

30534

**BEHRINGER HARVARD DOWNTOWN PLAZA LP
("Landlord")**

**CITY OF LONG BEACH
("Tenant")**

SUITE 410

**211 EAST OCEAN BOULEVARD
LONG BEACH, CALIFORNIA**

OFFICE LEASE

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LEASE

Landlord and Tenant enter into this Lease ("Lease") as of the Execution Date on the following terms, covenants, conditions and provisions:

1. BASIC LEASE PROVISIONS

1.1 Basic Lease Definitions. In this Lease, the following defined terms have the meanings indicated.

- (a) Execution Date: ~~January~~ ^{February} 7, 2008.
- (b) Landlord: Behringer Harvard Downtown Plaza LP, a Delaware limited partnership.
- (c) Tenant: City of Long Beach, a municipal corporation.
- (d) Building: DOWNTOWN PLAZA
211 East Ocean Boulevard, Long Beach, California deemed to contain: 100,146 rentable square feet ("RSF").
- (e) Premises: Suite 410 (outlined on Exhibit "A"), located on the 4th floor of the Building and deemed to contain: 2,548 RSF.
- (f) Use: General office use and any other legally permitted use consistent with that of a first-class office building.
- (g) Scheduled Term: 63.5 months.
- (h) Commencement Date: February 1, 2008.
- (i) Base Rent: The following amounts payable in accordance with Article 4 (subject to the provisions of §4.1 below regarding the addition of any Amortized Construction Allowance to Base Rent):

Months	Monthly Rate per RSF	Monthly Base Rent
February 1, 2008 through April 30, 2009	\$2.00	\$5,096.00 (See abatement provisions in §4.1, below.)
May 1, 2009 through April 30, 2010	\$2.06	\$5,248.88
May 1, 2010 through April 30, 2011	\$2.12	\$5,401.76
May 1, 2011 through April 30, 2012	\$2.19	\$5,580.12
May 1, 2012 through May 15, 2013	\$2.25	\$5,733.00

- (j) Tenant's Share: 2.544%
- (k) Base Year: The calendar year 2008
- (l) Security Deposit: Not applicable.
- (m) Notice Address: For each party, the following address(es):

To Landlord	To Tenant
Behringer Harvard Downtown Plaza LP 15601 Dallas Parkway Suite 600 Addison, Texas 75001 Attn: Asset Manager with a copy to: Property Manager 2041 Rosecrans Ave. Suite 300 El Segundo, CA 90245 Attn: Angelica Restivo With a copy of notices of default to: Behringer Harvard Funds 15601 Dallas Parkway, Suite 600 Addison, Texas 75001 Attn: Chief Legal Officer Facsimile: 214/655-1610	City of Long Beach 333 W. Ocean Boulevard, 13 th Floor Long Beach, California 90802 Attn: City Manager With a copy of notices of default to: City of Long Beach 211 East Ocean Boulevard Suite 410 Long Beach, CA 90802 Attn: Executive Director of Citizen Police Complaint Commission City of Long Beach 333 W. Ocean Boulevard, 3 rd Floor Long Beach, CA 90802 Attn: Property Services Bureau Manager

- (n) Billing Address: For each party, the following address:

For Landlord	For Tenant
Behringer Harvard Downtown Plaza PO Box 974412 Dallas, Texas 75397-4412	City of Long Beach 333 W. Ocean Boulevard, 13 th Floor Long Beach, CA 90802 Attn: Administrative Officer, City Manager's Office

- (o) **Brokers:** Cushman & Wakefield of California, Inc. represents both Landlord and Tenant, whose right to a commission to be paid by Landlord is subject to a separate written agreement with Landlord;
- (p) **Parking Allotment:** Up to two (2) reserved parking spaces and five (5) unreserved parking spaces at the prevailing monthly market rates. See Exhibit "C".
- (q) **Intentionally omitted.**
- (r) **Construction Allowance:** An amount up to \$9.00 per RSF in the Premises. See Exhibit "F".
- (s) **Amortized Construction Allowance:** Any amount up to \$3.00 per RSF in the Premises in excess of the Construction Allowance which is funded by Landlord, at Tenant's request, for additional improvements or alterations in the Premises, which amount shall be amortized in Base Rent. See §4.1. The Amortized Construction Allowance shall be in addition to, and not a part of, the Construction Allowance.
- (t) **Business Hours:** From 7:30 a.m. to 6:15 p.m. on Monday through Friday, excepting: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day ("Business Days").
- (u) **Administration Fee** Landlord's standard administration fee charged in connection with the administration of the Project, which fee shall not exceed ten percent (10%) of applicable costs as specified in this Lease.

2. PROJECT

2.1 Project. The Land and all improvements thereon, including the Building, Common Areas and Premises (as defined in Article 1 and below) are collectively referred to as the “Project.”

2.2 Land. “Land” means the real property on which the Project, Building and Common Areas are located, and all other leaseholds, easements or other interests owned by Landlord in connection with the Project, Building or Common Areas, whether Landlord’s interest in the Land is in fee or is a leasehold. The Land is subject to expansion or reduction after the Execution Date.

2.3 Base Building. “Base Building” means Building Structure and Mechanical Systems, collectively, defined as follows:

(a) **Building Structure.** “Building Structure” means the foundations, floor/ceiling slabs, roofs, exterior walls, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, stairwells, elevators, Building mechanical, electrical and telephone closets, Common Areas, public areas, and any other structural components in the Building. The Building Structure excludes the Leasehold Improvements (and similar improvements to other premises) and the Mechanical Systems.

(b) **Mechanical Systems.** “Mechanical Systems” means the mechanical, electronic, physical or informational systems generally serving the Building or Common Areas, including the sprinkler, plumbing, heating, ventilating, air conditioning, lighting, communications, security, drainage, sewage, waste disposal, vertical transportation, fire/life safety systems.

2.4 Common Areas. Tenant will have a non-exclusive right to use the Common Areas subject to the terms of this Lease. “Common Areas” means those interior and exterior common and public areas on the Land and in the Building (and appurtenant easements) designated by Landlord from time to time for the non-exclusive use by Tenant in common with Landlord, other tenants and occupants, and their employees, agents and invitees, including any parking facilities serving the Building that are owned or leased by Landlord.

2.5 Premises. Landlord leases to Tenant the Premises subject to the terms of this Lease. Except as provided elsewhere in this Lease, by taking possession of the Premises Tenant accepts the Premises in its “as is” condition and with all faults, and the Premises is deemed in good order, condition, and repair. Landlord does not make and Tenant does not rely upon any representation or warranty of any kind, express or implied, with respect to the condition of the Premises (including habitability or fitness for any particular purpose of the Premises). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD HEREBY DISCLAIMS, AND TENANT WAIVES THE BENEFIT OF, ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY AND FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE. The Premises includes the Leasehold Improvements and excludes certain areas, facilities and systems, as follows:

(a) **Leasehold Improvements.** “Leasehold Improvements” means all non-structural improvements in the Premises or exclusively serving the Premises, and any structural

improvements to the Building made to accommodate Tenant's particular use of the Premises. The Leasehold Improvements may exist in the Premises as of the Execution Date, or be installed by Landlord or Tenant under this Lease at the cost of either party. The Leasehold Improvements include: (1) interior walls and partitions (including those surrounding structural columns entirely or partly within the Premises); (2) the interior one-half of walls that separate the Premises from adjacent areas designated for leasing; (3) the interior drywall on exterior structural walls, and walls that separate the Premises from the Common Areas; (4) stairways and stairwells connecting parts of the Premises on different floors, except those required for emergency exiting; (5) the frames, casements, doors, windows and openings installed in or on the improvements described in (1-4), or that provide entry/exit to/from the Premises; (6) all hardware, fixtures, cabinetry, railings, paneling, woodwork and finishes in the Premises or that are installed in or on the improvements described in (1-5); (7) if any part of the Premises is on the ground floor, the ground floor exterior windows (including mullions, frames and glass); (8) integrated ceiling systems (including grid, panels and lighting); (9) carpeting and other floor finishes; (10) sink with cold water faucet, instant hot water dispenser and drain; (11) if any part of the Premises encompasses an entire floor of the Building, the elevator lobby, corridors and restrooms located on such floor; and (12) the sprinkler, plumbing, heating, ventilating, air conditioning, lighting, communications, security, drainage, sewage, waste disposal, vertical transportation, fire/life safety, and other mechanical, electronic, physical or informational systems that exclusively serve the Premises, including the parts of each system that are connected to the Mechanical Systems (defined below) from the common point of distribution for each system to and throughout the Premises.

(b) Exclusions from the Premises. The Premises does not include: (1) any areas above the finished ceiling or integrated ceiling systems, or below the finished floor coverings that are not part of the Leasehold Improvements, (2) janitor's closets, (3) stairways and stairwells to be used for emergency exiting or as Common Areas, (4) rooms for Mechanical Systems or connection of telecommunications equipment, (5) vertical transportation shafts, (6) vertical or horizontal shafts, risers, chases, flues or ducts, or (7) any easements or rights to natural light, air and view.

2.6 Building Standard. "Building Standard" means the minimum or exclusive type, brand, quality or quantity of materials Landlord designates for use in the Building from time to time.

2.7 Tenant's Personal Property. "Tenant's Personal Property" means those trade fixtures, furnishings, equipment, work product, inventory, stock-in-trade and other personal property of Tenant that are not permanently affixed to the Project in a way that they become a part of the Project and will not, if removed, impair the value of the Leasehold Improvements that Tenant is required to deliver to Landlord at the end of the Term under §3.3.

3. TERM

3.1 Term. "Term" means the period that begins on the Commencement Date, as such term is defined in §1.1(h) hereinabove and ends on the Expiration Date, subject to renewal, extension or earlier termination as may be further provided in this Lease. "Month" means a full calendar month of the Term.

(a) Commencement Date. "Commencement Date" means February 1, 2008.

(b) Expiration Date. "Expiration Date" means May 15, 2013.

(c) Previous Sublease. Tenant acknowledges that as of the Execution Date, Tenant is in possession of the Premises pursuant to the terms of that certain Sublease, dated April 30, 2002 by and between The Designory, Inc., as Sublessor, and Tenant, as Sublessee, and Tenant accepts the Premises for the Term in its "as-is, where-is" condition, and any improvements to the Premises except as set forth in Exhibit "F" attached hereto shall be at Tenant's sole cost. The parties acknowledge that the Sublease is scheduled to expire on January 31, 2008.

(d) Extension Option. Tenant shall have the right to extend the initial Term of this Lease for one (1) five (5) year extension period upon the terms and conditions set forth in Exhibit "D" hereto.

(e) Termination Option. Tenant shall have the right to terminate this Lease upon the terms and conditions set forth on Exhibit "E" hereto.

3.2 Holdover. If Tenant keeps possession of the Premises after the end of the Term (a "Holdover") without Landlord's prior written consent (which may be withheld in its sole and absolute discretion), then in addition to the remedies available elsewhere under this Lease or by applicable law, Tenant will be a tenant at sufferance and must comply with all of Tenant's obligations under this Lease, except that during the Holdover Tenant will pay one hundred ten percent (110%) for the first sixty (60) days and one hundred fifty percent (150%) thereafter of the monthly Base Rent and Additional Rent last payable under this Lease, without prorating for any partial month of Holdover. If Tenant's Holdover is for a period longer than sixty (60) days, Tenant shall indemnify and defend Landlord from and against all claims and damages, both consequential and direct, that Landlord suffers due to Tenant's failure to return possession of the Premises to Landlord at the end of the Term. Landlord's deposit of Tenant's Holdover payment will not constitute Landlord's consent to a Holdover, or create or renew any tenancy.

3.3 Condition on Expiration. By the end of the Term, Tenant will return possession of the Premises to Landlord vacant, free of Tenant's Personal Property, in broom-clean condition, and with all Leasehold Improvements in good working order and repair (excepting ordinary wear and tear), except that Tenant will remove Tenant's Wiring and those Leasehold Improvements and Alterations that, when approved by Landlord in writing, were specified to be removed at the end of the Term. If Tenant fails to return possession of the Premises to Landlord in this condition, Tenant shall reimburse Landlord for the costs incurred to put the Premises in the condition required under this §3.3, including Landlord's standard Administration Fee. Tenant's Personal Property left behind in the Premises after the end of the Term will be considered abandoned and Landlord may move, store, retain or dispose of these items at Tenant's cost, including Landlord's standard Administration Fee.

4. RENT

4.1 Base Rent. Tenant shall prepay one (1) month's installment of Base Rent within fifteen (15) Business Days after the Execution Date, to be applied against Base Rent due February 1, 2008. During the Term, Tenant shall pay all other Base Rent in advance, in monthly

installments, on the 1st day of each calendar month. Base Rent for any partial month will be prorated.

Base Rent shall be conditionally abated for the period of time beginning on March 1, 2008 and ending on June 15, 2008. On June 16, 2008, Tenant shall make a prorated Base Rent payment for the month of June, 2008, and thereafter Tenant shall make Base Rent payments as otherwise provided in this Lease. Notwithstanding such abatement of Base Rent, (a) all other sums due under this Lease, including Additional Rent, shall be payable as provided in this Lease, and (b) any increases in Base Rent set forth in this Lease shall occur on the dates scheduled therefor.

Abatement of Base Rent is conditioned upon Tenant's full and timely performance of its obligations under this Lease. If Tenant defaults under or breaches any of the provisions of this Lease, then abatement of Base Rent shall immediately become void, and Tenant shall promptly pay to Landlord, in addition to all other amounts due to Landlord under this Lease, the full amount of all Base Rent herein abated.

