the Renewal Term (**'Landlord's Fair Market Notice'**). For a period of thirty (30) days following delivery of Landlord's Fair Market Notice, Landlord and Tenant shall work together in good faith to reach agreement upon the Fair Market Rent for the Premises for the Renewal Term. If Landlord and Tenant fail to agree upon the Fair Market Rent within such thirty (30) day period, then, the Fair Market Rent shall be established in accordance with the procedures set forth in Section 7.C, below.

C. Determination of Fair Market Rent. The Parties shall endeavor to mutually select an arms-length appraiser with at least five (5) years of current experience appraising commercial properties in the vicinity of the Comparison Area who is a member of either the American Institute of Real Estate Appraisers or the Society of Real Estate Appraisers; provided that such appraiser shall not have been employed by either Party within the past three (3) years. If Landlord and Tenant are unable to so agree upon a single appraiser within ten (10) days after the expiration of such thirty (30) day period, then each Party shall appoint one (1) appraiser by written notice to the other, to be given within ten (10) days after the end of said first ten (10) day selection period. Within ten (10) days after the two (2) appraisers are appointed, such two appraisers shall appoint a third appraiser. Such third appraiser shall, within thirty (30) days after appointment, make a determination of Fair Market Rental by choosing the one rental

determination completed by the first two appraisers which most closely matches the third appraiser's opinion of Fair Market Rental and such rental rate shall be the "**Fair Market Rent**". In the event that (i) either Landlord or Tenant fails to appoint its appraiser within the prescribed time period, the single appraiser appointed by the other Party shall determine the Fair Market Rent for the Premises; or (ii) if the two (2) appraisers fail to agree upon and timely appoint a third appraiser, either Party, upon ten (10) days' written notice to the other Party, may apply to the Presiding Judge of the Superior Court of Alameda County to appoint a third appraiser meeting the qualifications set forth herein. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for either Party. The cost of each Party's appraiser shall be the responsibility of the Party selecting such appraiser, and the cost of the third appraiser will be shared by Landlord and Tenant equally.

D. Rent Deficiency. If the Fair Market Rent is not known as of the commencement of the Renewal Term, then Tenant shall continue to pay the Base Rent in effect immediately prior to the commencement of the Renewal Term until the amount of the Fair Market Rent is determined. When such determination is made, Tenant shall pay to Landlord any deficiency within ten (10) business days following written notice by Landlord.

E. Conditions of Exercise. Notwithstanding anything to the contrary contained in this Third Amendment, all of the provisions of this Section 7.E shall be applicable to the Renewal Option. The Renewal Option is personal to Tenant and may be exercised only by Tenant while occupying the entire Premises, and without the intent of thereafter assigning the Lease or subletting any portion of the Premises, and may not be exercised or be assigned, voluntarily or involuntarily, by any person or entity other than Tenant. Tenant shall have no right to exercise the Renewal Option, and Tenant's exercise of the Renewal Option may be nullified by Landlord and deemed of no further force or effect, if at any time between Tenant's exercise of the Renewal Option and the commencement of the Renewal Term Tenant is in default under this Lease. As used in this Section, "Tenant" refers only to the City of Berkeley and not to any successor or assign thereof.

8. Base Year. The Base Year, as defined in Paragraph 2.b of the Lease, is hereby amended to mean the calendar year 2012.

9. Janitorial Work. Tenant hereby agrees to provide, at Tenant's sole cost and expense, all janitorial services for the Premises ("**Janitorial Services**"). The types, costs and frequency of such Janitorial Services shall be generally consistent with those janitorial services which were being provided to the Premises by Landlord prior to the execution of this Third Amendment. Notwithstanding anything to the contrary contained in the Lease, the Janitorial Services will include providing restroom supplies and replacing ceiling tiles and light bulbs in the Premises. The costs of such restroom supplies, ceiling tiles and light bulbs shall be billed directly by the janitorial services company to Landlord's property manager and paid directly by Landlord to the janitorial services company; provided, however, such costs will be included in Project Operating Costs.

10. Removal of Cap on Certain Project Operating Costs. Paragraph 5.3.b(2)(g) of the Lease (located in Addendum #2 of the Original Lease) is hereby amended such that the costs of "supplies" (under Paragraph 5.3(b)(1)(b)(2) of the Lease), to the extent that such supplies are

used by the janitorial services company or in connection with the Janitorial Services (including, but not limited to restroom supplies, ceiling tiles and light bulbs) are no longer costs that will be subject to the cap provided by Paragraph 5.3.b(2)(g).

11. Services and Utilities. Article 9 of the Lease is hereby amended to reflect that Tenant shall contract directly for the Premises' Utilities (as defined herein) and pay, prior to delinquency, all charges and/or fees and assessments for such Utilities. For purposes of this Third Amendment, the term "**Premises' Utilities**" means gas, electricity, water, sewage, garbage, fire alarm and telephone services or other services, including but not limited to the monthly monitoring of the security system, if any, which may be used or consumed in the Building.

12. Project Operating Costs. Paragraphs 5.3(a) and 5.3(b) of the Lease are hereby modified to reflect that the Project Operating Costs shall be adjusted by Landlord to reasonably approximate taxes which will be payable if the Project continues to be one hundred percent (100%) occupied. Since Tenant shall directly pay the costs of Janitorial Services and Premises' Utilities, the term "**Project Operating Costs**" is hereby amended to exclude the costs of Janitorial Services and Premises' Utilities. Notwithstanding anything to the contrary contained in this Third Amendment or the Lease, Tenant's Proportionate Share of Project Operating Costs due in the last twelve (12) months of the Term, excluding Non-Controllable Costs (as defined herein) shall not be more than one hundred five percent (105%) of Tenant's Proportionate Share of Project Operating Costs, excluding Non-Controllable Costs, payable in the previous calendar year (the "**Cost Cap**"). By way of example, if the last twelve months of the Lease Term are September 1, 2017 through August 31, 2018, then the Cost Cap would be applied as follows: (a) for the months September 1, 2017 through December 31, 2017, the Cost Cap would be determined by comparing Tenant's Proportionate Share of Project Operating Costs for those months to Tenant's Proportionate Share of Project Operating Costs that were payable during September 1, 2016 through December 31, 2016, and (b) for the months January 1, 2018 through August 31, 2018, the Cost Cap would be determined by comparing Tenant's Proportionate Share of Project Operating Costs for those months to Tenant's Proportionate Share of Operating Costs that were payable during January 1, 2017 through August 31, 2017. For purposes of this Section 12, the term "**Non-Controllable Costs**" means all of the costs set forth in Paragraph 5.3.b(1)(a) of the Lease (which references taxes, assessments, etc.), and the cost of insurance described in Paragraph 5.3.b(1)(b) of the Lease. For purposes of this Section 12 the "last twelve (12) months of the Term" shall mean September 1, 2017 through August 31, 2018 if Tenant does not extend the Term pursuant to Section 7.A, above, *or* shall mean September 1, 2022 through August 31, 2023 if Tenant does extend the Term pursuant to Section 7.A, above.

13. Assignment and Subletting.

A. Paragraph 16.b.5 of the Lease is hereby deleted and replaced in its entirety with the following:

> "Fifty percent (50%) of any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate (i) Base Rent and Tenant's Proportionate Share of Project Operating Costs (prorated to

reflect obligations allocable to any portion of the Premises subleased), plus (ii) any commercially reasonable real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder."

14. Security Deposit. Landlord shall retain Tenant's existing security deposit in the amount of Twenty Eight Thousand Thirty Five and 00/100 Dollars ($28,035.00) as security for the obligations of Tenant under the Lease throughout the extended Lease Term and the Renewal Term, if applicable.

15. Tenant Improvements. Landlord, at its sole cost, shall perform the work described in Exhibit "A" attached hereto and incorporated herein (collectively, "**Landlord's Work**"). Landlord's Work shall be performed on dates selected by Landlord and reasonably acceptable to Tenant, and Landlord shall use commercially reasonable efforts to complete Landlord's Work within ninety (90) days of full execution of this Third Amendment. Landlord shall also use commercially reasonable efforts to minimize unreasonable interference with Tenant's business operations while completing Landlord's Work, but no disturbance of Tenant's use or possession of the Premises during such work shall give rise to any claim for setoff or abatement of rent or shall otherwise affect any of Tenant's obligations under the Lease. Tenant acknowledges that, except for Landlord's Work, Tenant is leasing the Premises during the extended Term in its "as-is" condition and that Landlord shall have no obligation to remodel or improve the Premises, nor shall Landlord have any obligation to reimburse Tenant or provide any allowance to Tenant for the cost of any cleaning of or improvements to the Premises.

16. Estimated Project Operating Costs for 2011. The Parties hereby agree that the monthly estimate for Tenant's Proportionate Share of Project Operating Costs for the period July 1, 2011 through August 31, 2011 is Eight Hundred Five and No/100 Dollars ($805.00) per month. Further, since the Base Year is being amended pursuant to Section 8 of this Third Amendment, Tenant shall have no obligation to pay Tenant's Proportionate Share of the Project Operating Costs for the period September 1, 2011 through December 31, 2012.

17. Brokers. Landlord and Tenant each represent and warrant to the other that it is not aware of any brokers or finders who may claim a fee or commission in connection with the consummation of the transactions contemplated by this Third Amendment other than Colliers International, representing Landlord, and Cornish & Carey Commercial, representing Tenant (collectively, the "**Brokers**"). Landlord shall pay the Brokers a leasing commission in connection with this Third Amendment pursuant to the terms of a separate written agreement between Landlord and the Brokers. If any claims for other broker's or finder's fees arise in connection with the transactions contemplated by this Third Amendment, Tenant agrees to indemnify, protect, hold harmless and defend Landlord (with counsel reasonably satisfactory to Landlord) from and against any such claims based upon any statement, representation or agreement made by Tenant; and Landlord agrees to indemnify, protect, hold harmless and defend Tenant (with counsel reasonably satisfactory to Tenant) from and against any such claims based upon any statement, representation or agreement made by Landlord.

18. Continuing Effectiveness. Landlord and Tenant hereby acknowledge and agree that, except as noted herein, the Lease has not been modified, supplemented, amended or otherwise changed in any way. The Lease remains in full force and effect as amended hereby. To the extent of any actual conflict between the terms of the Lease and the terms of this Third Amendment, the terms of this Third Amendment shall control.

19. Counterparts. This Third Amendment may be executed in counterparts, each of which shall constitute an original document. Delivery of the executed Third Amendment may be accomplished by facsimile or electronic mail (in .PDF or .TIF form) and if so, the facsimile or electronic copy shall be deemed an executed original counterpart of this Third Amendment. All executed counterparts together shall constitute one and the same document, and any signature pages, including facsimile or electronic copies thereof, may be assembled to form a single, binding agreement.

[The signature page follows this page.]

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

LANDLORD:

N.E.W. MILVIA PROPERTY, LLC,
a California limited liability company

By: Nora E. Wagner
Nora E. Wagner
Its: Managing Director

TENANT:

CITY OF BERKELEY

By: [illegible]
Print Name: [illegible]
Its: Deputy City Manager

Approved as to form:
[illegible]
Print Name: Lynne Borgquist
City Attorney for the City of Berkeley

MMB:4000-005:1188851

EXHIBIT A

LANDLORD'S WORK

Landlord's Work to be performed pursuant to this Third Amendment shall be limited to the following:

1. Provide a life safety system for the Building as per the bid provided by AECO Systems, Inc. dated March 30, 2011.
2. Paint the exterior of the Building; Exterior windows will be cleaned after the painting is completed.
3. Complete the work in the bid by Clinton Air dated February 22, 2011 and as a result of that evaluation/work, replace all the economizers and replace 7 of the air conditioning units.
4. Improve the lobby lighting and signage on the ground floor of the Building and bathroom emergency lighting throughout the restrooms.
5. Perform the roof work outlined in the roofing report dated April 2, 2011
6. Spot cleaning of carpets.
7. Touch up painting in the Common Areas.
8. Cleaning of exterior windows (done annually)
9. Any stained ceiling tiles will be replaced by the janitorial service over the next few weeks.

VENDOR

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this **"Second Amendment"**) is made Jan. 18, 2008 and entered into by and between N.E.W. Milvia Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD DATED JULY 27, 1989 (**"Landlord"**) and City of Berkeley (**"Tenant"**), with reference to the following facts:

RECITALS

A. Landlord and Tenant entered into that certain Office Lease, including Addenda #1 and #2, dated November 6, 1995 (the **"Lease"**). Pursuant to the Lease, Landlord leased to Tenant the premises consisting of approximately 19,260 rentable square feet on the first and third floors and a portion of the second floor of the building (the "**Original Premises**") located at 2118 Milvia Street, Berkeley, California ("**The Building**"). Landlord and Tenant entered into a First Amendment to the Lease, dated August 31, 2006, which extended the Lease Term and among other things, confirmed the Rent, Base Year for Operating Expenses and Property Taxes (the "**First Amendment**").

B. The Lease and the First Amendment contain a provision allowing Tenant to lease the remaining space on the second floor of The Building consisting of approximately 3774 square feet ("**Additional Second Floor Space**"), if and when it became available.

C. The Additional Second Floor Space has become available and Tenant desires to add the Additional Second Floor Space to the Lease, as amended by the First Amendment. Landlord is willing to add the Additional Second Floor space and will agree to paint it and provide new carpeting and make the modifications as outlined in the bid from Greene Builders, Inc. dated November 27, 2007 ("**Tenant Improvement Work**"), attached as Exhibit A. By adding the Additional Second Floor Space, Tenant will occupy 100% of the Building,

D. The Parties acknowledge that this Second Amendment must be submitted for approval to the City Council of the City of Berkeley. Therefore, the effective date of the Second Amendment is the date 30 days after the second reading of the authorizing Ordinance, or the date the Landlord has completed the Tenant Improvement Work, whichever is later ("**Effective Date**").

AGREEMENT

NOW, THEREFORE, in consideration of Landlord's agreement to add the Additional Second Floor Space to the Lease and for other good and valuable consideration recited above, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. New Definition of the Premises. The Premises, as that term is used in the Lease, as amended by the First Amendment and this Second Amendment, shall hereinafter include the Additional Second Floor Space. Landlord and Tenant confirm that as a result, Tenant is the sole occupant of the Building. All terms and conditions which heretofore applied to Tenant and its tenancy, shall apply to, and include, the Premises.

2. Condition of the Additional Second Floor Space. Tenant shall and does accept the Additional Second Floor Space in its "as is" condition, subject only to the Landlord's duty, prior to the Effective Date, to complete the Tenant Improvement Work, consistent with the paint color and carpeting identified on Exhibit A of the First Amendment (to wit: Paint color "Waltz #09208 and Carpet Patcraft Strut Your Stuff #10109). Should Tenant not thereafter exercise its option to renew the Lease for the three year term commencing upon the expiration of the First Extension Term, Landlord may require Tenant to restore the wall removed under item #3 of the bid from Greene Builders, Inc., as referenced in Exhibit A.

3. New Base Rent for the Additional Second Floor Space. The Base Rent for the Additional Second Floor Space shall be $0.05 more per square foot than the Base Rent for the remainder of the Premises, as established by the First Amendment to Lease, in the following amounts which are to be paid in the same time and manner as set forth in the Lease and the First Amendment to Lease.