Any Amortized Construction Allowance funded by Landlord at Tenant's written request shall be amortized in the Base Rent over the remaining Term of this Lease (not including any extended Term) at an annual interest rate of ten percent (10%). The amount of any such Amortized Construction Allowance which is funded by Landlord shall be added to, and become a part of, Base Rent under this Lease. The Amortized Construction Allowance may be prepaid by Tenant at any time, in whole or in part, without penalty, subject to Tenant's payment to Landlord of the amount of any reasonable attorneys' fees and other costs incurred by Landlord to amend the Lease to reflect revisions to the Base Rent schedules necessitated by the prepayment of the Amortized Construction Allowance, which such fees and other costs shall not exceed \$1000.

4.2 Additional Rent. Tenant's obligation to pay Taxes and Expenses under this §4.2 is referred to in this Lease as "Additional Rent."

(a) Taxes. For each calendar year after the Base Year (each, a "Comparison Year"), Tenant shall pay, in the manner described below, Tenant's Share of the amount that Taxes paid, or payable by Landlord for the Comparison Year exceed Taxes paid or payable by Landlord for the Base Year. "Taxes" means the total costs incurred by Landlord had the Building been fully assessed, for: (1) real and personal property taxes and assessments (including ad valorem and special assessments) levied on the Project and Landlord's personal property used in connection with the Project; (2) taxes on rents or other income derived from the Project; (3) capital and place-of-business taxes; (4) taxes, assessments or fees in lieu of the taxes described in (1-3); and (5) the reasonable costs incurred to reduce the taxes described in (1-4). Taxes excludes net income taxes and taxes paid under §4.3.

(b) Expenses. For each Comparison Year, Tenant shall pay, in the manner described below, Tenant's Share of the amount that Expenses paid, or incurred by Landlord in the Comparison Year exceed Expenses paid or incurred by Landlord in the Base Year. "Expenses" means the total costs incurred by Landlord to operate, manage, administer, equip, secure, protect, repair, replace, refurbish, clean, maintain, decorate and inspect the Project,

including a market fee to manage the Project of not less than three percent (3%) and not more than five percent (5%) of the gross revenue of the Project. If the Building is not at least 95 percent occupied during all or a portion of any Comparison Year including the Base Year, then Landlord shall make an appropriate adjustment in accordance with industry standards of the Expenses for each such Comparison Year and Base Year to determine what the Expenses would have been for such year as if the Building had been 95 percent occupied, and the amount so determined shall be deemed to be the amount of Expenses for the year. Such adjustment shall be made by Landlord by increasing those costs included in the Expenses which according to industry practice vary based upon the level of occupancy of the Building.

- (1) Expenses include (without limitation):
 - (A) Standard Services provided under §6.1;
 - (B) Repairs and maintenance performed under §7.2;
 - (C) Insurance maintained under §9.2 (including deductibles paid);
 - (D) Wages, salaries and benefits of personnel to the extent they render services to the Project;
 - (E) Costs of operating any Project management office at the Building (including reasonable rent);
 - (F) Costs of operating the parking facilities; and
 - (G) Amortization installments of costs required to be capitalized and incurred to:
 - (i) Comply with laws (“Government Mandated Expenses”);
 - (ii) Reduce other Expenses or the rate of increase in other Expenses (“Cost-Saving Expenses”); or
 - (iii) Improve or maintain the safety, structural or mechanical integrity of the Building, health or access of Project occupants, but only to the extent such costs would be customary at any other comparable multi-tenant office buildings in the downtown Long Beach market (“Well-Being Expenses”).

- (2) Expenses exclude:
 - (A) Taxes;
 - (B) Mortgage payments (principal and interest), and ground lease rent;

(C) Commissions, advertising costs, attorney's fees and costs of improvements in connection with leasing space in the Building;

(D) Costs reimbursed by insurance proceeds or tenants of the Building (other than as Additional Rent);

(E) Depreciation;

(F) Except for the costs identified in §4.2(b)(1)(G), costs required to be capitalized according to sound real estate accounting and management principles, consistently applied;

(G) Collection costs and legal fees paid in disputes with tenants;

(H) In the Base Year only, installments of costs amortized under subsection (c) of this §4.2 or elsewhere in this Lease;

(I) All costs for the operation of the business of the entity which constitutes "Landlord" (as distinguished from the costs of Building operations) including, but not limited to, Landlord's or Landlord's Managing Agents general corporate overhead and general administrative expenses or such costs that would be normally included in a management fee (e.g., placement/recruiting fees for employees, risk management costs, corporate accounting, employee training programs, health/sports club dues, tickets to special events, bank charges, etc.);

(J) costs incurred by Landlord in connection with the correction of latent defects in the original design or original construction of the Building or Project;

(K) any costs of any services sold or provided to tenants or other occupants for which Landlord or Managing Agent is entitled to be reimbursed by such tenants or other occupants as an additional charge or rental over and above the basic rent (and escalations thereof);

(L) Costs of performing additional services to or for tenants to any extent that such services exceed those provided by Landlord to Tenant without charge hereunder;

(M) overhead or profits paid to subsidiaries or affiliates of Landlord, or to any party as a result of a non-competitive selection process, for management or other services to the Building, or for supplies or other materials, to the extent that the costs of such services, supplies, or materials exceed the costs that would have been paid had the services, supplies or materials been provided by qualified parties unaffiliated with the Landlord on a competitive basis and are consistent with those incurred by similar multi-tenant office buildings in the downtown Long Beach market;

(N) wages, salaries and other compensation paid to any executive employee of Landlord and/or Landlord's Managing Agent above the level of the Building's manager,

(O) governmental charges, impositions, penalties or any other costs incurred by Landlord in order to clean-up, remediate, remove or abate any Hazardous Materials if such Hazardous Materials were installed or deposited in or on the Project in violation of then applicable law by Landlord, any tenant of the Building, any party expressly permitted by Landlord or any such tenant to install or deposit such Hazardous Materials in the Building;

(P) advertising and promotional costs including tenant relation programs and events;

(Q) except to any extent expressly permitted under Section 4.2 (a), Landlord's gross receipts taxes, personal and corporate income taxes, inheritance and estate taxes, other business taxes and assessments, franchise, gift and transfer taxes, and all other real estate taxes accruing during a period outside the Term of the Lease;

(R) any fines, costs, penalties or interest resulting from the gross negligence or intentional misconduct of the Landlord or its agents, contractors, or employees;

(S) any rental payments and related costs pursuant to any ground lease of land underlying all or any portion of the Building and Common Areas;

(T) any costs, fees, dues, contributions or similar expenses for political, charitable, industry association or similar organizations, except BOMA;

(U) acquisition costs (but not routine maintenance costs) for sculptures, paintings, or other objects of art; and

(V) Cost of repairs (other than as Additional Rent) incurred by reason of fire or other casualty or condemnation to the extent that either (i) Landlord is compensated therefore through proceeds of insurance or condemnation awards; (ii) Landlord failed to obtain insurance (other than the amount of commercially reasonable deductibles) against such fire or casualty, if insurance was available at a commercially reasonable rate, against a risk of such nature at the time of same; or (iii) Landlord is not fully compensated therefore due to the coinsurance provisions of its insurance policies on account of Landlord's failure to obtain a sufficient amount of coverage against such risk.

(c) Amortization and Accounting Principles.

(1) Each item of Government Mandated Expenses and Well-Being Expenses will be fully amortized in equal annual installments, with interest on the principal balance at the Amortization Rate, over the number of years, not to exceed fifteen (15), that

Landlord projects the item of Expenses will be productive for its intended use, without replacement, but properly repaired and maintained.

(2) Each item of Cost-Saving Expenses will be fully amortized in equal annual installments, with interest on the principal balance at the Amortization Rate, over the number of years that Landlord reasonably estimates for the present value of the projected savings in Expenses (discounted at the Amortization Rate) to equal the cost.

(3) Any item of Expenses of significant cost that is not required to be capitalized but is unexpected or does not typically recur may, in Landlord's discretion, be amortized in equal annual installments, with interest on the principal balance at the Amortization Rate, over a number of years reasonably determined by Landlord.

(4) "Amortization Rate" means the prime rate of Citibank, N.A. (or a comparable financial institution selected by Landlord), plus two percent (2%).

(5) Landlord will otherwise use sound real estate accounting and management principles, consistently applied, to determine Additional Rent.

(d) Estimates. Each calendar year, Landlord will reasonably estimate and advise Tenant in writing of Additional Rent that may be payable with respect to such calendar year. Tenant will pay the estimated Additional Rent in advance, in monthly installments, on the first day of each month, until the estimate is revised by Landlord. Landlord may reasonably revise its estimate during a calendar year and the monthly installments after the revision will be paid based on the revised estimate. The aggregate estimates of Additional Rent paid by Tenant in a calendar year is the "Estimated Additional Rent." Without limiting Landlord's other rights hereunder and at law, Additional Rent not paid when due shall be subject to the Late Charge set forth in §4.5 below.

(e) Settlement. As soon as practical after the end of each calendar year that Additional Rent is payable, Landlord will give Tenant a statement of the actual Additional Rent for the calendar year. The statement of the actual Additional Rent is conclusive, binds Tenant, and Tenant waives all rights to contest the statement, except for items of Additional Rent to which Tenant objects by notice ("Objection Notice") to Landlord given within one hundred eighty (180) days after receipt of Landlord's statement; however, Tenant's objection will not relieve Tenant from its obligation to pay Additional Rent pending resolution of any objection. If the actual Additional Rent exceeds the Estimated Additional Rent for the calendar year, then Tenant shall pay the underpayment to Landlord in a lump sum as Rent within thirty (30) days after receipt of Landlord's statement of Additional Rent. If the Estimated Additional Rent exceeds the actual Additional Rent for the calendar year, then Landlord shall credit the overpayment against Rent next due. However, if the Term ends during a calendar year, then the obligations under this §4.2(e) survive the end of the Term.

(f) Tenant's Audit Rights. If Tenant has delivered an Objection Notice in connection with a statement of actual Additional Rent, and Tenant is not then in Default under this Lease, Tenant shall have the right, at Tenant's sole expense, to conduct an audit of Landlord's Expenses in connection with such annual statement of actual Additional Rent, at

Landlord's offices using the services of a reputable, third party, non-contingency fee certified accountant, or other professional reasonably acceptable to Landlord who is experienced in auditing leases for operating expenses, within one hundred eighty (180) days of delivery of Landlord's statement of actual Additional Rent. Under no circumstances will Tenant be permitted to review or audit income tax records of Landlord and similar financial records pertaining to Landlord as a business entity. Any refund due Tenant will be credited to the next installment of Base Rent due, or paid to Tenant within thirty (30) days if such Base Rent is not due. Any payment due from Tenant will be paid to Landlord within thirty (30) days of audit. If the audit determines an over-billing of Expenses exceeding five percent (5%) of the corrected/reconciled total Expenses, then Landlord will reimburse Tenant for the actual costs of conducting the audit, but in no event will any such actual costs to be reimbursed by Landlord exceed the amount of the over-billing determined by such audit.

Any such audit by Tenant shall be upon at least thirty (30) days' prior written notice to Landlord. Any such audit shall be conducted at a reasonable time, in a reasonable manner and otherwise so as to cause the least interference reasonably practicable to Landlord's business and operations. Tenant will treat as confidential all information disclosed to Tenant as a result of any such audits; provided, however, that Tenant may disclose such information to Tenant's employees, agents, attorneys and accountants and in connection with any lawsuit or other legal proceeding in connection with any dispute over Tenant's obligations to pay Additional Rent. Landlord shall not be required to preserve its records relating to Expenses payable by Tenant for more than twenty-four (24) months after the end of the calendar year to which they relate

4.3 Other Taxes. Upon demand, but only to the extent not prohibited by applicable law, Tenant will reimburse Landlord for taxes paid by Landlord on (a) Tenant's Personal Property, (b) Rent, (c) Tenant's occupancy of the Premises, or (d) this Lease.

4.4 Terms of Payment. "Rent" means all amounts payable by Tenant under this Lease and the Exhibits, including without limitation Base Rent, Additional Rent, and charges for any Additional Services (as defined in §6.2). If a time for payment of an item of Rent is not specified in this Lease, then Tenant will pay Rent within thirty (30) days after receipt of Landlord's statement or invoice. Unless otherwise provided in this Lease, Tenant shall pay Rent without notice, demand, deduction, abatement or setoff, in lawful U.S. currency, at Landlord's Billing Address. Landlord will send invoices payable by Tenant to Tenant's Billing Address; however, neither Landlord's failure to send an invoice nor Tenant's failure to receive an invoice for Base Rent (and installments of Estimated Additional Rent) will relieve Tenant of its obligation to timely pay Base Rent (and installments of Estimated Additional Rent). Each partial payment by Tenant shall be deemed a payment on account; and, no endorsement or statement on any check or any accompanying letter shall constitute an accord and satisfaction, or affect Landlord's right to collect the full amount due. No payment by Tenant to Landlord will be deemed to extend the Term or render any notice, pending suit or judgment ineffective. By notice to the other, each party may change its Billing Address.

4.5 Late Payment. If Landlord does not receive any item of Rent when due, including without limitation Base Rent, Additional Rent, and charges for any Additional Services, then Tenant shall pay Landlord a "Late Charge" of five percent (5%) of the overdue amount. Tenant agrees that the Late Charge is not a penalty, and will compensate Landlord for

costs not contemplated under this Lease that are impracticable or extremely difficult to fix. Landlord's acceptance of a Late Charge does not waive Tenant's default.

5. USE & OCCUPANCY

5.1 Use. Tenant shall use and occupy the Premises only for the Use. Landlord does not represent or warrant that the Project is suitable for the conduct of Tenant's particular business.

5.2 Compliance with Laws and Directives.

(a) Tenant's Compliance. Subject to the remaining terms of this Lease, Tenant shall comply at Tenant's expense with all directives of Landlord's insurers or laws concerning:

- (1) The Leasehold Improvements and Alterations,
- (2) Tenant's use or occupancy of the Premises,
- (3) Tenant's employer/employee obligations,
- (4) A condition created by Tenant,
- (5) Tenant's or its invitees' failure to comply with this Lease,
- (6) The negligence of Tenant, the Tenant Parties, or Tenant's Affiliates or contractors, or
- (7) Any chemical wastes, contaminants, pollutants or substances that are hazardous, toxic, infectious, flammable or dangerous, or regulated by any local, state or federal statute, rule, regulation or ordinance for the protection of health or the environment ("Hazardous Materials") that are introduced to the Project, handled or disposed by Tenant or its Affiliates, or any of their contractors. Upon Landlord's written request, Tenant will promptly deliver to Landlord documentation acceptable to Landlord disclosing the nature and quantity of any Hazardous Materials Tenant has located at the Property and evidencing the legal and proper handling, storage and disposal of all Hazardous Materials kept at or removed or to be removed from the Property by Tenant. All such documentation will list Tenant or its agent as the responsible party and will not attribute responsibility for any such Hazardous Materials to Landlord or the property manager, if any. Tenant will comply with and is solely responsible for all reporting and warning obligations required under Hazardous Materials laws arising from Tenant's use or occupancy of the Premises, Building or Common Areas. Such reporting and warning obligations are the sole responsibility of Tenant regardless of whether Hazardous Materials laws permit or require Landlord to report or warn, and include, without limitation, all notices and other requirements under California Health & Safety Code Section 25249.5 et seq. and Title 22 of the California Code of Regulations, Sections 12000 et seq.

(b) Landlord's Compliance. Subject to the remaining terms of this Lease, Landlord shall comply at Landlord's cost with all directives of Landlord's insurers or laws

concerning the Project other than those that are Tenant's obligation under subsection (a). The costs of compliance under this subsection (b) will be included in Expenses to the extent allowed under §4.2. In no event shall Tenant be responsible for any Hazardous Materials violation except for any breach of Tenant's obligations under Section 5.2 (a) (7) or except if caused by Tenant or its agents or invitees.

5.3 Occupancy. Tenant shall not interfere with Building services or other tenants' rights to quietly enjoy their respective premises or the Common Areas. Tenant shall not make or continue any nuisance, including any objectionable odor, noise, fire hazard, vibration, or wireless or electromagnetic transmission. Tenant's will not maintain any Leasehold Improvements or use the Premises in a way that increases the cost of insurance required under §9.2, or requires insurance in addition to the coverage required under §9.2.

5.4 Prohibited Persons and Transactions. Tenant represents and warrants to Landlord that (a) Tenant is currently in compliance with and shall at all times during the Scheduled Term (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on the OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order No. 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism (the "Executive Order")), or other governmental action relating thereto; and (b) Tenant is not, and will not be, a person with whom Landlord is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act), H.R. 3152, Public Law 107-56 and the Executive Order and regulations promulgated thereunder and including persons and entities named on the OFAC Specially Designated Nations and Blocked Persons List.

6. SERVICES & UTILITIES

6.1 Standard Services.

(a) Standard Services Defined. "Standard Services" means:

(1) Heating, ventilation and air-conditioning ("HVAC") during Business Hours as reasonably required to comfortably use and occupy the Premises and interior Common Areas;

(2) Tempered water from the public utility for use in Common Areas rest rooms;

(3) Janitorial services to the Premises and interior Common Areas five (5) days a week, except Holidays, to the extent reasonably determined by Landlord;

(4) Subject to Building rules and regulations, Landlord's security procedures, events of emergency and events beyond Landlord's control, access to the Premises (by at least 1 passenger elevator if not on the ground floor) 24 hours per day, 7 days per week, 52 weeks per year;

(5) Building Standard bulbs are provided to Tenant, specialty bulbs will be billed to Tenant;

(6) Replacement of fluorescent tubes and ballasts in Building Standard light fixtures in the Premises; and

(7) Electricity from Landlord's selected provider(s) for lighting in the Common Areas and as follows from convenience outlets in the Premises: Building Standard lighting (1 three amp fixture per each 80 RSF of the Premises), Building Standard HVAC and the operation of customary quantities and types of office equipment (excluding data processing), so long as (i) the connected load does not exceed three (3) watts per RSF of the Premises and .08 kilowatt hour per month per RSF of the Premises, and (ii) any item of electrical equipment does not (singly) consume more than 500 watts per hour at rated capacity or require a voltage other than one hundred twenty (120) volts single phase.

(b) Standard Services Provided. During the Term, Landlord shall provide the Standard Services to Tenant. The cost of the Standard Services shall be included in Expenses. Landlord is not responsible for any inability to provide Standard Services due to either: the concentration of personnel or equipment in the Premises; or Tenant's use of equipment in the Premises that is not customary office equipment, has special cooling requirements, or generates heat.

6.2 Additional Services. "Additional Services" means utilities or services in excess of the Standard Services set forth in §6.1. Tenant shall not use any Additional Services without Landlord's prior written consent. If Landlord so consents, any such Additional Services shall be subject to the terms and conditions of this §6.2. Tenant agrees to pay for any Additional Services upon receipt of an invoice or statement from Landlord. If Tenant fails to timely pay for any Additional Services, in addition to Landlord's other remedies under this Lease, including application of the Late Charge set forth in §4.5, Landlord may discontinue the Additional Services.

(a) HVAC. If Tenant requests HVAC service to the Premises during non-Business Hours, Tenant will give Landlord at least 24 hour notice of same, and Tenant will pay as Rent Landlord's scheduled rate for this service.

(b) Lighting. Landlord will furnish non-Building Standard lamps, bulbs, ballasts and starters that are part of the Leasehold Improvements for purchase by Tenant at Landlord's cost, plus Landlord's standard Administration Fee. Landlord will install non-Building Standard items at Landlord's scheduled rate for this service.

(c) Other Utilities and Services. Tenant will pay as Rent the actual cost of utilities or services (other than HVAC and lighting addressed in (a) and (b)) either used by Tenant or provided at Tenant's request in excess of that provided as part of the Standard Services, plus Landlord's standard Administration Fee. Tenant's excess consumption may be estimated by Landlord unless either Landlord requires or Tenant elects to install Building Standard meters to measure Tenant's consumption.

(d) Additional Systems and Metering. Landlord may require Tenant, at Tenant's expense, to upgrade or modify existing Mechanical Systems serving the Premises or the Leasehold Improvements to the extent necessary to meet Tenant's excess requirements (including installation of Building Standard meters to measure the same).

6.3 Alternate Electrical Billing. Landlord, at Landlord's sole cost, may elect at any time during the Term, and continuing for the remainder of the Term, to separately meter Tenant's total consumption of electricity in the Premises, including lighting and convenience outlets. If Landlord so elects, then Landlord shall notify Tenant of such election and in lieu of including consumption of electricity of tenanted premises in Expenses, Tenant shall pay to Landlord as Rent the actual cost of Tenant's electricity consumption, plus Landlord's standard Administration Fee.

6.4 Telecommunications Services. Tenant will contract directly with third party providers and will be solely responsible for paying for all telephone, data transmission, video and other telecommunication services ("Telecommunication Services") subject to the following:

(a) Providers. Each Telecommunications Services provider that does not already provide service to the Building shall be subject to Landlord's approval, which Landlord may withhold in Landlord's sole discretion. Without liability to Tenant, the license of any Telecommunications Services provider servicing the Building may be terminated under the terms of the license, or not renewed upon the expiration of the license.

(b) Tenant's Wiring. Landlord may, in its sole discretion, reasonably designate the location of all wires, cables, fibers, equipment, and connections ("Tenant's Wiring") for Tenant's Telecommunications Services, restrict and control access to telephone cabinets and rooms. Tenant may not use or access the Base Building, Common Areas or roof for Tenant's Wiring without Landlord's prior written consent, which Landlord may withhold in Landlord's reasonable discretion, or for which Landlord may charge a fee reasonably determined by Landlord.

(c) Tenant Sole Beneficiary. This §6.4 is solely for Tenant's benefit, and no one else shall be considered a third party beneficiary of these provisions.

(d) Removal of Equipment. Any and all telecommunications equipment and other facilities for telecommunications transmission (including, without limitation, Tenant's Wiring) installed in the Premises or elsewhere in the Building by or on behalf of Tenant shall be removed prior to the expiration or earlier termination of the Term by Tenant at its sole cost or, at Landlord's election, by Landlord at Tenant's sole cost, with the cost thereof to be paid as additional rent. Landlord shall have the right, however, upon written notice to Tenant given no later than thirty (30) days prior to the expiration or earlier termination of the Term, to require Tenant to abandon and leave in place without additional payment to Tenant or credit against rent, any or all of Tenant's Wiring and related infrastructure, or selected components thereof, whether located in the Premises or elsewhere in the Building.

6.5 Interruption of Services.

(a) Without breaching this Lease, Landlord may:

(1) Comply with laws or voluntary government or industry guidelines concerning the services to be provided by Landlord or obtained by Tenant under this Article 6;

(2) Interrupt, limit or discontinue the services to be provided by Landlord or obtained by Tenant under this Article 6 as may be reasonably required during an emergency or Force Majeure event; or

(3) If Landlord gives Tenant reasonable prior notice and uses commercially reasonable efforts not to disturb Tenant's use of the Premises for the Use, interrupt, limit or discontinue the services to be provided by Landlord or obtained by Tenant under this Article 6 to repair and maintain the Project under §7.2, or make any improvements or changes to the Project.

(b) Abatement for Interruption of Standard Services. If all or a part of the Premises is untenantable because of an interruption in a utility service that prevents Landlord from providing any of the Standard Services for more than five (5) consecutive days, then from the sixth (6th) consecutive day of interruption until the Standard Services are restored, Landlord shall abate Tenant's Base Rent and Additional Rent, subject to the following:

(1) Landlord will only abate Base Rent and Additional Rent to the extent the Premises are untenantable and not actually used by Tenant to conduct business; and

(2) Landlord will only abate Base Rent and Additional Rent to the extent the interruption in Base Rent and Additional Rent is covered by insurance Landlord must maintain under §9.2.

(c) No Other Liability. Except as provided under 6.5(b), Landlord will not be liable in any manner for any interruption in services to be provided by Landlord or obtained by Tenant under this Article 6 (including damage to Tenant's Personal Property, consequential damages, actual or constructive eviction, or abatement of any other item of Rent).

6.6 Recycling. Tenant covenants and agrees, at its sole cost and expense, to comply with all present and future laws, orders, and regulations of the jurisdiction in which the Building is located and of the federal, municipal, and local governments, departments, commissions, agencies and boards having jurisdiction over the Building to the extent that they or this Lease impose on Tenant duties and responsibilities regarding the collection, sorting, separation, and recycling of trash. Tenant shall pay all costs, expenses, fines, penalties, or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this §6.6, and, at Tenant's sole cost and expense, shall indemnify, defend and hold Landlord harmless (including legal fees and expenses) from and against any actions, claims, and suits arising from such noncompliance, using counsel reasonably satisfactory to Landlord.

7. REPAIRS

7.1 Tenant's Repairs. Except as provided in Articles 10 and 12, during the Term Tenant shall, at Tenant's cost, repair and maintain (and replace, as necessary) the Leasehold Improvements and keep the Premises in good order and condition and in compliance with any and all applicable codes, ordinances and laws. Tenant shall be responsible for the costs to repair

(and replace, as necessary) any portion of the Project damaged by Tenant or Tenant's agents, contractors, or invitees. Tenant's work under this §7.1 (a) is subject to the prior approval and supervision of Landlord, (b) must be performed in compliance with laws and Building rules and regulations, and (c) must be performed in a first-class, lien free and workmanlike manner, using materials not less than Building Standard.

7.2 Landlord's Repairs. Except as provided in Articles 10 and 12, during the Term Landlord shall, at Landlord's cost (but included as Expenses to the extent provided in §4.2) repair and maintain (and replace, as necessary) all parts of the Project that are not Tenant's responsibility to repair and maintain under §7.1 (or any other tenant's responsibility under their respective lease), (ii) keep the Project in good order and condition according to the standards prevailing for comparable office buildings in the area in which the Building is located, (iii) keep the Building, other than the Premises, in compliance with all applicable codes, ordinances and laws.

(a) **Building Improvement.** Landlord shall, at its sole cost and expense, keep the outdoor balcony that is adjacent to the Premises in good repair and clean condition and replace any and all broken ceiling tiles in the Premises.

(b) **Notice to Landlord.** If Tenant believes that Landlord has failed to perform any maintenance or repair for which Landlord is obligated under §7.2, Tenant will promptly provide written notice to Landlord specifying in detail the nature and extent of any condition requiring maintenance or repair. Landlord will not be deemed to have failed to perform its obligations under §7.2 with respect to any maintenance or repair unless Tenant has provided such written notice and Landlord has had a commercially reasonable time within which to respond to such notice and effect the needed maintenance or repair. Tenant waives the right to terminate this Lease or vacate the Premises (pursuant to California Civil Code Section 1932, Subsection 1, California Civil Code Sections 1941 and Section 1942, or any similar or successor Laws).