Tenant shall pay the Monthly Installment of Base Rent for the Additional Second Floor Space as required by Paragraph 5.1, during the First Extension Term, in the amounts as follows:

September 1, 2006- Effective Date	$n/a
Effective Date – August 31, 2008	$8,866.90
September 1, 2008 – August 31, 2009	$9,133.08
September 1, 2009 – August 31, 2010	$9,397.26
September 1, 2010 -- August 31, 2011	$9,661.44

4. Excess Expenses for the Additional Second Floor Space. The Base Year applicable to the Additional Second Floor Space, as defined by Paragraph 2.b of the Lease, as amended, shall be January 1, 2006 through December 31, 2006. Tenant shall pay its Proportionate Share of the Excess Expenses as set forth in the Lease and Lease Addendum No. 2 using January 1, 2006 through December 31, 2006 as the Base Year. For clarification, because Tenant will occupy 100% of the Building, beginning on the Effective Date, Tenant's Proportionate Share of the Excess Expenses will increase from 83.6% to 100%. Tenant shall make monthly payments after the Effective Date reflecting the increased Proportionate Share of the Excess Expenses in compliance with Paragraph 5.3(b)(2) of the Lease.

5. Brokerage Fees. Tenant represents and warrants to Landlord that Tenant has not dealt with any real estate broker or agent in connection with this Second Amendment. Landlord represents and warrants to Tenant that the only real estate broker or agent Landlord has dealt with in connection with this Second Amendment is Colliers International, and that Landlord shall pay a brokerage fee to Colliers International pursuant to a separate written agreement between Landlord and Colliers International. Tenant shall, to the fullest extent allowed by law, defend, indemnify and hold harmless Landlord from and against any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any real estate broker, finder or agent in connection with this Second Amendment or its

negotiation by reason of any act of Tenant. Landlord shall, to the fullest extent allowed by law, defend, indemnify and hold harmless Tenant from and against any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any real estate broker, finder or agent in connection with this Second Amendment or its negotiation by reason of any act of Landlord.

6. Conditions. This Second Amendment is conditional on Tenant complying with all of the terms and conditions set forth in the First Amendment with respect to payments of Arrearages, Additional Rent and Tenant's payment of Operating Expenses.

7. Governing Law. This Second Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

8. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall constitute an original hereof and all of which shall constitute one and the same document.

9. Modifications. This Second Amendment, and the Lease it amends, may only be modified pursuant to a written agreement signed by both Landlord and Tenant.

10. Enforceability/Conflicts. Landlord and Tenant acknowledge and agree that the Lease, as modified by the First Amendment, remains in full force and effect, unchanged except as expressly provided for in this Second Amendment. In the event of a conflict between the terms of this Second Amendment and the terms of the Lease, as modified by the First Amendment, the terms of this Second Amendment shall govern. Landlord and Tenant agree that capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Lease.

11. Authority. The undersigned each represents they are authorized to execute this Second Amendment and have, as required, received due authority as appropriate.

12. Lease. Except as herein modified, the provisions of the Lease, as modified by the First Amendment, remain in force and effect; other than as set forth in that certain Settlement and Release effective March 15, 2007 by and between Landlord and Tenant; provided, however, if this Second Amendment is not confirmed by the City Council by February 29, 2008, this Second Amendment may be withdrawn and Tenant will no longer retain any rights to Lease the Additional Second Floor Space, Landlord having fully and completely fulfilled its obligations to present the Space to Tenant for acceptance and Tenant having failed to accept the Space.

(Continued on the following page)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment as of the date first written above.

LANDLORD:

N.E.W.Milvia Property, LLC

By: Nora E. Wagner
Nora E. Wagner, it Manager Member

TENANT:

City Of Berkeley

By: [signature]
Print Name: TERRY VESELY
Title: BUDGET MANAGER

APPROVED AS TO FORM
[signature]
CITY ATTORNEY FOR THE
CITY OF BERKELEY

Registered by:
Ann-Marie Hogan
Auditor

ATTEST-
Deputy CITY CLERK

COB 11 30 07 rev.

EXHIBIT A

TO SECOND AMENDMENT

Copy of Bid from Greene Construction

GREENE BUILDERS INC.
44 Montgomery Street, Suite 1255 San Francisco, CA 94104
Office 415-399-9222 Fax 415-399-9229
CA Lic # 827515

2118 Milvia Street, Berkeley, CA
Lease Improvements / 2ND Floor Vacant Space
Proposal dated - November 27, 2007

ITEM #			
1	**Corner Office Modifications**		
	Project mngt /Supervision/general requirements	665	
	Soft Demo	375	
	Door & frame salvage	225	
	Drywall partitions	1,975	
	Wall bracing	95	
	Reinstall door & frame with new trim	425	
	Prime new drywall	175	
	Acoustic ceiling - open/close & minor repairs	185	
	Electrical - Relocate light switch & L.F. re-connects	1,250	
	GC & electrical permit fee allowance	1,250	
	Final clean-up	200	
	GRT	13	
	GC Fees & GL insurance	853	
			7,686
2	**Open Area Soft Demo**		
	Project mngt /Supervision/general requirements	300	
	Acoustic ceiling - open/close & minor repairs	185	
	Soft Demo - excludes shear wall - non-struc. Only	1,550	
	Demo scar repairs	250	
	Electrical outlet relocation	575	
	GC electrical permit fees	450	
	GRT	6	
	GC Fees & GL insurance	386	
			3,702
	Total of Items # 1,2 & 3	**$21,428**	

ITEM #			
3	**Half height wall demo**		
	Project mngt /Supervision/general requirements	816	
	Soft demo on OT	1,950	
	Low height wall bracing	555	
	Over-head bracing - jack wall & adjacent hard ld	880	
	Drywall repairs	1,670	
	Wood trim with reveal	1,080	
	Additional painting - corridor & ceiling on OT	675	
	Replace lock-set with latch-set	125	
	Electrical relocates	575	
	GC & electrical permit fee allowance	650	
	GRT	16	
	GC Fees & GL insurance	1,048	
			10 040

COB 11 30 07 rev.

ORDINANCE NO. 7,011–N.S.

LEASE AMENDMENT WITH N.E.W. MILVIA PROPERTY, LLC, THE SUCCESSOR IN INTEREST TO NORA E. WAGNER, TRUSTEE UTD FOR REAL PROPERTY LOCATED AT 2118 MILVIA STREET FOR THE PURPOSE OF LEASING ADDITIONAL OFFICE SPACE FOR THE PLANNING AND DEVELOPMENT DEPARTMENT FOR THE PERIOD MARCH 1, 2008 AND CONTINUING THROUGH AUGUST 31, 2011

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS
That the City Manager is hereby authorized for and on behalf of the City to execute a Lease Amendment for a period of approximately 3 years, 6 months with an option to extend for additional three year period as set forth in the Lease Amendment, marked Exhibit A, a copy of which is attached hereto and made a part hereof.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AMENDMENT AT 2118 MILVIA STREET.

The City Manager is hereby authorized to execute a Lease Amendment with N.E.W. Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD for real property located at 2118 Milvia Street. The lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 11, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Anderson, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates.

Noes: None.

Absent: Capetilli.

VENDOR

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this **"First Amendment"**) is made August 31, 2006 and entered into by and between N.E.W. Milvia Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD DATED JULY 27, 1989 (**"Landlord"**) and City of Berkeley (**"Tenant"**), with reference to the following facts:

RECITALS

A. Landlord and Tenant entered into that certain Office Lease, including Addendum #1 and #2, dated November 6, 1995 (the **"Lease"**). Pursuant to the Lease, Landlord leased to Tenant the premises consisting of approximately 19,260 rentable square feet on the first and third floors and a portion of the second floor of the building (the **"Premises"**) located at 2118 Milvia Street, Berkeley, California.

B. The Lease contains an option by which Tenant may extend the Lease for two additional three-year terms at fair market rental value. By letter dated September 6, 2005, Tenant exercised its option to extend the term of the Lease for three years, commencing on September 1, 2006 and continuing through August 31, 2009. The parties thereafter agreed to extend the lease for an additional two years, for a total first extended term of five years, through August 31, 2011.

C. The Landlord believes that, due to a misreading of language in the Lease capping certain operating expenses, Landlord undercharged Tenant for and Tenant accordingly underpaid Tenant's Proportionate Share of Excess Expenses for Project Operating Costs as required by the Lease during its Initial Term in an amount totaling $130,189. Landlord first notified Tenant of the claimed miscalculation in June of 2006, and provided Tenant an accounting of the alleged underpayment figures on August 14, 2006, reflecting Tenant's Proportionate Share of the Excess Expenses incurred through August 31, 2005. Thereafter, on November 14, 2006, Landlord provided the itemized expense statement reflecting Excess Expenses due for the final year of the Initial Term, September 1, 2005 through August 31, 2006. The Tenant has not audited the figures presented by Landlord and believes that no additional amount can be claimed after the Landlord provides Tenant an itemized expense statement on or before April 1 following each lease year and that the limitations period has run for a significant portion of the amounts allegedly due. Each party disputes the claims and defenses of the other party (hereinafter the **"Dispute"**).

D. The Parties nevertheless wish to compromise the Dispute by modifying the Lease and agreeing that Tenant will pay a stipulated sum on a monthly basis in addition to the rent that would otherwise be due as a result of the Tenant's exercise of the first option to extend the Lease.

E. The Parties acknowledge that this First Amendment must be submitted for approval through an Ordinance of the City Council of the City of Berkeley. Therefore, the effective date of the First Amendment is the date 30 days after the second reading of the authorizing Ordinance (**"Effective Date"**).

AGREEMENT

NOW, THEREFORE, in consideration of Landlord's agreement to extend the term of the Lease and for other good and valuable consideration recited above, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Extension of Term. Paragraph 2 of the Lease, and the Basic Lease Information attached thereto, are hereby amended to reflect the extension of the term of the Lease (the "**First Extension Term**") as follows: The Commencement Date for the First Extension Term shall be September 1, 2006, and the Expiration Date for the First Extension Term shall be August 31, 2011. There will be one remaining option to renew the Lease for a three-year term commencing upon the expiration of the First Extension Term.

2. Condition of the Premises. Tenant acknowledges that it has been in continuous possession of the Premises since 1996 and further acknowledges that it accepts the Premises in their "as-is" physical condition and "as-is" state of repair. Neither Landlord, nor anyone acting for or on behalf of Landlord, has made any representation, statement, warranty or promise to Tenant concerning the physical aspects or condition of the Premises. Tenant represents to Landlord that: (i) the Premises and facilities appurtenant thereto are in good, clean, safe and tenantable condition as of the Effective Date; (ii) Landlord completed all construction obligations as set forth in the Lease; (iii) Landlord is not in default under the Lease, and no facts or conditions exist which, with the passage of time, could constitute a default by Landlord under the Lease.

3. NEW BASE RENT AND ADDITIONAL RENT FOR THE OPTION TERM.

(a) Base Rent: Tenant shall pay the Monthly Installment of Base Rent as required by Paragraph 5.1, during the First Extension Term, in the amounts as follows:

September 1, 2006- August 31, 2007	$42,997.95
September 1, 2007 – August 31, 2008	$44,287.88
September 1, 2008 – August 31, 2009	$45,616.52
September 1, 2009 – August 31, 2010	$46,985.01
September 1, 2010 – August 31, 2011	$48,394.56

(b) Payment of Arrearage for the period September 1, 2006 and continuing through Effective Date as Additional Rent: Tenant confirms that Tenant has paid, or will pay, as Base Rent for the months beginning September 1, 2006 through the Effective Date, the sum of $35,837.26 monthly, the rate established for the 2005-2006 lease year under the Initial Term of the Lease. Thus, Tenant has not paid the full amount due pursuant to this First Amendment for the period of September 1,

2006 through the Effective Date. As a condition to the effectiveness of this First Amendment, Tenant acknowledges it must make up the new Base Rent underpayments. To do so, Tenant shall, within 30 days of the Effective Date of this First Amendment, pay $7,160.69 for each month from September 1, 2006 through the end of the month of the Effective Date. Should the payment not be made, this First Amendment shall be null and void.

(c) Payment of Proportionate Share of Project Operating Expenses: As a condition to the effectiveness of this Amendment, Tenant shall pay its Proportionate Share of Excess Expenses in the amount of $48,431.00, which became due under the 2005-2006 lease year of the Initial Term of the Lease, in two equal payments of $24,215.50, the first due by March 1, 2007 and the second due by August 1, 2007. Should the payment not be made, this First Amendment shall be null and void.

4. NEW BASE OPERATING EXPENSES AND PROPERTY TAXES - Base Operating Expenses and Property Taxes for First Extension Term. The Base Year as defined by Paragraph 2.b. shall be January 1, 2006 through December 31, 2006. Tenant shall pay its Proportionate Share of the Excess Expenses as set forth in the Lease and Lease Addendum No. 2 using January 1, 2006 through December 31, 2006 as the Base Year. 2007 shall therefore be the first Comparison Year under the First Extension Term. Tenant shall make monthly payments during 2007 toward its Proportionate Share of the Excess Expenses in compliance with Paragraph 5.3(b)(2) of the Lease. Tenant has been making payments of $350 per month beginning in September 2006, and Landlord shall apply these $350 monthly payments to the Excess Expenses due from Tenant for 2007.

5. Reimbursement, as Additional Rent, for Previous Project Operating Costs Accruing as of August 31, 2005. Tenant agrees to pay a stipulated sum of $92,106 as a full resolution of Landlord's claim that Landlord undercharged Tenant for, and Tenant accordingly underpaid, Tenant's Proportionate Share of Excess Expenses for Project Operating Costs over the course of the Initial Term of the Lease. Landlord asserts that said underpayments total at least $130,189 through the 2004-2005 lease year. As a full and final release and settlement of this dispute and accord of this underpayment, Tenant agrees to and shall pay as Additional Rent due when Monthly Base Rent is due the additional amount of $1,535.10 monthly for each month of the First Extension Term ("**Additional Rent**"), for a total payment of $92,106. The parties agree that these Additional Rent payments shall constitute a full satisfaction of any and all arrearage under the Initial Term of the Lease for Excess Expenses incurred through August 31, 2005. The parties have, concurrent with this First Amendment, entered into a Settlement Agreement and Release reflecting and restating the terms of this compromise settlement. As set forth in the Settlement Agreement and Release, Tenant shall pay the monthly installments of $1535.10 for the period of September 1, 2006 through the end of the month of the Effective Date, within 30 days of the Effective Date ("Arrearage Catch Up"). Should the Arrearage Catch Up not be made, this First Amendment shall be null and void.

6. Time Limitation for Adjustment of Additional Rent. Landlord and Tenant agree to add the following as paragraph 5.3(b)(2)(f):

Should Landlord discover that for any reason the Landlord understated or overstated Tenant's Proportionate Share of Excess Expenses for Project Operating Costs for any Comparison Year, the Landlord shall submit a corrected itemized expense statement within twelve months from the date on which Landlord first delivered the itemized expense statement for the Comparison Year, after which time the itemized expense statement shall be considered a final statement subject to no further corrections by the Landlord. This Section 5.3(b)(2)(f) does not effect any right the Tenant has under Section 5.3(b)(2)(e) to audit records and obtain a credit from Landlord for any overcharges discovered as the result of an audit.

7. Tenant Improvements. Notwithstanding anything to the contrary in this First Amendment or the Lease, Landlord agrees to contract with Greene Construction, at Landlord's expense, to complete certain tenant improvements to the Premises as set forth in the scope of work (the "**Work**"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Tenant agrees to and shall cooperate with Landlord and its contractors with regard to completion of the Work. The exercise of Landlord's rights hereunder shall not constitute an eviction of Tenant from the Premises or any part thereof, and Tenant shall not receive any rent abatement by reason thereof. Nothing herein shall be construed to impose upon Landlord any obligation whatsoever with regard to the care, maintenance or repair of the Premises other than as specifically provided in the Lease, including its Addenda. Landlord shall use reasonable efforts to minimize interference with Tenant's operations at the Premises and to provide notice to Tenant of its contractor's schedule for the completion of the Work.

8. Right of First Negotiation. A portion of the second floor of the building in which the Premises are located (the "**Second Floor Space**") is currently leased to a tenant (the "ISMRM") whose lease expires in August 2007. In the event Landlord and the ISMRM do not enter into an agreement to extend the term of ISMRM's lease for the Second Floor Space, Landlord shall notify Tenant in writing as to the date the Second Floor Space will become available for lease (the "**Availability Notice**") before Landlord attempts to market the Second Floor Space to any other potential tenant. If Tenant is interested in leasing the Second Floor Space, it shall so notify Landlord in writing within fifteen (15) days following Tenant's receipt of the Availability Notice (the "**Interest Period**"), in which event Landlord and Tenant shall then negotiate in good faith to establish the fair market rental for the Second Floor Space (the "**FMR**"). If Landlord and Tenant reach consensus on the FMR within thirty (30) days following Tenant's receipt of the Availability Notice (the "**Negotiation Period**"), they shall promptly thereafter enter into a lease for the Second Floor Space on the same material terms and conditions as are contained in the Lease then existing between Landlord and Tenant, except that the base rent for the Second Floor Space shall be equal to the FMR. If Tenant does not notify Landlord of its interest in leasing the Second Floor Space in writing within the Interest Period, or if Tenant does so notify Landlord within the Interest Period but Landlord and Tenant are unable to reach consensus on the FMR within the Negotiation Period, then Tenant's right of first negotiation shall terminate as of 5:00 P.M. on the last day of the Interest Period or the Negotiation Period, as applicable, and Landlord may then market the Second Floor Space to other potential tenant(s) on any terms and conditions Landlord may elect. Time is of the essence. Landlord shall not be obligated to enter into a new lease with Tenant for the Second Floor Space if Tenant either is in default at the time of the initial notice or during or at the end of the Negotiation Period.

9. Brokerage Fees. Tenant represents and warrants to Landlord that Tenant has not dealt with any real estate broker or agent in connection with this First Amendment. Landlord represents and warrants to Tenant that the only real estate broker or agent Landlord has dealt with in connection with this First Amendment is Colliers International, and that Landlord shall pay a brokerage fee to Colliers International pursuant to a separate written agreement between Landlord and Colliers International. Tenant shall, to the fullest extent allowed by law, defend, indemnify and hold harmless Landlord from and against any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any real estate broker, finder or agent in connection with this First Amendment or its negotiation by reason of any act of Tenant. Landlord shall, to the fullest extent allowed by law, defend, indemnify and hold harmless Tenant from and against any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any real estate broker, finder or agent in connection with this First Amendment or its negotiation by reason of any act of Landlord.

10. Governing Law. This First Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

11. Counterparts. This First Amendment may be executed in any number of counterparts, each of which shall constitute an original hereof and all of which shall constitute one and the same document.

12. Modifications. This First Amendment, and the Lease it amends, may only be modified pursuant to a written agreement signed by both Landlord and Tenant.

13. Enforceability/Conflicts. Landlord and Tenant acknowledge and agree that the Lease remains in full force and effect, unchanged except as expressly provided for in this First Amendment. In the event of a conflict between the terms of this First Amendment and the terms of the Lease, the terms of this First Amendment shall govern. Landlord and Tenant agree that capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Lease.

14. Authority. The undersigned each represents they are authorized to execute this First Amendment and have, as required, received due authority as appropriate.

15. Lease; Settlement Agreement. Except as herein modified, the provisions of the Lease remain in force and effect, other than as set forth in that certain Settlement Agreement and Release of even date by and between Landlord and Tenant; provided however, that the effectiveness of this Amendment is conditional upon the execution by both parties of the Settlement Agreement and Release.

IN WITNESS WHEREOF, Landlord and Tenant have executed this First Amendment as of the date first written above.

LANDLORD:

N.E.W.Milvia Property, LLC

By: Nora E. Wagner, Manager
Nora E. Wagner

TENANT:

City Of Berkeley

By: Lisa Caronna
Print Name: Lisa Caronna
Title: Deputy City Manager

Registered by:

Ann-Marie Hogan
City Auditor

APPROVED AS TO FORM

Deputy
CITY ATTORNEY FOR THE
CITY OF BERKELEY

ATTEST for the City of Berkeley

Rhonda K Basore
Assistant City Clerk

EXHIBIT A

TO FIRSTAMENDMENT

Landlord and Tenant have agreed on the items listed below. Items completed or in process as of December 15, 2006 are noted:

1. Landlord shall provide new building standard carpet as shown below throughout the Premises except in the Permit Center. The carpet tiles in the Permit Center shall be cleaned.
Manufacturer: Patcraft Carpeting Line: Strut Your stuff - I 0109
Third Floor: Mambo – 09205/ First and Second Floors: Waltz - 09208

2. Landlord shall paint the entire Premises. Tenant and Landlord shall mutually approve the color. The carpet replacement and cleaning (noted above) and painting shall occur during non-working hours as mutually agreed to by Landlord and Tenant. Landlord will provide moving services. Tenant to be responsible for its own IT work.

3. Landlord shall place soap dispensers in each restroom. The ventilation in the restrooms shall be enhanced to meet code requirements.

4. Landlord shall replace or repair the track lighting in the third floor conference room.

5. Landlord shall provide emergency lighting on the first floor in the back and in the bathrooms.

6. Landlord shall install a pump to better circulate the hot water to each restroom.

7. Landlord has repaired the ADA door opener at the base of the Permit Center door.

8. Landlord shall replace rotten planks on the third floor and the entire deck shall be powerwashed and resealed.

9. Landlord shall power wash the exterior of the building.

10. Landlord shall replace the kitchen cabinets on the Third Floor.

11. Landlord shall repair the roof and deck flashing to prevent leaks as necessary.

12. The HVAC shall be examined to address any malfunctions and analyzed for improper ventilation and heating. Based on the analysis, the system shall be rebalanced and thermostats adjusted or replaced. Where necessary, ducting shall be altered or additional ceiling mounted units added.

13. Landlord shall design with Tenant's input a new exterior main entry gate and fence and replace the current front doors, remove mailboxes, fill in the opening with glass and apply a non-slip coating at the ceramic tile entrance for 2118 Milvia.

14. Landlord shall provide Tenant with a copy of its HVAC maintenance schedule, window washing schedule and exterior landscaping maintenance plan and schedule. (Tenant to be responsible for interior plants and any potted plants on the third floor roof deck). Such schedule shall ensure adequate maintenance of landscaping and the HVAC system.

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made this ____ day of _____, by and between N.E.W. Milvia Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD DATED JULY 27, 1989 FUND ("LANDLORD") and CITY OF BERKELEY ("CITY"). The CITY and LANDLORD are collectively referred to herein as the "Parties."

RECITALS

A. CITY and LANDLORD are parties to a lease agreement dated November 6, 1995 for a portion of the property at 2118 Milvia Street, Berkeley, California. The foregoing lease and all addendums thereto are collectively referred to herein as the "Lease."

B. A dispute has arisen between LANDLORD and CITY about Additional Rent for Operating Costs that LANDLORD claims to be due under the Lease. The LANDLORD believes that, due to a misreading of language in the Lease capping certain operating expenses, LANDLORD undercharged CITY for, and CITY accordingly underpaid, CITY's Proportionate Share of Excess Expenses for the Project Operating Costs as required by the Lease during its Initial Term in an amount totaling $130,189. LANDLORD first notified CITY of the claimed miscalculation in June of 2006, and provided on August 14, 2006 an accounting of the alleged underpayment figures reflecting Tenant's Proportionate Share of the Excess Expenses incurred through August 31, 2005. Thereafter, on November 14, 2006, Landlord provided the itemized expense statement reflecting Excess Expenses due for the final year of the Initial Term, September 1, 2005 through August 31, 2006. The CITY has not audited the figures presented by LANDLORD and believes that no additional amount can be claimed after LANDLORD provides CITY an itemized expense statement on or before April 1 following each lease year and that the limitations period has run for a significant portion of the amounts allegedly due. Each party disputes the claims and defenses of the other party (hereinafter the "Dispute").

C. The Parties nevertheless wish to compromise the Dispute by modifying the Lease and agreeing that CITY will pay a stipulated sum on a monthly basis in addition to the rent that would otherwise be due as a result of the CITY's exercise of the option to renew the Lease.

D. Other than the Dispute as set forth above, there are no disputes pending between the Parties. However, in order to fully resolve any possible disputes known or unknown, the Parties wish to enter into a general release as set forth hereinbelow.

E. The Parties desire to enter into this Settlement Agreement and concurrently herewith to enter into a First Amendment to Lease ("First Amendment") in the form attached hereto as Exhibit A and incorporated herein.

ORDINANCE NO. 6,966–N.S.

LEASE AMENDMENT WITH N.E.W. MILVIA PROPERTY, LLC, THE SUCCESSOR IN INTEREST TO NORA E. WAGNER, TRUSTEE UTD FOR REAL PROPERTY LOCATED AT 2118 MILVIA STREET FOR THE PURPOSE OF LEASING OFFICE SPACE FOR THE PLANNING AND DEVELOPMENT DEPARTMENT

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS.

1. On November 21, 1995, the City Council adopted Ordinance No. 6,306–N.S., which authorized the City Manager to execute a ten-year lease agreement, with the option of additional two, three-year terms, with Nora Wagner for real property located at 2118 Milvia Street for use as office space for the Planning and Development Department.

2. The lease amendment for the five year period, with a three year option, is appropriate due to the proximity of the existing lease space at 2118 Milvia to the remainder of the City administration and because the space is designed to accommodate the needs of the Permit Service Center. The proposed lease rate is comparable with rates offered elsewhere in the vicinity and consistent with the agreement previously reached with the landlord.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AMENDMENT FOR REAL PROPERTY AT 2118 MILVIA STREET.

The City Manager is hereby authorized to execute a Lease Amendment with N.E.W. Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD for real property located at 2118 Milvia Street, for the purpose of leasing office space for the Planning and Development Department for the five-year period of September 1, 2006 through August 31, 2011. The lease amendment shall be on substantially the terms set forth in Exhibit A, a copy of which is attached hereto and made a part hereof.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on January 30, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Worthington, Wozniak and Mayor Bates.

Noes: None.

Abstain: Councilmember Spring.

Absent: None.

* * * * * *

At a regular meeting of the Council of the City of Berkeley held on February 13, 2007, this Ordinance was adopted by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Tom Bates

Tom Bates, Mayor

ATTEST: Pamyla Means

Pamyla Means, MMC, City Clerk

In effect: March 15, 2007

ACKNOWLEDGMENT OF TERM
COMMENCEMENT DATE

To: City of Berkeley
Attn: Wendy Cosin
2180 Milvia Street
Berkeley, CA 94704

Date: November 7, 1996

Re: Lease dated November 6, 1995, between NORA WAGNER, an individual, Landlord, and CITY OF BERKELEY, Tenant, concerning the Premises located at 2118 Milvia Street, Berkeley, California

Ladies and Gentlemen:

In accordance with the above-referenced lease, (the "Lease"), we wish to advise you and/or confirm the following information:

1. The Premises have been accepted by Tenant as being substantially complete in accordance with the Lease and there is no apparent deficiency in construction.

2. Tenant has possession of the Premises and acknowledges that, pursuant to the provisions of the Lease, the Term Commencement Date is **September 1, 1996**, and the Term Expiration Date is **August 31, 2006.**

3. The Rentable Area of the Premises is 19,260 square feet.

4. Tenant's Percentage Share is 83.6%.

5. The Security Deposit is $28,035.

6. The Annual Base Rent is $263,662.20.

7. The Monthly Base Rent is $21,971.85.

8. In accordance with the Lease, Annual Base Rent commenced to accrue on September 1, 1996.

9. If the Term Commencement Date is other than the first day of a calendar month, the first billing will contain a pro rata adjustment. Each billing thereafter shall be for the full amount of the Monthly Base Rent as provided for in the Lease.

10. Monthly Base Rent is due and payable in advance on the first day of each and every month during the term of the Lease. Your rent checks should be made payable to NORA WAGNER at 846 Mendocino Avenue, Berkeley, California 94707.

LANDLORD: Dated: 3/14/97

Nora E. Wagner
NORA WAGNER, an individual

AGREED TO AND ACCEPTED BY TENANT: Dated: 3/12/97

CITY OF BERKELEY, a municipality

By: _____ By: _____

Its: Deputy City Manager Director Its: _____

EXHIBIT "A"

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CB COMMERCIAL

OFFICE BUILDING LEASE

CB COMMERCIAL REAL ESTATE GROUP, INC.
BROKERAGE AND MANAGEMENT
LICENSED REAL ESTATE BROKER

This Lease between Nora Wagner

an Individual

("Landlord"), and City of Berkeley

a municipality, ("Tenant"), is

dated November 6, 19 95.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 5.4) and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown by diagonal lines on the floor plan attached hereto as Exhibit "A," and further described at Section 2l. The Premises are located within the Building and Project described in Section 2m. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants and invitees, to use of the Common Areas (as defined at Section 2e).

2. DEFINITIONS

As used in this Lease, the following terms shall have the following meanings:

a. *Base Rent (initial):* $ 263,662.20 per year.

b. *Base Year:* The calendar year of 1996 - 1997 Tenant's base year shall be 12 months from occupancy.

c. *Broker(s)*
Landlord's: Aileen Dolby

Tenant's: Aileen Dolby

In the event that CB Commercial Real Estate Group, Inc. represents both Landlord and Tenant, Landlord and Tenant hereby confirm that they were timely advised of the dual representation and that they consent to the same, and that they do not expect said broker to disclose to either of them the confidential information of the other party.

d. *Commencement Date:* May 1, 1996. Landlord and Tenant will confirm in writing the actual commencement date and expiration date of the ten (10) year term of the lease promptly after the occurence thereof.

e. *Common Areas:* the building lobbies, common corridors and hallways, restrooms, garage and parking areas, stairways, elevators and other generally understood public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas.

f. *Expense Stop:* (fill in if applicable): $ N/A

g. *Expiration Date:* April 30, 2006, unless otherwise sooner terminated in accordance with the provisions of this Lease.

h. *Index (Section 5.2):* United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, N/A Average, Subgroup "All Items" (1967 = 100).

i. *Landlord's Mailing Address:* 846 Mendocino, Berkeley, California 94707-1923

Tenant's Mailing Address: City of Berkeley, 2180 Milvia Street, Berkeley, California 94704 until Commencement Date, then building address.

j. *Monthly Installments of Base Rent (initial):* $ 21,971.85 per month.