(c) **Tenant's Rights to Perform Repairs at Landlord's Cost.** Notwithstanding anything to the contrary set forth in this Lease, if Landlord fails or refuses to either commence any repairs or maintenance of the Premises for which Landlord is responsible under this Lease within thirty (30) business days (or, in the case of an emergency which renders the Premises untenable and Tenant actually ceases doing business in the Premises, as soon as possible under the circumstances but in any event within three (3) business days) following written notice from Tenant to Landlord stating in detail the repairs or maintenance required under this provision ("Tenant's Repair Notice"), or diligently pursue performance of such repairs or maintenance of the Premises to completion as soon as reasonably practical, then if Tenant is not then in Default, Tenant, upon three (3) business days written notice to Landlord, shall have the right to engage qualified contractors to perform such repairs or maintenance of the Premises. In the event Tenant's performance of such repairs or maintenance would affect (i) the exterior appearance of the Building, (ii) the Building Structure, or (iii) the Mechanical Systems, Tenant shall use only those contractors used by Landlord in the Building for work and whose names Landlord has furnished to Tenant (when available and upon Tenant's written request) unless such contractors are unwilling or unable to perform, or timely perform, such work, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs

similar work in comparable buildings. Upon completion of such repairs and maintenance, Tenant shall provide Landlord a detailed invoice of all related costs, together with such backup documentation as is reasonably requested by Landlord and lien waivers from all contractors and subcontractors supplying services or materials for such repairs or maintenance. Landlord shall reimburse Tenant for Tenant's reasonable and actual costs and expenses in connection with Tenant's performance of such repairs and maintenance within thirty (30) days after receipt of Tenant's written invoice therefore (the "Reimbursement Period"), failing which, Tenant may offset such amounts against the next Rent payable by Tenant Tenant's rental obligations hereunder. Notwithstanding the forgoing, Tenant shall not be entitled to such offset right to any extent that Landlord provides written notice to Tenant within the Reimbursement Period setting forth its objections to Tenant's invoice amount. In which case, Tenant shall be entitled to offset that portion of the invoice amount, if any, which Landlord does not object to, but shall not be entitled to such offset with respect to amounts that Landlord objects to until Tenant obtains a final judgment in a court of law relating to Tenant's right of reimbursement hereunder and such judgment is not satisfied within thirty (30) days of the rendering of such final judgment or other wise in accordance with its terms. In no event shall the provisions of this Section 7.2 (c) be applicable to repairs or maintenance following a casualty or condemnation.

8. ALTERATIONS

8.1 Alterations by Tenant. "Alterations" means any modifications, additions or improvements to the Premises or Leasehold Improvements made by Tenant during the Term, including modifications to the Base Building or Common Areas required by law as a condition of performing the work. Alterations does not include tenant improvements made under any Work Letter attached to this Lease. Alterations are made at Tenant's sole cost and expense, subject to the following:

(a) Consent Required. All Alterations require Landlord's prior written consent. If a Design Problem exists, Landlord may withhold its consent in Landlord's sole and absolute discretion; otherwise, Landlord will not unreasonably withhold its consent. In either case, Landlord may condition its consent in writing to any item of Alterations on the requirement that Tenant remove this item of Alterations upon termination of this Lease. "Design Problem" means a condition that results, or will result, from Alterations that are proposed, being performed or have been completed that either:

- (1) Does not comply with laws;
- (2) Does not meet or exceed the Building Standard;
- (3) Exceeds the capacity, adversely affects, is incompatible with, or impairs Landlord's ability to maintain, operate, alter, modify or improve the Base Building;
- (4) Affects the exterior appearance of the Building or Common Areas;
- (5) Violates any agreement affecting the Project;
- (6) Costs more to demolish than Building Standard improvements;

(7) Violates any insurance regulations or standards for a fire-resistive office building; or

(8) Locates any equipment, Tenant's Wiring or Tenant's Personal Property on the roof of the Building, in Common Areas or in telecommunications or electrical closets.

(b) **Performance of Alterations.** Alterations shall be performed by Tenant in a good and workman-like manner according to plans and specifications approved by Landlord. All Alterations shall comply with law and insurance requirements. Landlord's designated contractors must perform Alterations affecting the Base Building or Mechanical Systems; and, all other work will be performed by qualified contractors that meet Landlord's insurance requirements and are otherwise approved by Landlord. Promptly after completing Alterations, Tenant will deliver to Landlord "as-built" CADD plans, proof of payment, a copy of the recorded notice of completion, and all unconditional lien releases.

(c) **Bonding.** If requested by Landlord, before commencing Alterations Tenant shall at Tenant's cost obtain bonds, or deposit with Landlord other security acceptable to Landlord for the payment and completion of the Alterations. These bonds or other security shall be in form and amount acceptable to Landlord.

(d) **Alterations Fee.** Tenant shall pay Landlord as Rent ten percent (10%) of the total construction costs of the Alterations to cover review of Tenant's plans and construction coordination by its own employees. In addition, Tenant shall reimburse Landlord for the actual cost that Landlord reasonably incurs to have engineers, architects or other professional consultants review Tenant's plans and work in progress, or inspect the completed Alterations.

8.2 Alterations by Landlord. Landlord may make any modifications, additions, renovations or improvements to the Project that Landlord deems appropriate, provided Landlord uses commercially reasonable efforts to avoid disrupting Tenant's business.

8.3 Liens and Disputes. Tenant will keep title to the Land and Building free of any liens concerning the Leasehold Improvements, Alterations, or Tenant's Personal Property, and will promptly take whatever action is required to have any of these liens released and removed of record (including, as necessary, posting a bond or other deposit). To the extent legally permitted, each contract and subcontract for Alterations will provide that no lien attaches to or may be claimed against the Project other than Tenant's leasehold interest in the Premises.

9. INSURANCE

9.1 Tenant's Insurance.

(a) **Tenant's Coverage.** Before taking possession of the Premises for any purpose (including construction of tenant improvements, if any) and during the Term, Tenant will provide and keep in force the following coverage:

(1) Commercial general liability insurance insuring Tenant's use and occupancy of the Premises and Common Areas, and covering personal and bodily injury, death,

and damage to others' property of not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate . Each of these policies shall include cross liability and severability of interests clauses, and be written on an occurrence, and not claims-made, basis. Each of these policies shall name Landlord, the Building property manager, each secured lender, and any other party reasonably designated by Landlord as an additional insured ("Additional Insured").

(2) Causes of loss – special form commercial property insurance (including standard extended coverage endorsement perils, leakage from fire protective devices and other water damage) covering the full replacement cost of the Leasehold Improvements as described in §2.5(a) and Tenant's Personal Property. Each of these policies shall name Landlord and each Additional Insured as loss payee to the extent of their interest in the Leasehold Improvements. Each of these policies shall include a provision or endorsement in which the insurer waives its right of subrogation against Landlord, Landlord's Affiliates, and each Additional Insured.

(3) Business interruption insurance covering continuation of rents during any time the Premises is untenable, with a limit not less than Tenant's annual Rent. Such coverage may be included in insurance covering the perils described in 9.1(a)(2). Each of these policies shall include a provision or endorsement in which the insurer waives its right of subrogation against Landlord, Landlord's Affiliates, and each Additional Insured.

(4) Insurance required by law, including workers' compensation insurance.

(5) Employers liability insurance with limits not less than \$1 million.

(6) Commercial automobile liability insurance covering all Tenant's owned, hired, and non-owned vehicles with a combined single limit of not less than \$1 million.

(7) Insurance covering the Leasehold Improvements and Tenant's Personal Property against loss or damage due to earthquake, flood and difference in conditions. Tenant may elect to self-insure this coverage. If Tenant does not elect to self-insure this coverage, then each of these policies shall name Landlord and each Additional Insured as loss payee to the extent of their interest in the Leasehold Improvements.

(b) Insurers and Terms. Each policy required under (a) shall be written insurance from an insurer admitted to write insurance in California or an authorized non-admitted insurer having a rating of or equivalent to A: VIII by A.M. Best Company.

(c) Proof of Insurance. Tenant shall provide Landlord with certificates of insurance or other reasonable proof that the coverage required under (a) is in effect. Tenant will provide reasonable proof at least 30 days before any policy expires that the expiring policy will be replaced.

(d) Self-Insurance. Tenant may satisfy any or all of the insurance requirements set forth in §9.1 by use of self-insurance and/or deductible. The responsibility to fund any financial obligation for self-insurance and/or deductibles shall be assumed by, for the

account of, and at the sole risk of Tenant. The application of coverage within this self-insurance and/or deductible shall be deemed covered in accordance with the policy forms set forth in this §9.1.

9.2 Landlord's Insurance.

(a) Landlord's Coverage. During the Term, Landlord will provide and keep in force the following coverage:

(1) Commercial general liability insurance, insuring Landlord's use and occupancy of the Premises and Common Areas, and covering personal and bodily injury, death, and damage to others' property of not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, which limits may be met in combination with umbrella/excess policies. Each of these policies shall include cross liability and severability of interests clauses, and be written on an occurrence, and not claims-made, basis.

(2) Causes of loss – special form commercial property insurance (including standard extended coverage endorsement perils, leakage from fire protective devices and other water damage) covering the full replacement cost of the Project improvements (excepting the Leasehold Improvements to be insured by Tenant). Each of these policies shall include a provision or endorsement in which the insurer waives its right of subrogation against Tenant.

(3) Boiler and machinery or equipment breakdown insurance.

(4) Other insurance that Landlord elects to maintain.

(b) Terms. Each of the policies required under (a) will have those limits, deductibles, retentions and other terms that Landlord prudently determines.

10. DAMAGE OR DESTRUCTION

10.1 Damage and Repair. If the Leasehold Improvements, Premises or Building is damaged by fire or other casualty, not including (a) any waste or excessive or unreasonable wear and tear, or (b) any loss, destruction or damage arising or resulting from the placement, disposal or release of Hazardous Materials in, on, under, about or from the Building by either Landlord or Tenant, then the parties will proceed as follows:

(a) Landlord's Estimates. Landlord will assess the damage to the Project (but not the Leasehold Improvements) and notify Tenant of Landlord's reasonable estimate of the time required to substantially complete repairs and restoration of the Project ("Repair Estimate"). Landlord will also estimate the time that the Premises will be untenable ("Interruption Estimate"). Within thirty (30) days after the later of the casualty, issuance of the Repair Estimate, issuance of the Interruption Estimate, or receipt of any denial of coverage or reservation of rights from Landlord's insurer, each party may terminate this Lease by written notice to the other on the following conditions:

(1) Landlord may elect to terminate this Lease if:

(A) The damage occurs during the last year of the Term, or

(B) The Repair Estimate exceeds one hundred eighty (180)

days, or

(C) The repair and restoration is not fully covered by insurance maintained or required to be maintained by Landlord (subject only to those deductibles or retentions Landlord elected to maintain) or Landlord's insurer denies coverage or reserves its rights on coverage or any mortgagee of the Building requires that insurance proceeds be applied to the indebtedness secured by its mortgage.

(2) Tenant may elect to terminate this Lease if the Interruption Estimate exceeds one hundred eighty (180) days.

(b) If neither party terminates this Lease under (a), then this Lease shall remain in full force and effect and the parties will proceed as follows:

(1) Landlord will repair and restore the Project (but not Leasehold Improvements) to the condition existing prior to such damage, except for modifications required by law. Landlord will perform such work reasonably promptly, subject to delay for loss adjustment, Tenant Delay and Force Majeure.

(2) Tenant will repair and restore the Leasehold Improvements reasonably promptly to the condition existing prior to such damage, but not less than then current Building Standards, except for modifications required by law.

(3) Tenant may not terminate this Lease if the actual time to perform the repairs and restoration exceeds the Repair Estimate, or the actual interruption exceeds the Interruption Estimate, provided that Tenant may terminate this Lease upon thirty (30) days prior written notice to Landlord if the actual interruption exceeds the Interruption Estimate by more than forty-five (45) days; provided that, should Landlord restore the Premises so that the Premises are tenantable within the thirty (30) day period of notice, Tenant's right to terminate pursuant to this Section 10.1 (b) (3) shall be null and void; and further, should Landlord, within the thirty (30) day period of notice, provide Tenant with substitute premises in the Building reasonably acceptable to Tenant, Tenant's right to terminate pursuant to this Section 10.1 (b) (3) shall be null and void.

10.2 Rent Abatement. If as a result of the damage or casualty under §10.1 the Premises are rendered untenable for more than five (5) consecutive days, then from the sixth (6th) consecutive day Tenant's Base Rent and Additional Rent shall be abated to the extent that the Premises are untenable, and shall commence once the Premises are again tenantable. Tenant's sole remedy will be the abatement of Base Rent and Additional Rent provided under this §10.2, and Landlord will not be liable to Tenant for any other amount, including damages to Tenant's Personal Property, consequential damages, actual or constructive eviction, or abatement of any other item of Rent.

10.3 Exclusive Casualty Remedy. The provisions of this Article 10 are Tenant's sole and exclusive rights and remedies in the event of a damage or casualty described in §10.1. To the fullest extent allowable under the law, Tenant waives the benefits of any laws (including, without limitation, California Civil Code Sections 1932, Subsection 2 and 1933, Subsection 4, and any successor statutes or laws) that provide Tenant any abatement or termination rights (by virtue of a casualty) not specifically described in §10.1 or §10.2.

11. INDEMNITY

11.1 Claims. "Claims" means any and all liabilities, losses, claims, demands, damages or expenses that are suffered or incurred by a party, including attorneys' fees reasonably incurred by that party in the defense or enforcement of the rights of that party.