~~k. *Parking:* Tenant shall be permitted, upon payment of the then prevailing monthly rate (as set by Landlord from time to~~ time) to park _____ cars on a non-exclusive basis ~~in the area(s) designated by~~ Landlord for parking. Tenant shall abide by any and all ~~parking regulations and~~ rules established from time to time by Landlord or Landlord's ~~parking operator. Landlord reserves the right to separately charge Tenant's guests and visitors for parking.~~

PLEAS INITIA

l. *Premises:* that portion of the Building containing approximately 19,260 square feet of Rentable Area, shown by diagonal lines on Exhibit "A," located on the 1st and 2nd and 3rd ~~floor~~ floors of the Building and known as Suite _____.

m. *Project:* the building of which the Premises are a part (the "Building") and any other buildings or improvements on the real property (the "Property") located at 2118 Milvia Street, Berkeley, California and further described at Exhibit "B." The Project is known as _____.

n. *Rentable Area:* as to both the Premises and the Project, the respective measurements of floor area as may from time to time be subject to lease by Tenant and all tenants of the Project, respectively, as determined by Landlord and applied on a consistent basis throughout the Project.

o. *Security Deposit (Section 7):* $ 28,035.00

p. *State:* the State of California

q. *Tenant's First Adjustment Date (Section 5.2):* the first day of the calendar month following the Commencement Date plus N/A months.

r. *Tenant's Proportionate Share:* 83.6 %. Such share is a fraction, the numerator of which is the Rentable Area of the Premises, and the denominator of which is the Rentable Area of the Project, as determined by Landlord from time to time. The Project consists of 1 building(s) containing a total Rentable Area of 23,033.62 square feet.

s. *Tenant's Use Clause (Article 8):* One stop permit counter and general office for a public agency.

t. *Term:* the period commencing on the Commencement Date and expiring at midnight on the Expiration Date.

3. EXHIBITS AND ADDENDA.

The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:

PLEASE INITIAL

a. Exhibit "A"—Floor Plan showing the Premises.
b. Exhibit "B"—~~Site Plan of the Project.~~ Legal Description
c. Exhibit "C"—Building Standard Work Letter.
d. Exhibit "D"—Rules and Regulations.
~~e. Exhibit "E"—Guarantee.~~
f. Addenda:

1 and 2, and seismic report.

PLEASE INITIAL

4. DELIVERY OF POSSESSION.

If for any reason Landlord does not deliver possession of the Premises to Tenant on the Commencement Date, Landlord shall not be subject to any liability for such failure, ~~the Expiration Date shall not change~~ and the validity of this Lease shall not be impaired, but Rent shall be abated until delivery of possession. "Delivery of possession" shall be deemed to occur on the date Landlord completes Landlord's Work as defined in Exhibit "C." If Landlord permits Tenant to enter into possession of the Premises before the Commencement Date, such possession shall be subject to the provisions of this Lease, including, without limitation, the payment of Rent. Notwithstanding the foregoing, if Landlord does not deliver possession of the Premises to Tenant by August 1, 1996 Tenant can elect to terminate this lease by giving notice to Landlord at any time before the date Landlord delivers possession of the Premises to Tenant. Lsafter Aug. 1, 1996

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5. RENT.

5.1. *Payment of Base Rent.* Tenant agrees to pay the Base Rent for the Premises. Monthly installments of Base Rent shall be payable in advance on the first day of each calendar month of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis. Tenant shall pay Landlord the first Monthly Installment of Base Rent when Tenant executes the Lease. SEE ADDENDUM

~~5.2 *Adjusted Base Rent.*~~

~~a. The Base Rent (and the corresponding Monthly Installments of Base Rent) set forth at Section 2a shall be adjusted~~ annually (the "Adjustment Date"), commencing on Tenant's First Adjustment Date. Adjustments, if any, shall be based upon increases (if any) in the Index. The Index in publication three (3) months before the Commencement Date shall be the "Base Index." The Index in publication three (3) months before each Adjustment Date shall be the "Comparison Index." As of each Adjustment Date, the Base Rent payable during the ensuing twelve-month period shall be determined by increasing the initial Base Rent by a percentage equal to the percentage increase, if any, in the Comparison Index over the Base Index. If the Comparison Index for any Adjustment Date is equal to or less than the Comparison Index for the preceding Adjustment Date (or the Base Index, in the case of First Adjustment Date), the Base Rent for the ensuing twelve-month period shall remain the amount of Base Rent payable during the preceding twelve-month period. When the Base Rent payable as of each Adjustment Date is determined, Landlord shall promptly give Tenant written notice of such adjusted Base Rent and the manner in which it was computed. The Base Rent as so adjusted from time to time shall be the "Base Rent" for all purposes under this Lease.

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b. If at any Adjustment Date the Index no longer exists in the form described in this Lease, Landlord may substitute any substantially equivalent official index published by the Bureau of Labor Statistics or its successor. Landlord shall use any appropriate conversion factors to accomplish such substitution. The substitute index shall then become the "Index" ~~hereunder.~~

5.3 *Project Operating Costs.*

a. In order that the Rent payable during the Term reflect any increase in Project Operating Costs, Tenant agrees to pay to Landlord as Rent, Tenant's Proportionate Share of all increases in costs, expenses and obligations attributable to the Project and its operation, all as provided below.

b. If, during any calendar year during the Term, Project Operating Costs exceed the Project Operating Costs for the Base Year, Tenant shall pay to Landlord, in addition to the Base Rent and all other payments due under this Lease, an amount equal to Tenant's Proportionate Share of such excess Project Operating Costs in accordance with the provisions of this Section 5.3b.

Upon any such termination, neither party shall have any further liability to the other.

(1) The term "Project Operating Costs" shall include all those items described in the following subparagraphs (a) and (b)

(a) All taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Building or Project or their operation, including without limitation, (i) real property taxes or assessments levied or assessed against the Building or Project, (ii) assessments or charges levied or assessed against the Building or Project by any redevelopment agency, (iii) any tax measured by gross rentals received from the leasing of the Premises, Building or Project, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided that if at any time during the Term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this Lease or on the rent received under any other leases of space in the Building or Project, or (2) any license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rent, or (3) any transfer, transaction, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or Project, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Project Operating Costs. If at any time during the Term the assessed valuation of, or taxes on, the Project are not based on a completed Project having at least ~~eighty-five percent (85%)~~ of the Rentable Area occupied, then the "taxes" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the taxes which would have been payable if the Project were completed and at least ~~eighty-five percent (85%) occupied~~ ninety five percent (95%) occupied.

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(b) Operating costs incurred by Landlord in maintaining and operating the Building and Project, including without limitation the following: costs of (1) utilities; (2) supplies; (3) insurance (including public liability, property damage, ~~earthquake~~ earthquake, and fire and extended coverage insurance for the full replacement cost of the Building and Project as required by Landlord or its lenders for the Project; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance, repair or overhaul of the Building or Project, and equipment, improvements and facilities located within the Project, including without limitation engineers, janitors, painters, floor waxers, window washers, security ~~and parking personnel and gardeners~~ (but excluding persons performing services not uniformly available to or performed for substantially all Building or Project tenants); ~~(6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building or Project as required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises);~~ (7) management of the Building or Project, whether managed by Landlord or an independent contractor ~~(including, without limitation, an amount equal to the fair market value of any on-site manager's office)~~; (8) rental expenses for ~~for a reasonable depreciation allowance on~~ personal property used in the maintenance, operation or repair of the Building or Project; (9) costs, expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental authority; (10) amortization of capital expenses (including financing costs) (i) required by a governmental entity for energy conservation or life safety purposes, or (ii) made by Landlord to reduce Project Operating Costs; and (11) any other cost, or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Project. If at any time during the Term, less than ~~eighty-five percent (85%)~~ of the Rentable Area of the Project is occupied, the "operating costs" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the operating costs which would have been incurred if the Project had been at least ~~eighty-five percent (85%)~~ ninety five percent (95%) occupied. not to exceed ~~3%~~ 5% of gross revenues

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(2) Tenant's Proportionate Share of Project Operating Costs shall be payable by Tenant to Landlord as follows:

(a) Beginning with the calendar year following the Base Year and for each calendar year thereafter ("Comparison Year"), Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of the Project Operating Costs incurred by Landlord in the Comparison Year which exceeds the total amount of Project Operating Costs payable by Landlord for the Base Year. This excess is referred to as the "Excess Expenses."

(b) To provide for current payments of Excess Expenses, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year, an amount equal to Tenant's Proportionate Share of the Excess Expenses payable during such Comparison Year, as estimated by Landlord from time to time. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Excess Expenses. It is the intention hereunder to estimate from time to time the amount of the Excess Expenses for each Comparison Year and Tenant's Proportionate Share thereof, and then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Comparison Year.

(c) On or before April 1 of each Comparison Year after the first Comparison Year (or as soon thereafter as is practical), Landlord shall deliver to Tenant ~~a~~ an itemized expense statement setting forth Tenant's Proportionate Share of the Excess Expenses for the preceding Comparison Year. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within ~~ten (10)~~ forty-five (45) days of the receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of additional rent an amount equal to the difference until the credit is exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit. The obligations of Tenant and Landlord to make payments required under this Section 5.3 shall survive the Expiration Date.

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(d) Tenant's Proportionate Share of Excess Expenses in any Comparison Year having less than 365 days shall be appropriately prorated.

(e) If any dispute arises as to the amount of any additional rent due hereunder, Tenant shall have the right after reasonable notice and at reasonable times to ~~inspect~~ audit Landlord's accounting records at Landlord's accounting ~~office and~~ office. If after such inspection Tenant still disputes the amount of additional rent owed, ~~a certification as to the proper amount shall be made by~~ Landlord's certified public accountant, ~~which certification shall be final and conclusive. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original statement overstated Project Operating Costs by more than five percent (5%) three percent (3%)~~. and Tenant shall reconcile what is the proper amount. Landlord's with ~~its~~ assistance.

and recognized as normal for a commercial office building reasonable

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~~(i) If this Lease sets forth a Expense Stop at Section 2f, then during the Term Tenant shall be liable for Tenant's~~ Proportionate Share of any actual Project Operating Costs which exceed the ~~amount of the~~ Expense Stop. Tenant shall make current payments of such ~~excess costs during the Term~~ in the same manner as is provided for payment of Excess ~~Expenses under the applicable provisions of Section 5.3b(2)(b) and (c) above.~~

5.4 *Definition of Rent.* All costs and expenses which Tenant assumes or agrees to pay to Landlord under this Lease shall be deemed additional rent (which, together with the Base Rent is sometimes referred to as the "Rent"). The Rent shall be paid to the Building manager (or other person) and at such place, as Landlord may from time to time designate in writing, without any prior demand therefor and without deduction or offset, in lawful money of the United States of America.

5.5 *Rent Control.* If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

5.6 *Taxes Payable by Tenant.* In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, other than Building Standard Work made by Landlord, regardless of whether title to such improvements is held by Tenant or Landlord; (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease, the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

6. INTEREST AND LATE CHARGES.

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If Tenant fails to pay ~~when~~ within ten (10) days due any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest at the maximum rate then allowed by law ~~after fifteen (15) days written notice~~. Tenant acknowledges that the late payment of any Monthly Installment of Base Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within ~~ten (10)~~ days from the date it is due, Tenant shall pay Landlord a late charge equal to ~~ten percent (10%)~~ of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease.

~~five~~ six percent (~~5%~~ 6%) fifteen (15)

7. SECURITY DEPOSIT.

Tenant agrees to deposit with Landlord the Security Deposit set forth at Section 2.0 upon execution of this Lease, as security for Tenant's faithful performance of its obligations under this Lease. Landlord and Tenant agree that the Security Deposit may be commingled with funds of Landlord and Landlord shall have no obligation or liability for payment of interest on such deposit. Tenant shall not mortgage, assign, transfer or encumber the Security Deposit without the prior written consent of Landlord and any attempt by Tenant to do so shall be void, without force or effect and shall not be binding upon Landlord.

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If Tenant fails to pay any Rent or other amount when due and payable under this Lease, or fails to perform any of the terms hereof, Landlord may appropriate and apply or use all or any portion of the Security Deposit for Rent payments or any other amount then due and unpaid, for payment of any amount for which Landlord has become obligated as a result of Tenant's default or breach, and for any loss or damage sustained by Landlord as a result of Tenant's default or breach, and Landlord may so apply or use this deposit without prejudice to any other remedy Landlord may have by reason of Tenant's default or breach. If Landlord so uses any of the Security Deposit, Tenant shall, within ~~ten (10) days~~ after written demand therefor, restore the Security Deposit to the full amount originally deposited; Tenant's failure to do so shall constitute an act of default hereunder and Landlord shall have the right to exercise any remedy provided for at Article 27 hereof. Within fifteen (15) days after the Term (or any extension thereof) has expired or Tenant has vacated the Premises, whichever shall last occur, and provided Tenant is not then in default on any of its obligations hereunder, Landlord shall return the Security Deposit to Tenant, or, if Tenant has assigned its interest under this Lease, to the last assignee of Tenant. If Landlord sells its interest in the Premises, Landlord may deliver this deposit to the purchaser of Landlord's interest and thereupon be relieved of any further liability or obligation with respect to the Security Deposit.

fifteen (15) days

8. TENANT'S USE OF THE PREMISES.

Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or Project or the certificate of occupancy issued for the Building or Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall

promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Article. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

9. SERVICES AND UTILITIES.

Provided that Tenant is not in default hereunder, Landlord agrees to furnish to the Premises during generally recognized business days, ~~and during hours determined by Landlord in its sole discretion, and subject to the Rules and Regulations of the Building or Project~~ from the hours of 8:00 am to 6:00 pm, Monday through Friday (excluding holidays), electricity for normal desk top office equipment and normal copying equipment, and heating, ventilation and air conditioning ("HVAC") as required in Landlord's judgment for the comfortable use and occupancy of the Premises. If Tenant desires HVAC at any other time, Landlord shall use reasonable efforts to furnish such service upon reasonable notice from Tenant and Tenant shall pay Landlord's charges therefor on demand. Landlord shall also maintain and keep lighted the common stairs, common entries and restrooms in the Building. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, (ii) failure to furnish or delay in furnishing any such services where such failure or delay is caused by accident or any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, Building or Project, or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises, Building or Project. Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring, through or in connection with or incidental to failure to furnish any such services. If Tenant uses heat generating machines or equipment in the Premises which affect the temperature otherwise maintained by the HVAC system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation, operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord. Notwithstanding, the foregoing, water, electricity, elevator shall be available 24-hours a day, 7 days a week.

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Tenant shall not, without the written consent of Landlord, use any apparatus or device in the Premises, including without limitation, electronic data processing machines, punch card machines or machines using in excess of 120 volts, which consumes more electricity than is usually furnished or supplied for the use of premises as general office space, as determined by Landlord. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises. Tenant shall not consume water or electric current in excess of that usually furnished or supplied for the use of premises as general office space (as determined by Landlord), without first procuring the written consent of Landlord, which Landlord may refuse, and in the event of consent, Landlord may have installed a water meter or electrical current meter in the Premises to measure the amount of water or electric current consumed. The cost of any such meter and of its installation, maintenance and repair shall be paid for by the Tenant and Tenant agrees to pay to Landlord promptly upon demand for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility plus any additional expense incurred in keeping account of the water and electric current so consumed. If a separate meter is not installed, the excess cost for such water and electric current shall be established by an estimate made by a utility company or electrical engineer hired by Landlord at Tenant's expense.

Nothing contained in this Article shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises. In the event utilities are separately metered, Tenant shall pay promptly upon demand for all utilities consumed at utility rates charged by the local public utility plus any additional expense incurred by Landlord in keeping account of the utilities so consumed. Tenant shall be responsible for the maintenance and repair of any such meters at its sole cost.

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Landlord shall furnish elevator service, lighting replacement for building standard lights, restroom supplies, window washing and janitor services in a manner that such services are customarily furnished to comparable office buildings in the area, but not less than five (5) days per week, holidays excepted and of the type of service acceptable in commercially similar buildings.

10. CONDITION OF THE PREMISES.

Tenant's taking possession of the Premises shall be deemed conclusive evidence that as of the date of taking possession the Premises are in good order and satisfactory condition, except for such matters as to which Tenant gave Landlord notice on or before the Commencement Date. No promise of Landlord to alter, remodel, repair or improve the Premises, the Building or the Project and no representation, express or implied, respecting any matter or thing relating to the Premises, Building, Project or this Lease (including, without limitation, the condition of the Premises, the Building or the Project) have been made to Tenant by Landlord or its Broker or Sales Agent, other than as may be contained herein or in a separate exhibit or addendum signed by Landlord and Tenant.

11. CONSTRUCTION, REPAIRS AND MAINTENANCE.

~~a. *Landlord's Obligations.* Landlord shall perform Landlord's Work to the Premises as described in Exhibit "C." Landlord~~ shall maintain in good order, condition and repair the Building ~~and all other~~ portions of the Premises not the obligation of Tenant ~~or of any other tenant in the Building.~~ SEE ADDENDUM #2

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b. *Tenant's Obligations.*

(1) Tenant shall perform Tenant's Work to the Premises as described in Exhibit "C."

(2) Tenant at Tenant's sole expense shall, except for services furnished by Landlord pursuant to Article 9 hereof, maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing, pipes and fixtures, electrical wiring, switches and fixtures, Building Standard furnishings and special items and equipment installed by or at the expense of Tenant.

(3) Tenant shall be responsible for all repairs and alterations in and to the Premises, Building and Project and the facilities and systems thereof, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Article 13) in the Premises, (iii) the moving of Tenant's Property into or out of the Building, or (iv) the act, omission, misuse or negligence of Tenant, its agents, ~~contractors, employees or invitees.~~

Except, with respect to Landlord's obligation to cause the construction of the Tenant Improvements prior to the commencement of the term of this lease, ~~except for~~ as provided in Exhibit C,

Normal wear and tear excepted,

MEW

GW

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(4) If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails ~~promptly~~ commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the prime commercial rate then being charged by Bank of America NT & SA plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum rate then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.

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

~~d. *Waiver by Tenant.* Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford the Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.~~

e. *Load and Equipment Limits.* Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon demand. Tenant shall not install business machines or mechanical equipment which cause noise or vibration to such a degree as to be objectionable to Landlord or other Building tenants.

f. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Project, Building or the Premises. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises.

g. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises.

h. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, except for normal wear and tear. Any damage to the Premises, including any structural damage, resulting from Tenant's use or from the removal of Tenant's fixtures, furnishings and equipment pursuant to Section 13b shall be repaired by Tenant at Tenant's expense.

12. ALTERATIONS AND ADDITIONS. which shall not be unreasonably withheld.

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a. Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord. Landlord's consent may be conditioned on Tenant's removing any such additions, alterations or improvements upon the expiration of the Term and restoring the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion. ~~Landlord may, at Landlord's option, require that any such work be performed by Landlord's contractor, in which case the cost of such work shall be paid for before commencement of the work. Tenant shall pay to Landlord upon completion of any such work by Landlord's contractor, an administrative fee of fifteen percent (15%) of the cost of the work.~~ which shall not be unreasonably withheld.

b. Tenant shall pay the costs of any work done on the Premises pursuant to Section 12a, and shall keep the Premises, Building and Project free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

Tenant shall keep Tenant's leasehold interest, and any additions or improvements which are or become the property of Landlord under this Lease, free and clear of all attachment or judgment liens. Before the actual commencement of any work for which a claim or lien may be filed, Tenant shall give Landlord notice of the intended commencement date a sufficient time before that date to enable Landlord to post notices of non-responsibility or any other notices which Landlord deems necessary for the proper protection of Landlord's interest in the Premises, Building or the Project, and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

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~~c. Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien completion bond in an amount equal to at least one and one-half (1½) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and materialmen's liens and to insure timely completion of the work. Nothing contained in this Section 12c shall relieve Tenant of its obligation under Section 12b to keep the Premises, Building and Project free of all liens.~~

d. Unless their removal is required by Landlord as provided in Section 12a, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13b.

13. LEASEHOLD IMPROVEMENTS; TENANT'S PROPERTY.

a. All fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 13b.

b. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant's Property is removed, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal.

14. RULES AND REGULATIONS.

Tenant agrees to comply with (and cause its agents, contractors, employees and invitees to comply with) the rules and regulations attached hereto as Exhibit "D" and with such reasonable modifications thereof and additions thereto as Landlord may from time to time make. Landlord shall not be responsible for any violation of said rules and regulations by other tenants or occupants of the Building or Project.

15. CERTAIN RIGHTS RESERVED BY LANDLORD.

Landlord reserves the following rights, exercisable without liability to Tenant for (a) damage or injury to property, person or business, (b) causing an actual or constructive eviction from the Premises, or (c) disturbing Tenant's use or possession of the Premises:

~~a. To name the Building and Project and~~ to change the name or street address of the Building or Project;

b. To install and maintain all signs on the exterior and interior of the Building and Project;

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c. To have pass keys to the Premises and all doors within the Premises, excluding Tenant's vaults and safes;

d. At any time during the Term, and on reasonable prior notice to Tenant, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an interest in the Project or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and

e. To enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building or Landlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use its best efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

16. ASSIGNMENT AND SUBLETTING.

No assignment of this Lease or sublease of all or any part of the Premises shall be permitted, except as provided in this Article 16.

PLEASE INITIAL

a. Tenant shall not, without the prior written consent of Landlord which shall not be unreasonably withheld, assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

b. If at any time or from time to time during the Term Tenant desires to assign this Lease or sublet all or any part of the Premises, Tenant shall give notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease, and the identity of the proposed assignee or subtenant. Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant as Landlord may reasonably request. Landlord shall have the option, exercisable by notice given to Tenant within twenty (20) days after Tenant's notice is given, either to sublet such space from Tenant at the rental and on the other terms set forth in this Lease for the term set forth in Tenant's notice, or, in the case of an assignment, to terminate this Lease. If Landlord does not exercise such option, Tenant may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions:

(1) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld;

(2) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord;

(3) No assignment or sublease shall be valid and no assignee or sublessee shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to Landlord;

(4) No assignee or sublessee shall have a further right to assign or sublet except on the terms herein contained; and

(5) Any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) any real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder.

PLEASE INITIAL

~~c. Notwithstanding the provisions of paragraphs a and b above, Tenant may assign this Lease or sublet the Premises or any~~ portion thereof, without Landlord's consent and without extending any recapture or ~~termination option~~ to Landlord, to any corporation which controls, is controlled by or is under common ~~control with Tenant~~, or to any corporation resulting from a merger or consolidation with Tenant, ~~or to any person or~~ entity which acquires all the assets of Tenant's business as a going concern, provided that ~~(i) the~~ assignee or sublessee assumes, in full, the obligations of Tenant under this Lease, (ii) Tenant ~~remains fully liable under this Lease, and (iii) the use of the Premises under Article 8 remains unchanged.~~

d. No subletting or assignment sh[illegible]lease Tenant of Tenant's obligations under [illegible]'s Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Te[illegible]t hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the Lease or sublettings or amendments or modifications to the Lease with assignees of Tenant, ~~without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent~~ with Tenant's consent thereto and any such actions shall not relieve Tenant of liability under this Lease.

PLEASE INITIAL

e. If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand, pay Landlord an administrative fee of One Hundred Fifty and No/100ths Dollars ($150.00) plus ~~any~~ attorneys' fees reasonably incurred by Landlord in connection with such act or request. These fees will be due and payable up to $1,500.00 thirty (30) days after written notice from Landlord.

17. HOLDING OVER.

If after expiration of the Term, Tenant remains in possession of the Premises with Landlord's permission (express or implied), Tenant shall become a tenant from month to month only, upon all the provisions of this Lease (except as to term and Base Rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to one hundred fifty percent (150%) of the Monthly Installments of Base Rent payable by Tenant at the expiration of the Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month to month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination.

18. SURRENDER OF PREMISES.

a. Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, and (iii) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property on or before the Expiration Date and promptly repair all damage to the Premises or Building caused by such removal.

b. If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date Tenant shall surrender all keys to the Premises.

19. DESTRUCTION OR DAMAGE.

~~a. If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged by fire, earthquake, act of~~ God, the elements of other casualty, Landlord shall, subject to the provisions of this Article, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within (90) ninety days. If Landlord determines that repairs can be completed within ninety (90) days, this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees, contractors, licensees or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs required of Landlord under Section 19d.

b. If in Landlord's opinion, such repairs to the Premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

PLEASE INITIAL

c. If any other portion of the Building or Project is totally destroyed or damaged to the extent that in Landlord's opinion repair thereof cannot be completed within ninety (90) days, Landlord may elect upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

d. If the Premises are to be repaired under this Article, Landlord shall repair at its cost any injury or damage to the Building and Building Standard Work in the Premises. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any other Leasehold Improvements and Tenant's Property. Landlord shall not be liable for any loss of business, inconvenience or annoyance arising from any repair or restoration of any portion of the Premises, Building or Project as a result of any damage from fire or other casualty.

e. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, Building or Project by fire or other casualty, and any present or future law which purports to govern the rights of Landlord ~~and Tenant in such circumstances in the absence of express agreement, shall have no application.~~ SEE ADDENDUM

20. EMINENT DOMAIN.

a. If the whole of the Building or Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by notice to Landlord given within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Project.

b. In the event of any taki[illegible] partial or whole, all of the proceeds of any [illegible]rd, judgment or settlement payable by th condemning authority shall be the exclusive property of Landlord, and Te[illegible]nt hereby assigns to Landlord all of its righ title and interest in any award, judgment or settlement from the condemning authority. Tenant, however, shall have th right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not fro Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage t Tenant's personal property.

c. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restor the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but onl to the extent of Building Standard Work. Tenant shall be responsible at its sole cost and expense for the repair, restoratio and replacement of any other Leasehold Improvements and Tenant's Property.

21. INDEMNIFICATION.

a. Tenant shall indemnify and hold Landlord ~~harmless~~ reasonably against and from liability and claims of any kind for loss or damag to property of Tenant or any other person, or for any injury ~~to or~~ death of any person, arising out of: (1) Tenant's use an occupancy of the Premises, or any work, activity or other things allowed ~~or suffered~~ by Tenant to be done in, on or about th Premises; (2) any breach or default by Tenant of any of Tenant's obligations ~~under~~ this Lease; or (3) any negligent o otherwise tortious act or omission of Tenant, its agents, employees, invitees or contractors. Tenant shall at Tenant' expense, ~~and by counsel satisfactory to Landlord,~~ defend Landlord in any action or proceeding arising from any such clain and shall indemnify Landlord against all costs, attorneys' fees, expert witness fees and any other expenses incurred i such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereb assumes all risk of damage or injury to any person or property in, on or about the Premises from any cause provided that the terms of the foregoing indemnity shall not apply to the acts or omissions of the Landlord or Landlord's agents, unless due to the gross negligence or willful misconduct of Landlord.

PLEASE INITIAL

b. Landlord shall not be liable for injury or damage which may be sustained by the person or property of Tenant, its employees, invitees or customers, or any other person in or about the Premises, caused by or resulting from fire, steam electricity, gas, water or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, whethe such damage or injury results from conditions arising upon the Premises or upon other portions of the Building or Projec or from other sources. Landlord shall not be liable for any damages arising from any act or omission of any other tenant o the Building or Project, unless due to the gross negligence or willful misconduct of Landlord.

22. TENANT'S INSURANCE.

a. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companie acceptable to Landlord and Landlord's lender and qualified to do business in the State. Each policy shall name Landlor and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appea Each policy shall contain (i) a cross-liability endorsement, (ii) a provision that such policy and the coverage evidence thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverag carried by Landlord shall be excess insurance, and (iii) a waiver by the insurer of any right of subrogation against Landlor its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or b reason of any act or omission of Landlord, its agents, employees or representatives. A copy of each paid up polic (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance polic required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefor. Landlord may, at any time and fro time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such polic shall be cancellable except after twenty (20) days written notice to Landlord and Landlord's lender. Tenant shall furnis Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agree that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure sai insurance on Tenant's behalf and charge the Tenant the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policie obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee and Tenant as required by this Lease.

PLEASE INITIAL

b. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term Tenant shall procure, pay for and maintain in effect policies of casualty insurance covering (i) all Leasehold Improvements (including any alterations, additions or improvements as may be made by Tenant pursuant to the provisions of Article 12 hereof), and (ii) trade fixtures, merchandise and other personal property from time to time in, on or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against sprinkler damage, vandalism and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. ~~Upon termination of this Lease following a casualty as set forth herein, the proceeds under (i) shall be paid to Landlord, and the proceeds under (ii) above shall be paid to Tenant.~~ Tenant's policy of self-insurance shall be acceptable in satisfaction of the requirements *

c. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term Tenant shall procure, pay for and maintain in effect workers' compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation or condition of the Premises and the operations of Tenant in, on or about the Premises providing personal injury and broad form property damage coverage for not less than One Million Dollars ($1,000,000.00) combined single limit for bodily injury, death and property damage liability. Tenant's policy of self-insura shall be acceptable in satisfaction of the requirements of this subsection.

PLEASE INITIAL

d. Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Article. In the event Landlord and Tenant cannot mutually agree upon the amounts of said increases, then Tenant agrees that all insurance policy limits as set forth in this Article shall be adjusted ~~for increases in the cost of living in the same manner as is set forth in Section 5.2 hereof for the adjustment of the Base Rent.~~ ~~Rental increase outlined in the Addendum.~~ in the same percentages as the rental increases set forth in the Addendum.

* of this subsection.

23. WAIVER OF SUBROGATION.

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Landlord and Tenant each hereby waive all rights of recovery against the other and against the officers, employees, agents and representatives of the other, on account of loss by or damage to the waiving party of its property or the property of others under its control, to the extent that such loss or damage is insured against under any fire and extended coverage insurance policy which either may have in force at the time of the loss or damage. ~~Tenant shall, upon obtaining the policies of insurance required under this Lease, give notice to its insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.~~ Tenant and Landlord warrant that this waiver of subrogation is contained in their respective insurance policies.

24. SUBORDINATION AND ATTORNMENT.

Upon written request of Landlord, or any first mortgagee or first deed of trust beneficiary of Landlord, or ground lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust, or to the interest of any lease in which Landlord is lessee, and to all advances made or hereafter to be made thereunder. However, before signing any subordination agreement, Tenant shall have the right to obtain from any lender or lessor or Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Term. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure or termination of the lease in which Landlord is lessee, Tenant shall attorn to the purchaser, transferee or lessor as the case may be, and recognize that party as Landlord under this Lease, provided such party acquires and accepts the Premises subject to this Lease.