11.2 Tenant's Indemnity.

(a) Landlord's Waivers. Landlord waives any Claims against Tenant and its Affiliates for perils insured or required to be insured by Landlord under subsections (2) and (3) of §9.2(a), except to the extent caused by the gross negligence or willful misconduct of Tenant or its Affiliates.

(b) Claims Against Landlord. Unless waived by Landlord under (a), Tenant will indemnify and defend Landlord and its Affiliates and hold each of them harmless from and against Claims arising from:

- (1) Any accident or occurrence on or about the Premises, except to the extent caused by the negligence or willful misconduct of Landlord or its Affiliates;
- (2) Tenant's or its Affiliates' negligence or willful misconduct;
- (3) Tenant's failure to comply with this Lease; or
- (4) Any claim for commission or other compensation by any person other than the Brokers for services rendered to Tenant in procuring this Lease.

11.3 Landlord's Indemnity.

(a) Tenant's Waivers. Tenant waives any Claims against Landlord and its Affiliates for:

- (1) Peril insured or required to be insured by Tenant under subsections (2), (3) and (8) of §9.1(a) (such waiver by Tenant being effective whether or not any such insurance contains deductibles or if Tenant has elected to self-insure for any such perils), and
- (2) Damage caused by any public utility, public work, other tenants or occupants of the Project, or persons other than Landlord.

(b) Claims against Tenant. Unless waived by Tenant under (a), Landlord will indemnify and defend Tenant and its Affiliates and hold each of them harmless from and against Claims arising from:

- (1) Landlord's or its Affiliates' negligence or willful misconduct;
- (2) Landlord's default of this Lease; or
- (3) Any claim for commission or other compensation by any person other than the Brokers for services rendered to Landlord in procuring this Lease.

11.4 Affiliates Defined. "Affiliates" means with respect to a party (a) that party's partners, co-members and joint venturers, (b) each corporation or other entity that is a parent or subsidiary of that party, (c) each corporation or other entity that is controlled by or under common control of a parent of such party, and (d) the directors, officers, employees and agents of that party and each person or entity described in this §11.4(a-c).

11.5 Survival of Waivers and Indemnities. Landlord's and Tenant's waivers and indemnities under §11.2 and §11.3 will survive the expiration or early termination of this Lease.

12. CONDEMNATION

12.1 Taking. "Taking" means acquiring of all or part of the Project for any public or quasi-public use by exercise of a right of eminent domain or under any other law, or any sale in lieu thereof. If a Taking occurs:

(a) This Lease will terminate as of the date of a Taking if substantially all of the Premises become untenable for substantially all of the remaining Term because of the Taking.

(b) If this Lease is not terminated under (a), Landlord shall restore or alter the Premises after the Taking to be tenantable, unless Landlord reasonably determines that it will be uneconomical to do so, in which case Landlord may terminate this Lease upon sixty (60) days prior written notice to Tenant.

(c) If this Lease is not terminated under (a), more than twenty percent (20%) of the Premises is untenable because of the Taking and Tenant cannot operate Tenant's business for the Use in the Premises after such Taking, and Landlord is unable to provide Tenant with comparable premises in the Project, then Tenant may terminate this Lease upon sixty (60) days prior written notice to Landlord.

(d) If this Lease is not terminated under (a), (b) or (c), the Rent payable by Tenant will be reduced for the term of the Taking based upon the rentable area of the Premises made untenable by the Taking.

12.2 Awards. Landlord is entitled to the entire award for any claim for a Taking of any interest in this Lease or the Project, without deduction or offset for Tenant's estate or interest; however, Tenant may make a claim for relocation expenses and damages to Tenant's

Personal Property and business to the extent that Tenant's claim does not reduce Landlord's award.

12.3 Exclusive Taking Remedy. The provisions of this Article 12 are Tenant's sole and exclusive rights and remedies in the event of a Taking. To the fullest extent allowable under the law, Tenant waives the benefits of any law (including, without limitation, California Code of Civil Procedure Section 1265.130 and any successor statutes or laws) that provide Tenant any abatement or termination rights or any right to receive any payment or award (by virtue of a Taking) not specifically described in this Article 12.

13. TENANT TRANSFERS

13.1 Terms Defined.

(a) Transfer Defined. "Transfer" means any:

(1) Sublease of all or part of the Premises, or assignment, mortgage, hypothecation or other conveyance of an interest in this Lease;

(2) Use of the Premises by anyone other than Tenant with Tenant's consent;

(3) Change in Tenant's form of organization (e.g., a change from a partnership to limited liability company);

(4) Transfer of fifty-one percent (51%) or more of Tenant's assets, shares (excepting shares transferred in the normal course of public trading), membership interests, partnership interests or other ownership interests; or

(5) Transfer of effective control of Tenant.

13.2 Prohibited Transfers. Tenant may not enter into any Transfer if such Transfer will result in any portion of the Rent not constituting "rents from real property" with respect to Landlord, within the meaning of Section 856(d) of the Internal Revenue Code of 1986, as amended (the "Code"). In particular, Tenant may not enter into a Transfer (i) that provides for rent or other compensation based in whole or in part on the net income or profits from the business operated in the Premises or (ii) if the proposed transferee is directly or indirectly related to Landlord under §856, et seq. of the Code. Any such Transfers shall be considered null, void and of no force or effect.

13.3 Consent Not Required. Tenant may effect a Transfer to a Permitted Transferee without Landlord's prior consent, but with notice to Landlord prior to the Permitted Transferee's occupancy. "Permitted Transferee" means any person or entity that:

(a) Either (1) controls, is controlled by, or is under common control with Tenant, (2) results from the merger or consolidation of Tenant (for purposes hereof, "control" shall mean ownership of not less than fifty percent (50%) of all of the voting stock or legal and

equitable interest in the entity in question), or (3) acquires all or substantially all of the stock and/or assets of Tenant as a going concern;

(b) Has a tangible net worth immediately following the Transfer not less than the greater of (1) Tenant's tangible net worth immediately before the Transfer, or (2) Tenant's tangible net worth as of the execution of this Lease; and

(c) Will not, by occupying the Premises, cause Landlord to breach any other lease or other agreement affecting the Project.

13.4 Consent Required. Each proposed Transfer other than those prohibited under §13.2 or permitted under §13.3 requires Landlord's prior consent, in which case the parties will proceed as follows:

(a) Tenant's Notice. Tenant shall notify Landlord at least thirty (30) days prior to the proposed Transfer of the name and address of the proposed transferee and the proposed use of the Premises, and include in the notice the Transfer documents and copies of the proposed transferee's balance sheets and income statements (both current and for the past two (2) years).

(b) Landlord's Rights. Within thirty (30) days after receipt of Tenant's complete notice, Landlord may either:

(1) If the proposed Transfer is either an assignment of this Lease or sublease of substantially all of the Premises, terminate this Lease as of the proposed Transfer date; provided, however, that if Landlord elects to terminate this Lease pursuant to this provision, Tenant may rescind its notice of Transfer by giving written notice of such rescission to Landlord within ten (10) after Landlord's notice of termination;

(2) If the proposed Transfer is a sublease of all of the Premises or any part of the Premises that will be separately demised and have its own entrance from the Common Areas, exercise a right of first refusal to sublease such portion of the Premises at the lesser of (A) the Rent (prorated for subletting part of the Premises), or (B) the rent payable in the proposed Transfer; or

(3) Consent or deny consent to the proposed Transfer, consent not to be unreasonably withheld if:

(A) The proposed transferee, in Landlord's reasonable opinion, has the financial capacity to meet its obligations under the proposed Transfer;

(B) The proposed use is consistent with the Use and will not cause Landlord to be in breach of any lease or other agreement affecting the Project;

(C) The proposed transferee is typical of tenants that directly lease premises in first-class office buildings;

(D) The proposed transferee is not an existing tenant or an Affiliate of an existing tenant, or a party with which Landlord is actively negotiating to lease space in the Building (or has, in the last six (6) months, been actively negotiating to lease space in the Building); and

(E) Tenant is not in Default under this Lease.

(c) **Compelling Consent.** If Landlord does not consent to a Transfer, Tenant's sole remedy against Landlord will be an action for specific performance or declaratory relief, and Tenant may not terminate this Lease or seek monetary damages.

13.5 Payments to Landlord. Tenant shall pay Landlord fifty percent (50%) of Transfer receipts that exceed Tenant's Rent (on a per square foot basis); after Tenant is reimbursed for Tenant's reasonable and customary out-of-pocket costs incurred in the Transfer, including attorneys' fees, Alterations, and broker commissions. Tenant shall pay Landlord a Five Hundred Dollar (\$500) review fee, and Landlord's reasonable attorneys' fees, for each proposed Transfer, excepting those in which Landlord exercises its rights under subsection (1) or (2) of §13.4(b).

13.6 Effect of Transfers. No Transfer will release Tenant or any guarantor of this Lease from any Lease obligation. Landlord's acceptance of a payment from any person or entity other than Tenant that occupies the Premises does not waive Tenant's obligations under this Article 13. If Tenant is in Default of this Lease, Landlord may proceed against Tenant without exhausting any remedies against any transferee and may require (by written notice to any transferee) any transferee to pay Transfer rent owed Tenant directly to Landlord (which Landlord will apply against Tenant's Lease obligations). Termination of this Lease for any reason will not result in a merger. Each sublease will be deemed terminated upon termination of this Lease unless Landlord notifies the subtenant in writing of Landlord's election to assume any sublease, in which case the subtenant shall attorn to Landlord under the executory terms of the sublease.

14. LANDLORD TRANSFERS

14.1 Landlord's Transfer. Landlord's right to transfer any interest in the Project or this Lease is not limited by this Lease. Upon any such transfer, Tenant will attorn to Landlord's transferee and Landlord will be released from liability under this Lease, except for any Lease obligations accruing before the transfer that are not assumed by the transferee.

14.2 Subordination. This Lease is, and will at all times be, subject and subordinate to each ground lease, mortgage, deed to secure debt or deed of trust now or later encumbering the Building, including each renewal, modification, supplement, amendment, consolidation or replacement thereof (each, an "Encumbrance"). At Landlord's request, Tenant will, without charge, promptly execute, acknowledge and deliver to Landlord (or, at Landlord's request, the Encumbrance holder) any instrument reasonably necessary to evidence this subordination. Notwithstanding the foregoing, each Encumbrance holder may unilaterally elect to subordinate its Encumbrance to this Lease. Upon written request from Tenant, Landlord will use commercially reasonable efforts to provide Tenant with a Subordination, Non-Disturbance and

Attornment Agreement from Landlord's current lender or any future lender on said lender's standard form.

14.3 Attornment. Upon written request of the Successor Landlord, Tenant will automatically attorn to any transferee of Landlord's interest in the Project that succeeds Landlord by reason of a termination, foreclosure or enforcement proceeding of an Encumbrance, or by delivery of a deed in lieu of any foreclosure or proceeding (a "Successor Landlord"). In this event, this Lease will continue in full force and effect as a direct lease between the Successor Landlord and Tenant on all of the terms of this Lease, except that the Successor Landlord shall not be:

(a) Liable for any obligation of Landlord under this Lease, or be subject to any counterclaim, defense or offset accruing before Successor Landlord succeeds to Landlord's interest;

(b) Bound by any modification or amendment of this Lease made without Successor Landlord's consent,

(c) Bound by any prepayment of more than one month's Rent;

(d) Obligated to return any Security Deposit not paid over to Successor Landlord, or

(e) Obligated to perform any improvements to the Premises (or provide an allowance therefor). Upon Successor Landlord's request, Tenant will, without charge, promptly execute, acknowledge and deliver to Successor Landlord any instrument reasonably necessary required to evidence such attornment.

14.4 Estoppel Certificate. Within ten (10) business days after receipt of Landlord's written request, Tenant (and each guarantor of this Lease) will execute, acknowledge and deliver to Landlord a certificate upon which Landlord and each existing or prospective Encumbrance holder may rely confirming the following (or any exceptions to the following):

(a) The Commencement Date and Expiration Date;

(b) The documents that constitute this Lease, and that this Lease is unmodified and in full force and effect;

(c) The date through which Base Rent, Additional Rent, and other Rent has been paid;

(d) That neither Landlord nor Tenant is in Default;

(e) That Landlord has satisfied all Lease obligations to improve the Premises (or provide Tenant an allowance therefor) and Tenant has accepted the Premises;

(f) That Tenant solely occupies the Premises; and

(g) Such other matters concerning this Lease or Tenant's occupancy that Landlord may reasonably require.

15. DEFAULT AND REMEDIES

15.1 Tenant's Default.

(a) Tenant will be in "Default" of this Lease if Tenant either:

(1) Fails to pay Rent when due, and the failure continues for three (3) days after Landlord notifies Tenant of this failure under §17.2 (Tenant waiving any other notice that may be required by law);

(2) Fails to perform a non-monetary Lease obligation of Tenant and the failure continues for twenty (20) days after Landlord notifies Tenant of this failure, but:

(A) In an emergency Landlord may require Tenant to perform this obligation in a reasonable time of less than twenty (20) days, or

(B) If it will reasonably take more than twenty (20) days to perform this obligation, then Tenant will have a reasonable time not exceeding thirty (30) days to perform this obligation, but only if Tenant commences performing this obligation within twenty (20) days after Landlord notifies Tenant of this failure;

(3) Consummates a Transfer that violates Article 13;

(4) Fails, within fifteen (15) days after it occurs, to discharge any attachment or levy on Tenant's interest in this Lease; or

(5) Fails, within sixty (60) days after it occurs, to have vacated or dismissed any appointment of a receiver or trustee of Tenant's assets (or any Lease guarantor's assets), or any voluntary or involuntary bankruptcy or assignment for the benefit of Tenant's creditors (or any Lease guarantor's creditors).