25. TENANT ESTOPPEL CERTIFICATES.

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Within ~~ten (10)~~ fifteen (15) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

26. TRANSFER OF LANDLORD'S INTEREST.

In the event of any sale or transfer by Landlord of the Premises, Building or Project, and assignment of this Lease by Landlord, Landlord shall be and is hereby entirely freed and relieved of any and all liability and obligations contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises, Building, Project or Lease occurring after the consummation of such sale or transfer, providing the purchaser shall expressly assume all of the covenants and obligations of Landlord under this Lease. If any security deposit or prepaid Rent has been paid by Tenant, Landlord may transfer the security deposit or prepaid Rent to Landlord's successor and upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

27. DEFAULT.

unless the default cannot reasonably be cured within thirty (30) days, then Tenant shall not be in default of the Lease if Tenant commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

27.1. *Tenant's Default.* The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

a. If Tenant abandons or vacates the Premises; or

PLEASE INITIAL

b. If Tenant fails to pay any Rent or any other charges required to be paid by Tenant under this Lease and such failure continues for ~~five (5)~~ ten (10) days after such payment is due and payable; or

c. If Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; or

d. If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or

e. If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or

f. If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days; or

g. If in any proceeding or action in which Tenant is a party, a trustee, receiver, agent or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or

h. If Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in subparagraphs d through g above.

27.2. *Remedies.* In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

a. Terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or under this Lease; or

b. Continue this Lease in effect, reenter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or

c. Reenter the Premises under the provisions of subparagraph b, and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

If Landlord reenters the Premises under the provisions of subparagraphs b or c above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any Rent or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. In the event of any reentry or retaking of possession by Landlord Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's Property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant. If Landlord elects to relet the Premises for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord; second, to the payment of any costs of such reletting third, to the payment of the cost of any alterations or repairs to the Premises; fourth to the payment of Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If that portion of rent received from the reletting which is applied against the Rent due hereunder is less than the amount of the Rent due, Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, any costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

Should Landlord elect to terminate this Lease under the provisions of subparagraph a or c above, Landlord may recover as damages from Tenant the following:

1. *Past Rent.* The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus
2. *Rent Prior to Award.* The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
3. *Rent After Award.* The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could be reasonably avoided; plus
4. *Proximately Caused Damages.* Any other amount necessary to compensate Landlord for all 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, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (d) reletting the Premises, including broker's commissions.

"The worth at the time of the award" as used in subparagraphs 1 and 2 above, is to be computed by allowing interest at the rate of ten percent (10%) per annum. "The worth at the time of the award" as used in subparagraph 3 above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

27.3 *Landlord's Default.* If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within that thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building or Project, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such judgment. If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided herein, then Tenant shall have the right to cure that default at Landlord's expense. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of Rent or any other charges due and payable under this Lease except as otherwise specifically provided herein.

28. BROKERAGE FEES.

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Tenant and Landlord warrants and represents that it has not dealt with and Landlord with any real estate broker or agent in connection with this Lease or its negotiation except those noted in Section 2.c. Tenant shall indemnify and hold ~~Landlord~~ each other harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of ~~Tenant.~~ the other party.

29. NOTICES.

All notices, approvals and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given if personally delivered or sent by certified or registered U.S. mail, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address and to the Building manager, and (b) if to Tenant, to Tenant's Mailing Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

PLEASE INITIAL

30. GOVERNMENT ENERGY OR UTILITY CONTROLS.

In the event of imposition of federal, state or local government controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. ~~In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.~~

PLEASE INITIAL

~~**31. RELOCATION OF PREMISES.**~~

~~Landlord shall have the right to relocate the Premises to another part of the Building in accordance with the following:~~

a. The new premises shall be substantially the same as the Premises described in this Lease, and if the relocation occurs after the Commencement Date, shall be placed in that condition by Landlord at its cost.

b. Landlord shall give Tenant at least thirty (30) days written notice of Landlord's intention to relocate the Premises

c. As nearly as practicable, the physical relocation of the Premises shall take place on a weekend and shall be completed before the following Monday. If the physical relocation has not been completed in that time, Base Rent shall abate in full from the time the physical relocation commences to the time it is completed. Upon completion of such relocation, the new premises shall become the "Premises" under this Lease.

d. All reasonable costs incurred by Tenant as a result of the relocation shall be paid by Landlord.

e. If the new premises are smaller than the Premises as it existed before the relocation, Base Rent shall be reduced proportionately.

f. The parties hereto shall immediately execute an amendment to this Lease setting forth the relocation of the Premises and the reduction of Base Rent, if any.

PLEASE INITIAL

32. QUIET ENJOYMENT.

Tenant, upon paying the Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease and to any mortgage, lease, or other agreement to which this Lease may be subordinate.

33. OBSERVANCE OF LAW.

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

34. FORCE MAJEURE.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy or hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Article 34 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

PLEASE INITIAL

35. CURING TENANT'S DEFAULTS.

If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may after fifteen (15) days written notice to Tenant, (but shall not be obligated to) without waiving such default, perform the same for the account at the expense of Tenant. Tenant shall pay Landlord all costs of such performance ~~promptly upon~~ fifteen (15) days after receipt of a bill therefor, together with interest thereon at the maximum rate permitted by law.

36. SIGN CONTROL.

Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to any part of the Premises, Building or Project, including without limitation, the inside or outside of windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord.

37. MISCELLANEOUS.

a. *Accord and Satisfaction; Allocation of Payments.* No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.

b. *Addenda.* If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.

c. *Attorneys' Fees.* If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.

d. *Captions, Articles and Section Numbers.* The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Article and Section numbers refer to Articles and Sections in this Lease.

e. *Changes Requested by Lender.* Neither Landlord or Tenant shall unreasonably withhold its consent to changes or amendments to this Lease requested by the lender on Landlord's interest, so long as these changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or materially increase any obligations of the party from whom consent to such charge or amendment is requested.

f. *Choice of Law.* This Lease shall be construed and enforced in accordance with the laws of the State.

g. *Consent.* Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, etc.

h. *Corporate Authority.* If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation, and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.

i. *Counterparts.* This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease

j. *Execution of Lease; No Option.* The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant

k. *Furnishing of Financial Statements; Tenant's Representations.* In order to induce Landlord to enter into this Lease Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records and information furnished by Tenant to Landlord in connection with this Lease are true, correct and complete in all respects

l. *Further Assurances.* The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

m. *Mortgagee Protection.* Tenant agrees to send by certified or registered mail to any first mortgagee or first deed of trust beneficiary of Landlord whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, such mortgagee or beneficiary shall have an additional thirty (30) days to cure such default; provided that if such default cannot reasonably be cured within that thirty (30) day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

n. *Prior Agreements; Amendments.* This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.

o. *Recording.* Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.

p. *Severability.* A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.

q. *Successors and Assigns.* This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.

PLEASE INITIAL

r. *Time of the Essence.* Time is of the essence of this Lease.

s. *Waiver.* No delay or omission in the exercise of any right or remedy of ~~Landlord~~ either ~~the~~ party upon any default by ~~Tenant~~ the other party shall impair such right or remedy or be construed as a waiver of such default.

t. *Compliance.* The parties hereto agree to comply with all applicable federal, state and local laws, regulations, codes, ordinances and administrative orders having jurisdiction over the parties, property or the subject matter of this Agreement, including, but not limited to, the 1964 Civil Rights Act and all amendments thereto, the Foreign Investment In Real Property Tax Act, the Comprehensive Environmental Response Compensation and Liability Act, and The Americans With Disabilities Act.

The receipt and acceptance by Landlord of delinquent Rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular Rent payment involved.

No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the Lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

The parties hereto have executed this Lease as of the dates set forth ~~below.~~ on the following page:

CONSULT YOUR ADVISORS – This document has been prepared for approval by your attorney. No representation or recommendation is made by CB Commercial as to the legal sufficiency or tax consequences of this document or the transaction to which it relates. These are questions for your attorney.

In any real estate transaction, it is recommended that you consult with a professional, such as a civil engineer, industrial hygienist or other person, with experience in evaluating the condition of the property, including the possible presence of asbestos, hazardous materials and underground storage tanks.

Date: 12-22-95

Landlord: Nora Wagner

By: Nora E. Wagner
Nora Wagner
Title: Owner

Date:

Tenant: City of Berkeley

By: for
Weldon Rucker
Title: Acting City Manager

APPROVED AS TO FORM:

By: for
Manuela Albuquerque
Title City Attorney

REGISTERED BY:

By: Anne-Marie Hogan
Anne-Marie Hogan
Title: City Auditor

ATTEST:

By: Sherry Kelly
Sherry Kelly
Title: City Clerk

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CB COMMERCIAL

ADDENDUM #1

This Addendum to the Lease dated November 6, 1995, by and between Nora Wagner, Landlord and City of Berkeley, Tenant.

38. **RENT INCREASES**

The annual rent for the second through the tenth year of the Lease shall be as follows:

	Year	2:	$336,419.94 –	28,035
9-1-98	Year	3:	$360,709.42	30,059
9-1-99	Year	4:	$372,265.70	31,022.14
9-1-00	Year	5:	$383,821.99	31,985.17
9-1-01	Year	6:	$383,821.99	31,985.17
9-1-02	Year	7:	$395,378.28	32,948.19
9-1-03	Year	8:	$406,934.57	33,911.21
9-1-04	Year	9:	$418,490.86	34,874.24
9-1-05	Year	10:	$430,047.14	35,837.26

39. **OPTION TO RENEW**

a. Tenant shall have the option to renew the Lease for two (2), three (3)-year terms commencing upon the expiration of the initial term of the Lease and the expiration of the first three (3) year option if so exercised. Provided, however, such options shall be subject to the following conditions:

1. At the time the options are exercised, the Lease shall be in full force and effect, Tenant shall not be in default thereunder and Tenant shall not have assigned the Lease or sublet more than 50% of its total leased premises;

2. The option to extend the term must be exercised by written notice given to Landlord a minimum of nine (9) months but not earlier than fifteen (15) months prior to the expiration of the initial term of the Lease and expiration of the first three (3) year options, if so exercised.

3. If Tenant is in default on the date either option period is to commence either option period shall, at Landlord's option, not commence and this Lease shall expire at the end of the Lease term.

b. In the event the options are timely and effectively exercised, the Lease shall be extended for three (3) additional years, upon all of the terms and conditions of the Lease; provided, however, that the monthly Base Rent shall be amended to 95% of the then effective fair market rental value of the premises. Determination of fair market rental value shall be as follows:

1. For the purposes hereof, the effective fair market rental value of the premises shall be the monthly rental rate per square foot of rentable area then prevailing for comparable space in the City of Berkeley, that is then being offered for lease to prospective tenants, multiplied by the rentable area of the premises. If Tenant in good faith disputes Landlord's determination of fair market rental value, Tenant shall so notify Landlord and the parties shall negotiate in good faith to resolve the dispute. If such dispute is not resolved by negotiation between the parties within 30 days, then fair market rental value shall be determined by appraisal. Tenant shall pay monthly Base Rent when due based upon Landlord's determination of fair market rental value, subject to retroactive adjustment between the parties if the determination by appraisal is different from Landlord's determination.

2. When fair market rental value is to be determined by appraisal, within 10 days after the expiration of the 30-day negotiation period, Landlord and Tenant shall each appoint as an appraiser, a real estate appraiser with at least five years of experience in appraising commercial office buildings in the Oakland Metropolitan area, and give notice of such appointment to the other. If either Landlord or Tenant shall fail to appoint an appraiser within 10 days after receiving notice of the identity of the other party's appointed appraiser,

then the single appraiser appointed shall be the sole appraiser and determine the fair market rental value of the premises.

In the event each party appoints an appraiser, such appraisers shall, within thirty (30) days after appointment of the last of them to be appointed, complete their determinations of fair market rental value and furnish the same to Landlord and Tenant. If the low appraisal varies from the higher appraisal by 5% or less, the fair market rental value shall be the average of the two valuations. If the low appraisal varies from the high appraisal by more than 5%, the two appraisers shall, within 10 days after submission of the last appraisal report, appoint a third appraiser who shall meet the qualifications set forth in this paragraph. If the two appraiser s shall be unable to agree on the selection of a third appraiser in a timely manner then either Landlord or Tenant may request such appointment by the presiding judge of the Superior Court of Alameda County. The third appraiser, however selected, shall be a person who has not previously acted in any capacity for or against either party. Such third appraiser shall, within 30 days after appointment, make a determination of fair market rental value and submit an appraisal report to Landlord and Tenant. The fair market rental value of the premises shall be as determined by the third appraiser, unless it is less than the valuation set forth in the lower appraisal previously obtained, in which case the valuation set forth in the lower portion appraisal shall be controlling, or unless it is greater than the valuation set forth in the higher appraisal previously obtained, in which case the valuation set forth in the higher prior appraisal shall be controlling. All fees and costs incurred in connection with the determination of fair market rental value by appraisal shall be paid one-half by Landlord and one-half by Tenant. Prior to the commencement of either option period, Tenant and Landlord shall execute an amendment to this Lease setting forth the option period and revised monthly Base Rent amounts.

c. In the event Tenant effectively exercises its first option to extend the term of the Lease as set forth in this section, then Landlord shall pay the cost of repainting and re-carpeting the premises using a grade of paint and carpet equivalent to the Building standard at the time of initial installation.

40. SECOND FLOOR SPACE NOT LEASED BY TENANT

If and when the second floor space shown on Exhibit A currently leased to SMR comes available, Landlord will offer the space to the Tenant on the same terms and conditions as Tenant's current lease with the exception of a Tenant Improvement Allowance. Tenant shall take the space in its "as-is" condition, except for touch up paint and carpet cleaning. Tenant shall have thirty (30) days to accept the additional space and sixty (60) additional days to execute an addendum.

41. SEISMIC WORK

The effectiveness of this lease, and the commencement of the term of this lease is contingent on Landlord's completion to Landlord and Tenant's mutual reasonable satisfaction of an upgrading of the structural components of the building for seismic safety purposes. The scope of work to be completed shall be as set forth in the Paul F. Frattessa Associates, Inc. Consulting Engineer plans, dated 9/20/95 on file with the Planning Director of the City of Berkeley and the Steven Tipping and Associates letter dated 11/7/95, a copy of which is attached hereto and incorporated herein.

42. COMMISSION

Landlord agrees to pay to CB Commercial a commission of $59,432.55 in regards to this lease transaction. In recognition of the fact that CB Commercial reduced their commission, the Landlord agrees to give the City of Berkeley $10,487.39 to offset their architectural, engineering or other expenses associated with this transaction. The credit will be taken by the City of Berkeley upon occupancy of the Premises in the form of a reduction of first rental payment due.

43. OPTION TO REDUCE SQUARE FOOTAGE

Tenant shall have two (2) options to reduce the leased square footage during the ten (10) year lease by giving back the entire third (3rd) floor to the Landlord the eighteenth (18th) or thirtieth (30th) month of the ten (10) year lease. Tenant must give six (6) months written notice to Landlord on the twelfth (12th) or the twenty-fourth (24th) month of the ten (10) year lease period. The lease will be modified accordingly including but not limited to Tenant's pro-rata share, monthly rent, square footage and premises as follows:

1. Pro-rata share - 65.8%
2. Square Footage - 15,153 square feet
3. Premises - All of 1st floor and part of 2nd floor
4. Annual rent from the 18th or 30th month would be as follows:

Year 2:	$272,754.00
Year 3:	$281,845.80
Year 4:	$290,937.60
Year 5:	$300,029.40
Year 6:	$300,029.40
Year 7:	$309,121.20
Year 8:	$318,213.00
Year 9:	$327,304.80
Year 10:	$336,396.60

CB COMMERCIAL

ADDENDUM #2

This Addendum is to the Office Building Lease between Nora Wagner as Landlord and City of Berkeley as Tenant dated November 6, 1995. This Addendum is in addition to the initial changes in the main body of the Lease and where there is any conflict between the main body of the lease and this Addendum, the Addendum shall prevail.

Section 5.3 *Project Operating Costs.*

The following provisions will be added to 5.3b.(1)(a):

a. The Base Year will commence only after all improvements have been constructed.

b. The Base Year project operating costs shall include any increases in the real property taxes attributable to improvements being made for tenant for this lease.

c. The City will have the right to contest with the taxing authority all taxes payable under this provision.

d. The City will not pay taxes based on increased value of improvements made by other tenants.

e. Landlord insures that this property will be assessed separately from other of Landlord's properties.

f. The City's tax obligation will be pro-rated at the beginning and end of the Lease Term.

g. The Landlord will give the City copies of all tax bills.

5.3b.(1)(b) Notwithstanding the foregoing for purposes of this Lease Project Operating Costs shall not, however, include (a) except as otherwise set forth above in this Section 5.3b(1)(b) depreciation, interest and amortization on mortgages, or ground lease payments, if any; (b) legal fees incurred in negotiating and enforcing tenant leases; (c) real estate brokers leasing commissions; (d) initial improvements or alterations to tenant's spaces; (e) the cost of providing any service directly to and paid directly by any tenant; (f) any cost expressly excluded from Project Operating Costs elsewhere in this lease; (g) cost of any items to the extent Landlord receives reimbursement from insurance proceeds; (Such proceeds to be excluded from Project Operating Costs in the year in which received, except that any deductible cost under any insurance policy shall be included within Project Operating Cost) or from a third party; and (h) cost of capital improvements, except those set forth in this Section 5.3b(1)(b) or those included both in Project Operating Costs pursuant to an application by Landlord of sound real estate management principles.

Notwithstanding the cross-out of gardeners in the lease, it is the Landlord's and Tenant's intention that a gardener will be provided for the building and to handle it as an operating expense as per Section 5.3 of the lease.

5.3b.(2)(g) Notwithstanding the foregoing provisions, the percentage by which Tenant's Direct Share of Expenses for operating costs under 5.3b(1)(b)(2), (5) and (8) paid in any calendar year ("Payment Year") exceeds Tenant's Direct Share of Expenses paid for the preceding calendar year may not exceed the percentage by which the Consumer Price Index - All Urban Consumers (San Francisco - Oakland - San Jose Bay Area; Base: 1982 - 84 = 100) (the "Index") as published by the United States Department of Labor, Bureau of Labor Statistics for the month of January in the Payment Year has increased over the Index for January of the preceding year.

Section 11 CONSTRUCTION, REPAIRS AND MAINTENANCE.

(a) ***Landlord's Obligations.*** Prior to the commencement of term, Landlord shall perform Landlord's Work to the Premises as described in Exhibit "C". Landlord, except for damage caused by any negligent or intentional act or omission of Tenant, Tenant's agents, employees or invites in which event Tenant shall repair the damage, shall maintain in good order, condition and repair the Building and all other portions of the Premises not the obligation of Tenant or of any other Tenant in the Building, including, without limitation, all structural members of the Building, the roof and roof membrane, all mechanical, and unexposed

plumbing and electrical systems servicing the Building.

Section 19 DESTRUCTION OR DAMAGE.

(a) In the event the Premises or the Building in which the Premises are located are damaged by any peril covered by Landlord's Fire and Extended Coverage Insurance or any other peril required to be insured against by Landlord under the terms of this Lease:

(i) In the event of total destruction of the Building, this Lease shall automatically be terminated as of the date of such casualty.

(ii) In the event of partial destruction of the Building, or of total or partial destruction of the Premises, Landlord shall be responsible for repairing such damage and restoring the Building or the Premises, except in the circumstances hereinafter provided. If the Premises or the Building are damaged and (A) the repair or restoration thereof, in Landlord's opinion, cannot be completed within one hundred eighty (180) days of commencement of repair or restoration; or (B) the repair or restoration is not covered by insurance, or the estimated cost thereof exceeds the insurance proceeds available for repair or restoration plus any amount which Tenant is obligated or elects to pay for such repair or restoration; or (C) the estimated cost of repair or restoration of the Premises or Building exceeds fifty percent (50%) of the full replacement cost of the Building; or (D) the Building cannot be restored except in a substantially different structural or architectural form than existed before the damage and destruction, Landlord shall have the option to either terminate this Lease or to repair or restore the Premises or the Building. In the event that Landlord elects to terminate this Lease, Landlord shall give notice to Tenant within sixty (60) days after the occurrence of such damage, terminating this Lease as of the date specified in such notice, which date shall not be less than thirty (30) nor more than sixty (60) days after the giving of such notice. In the event such notice is given, this Lease shall expire and all interest of Tenant in the Premises shall terminate on the date specified in the notice, and the rent (abated proportionately in the ratio in which Tenant's use of said Premises has been impaired since the date of such partial destruction of the Building or of the Premises) shall be paid up to the date of termination. Landlord shall refund to Tenant the rent theretofore paid for any period of time subsequent to such date.

(b) Upon any termination of this Lease under any of the provisions of this Article, the parties shall be released thereby, without further obligation to the other, from the date possession of the Premises is surrendered to the Landlord, except for items which have theretofore accrued and are then unpaid.

(c) Unless the damage or destruction is caused by the negligence of Tenant, or its employees or agents, in the event Landlord repairs or restores as herein provided, the rental to be paid under this Lease shall be abated proportionately in the ratio which the Tenant's use of said Premises has been impaired from the date of such partial destruction of the Building or of the Premises until such portion of the Premises is again useable. The Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of said Premises or for any inconvenience or annoyance occasioned by any such damage, repair or restoration.

(d) Notwithstanding any destruction or damage to the Premises or the Building, including the parking facilities and interior and adjacent landscaped areas, Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Section 19. Notwithstanding anything to the contrary contained in this Section 19, should Landlord be delayed or prevented from repairing or restoring said damaged Premises for one (1) year after the occurrence of such damage or destruction by reason of acts of God, war, governmental restrictions, inability to procure the necessary labor or materials, or other cause beyond the control of Landlord, the Landlord and the Tenant shall each have the right to terminate this Lease, effective upon thirty (30) days prior written notice, so long as said damaged Premises shall still have not substantially been repaired or restored.

(e) In the event of partial destruction of the Premises or the Building due to any cause other than a peril covered by Landlord's Fire and Extended Coverage Insurance, if Tenant is not obligated to, or does not elect to, pay for repair and restoration of same, Landlord may elect to terminate this Lease.

(f) It is hereby acknowledged that if Landlord is obligated to, or elects to repair or restore as herein provided, Landlord shall be obligated to make repairs or restoration only of those portions of said Building and said Premises which were originally provided at Landlord's expense, and the repair of restoration of items not provided at Landlord's expense shall be the obligation of Tenant. Tenant understands that Landlord will not carry insurance of any kind on Tenant's furniture, furnishings, fixtures, equipment or other personal property, and that Landlord shall not be obligated to repair any damage thereto or replace the same.

(g) Notwithstanding anything to the contrary contained in this Section 19, Landlord shall not

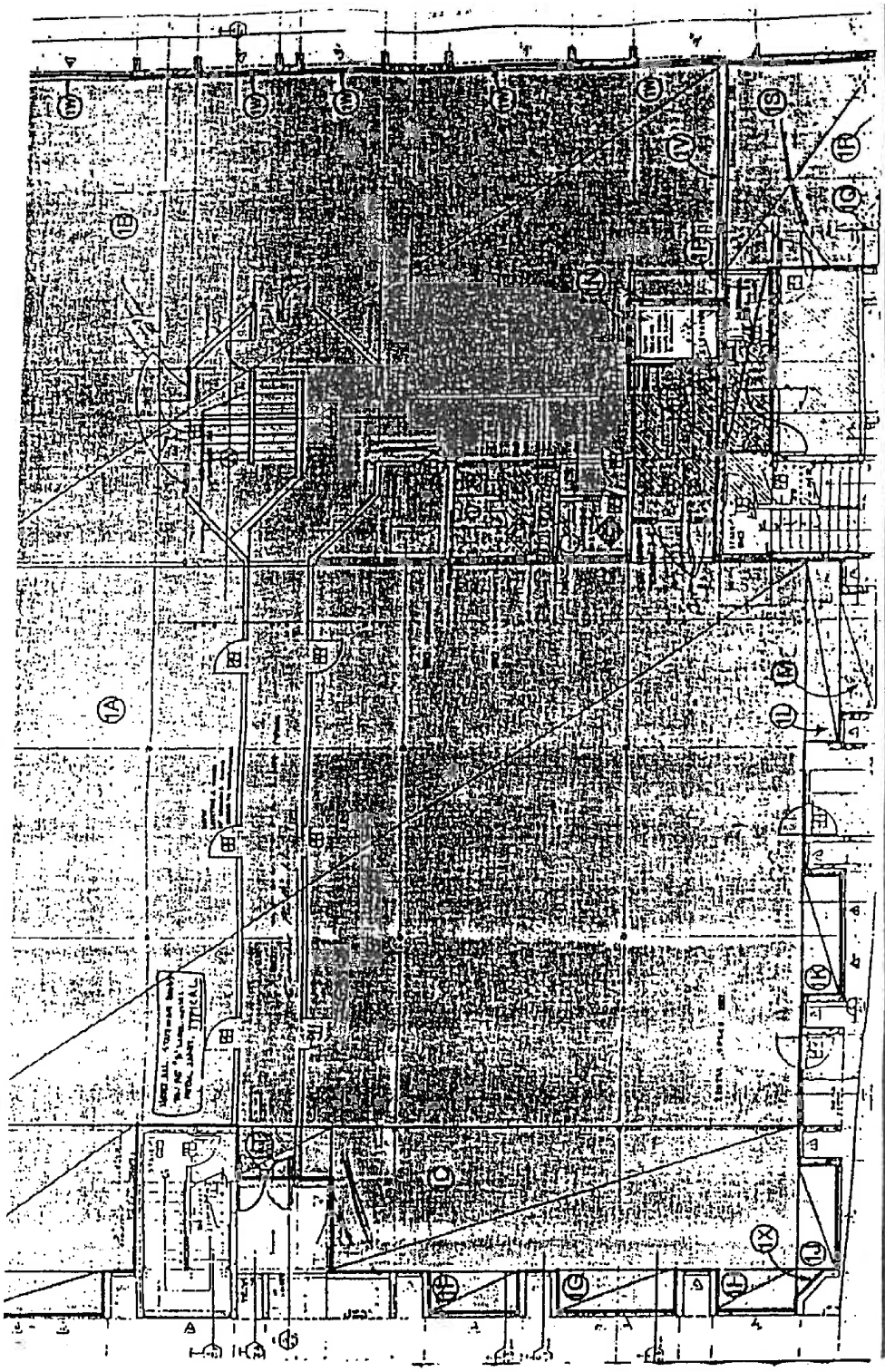
have any obligation whatsoever to repair or restore the Premises when the damage resulting from any casualty covered under this Section 19 occurs during the last twelve (12) months of the term of this Lease, or any extension thereof if Tenant shall elect to exercise any option which it may then have to extend the Term hereof; provided, however, that Landlord shall give Tenant notice of such intent within thirty (30) days of the occurrence of such casualty, whereupon this Lease shall terminate effective as of the date of such casualty and Landlord shall refund to Tenant the rent theretofore paid for any period of time subsequent to such date.

(h) The provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the Civil Code of the State of California, including any amendments thereto and any other law which may hereinafter be in force during the term of this Lease which authorizes the termination of the Lease upon the partial or complete destruction of the Premises, are hereby waived by Tenant.

(i) Notwithstanding the foregoing, if Tenant cannot occupy the entire Premise within one hundred eighty (180) days from the date of damage, Tenant may elect to terminate this Lease upon thirty (30) days notice.

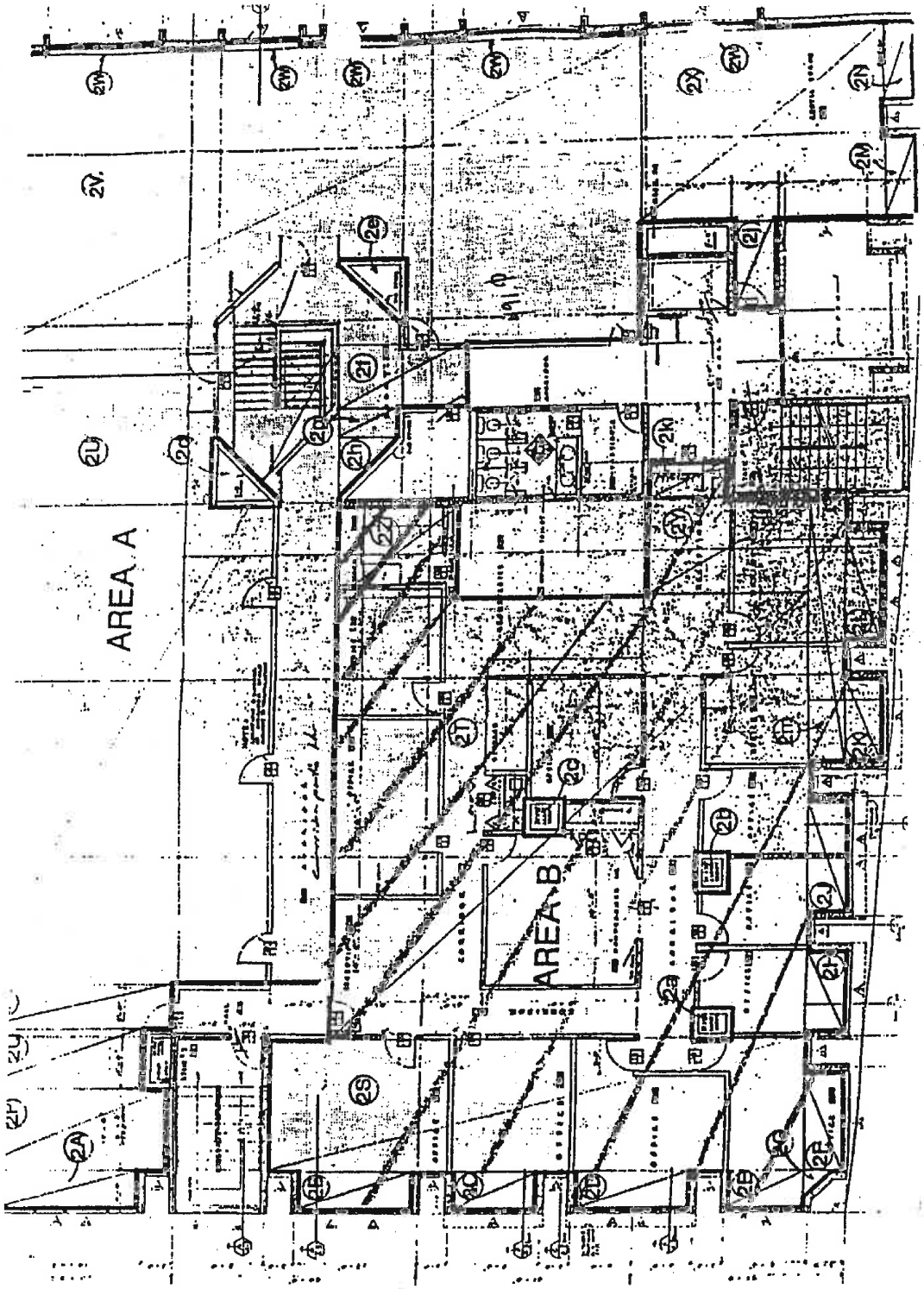
Section 27 DEFAULT.