15.2 Landlord's Remedies. If Tenant is in Default, Landlord may, without prejudice to the exercise of any other remedy, exercise any remedy available under law, including those described below:

(a) Termination of Tenant's Possession. Terminate Tenant's right to possession of the Premises at any time by any lawful means, in which case this Lease shall terminate and Tenant must immediately surrender possession of the Premises to Landlord. In such event, Landlord will be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including, without limitation, (a) the worth at the time of the award of the unpaid Rent which had been earned at the time of the termination; (b) 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 the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (c) 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 such rental loss that Tenant proves could be reasonably avoided; and (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, court costs, any costs or expenses Landlord incurs in maintaining or preserving the Premises after such default, the cost of recovering possession of the Premises, expenses of reletting, including renovation or alteration of the Premises, Landlord's reasonable attorneys' fees incurred in connection therewith, and any real estate commission paid or payable. As used in subparts (a) and (b) above, the "worth at the time of the award" is computed by allowing interest at the Maximum Rate. As used in subpart (c) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

(b) Maintain Right to Possession. Maintain Tenant's right to possession, in which case Landlord will be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due. Landlord has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations).

(c) Reletting. After Tenant's default (and for so long as Landlord does not terminate Tenant's right to possession of the Premises), Landlord may, to the extent allowable under the Laws, and in Landlord's sole and absolute discretion (but without obligation) elect to enter into the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be immediately liable to Landlord for all costs Landlord incurs in reletting the Premises, including brokers' commissions, expenses of remodeling the Premises, and like costs. Reletting can be for a period shorter or longer than the remaining Term of this Lease. Tenant will pay to Landlord the Rent due under this Lease on the dates the Rent is due, less the Rent Landlord receives from reletting. If Landlord elects to relet the Premises pursuant to this §15.2(c), Rent that Landlord receives from reletting will be applied to the payment of: (a) first, any indebtedness from Tenant to Landlord other than Rent due from Tenant; (b) second, all costs, including costs incurred by Landlord in reletting; and (c) third, Rent due and unpaid under this Lease. After deducting the payments referred to above in this §15.2(c), any sum remaining from the Rent Landlord receives from reletting will be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. If, on the date Rent is due under this Lease, the Rent received from the reletting is less than the Rent due on that date, Tenant will pay to Landlord, in addition to the remaining Rent due, all costs, including costs for maintenance, Landlord incurred in reletting which remain after applying the Rent received from the reletting. No act by Landlord allowed by this §15.2(c) will terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(d) Right of Landlord to Re-Enter. In the event of any termination of this Lease, Landlord shall have the immediate right to enter upon and repossess the Premises, and any personal property of Tenant may be removed from the Premises and stored in any public warehouse at the risk and expense of Tenant.

(e) **Other Remedies.** Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the state in which the Property is located. All rights and remedies of Landlord under this Lease are cumulative and the exercise of one or more remedies at any time or from time to time does not limit or preclude the further exercise by Landlord of the same or any other rights or remedies at any time or from time to time.

15.3 Costs. Tenant will reimburse and compensate Landlord on demand and as Additional Rent for any actual loss Landlord incurs in connection with, resulting from or related to any breach or default of Tenant under this Lease, regardless of whether the breach or default constitutes a Default, and regardless of whether suit is commenced or judgment is entered. Such loss includes all reasonable legal fees, costs and expenses (including paralegal fees, expert fees, and other professional fees and expenses) Landlord incurs investigating, negotiating, settling or enforcing any of Landlord's rights or remedies or otherwise protecting Landlord's interests under this Lease. In addition to the foregoing, Landlord is entitled to reimbursement of all of Landlord's fees, expenses and damages, including, but not limited to, reasonable attorneys' fees and paralegal and other professional fees and expenses, Landlord incurs in connection with any bankruptcy or insolvency proceeding involving Tenant including, without limitation, any proceeding under any chapter of the Bankruptcy Code; by exercising and advocating rights under Section 365 of the Bankruptcy Code; by proposing a plan of reorganization and objecting to competing plans; and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

15.4 Waiver of Re-entry Claims. Tenant waives and releases all Claims Tenant may have resulting from Landlord's re-entry and taking possession of the Premises pursuant to this Article 15 by any lawful means and removing, storing or disposing of Tenant's property as permitted under this Lease, regardless of whether this Lease is terminated and, to the fullest extent allowable under the law, Tenant releases the Landlord Parties from and against any and all Claims arising therefrom. No such re-entry is to be considered or construed as a forcible entry by Landlord.

15.5 Waiver of Redemption. Tenant waives any right of redemption from forfeiture under any law including, without limitation, California Code of Civil Procedure Sections 1174 and 1179.

15.6 Landlord's Default and Remedies.

(a) Landlord will be in "Default" of this Lease if Landlord fails to perform any Lease obligation of Landlord and this failure continues for twenty (20) days after Tenant notifies Landlord of such failure, or such longer period of time as is reasonable if more than 20 days is reasonably required to perform this obligation if performance commences within this twenty (20) day period and is diligently prosecuted to completion.

(b) If Landlord is in Default, then Tenant may exercise any remedy available under law that is not waived or limited under this Lease, subject to the following:

(1) Tenant may not terminate this Lease due to any Landlord Default until Tenant notifies each Encumbrance holder and each Encumbrance holder is provided a

reasonable opportunity to gain legal possession of the Project and, after gaining possession, cure the Default.

(2) Landlord's liability under this Lease is limited to Landlord's interest in the Building, and if Landlord is comprised of more than one entity, the liability of each entity comprising Landlord shall be several only (not joint) based upon such entity's proportionate share of ownership in the Building.

(3) No liability under this Lease is assumed by Landlord's Affiliates.

(4) Any liability of Landlord to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under this Lease or any matter relating to the occupancy or use of the Project shall be limited to Tenant's actual direct, but not consequential, damages therefor.

15.7 Mediation; Waiver of Jury Trial. Except as provided in this Section, if any dispute ensues between Landlord and Tenant arising out of or concerning this Lease, and if said dispute cannot be settled through direct discussions between the parties, the parties shall first attempt to settle the dispute through mediation before a mutually acceptable mediator. The cost of mediation shall be divided equally between the parties. To the extent permitted by law, Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim (including any claim of injury or damage and any emergency and other statutory remedy in respect thereof) brought by either against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises.

15.8 Force Majeure. "Force Majeure" means any cause or event beyond both Landlord's and Tenant's reasonable control, including any act of God, government act or restriction, labor disturbance, general shortage of materials or supplies, riot, insurrection, or act of war or terrorism. Force Majeure excuses a party from performing any non-monetary Lease obligation for a commercially reasonable time.

16. **Intentionally omitted**

17. **MISCELLANEOUS**

17.1 Rules and Regulations. Tenant will comply with the Rules and Regulations attached as Exhibit "B". Landlord may reasonably modify or add to the Rules and Regulations upon notice to Tenant. If the Rules and Regulations conflict with this Lease, this Lease shall govern.

17.2 Signage. Tenant shall be entitled to the signage set forth in §8 of Exhibit B. Landlord shall remove the existing "blank" suite signage outside of the Premises and restore such area so as to conform to Building Standard.

17.3 Notice. Notice to Landlord must be given to Landlord's Notice Addresses. Notice to Tenant must be given to Tenant's Notice Addresses. By notice to the other, either party may change its Notice Address. Each notice must be in writing and will be validly given if

either: (a) the notice is personally delivered and receipt is acknowledged in writing; (b) the notice is delivered by private carrier (e.g., Federal Express) and receipt is acknowledged in writing. If the party to receive notice refuses to acknowledge its receipt in writing, then notice may be validly given by mailing the notice first-class, certified or registered mail, postage prepaid, and the notice will be deemed received by the party two (2) business days after the notice's deposit in the U.S. Mail.

17.4 Relocation of the Premises. Landlord may relocate Tenant to other premises in the Building ("New Premises") upon not less than sixty (60) days' written notice, provided that the New Premises is comparably sized and may be comparably configured for Tenant's use. If Landlord elects to relocate Tenant under this §17.4, then Landlord will, at Landlord's cost, construct leasehold improvements to the New Premises of comparable quality to those existing in the Premises, relocate Tenant's existing telephone and computer systems, move Tenant's personal effects, and replace up to Five Hundred Dollars (\$500.00) of any in-stock stationary identifying the Premises.

17.5 Building Name. Tenant shall not use the Building's name or image for any purpose, other than Tenant's address. Landlord may change the name of the Building without any obligation or liability to Tenant.

17.6 Entire Agreement. This Lease is deemed integrated and contains all of each party's representations, waivers and obligations. The parties may only modify or amend this Lease in a writing that is fully executed and delivered by both parties.

17.7 Energy Star. Tenant acknowledges Landlord's implementation of an Energy Star scoring system in the Building relative to energy usage/ consumption and Landlord's commitment to exploring and implementing environmentally sensitive practices where, in Landlord's sole opinion, such practices deem economically feasible.

17.8 Successors. Unless provided to the contrary elsewhere in this Lease, this Lease binds and inures to the benefit of each party's heirs, successors and permissible assignees.

17.9 No Waiver. A party's waiver of a breach of this Lease will not be considered a waiver of any other breach. No custom or practice that develops between the parties will prevent either party from requiring strict performance of the terms of this Lease. No Lease provision or act of a party creates any relationship between the parties other than that of landlord and tenant.

17.10 Independent Covenants. The covenants of this Lease are independent. A court's declaration that any part of this Lease is invalid, void or illegal will not impair or invalidate the remaining parts of this Lease, which will remain in full force and effect.

17.11 Captions. The use of captions, headings, boldface, italics or underlining is for convenience only, and will not affect the interpretation of this Lease.

17.12 Authority. Individuals signing this Lease on behalf of either party represent and warrant that they are authorized to bind that party.

17.13 Applicable Law. This Lease is governed by the laws of the state in which the Building is located, regardless of that state's conflicts provision or choice of law rules. In any action brought under this Lease, Tenant submits to the jurisdiction of the courts of the State of California, and to venue in Long Beach, California.

17.14 Confidentiality. Tenant will not record this Lease or a memorandum of this Lease without Landlord's written consent. Tenant will keep the terms of this Lease confidential and, unless required by law, may not disclose the terms of this Lease to anyone other than Tenant's Affiliates to the extent necessary to Tenant's business.

17.15 Reasonableness. Tenant's sole remedy for any claim against Landlord that Landlord has unreasonably withheld or unreasonably delayed any consent or approval shall be an action for injunctive or declaratory relief.

17.16 Time. Time is of the essence as to all provisions in this Lease in which time is a factor.

17.17 Quiet Enjoyment. So long as Tenant is not in Default, Tenant shall have the right to peacefully and quietly enjoy the Premises for the Term under the terms of this Lease.

17.18 Right to Enter Premises. Landlord may enter the Premises at any reasonable time to inspect the Premises, show the Premises to prospective lenders, purchasers or tenants, or perform Landlord's duties under this Lease.

17.19 Lender Approval. If a mortgagee of the Building has the right to consent to this Lease and fails to give such consent, Landlord shall have the right, at its sole option, to terminate and cancel this Lease. Such option shall be exercisable by Landlord by written notice to Tenant of such termination, whereupon this Lease shall be deemed cancelled and terminated, and both Landlord and Tenant shall be relieved of any and all liabilities and obligations hereunder.

17.20 Exhibits. The exhibits attached to this Lease are incorporated herein. If any exhibit is inconsistent with the terms of this Lease, the provisions of this Lease will govern.

17.21 Attorneys' Fees. If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this Lease (including without limitation any claims in a bankruptcy or assignment for the benefit of creditors), the prevailing party in any such litigation or judicial action is entitled to recover all of its costs and expenses (including, but not limited to, reasonable attorneys' fees, costs and expenditures) from the non-prevailing party.

17.22 Counterparts. This Lease may be executed in any number of counterparts, all of which together shall constitute a single contract, and each of such counterparts shall for all purposes be deemed to be an original. This Lease may be executed and delivered by fax (telecopier); any original signatures that are initially delivered by fax shall be physically delivered with reasonable promptness thereafter.

17.23 Roof Top Installation. Landlord grants to Tenant, for the Term of this Lease, including any extensions hereto, the non-exclusive right to continue to use its proportionate share

of the Building rooftop, including the Building riser conduit for any Rooftop Communications Equipment. As used herein, "Rooftop Communications Equipment" means any equipment of Tenant located upon the rooftop of the Building as of the Execution Date, including any microwave dish, antenna or other telecommunications equipment. Tenant shall provide written notice to Landlord of any additional Rooftop Communications Equipment necessary to Tenant's use of the Premises along with the specifications of the proposed equipment. No additional Rooftop Telecommunications Equipment shall be installed by Tenant without the prior written consent of Landlord which consent shall not be unreasonably withheld, conditioned, or delayed, provided that no such additional Rooftop Telecommunications Equipment may penetrate the roof of the Building. Tenant shall be responsible for installation and maintenance of the Rooftop Communications Equipment and all costs thereof, and shall be in compliance with all laws in connection with its use and operation, subject to reasonable direction by Landlord as to the location of any device and its connections to the Premises. The Rooftop Telecommunications Equipment shall remain the property of Tenant and, upon termination or expiration of this Lease, Tenant shall promptly remove such equipment and shall repair (or reimburse Landlord for such repair) any damage caused by the removal thereof.

17.24 **Non-Discrimination Clause.** Landlord agrees, subject to applicable laws, rules and regulations, that no person employed by Landlord shall be subject to discrimination in the performance of this Lease on the basis of race, color, religion, national origin, gender, sexual orientation, AIDS, HIV status, age, disability, or handicap.

[signatures on following page]

HAVING READ AND INTENDING TO BE BOUND BY THE TERMS AND PROVISIONS THEREOF,
LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE DATE.

CITY OF LONG BEACH,
A MUNICIPAL CORPORATION

BEHRINGER HARVARD DOWNTOWN
PLAZA LP, A DELAWARE LIMITED
PARTNERSHIP

By: *[Signature]* **ASSISTANT** EXECUTED PURSUANT **TO SECTION 301 OF**
Print: Patrick H. West **THE CITY CHARTER.** By: HPT Management Services LP, a Texas
Title: City Manager limited partnership, its Property
Manager

By: _____
Print: _____
Title: _____

APPROVED AS TO FORM AND RETURNED

1.29, 20 08
ROBERT E. SHANNON, City Attorney

By _____
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

HAVING READ AND INTENDING TO BE BOUND BY THE TERMS AND PROVISIONS THEREOF,
LANDLORD AND TENANT HAVE EXECUTED THIS LEASE AS OF THE DATE.

CITY OF LONG BEACH,
A MUNICIPAL CORPORATION

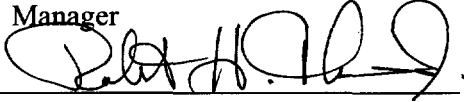
By: _____

Print: _____

Title: _____

BEHRINGER HARVARD DOWNTOWN
PLAZA LP, A DELAWARE LIMITED
PARTNERSHIP

By: HPT Management Services LP, a Texas
limited partnership, its Property
Manager

By:  _____

Print: ROBERT H. THOMAS, SR.

Title: ASSET MANAGER

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On 2-4-08 before me, Melodi Nantes Notary Public

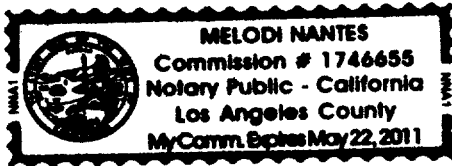
Date

Here Insert Name and Title of the Officer

personally appeared Suzanne M. Frick

Name(s) of Signer(s)

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



Place Notary Seal Above

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

WITNESS my hand and official seal.

Signature Melodi Nantes
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

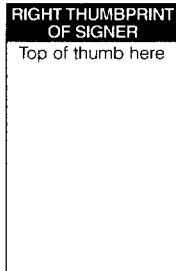
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

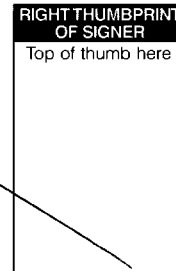
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

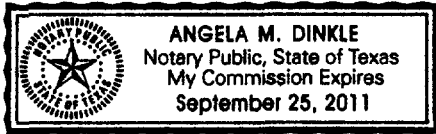
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me on the 7th day of February, 2008, by Rob Thomas, Asset Mgr. of HPT Management Services LP, a Texas limited partnership, on behalf of Behringer Harvard Downtown Plaza LP, a Delaware limited partnership.



Angela Dinkle
Notary Public in and for the State of Texas

Angela Dinkle
Printed or Typed Name of Notary

My Commission Expires: 9.25.11

EXHIBIT A – LOCATION OF PREMISES

211 East Ocean Boulevard, Long Beach, California

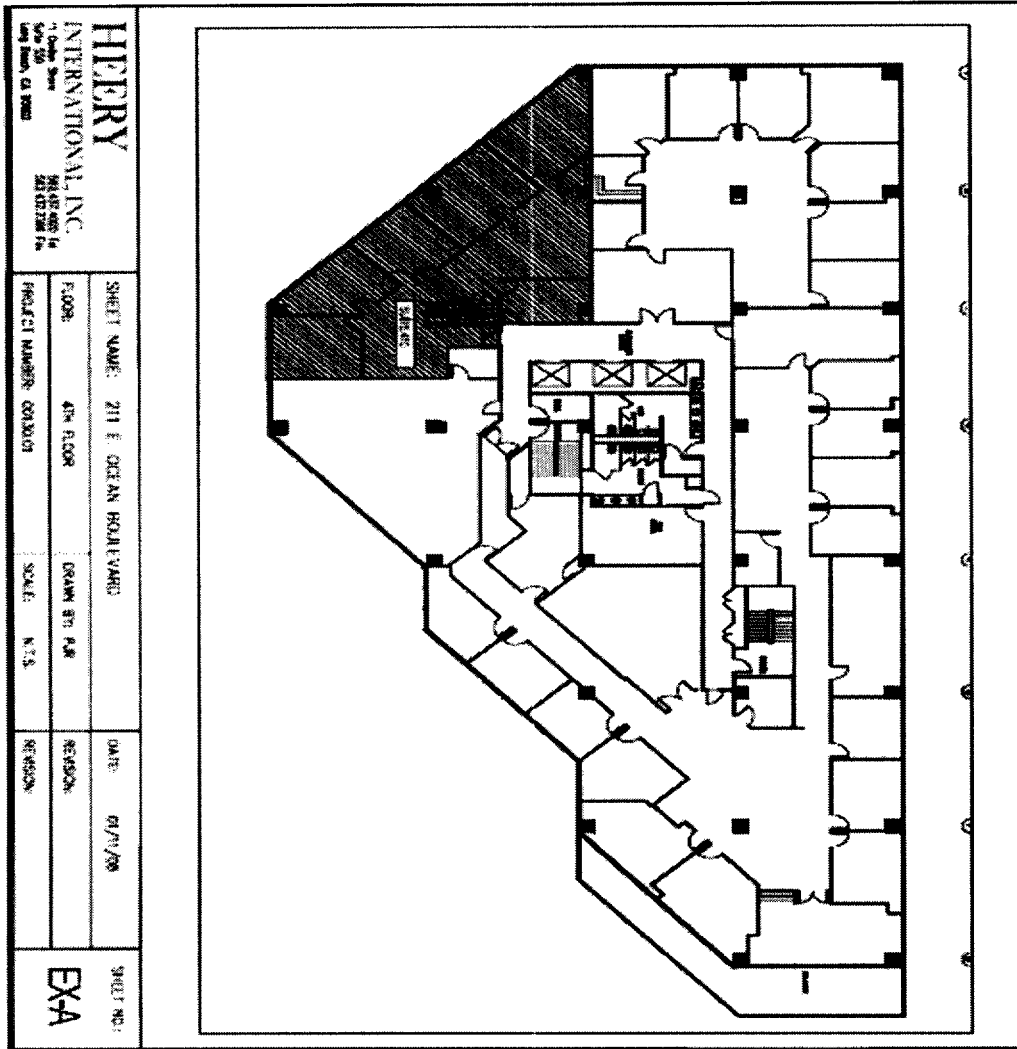


EXHIBIT B – RULES & REGULATIONS

211 East Ocean Boulevard, Long Beach, California

1. Landlord's Entry. Landlord may enter the Premises at all reasonable hours to perform its obligations under this Lease. During the last nine (9) months of the Term, Landlord may enter the Premises with reasonable prior notice (but in any event Landlord shall use commercially reasonable efforts to give at least 24 hour prior notice) to Tenant to show the Premises to prospective tenants.

2. Right to Exclude. Landlord may require that Tenant, its Affiliates and guests comply with each reasonable security measure that Landlord may establish as a condition entry to the Premises, Building or Project. These measures may include submitting to a search by persons or devices employed by Landlord, presenting an identification card or pass issued by the government, Landlord, or both, being announced to Tenant and accepted as a visitor by Tenant, and signing a register on entry and exit. Any person who cannot comply with these requirements may be excluded from the Project. If Landlord requires a Building pass issued by Landlord as a condition of entry to the Premises, Building or Project, Landlord will furnish a Building pass to all persons reasonably designated by Tenant in writing. Landlord may exclude or expel from the Project any person who, in Landlord's reasonable opinion, is intoxicated or under the influence of alcohol or drugs.

3. Obstructions. Tenant will not cause the Common Areas, or sidewalks or driveways outside the Building to be obstructed. Landlord may, at Tenant's expense, remove any such obstruction without prior notice to Tenant.

4. Trash. Tenant will place trash in proper receptacles in the Premises provided by Tenant at Tenant's cost, or in Building receptacles designated by Landlord. Tenant may not litter in the Common Areas, or sidewalks or driveways outside the Building.

5. Public Safety. Tenant will not throw anything out of doors, windows or skylights, down passageways or over walls. Tenant will not use any fire exits or stairways in the Building except in case of emergency.

6. Keys and Locks. Landlord may from time to time install and change locks on entrances to the Project, Building, Common Areas or Premises, and will provide Tenant a number of keys to meet Tenant's reasonable requirements. Additional keys will be furnished by Landlord at Tenant's cost. At the end of the Term, Tenant will promptly return to Landlord all keys for the Building and Premises issued by Landlord to Tenant. Unless Tenant obtains Landlord's prior written consent, Tenant will not add any locks or change existing locks on any door to the Premises, or in or about the Premises. If with Landlord's consent, Tenant installs any lock incompatible with the Building master locking system, Tenant will: relieve Landlord of each Lease obligation that requires access to each affected area; indemnify Landlord against any Claim resulting from forced entry to each affected area in an emergency; and, at the end of the Term, remove each incompatible lock and replace it with a Building Standard lock at Tenant's expense.

7. **Aesthetics.** Unless Tenant obtains Landlord's prior written consent (which may be withheld in Landlord's sole discretion), Tenant may not:

(a) Attach any awnings, signs, displays or projections to either the outside walls or windows of the Building, or to any part of the Premises visible from outside the Premises;

(b) Hang any non-Building Standard curtains, blinds, shades or screens in any window or door of the Premises;

(c) Coat or sunscreen the interior or exterior of any windows; or

(d) Place any objects on windowsills.

8. **Directories and Signs.** Tenant will be entitled to maintain its current listing in the Building's directory in the main lobby, and to maintain one (1) Building Standard tenant identification sign (consisting of Tenant's name and suite number) currently in place at the entrance to the Premises. Any changes to the listing or sign will be made at Tenant's cost and expense.

9. **HVAC Operation.** Tenant will not obstruct the HVAC convectors or diffusers, or adjust or interfere with the HVAC system. Tenant will assist the HVAC system in maintaining comfort in the Premises by drawing shades, blinds and other window coverings in the Premises as may be reasonable required. Tenant may not use any method of heating or cooling the Premises other than that supplied by Landlord.

10. **Plumbing.** Tenant will use plumbing fixtures only for the purpose for which they are constructed. Tenant will reimburse Landlord for any damage caused by Tenant's misuse of plumbing fixtures.

11. **Equipment Location.** Landlord may specify the location of any of Tenant's Business machines, mechanical equipment or other property that are unusually heavy, may damage the Building, or may cause vibration, noise or annoyance to other tenants. Tenant will reimburse Landlord for any professional engineering certification or assistance reasonably required to determine the location of these items.

12. **Bicycles.** Tenant may not bring bicycles or other vehicles into the Building or Premises. Bicycles and other vehicles may only be parked in areas designated by Landlord.

13. **Animals.** Tenant may not bring any birds or animals, excepting seeing-eye/assistance dogs, into the Building or Premises.

14. **Carpet Protection.** To protect carpeting in the Premises, Tenant will, at its own expense, install and maintain pads to protect the carpet under all furniture having castors other than carpet castors.

15. **Elevators.** Any use of the elevators for purposes other than normal passenger use (such as moving to or from the Building or delivering freight), whether during or after Business

Hours, must be scheduled through the office of the Property Manager. Tenant will reimburse Landlord for any extra costs incurred by Landlord in connection with any such non-passenger use of the elevators.

16. Moving and Deliveries. Moving of Tenant's Personal Property and deliveries of materials and supplies to the Premises must be made during the times and through the entrances, elevators and corridors reasonably designated by Landlord. Moving and deliveries may not be made through any of the main entrances to the Building without Landlord's prior permission. Any hand truck or other conveyance used in the Common Areas must be equipped with rubber tires and rubber side guards to prevent damage to the Building and its property. Tenant will promptly reimburse Landlord for the cost of repairing any damage to the Building or its property caused by any person making deliveries to the Premises.

17. Solicitation. Canvassing, soliciting and peddling in the Building are prohibited and Tenant will cooperate in preventing the same.

18. Food. Only persons approved from time to time by Landlord may prepare, solicit orders for, sell, serve or distribute food in or around the Project. Except as may be specified in this Lease or on construction drawings for the Premises approved by Landlord, and except for microwave cooking, Tenant will not use the Premises for preparing or dispensing food, or soliciting of orders for sale, serving or distribution of food.

19. Work Orders. Only authorized representatives of Tenant may request services or work on behalf of Tenant. Tenant may not request that Building employees perform any work outside of their duties assigned by Landlord.

20. Smoking. Neither Tenant nor its Affiliates shall smoke or permit smoking in any part of the Project in which Landlord, in Landlord's sole discretion, prohibits smoking. Landlord may designate the entire Project a no-smoking area, excepting areas in which Landlord, in Landlord's sole discretion, permits smoking.

21. Rules Applied. These Rules and Regulations apply equally to Tenant's Affiliates and others permitted by Tenant to access, use or occupy the Premises.