27.3 If Tenant at any time by reason of Landlord's default pays any sum or does any act that requires the payment of any sum, the sum paid by Tenant shall be due from Landlord within thirty (30) days after Landlord's receipt of invoice from Tenant. If paid at a later date the sum shall bear interest at the rate of five percent (5%) per annum from the date the sum is paid by Tenant until Tenant is reimbursed by Landlord.



FIRST FLOOR

EXHIBIT "A"



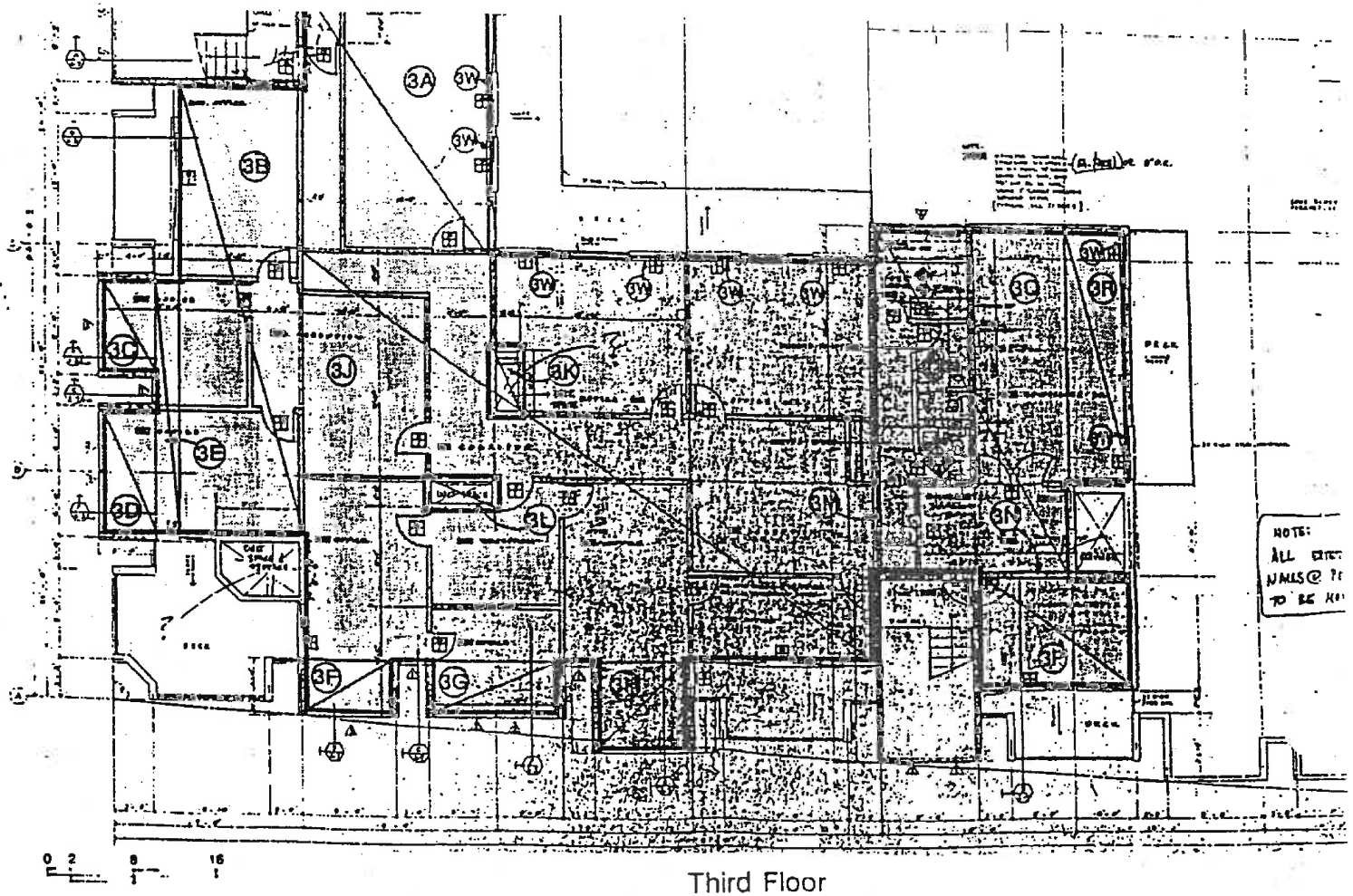
SECOND FLOOR

EXHIBIT "A"

PLEASE INITIAL

Area B (cross hatched) not part of Premises but expansion space

page 2 of 3



Third Floor

EXHIBIT "A"

Page 3 of 3

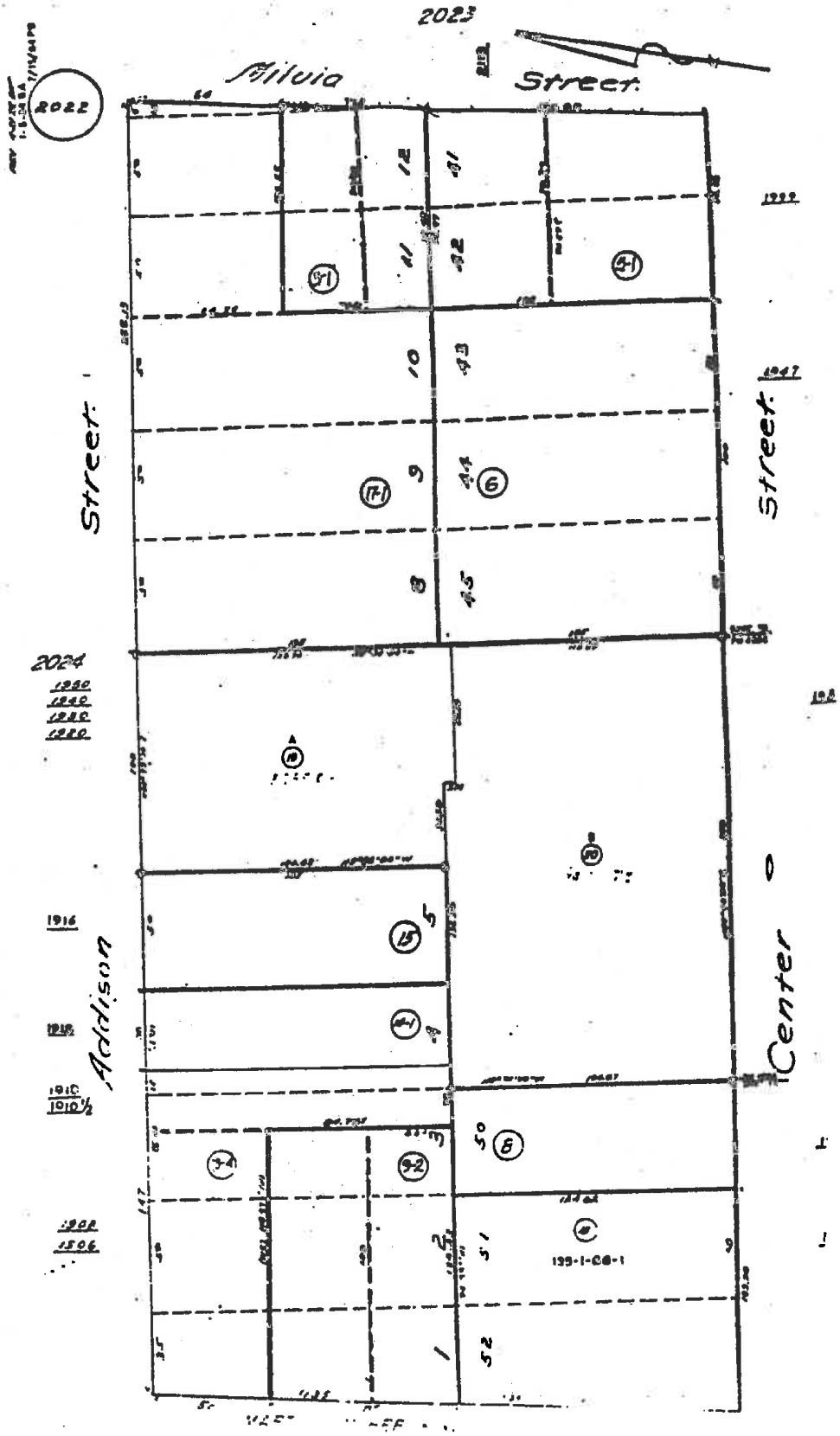


EXHIBIT "B"

APN # 057 · 2022 005-1

2118 Silvia Street

CB COMMERCIAL

EXHIBIT "C"
INITIAL IMPROVEMENT OF THE PREMISES
2118 MILVIA

1. **Tenant Improvements.**

In addition to any other improvements that the Landlord is obligated to make under this Lease, the Landlord, through its general contractor, shall furnish and install within the Premises substantially in accordance with a space plan from Anshen & Allen, which has been approved by Landlord and Tenant (the "Space Plan"), partitions, doors, lighting fixtures, acoustical ceilings, window coverings, floor coverings, electrical outlets, heating, venting and air conditioning and other items of general construction (the "Tenant Improvements). The Space Plan shall include standard office building interior finishes. The quantities, character and manner of installation of all of the Tenant Improvements shall be subject to the limitations imposed by any applicable governmental regulations.

2. **Allocation of Cost.**

Landlord shall bear the cost up to Twenty-One and 75/100 ($21.75) Dollars per rentable square feet of all Tenant Improvements, permits, architectural and engineering services related to the Tenant Improvements as set forth in the Space Plan with the exception of the Design Development services provided by Anshen & Allen architects on behalf of the Tenant and contracted for and paid for by Tenant, seismic work as outlined in attached seismic reports and any other work Landlord is obligated to do under this Lease at his sole cost and expense.

3. **Payment of Tenant's Cost.**

After Landlord has expended an aggregate amount of $329,577.75. Tenant shall contribute such additional amounts as and when required under the contract or contracts for the work. Tenant agrees to make the payments required in a timely manner so as to not delay the progress of the work.

4. **Plans and Specifications.**

a. Tenant shall complete and deliver to Landlord for approval, plans and specifications no later than December 20, 1995. Upon approval of the plans and specifications by Landlord, Landlord shall obtain and submit to Tenant three (3) bids on of the cost of the Tenant Improvements from three (3) contractors. Tenant shall approve or disapprove such estimate within a reasonable time. If disapproved, within seven days following disapproval Tenant shall provide Landlord with those items Tenant wants to delete in order to revise the estimate. This process of revision and re-pricing shall continue for a reasonable time until the cost of the Tenant Improvements is approved by Tenant.

5. **Changes.**

Tenant shall bear the cost of any changes in the Tenant Improvements requested by Tenant after final approval of the Plans and specifications by Tenant, together with a fee if any, as outlined in any construction contract between Landlord and Contractor.

6. **Tenant's Work.**

a. Any items or work beyond the scope of the Tenant Improvements for which Tenant contracts separately (hereinafter "Tenant's Work"), shall be subject to Landlord's policies and schedules and shall be conducted in such a way as not to hinder, cause any disharmony with or delay work of improvements in the Building. To this end, Tenant's Work shall conform with a schedule determined by Landlord's contractor and no work shall be done by Tenant which would cause Landlord's contractor to be dependent upon such work for completion of Landlord's contractor's work.

All of Tenant's work shall be subject to Landlord's approval, which approval shall not unreasonably be withheld.

a. If, in Landlord's opinion, any supplier, contractor or workman performing Tenant's Work hinders or delays, directly or indirectly, any other work of improvement in the Building or performs any work which may or does impair the quality, integrity or performance of any portion of the Building, Landlord shall give notice to Tenant and immediately thereafter, Tenant shall cause such

contractor or workman immediately to remove all of its tools, equipment and materials and to cease working in the Building. As additional rent under the Lease, Tenant shall reimburse Landlord for any repairs or corrections of the Improvements or of any portion of the Building or the cost of any delays caused by or resulting from the actions or omissions of anyone performing Tenant's Work.

7. **Completion and Rental Commencement Date.**

Notwithstanding anything to the contrary contained in the Lease, Tenant's obligation for the payment of rental under the Lease shall not commence until Landlord has substantially completed the Seismic Work as per Addendum #1, Section 41 of the lease and the Tenant Improvements, subject only to the completion of punch list items. Substantial completion shall be as determined by issuance of a certificate of substantial completion by Landlord's architect.

CB COMMERCIAL

EXHIBIT "D"
RULES AND REGULATIONS

1. Except as may otherwise be expressly consented to by Landlord, the sidewalks, plaza area, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or used for any purpose other than ingress and egress.

2. No bicycles, motorcycles or other vehicles shall be brought into or kept in the plaza areas or corridors.

3. No birds or animals of any kind shall be brought into or kept in or about the Demised Premises without the consent of Landlord. Nothing herein shall be construed to prevent entry of "Seeing Eye Dogs" for assistance of handicapped individuals.

4. Except as may otherwise be expressly consented to by Landlord, no cooking other than microwave shall be done or permitted by Tenant within the Demised Premises except for preparation of coffee, tea, hot chocolate, or similar items for Tenant and his employees shall be permitted provided power shall not exceed that amount that can be provided by a 30-amp. circuit. In no event shall any cooking be permitted which will cause or permit any unusual or objectionable odors to be produced or permeate the Demised Premises and adjacent offices.

5. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Tenant nor shall changes be made in existing locks or the mechanism thereof. Each Tenant must, upon termination of his tenancy, restore to Landlord all keys of offices and restrooms, either furnished to or otherwise procured by such Tenant and in the event of loss of any key so furnished, Tenant shall pay to Landlord costs of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such change.

6. The requirements of Tenant will be attended to only upon application to Landlord.

7. Canvassing, soliciting, and peddling in the Project are prohibited and Tenant shall cooperate to prevent the same.

8. No additional air-conditioning or heating unit or other similar apparatus shall be installed or used by Tenant without the written consent of Landlord.

9. Landlord shall have the right, exercisable without notice or without liability to Tenant, to change the name and address of the Project, provided if Landlord changes the address of the Project, Landlord shall reimburse Tenant its costs reasonably incurred as a result thereof.

10. No vending machine or machines of any description shall be installed, maintained or operated upon the Demised Premises without the written consent of Landlord.

11. The Demised Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Demised Premises for general office purposes.

12. Without the written consent of Landlord, Tenant shall not use the name of the Project as a part of Tenant's business name or in connection with or in promoting or advertising the business of Tenant except as Tenant's address.

13. No Tenant shall occupy or permit any portion of his premises to be occupied as in office for a public stenographer or typist, or as an employment bureau without written consent of Landlord.

14. Except as approved in Tenant's Working Drawings, all electric ceiling fixtures hung in offices or spaces along the perimeter of the Building must be florescent, of a quality, type, design, and bulb color approved by Landlord.

15. The scheduling of moves of Tenant's furniture and equipment into or out of the Building is subject to the reasonable discretion of Landlord, and Tenants of upper floors shall give Landlord sufficient notice so as to allow Landlord to arrange for protective padding within an elevator.