EXHIBIT C – PARKING

211 East Ocean Boulevard, Long Beach, California

Suite 410

Tenant may use up to the amount of its Parking Allotment for parking stalls in the subterranean parking facilities associated with the Building (the "Parking Area") subject to such terms, conditions and regulations as are from time to time applicable to patrons of the Parking Area. Tenant shall pay to Landlord, on the first day of each month during the Term, parking rent (plus all applicable taxes) equal to the rates established by Landlord from time to time for reserved, single unreserved, and tandem parking stalls, as applicable, in the Parking Area. As of the Execution Date, the parking rates are as follows: \$90.00 per stall per month for reserved spaces, \$60.00 per stall per month for single unreserved spaces, and \$55.00 per stall per month for tandem spaces.

Tenant shall at all times comply with all laws respecting the use of the Parking Area. Landlord reserves the right to adopt, modify, and enforce reasonable rules and regulations governing the use of the Parking Area from time to time including any key-card, sticker, or other identification or entrance systems and hours of operations. Landlord may refuse to permit any person who violates such rules and regulations to park in the Parking Area, and any violation of the rules and regulations shall subject the car to removal from the Parking Area.

Tenant may validate visitor parking by such method or methods as Landlord may approve, at the validation rate from time to time generally applicable to visitor parking. Provided however, that all official police vehicles shall be allowed a thirty (30) minute grace parking period during which time no visitor parking charges will be incurred by Tenant. Unless specified to the contrary above, the parking stalls provided herein shall be provided on an unreserved, "first-come, first served" basis. Tenant acknowledges that Landlord has arranged or may arrange for the Parking Area to be operated by an independent contractor, not affiliated with Landlord.

There will be a replacement charge payable by Tenant equal to the amount posted from time to time by Landlord for loss of any magnetic parking card or parking sticker issued by Landlord.

All motor vehicles (including all contents thereof) shall be parked in the Parking Area at the sole risk of Tenant and each patron of the Parking Area, it being expressly agreed and understood Landlord has no duty to insure any of said motor vehicles (including the contents thereof), and Landlord is not responsible for the protection and security of such vehicles. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY PROPERTY DAMAGE WHICH MIGHT OCCUR ON THE PARKING AREA OR AS A RESULT OF OR IN CONNECTION WITH THE PARKING OF MOTOR VEHICLES IN ANY OF THE PARKING STALLS.

Landlord reserves the right to change the size, configuration, design, layout and all other aspects of the Parking Area at any time and Tenant acknowledges that Landlord may, without

incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close-off or restrict access to the Parking Area for purposes of permitting or facilitating any such construction, alteration or improvements. If, for any reason, Landlord is unable to provide all or any portion of the parking stalls to which Tenant is entitled hereunder, then Tenant's obligation to pay for such parking stalls shall be abated for so long as Tenant does not have the use thereof; this abatement shall be in full settlement of all claims that Tenant might otherwise have against Landlord because of Landlord's failure or inability to provide Tenant with such parking stalls. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties.

EXHIBIT D – OPTION TO EXTEND TERM

211 East Ocean Boulevard, Long Beach, California

Suite 410

Provided that, at the time of Tenant's election to exercise this Extension Option and upon the commencement of the extended Term, this Lease is in full force and effect and there is no outstanding and uncured failure of Tenant to perform any of its obligations under this Lease, and Tenant is occupying the entire Premises at the time of such election, Tenant may elect to extend the Term for one additional period of five (5) years, which extension may be exercised only by delivering written notice of the exercise thereof to Landlord not earlier than twelve (12) months nor later than nine (9) months before the expiration of the Term. The Base Rent payable for each month during such extended Term shall be Landlord's estimate of the prevailing rental rate (the "Prevailing Rental Rate"), at the commencement of such extended Term, for extensions or renewals of space in the Building of equivalent quality, size, utility and location, with the length of the extended term and the credit standing of the tenant to be taken into account, provided, however, that the monthly Base Rent payable during the extended Term shall not be less than the monthly Base Rent due under this Lease for the month immediately preceding the beginning of the extended Term. Within twenty (20) days after receipt of Tenant's notice to extend, Landlord shall deliver to Tenant written notice of the Prevailing Rental Rate and shall advise Tenant of the required adjustment to Base Rent, if any. Tenant shall, within thirty (30) days after receipt of Landlord's notice, notify Landlord in writing whether Tenant accepts or rejects Landlord's determination of the Prevailing Rental Rate. If Tenant timely notifies Landlord that Tenant accepts Landlord's determination of the Prevailing Rental Rate, Tenant shall have sixty (60) days to obtain, and notify Landlord of, the approval of the City of Long Beach-City Council. If Tenant obtains such approval from the City Council within such sixty (60) days, then both parties will be bound to extend the Term of this Lease, and within thirty (30) days of Tenant's notification of such approval, Landlord and Tenant shall execute an amendment to this Lease extending the Term of this Lease on the then-applicable terms provided in this Lease, except as follows:

- (a) Base Rent shall be adjusted to the Prevailing Rental Rate;
- (b) Tenant shall have no further renewal or extension option unless expressly granted by Landlord in writing;
- (c) Landlord shall lease the Premises to Tenant for the extended Term in their then-current condition, and Landlord shall not provide to Tenant any allowances (e.g., moving allowance, construction allowance, and the like) or other tenant inducements unless otherwise agreed to in writing by Landlord in its sole and absolute discretion; and
- (d) Tenant shall pay for the parking spaces which it is entitled to use at the rates from time to time charged to patrons of the Parking Area and/or any other parking area associated with the Building during the extended Term (plus all applicable taxes).

If Tenant rejects Landlord's determination of the Prevailing Rental Rate within the thirty (30) day period set forth above, or fails to timely notify Landlord in writing that Tenant accepts

or rejects Landlord's determination of the Prevailing Rental Rate, or fails to timely notify Landlord of approval of this Lease by the City Council, time being of the essence with respect thereto, Tenant's rights under this Exhibit shall terminate and Tenant shall have no right to extend the term of this Lease.

Tenant's rights under this Exhibit shall terminate if (1) this Lease or Tenant's right to possession of the Premises is terminated, or (2) Tenant assigns any of its interest in this Lease or sublets any portion of the Premises.

EXHIBIT E – OPTION TO TERMINATE

211 East Ocean Boulevard, Long Beach, California

Suite 410

Tenant shall have the one-time option (“Termination Option”) to terminate the entire Lease, said termination to be effective on January 31, 2011 (the “Proposed Termination Date”), if Tenant strictly complies with all of the following early termination requirements:

(a) Upon the date of the Termination Notice (defined below), and upon the Proposed Termination Date, (i) Tenant must not then be in default under this Lease, and no breach or other event shall have occurred which, with the giving of notice or passage of time to cure, or both, will constitute a default by Tenant under this Lease, and (ii) there shall have been no assignment or delegation of Tenant’s interest in this Lease or any of Tenant’s rights or obligations under this Lease, and there shall have been no subletting of all or any part of the Premises.

(b) No less than two hundred seventy (270) days but no more than three hundred sixty five (365) days prior to the Proposed Termination Date, Tenant must provide written notice (the “Termination Notice”) to Landlord of Tenant’s exercise of this Termination Option. Time is of the essence in connection with this Termination Option.

(c) Tenant must comply with all provisions of this Lease with respect to the termination of this Lease and surrender of the Premises, including without limitation, the provisions of §3.3 of this Lease.

(d) Tenant must pay to Landlord the Cost Recovery Payment (defined below), which amount will be used by Landlord to partially offset Landlord’s unamortized costs of certain tenant improvements in the Premises and Landlord’s costs in connection with the early termination of this Lease.

The “Cost Recovery Payment” shall be an amount equal to the unamortized portion of Landlord’s Costs as of the Proposed Termination Date. As used in this Exhibit, the term “Landlord’s Costs” shall mean the sum of the following amounts: (i) all of Landlord’s costs of any tenant improvements in conjunction with this Lease, including without limitation the amount of the Construction Allowance and the Amortized Construction Allowance actually funded by Landlord, and (ii) all leasing and brokerage commissions paid by Landlord in connection with this Lease. Such unamortized portion of Landlord’s Costs shall be determined on a straight-line method with no interest rate applied over a sixty (60) month period beginning on the Commencement Date. Landlord will notify Tenant of the amount of the Cost Recovery Payment within ten (10) business days following the delivery of the Termination Notice. As a condition to the effectiveness of Tenant’s exercise of this Termination Option, Tenant shall pay the Cost Recovery Payment to Landlord in cash or other immediately available funds within thirty

(30) days following its Termination Notice.

(e) In addition, Tenant must pay to Landlord in cash, on or before the date that Tenant pays the Cost Recovery Payment to Landlord, an amount equal to the sum of two (2) months of Base Rent, which sum the parties agree equals \$10,803.52, plus the amount of the estimated Additional Rent for the two (2) months immediately following the Proposed Termination Date.

Tenant's rights under this Exhibit are personal to Tenant, and may not be transferred or assigned, in whole or in part, to any third party by assignment, subletting or otherwise, and any attempted assignment or transfer in violation hereof shall be null and void and of no force and effect.

Any provisions of this Lease which are intended to survive the expiration or termination of this Lease, shall survive the Proposed Termination Date above.

EXHIBIT F-WORK LETTER

211 East Ocean Boulevard, Long Beach, California

1. Acceptance of the Premises; Phased Improvements. (a) Tenant acknowledges and agrees that this Work Letter for the Premises constitutes the entire agreement of Landlord and Tenant with respect to the construction and completion of improvements in the Premises and that, except for Landlord's obligation to complete the Work (hereinafter defined), Landlord has no obligations to make any modifications, alterations or improvements to the Premises. Except as set forth in this Exhibit, Tenant accepts the Premises in their "AS-IS" condition as of the Execution Date.

(b) Landlord and Tenant acknowledge that the Work may, at Tenant's option, be performed in two or more distinct phases. To any extent that such is the case, then this Exhibit and the requirements and procedures hereunder shall apply to each separate phase of the Work; e.g. each separate and distinct phase of the work shall constitute separate and distinct "Work" for purposes of this Work Letter; each separate and distinct phase shall have its own set of "Premises Plans", and so on. However, there shall be only one Construction Allowance, as defined in §1.1 (r), and one Amortized Construction Allowance, as defined in §1.1 (s), which may be available to apply to the Work or any separate phases thereof.

2. Premises Plans.

(a) Preparation and Delivery. Tenant shall deliver to Landlord a Premises plan prepared by a design consultant reasonably acceptable to Landlord (the "Architect") depicting improvements to be installed in the Premises (the "Premises Plans"). If any portion of the improvements are cosmetic in nature (i.e., paint walls or install carpet), the Premises Plans may not be required for such cosmetic portion. For purposes of this Work Letter, Landlord acknowledges and accepts Tenant's selection of Heery International, Inc as the Architect.

(b) Approval Process. Landlord shall notify Tenant whether it approves of the submitted Premises Plans after Tenant's submission thereof. If Landlord disapproves of such Premises Plans, then Landlord shall notify Tenant thereof specifying in reasonable detail the reasons for such disapproval, in which case Tenant shall revise such Premises Plans in accordance with Landlord's objections and submit to Landlord for its review and approval. Landlord shall notify Tenant in writing whether it approves of the resubmitted Premises Plans after its receipt thereof. This process shall be repeated until the Premises Plans have been finally approved by Landlord and Tenant.

3. Working Drawings.

(a) Preparation and Delivery. On or before the tenth (10th) day following the

date on which the Premises Plans are approved by Landlord and Tenant (such date is referred to herein as the “Working Drawings Delivery Deadline”), Tenant shall provide to Landlord for its approval final working drawings, prepared by the Architect, of all improvements that Tenant proposes to install in the Premises; such working drawings shall include the partition layout, ceiling plan, electrical outlets and switches, telephone outlets, drawings for any modifications to the mechanical and plumbing systems of the Building, and detailed plans and specifications for the construction of the improvements called for under this Exhibit in accordance with all applicable laws.

(b) Approval Process. Landlord shall notify Tenant whether it approves of the submitted working drawings after Tenant’s submission thereof. If Landlord disapproves of such working drawings, then Landlord shall notify Tenant thereof specifying in reasonable detail the reasons for such disapproval, in which case Tenant shall revise such working drawings in accordance with Landlord’s objections and submit the revised working drawings to Landlord for its review and approval. Landlord shall notify Tenant in writing whether it approves of the resubmitted working drawings after its receipt thereof. This process shall be repeated until the working drawings have been finally approved by Tenant and Landlord.

(c) Landlord’s Approval; Performance of Work. Landlord’s approval of such working drawings shall not be unreasonably withheld, provided that (1) they comply with all applicable laws, (2) the improvements depicted thereon do not adversely affect (in the reasonable discretion of Landlord) the Building’s structure or operating systems (including the Building’s restrooms or mechanical rooms), the exterior appearance of the Building, or the appearance of the Building’s common areas or elevator lobby areas, (3) such working drawings are sufficiently detailed to allow construction of the improvements in a good and workmanlike manner, and (4) the improvements depicted thereon conform to the rules and regulations promulgated from time to time by Landlord for the construction of tenant improvements (a copy of which has been delivered to Tenant). As used herein, “Working Drawings” means the final working drawings approved by Landlord, as amended from time to time by any approved changes thereto, and “Work” means all improvements to be constructed in accordance with and as indicated on the Working Drawings, together with any work required by governmental authorities to be made to other areas of the Building as a result of the improvements indicated by the Working Drawings. Landlord’s approval of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use or comply with any Law, but shall merely be the consent of Landlord thereto. Tenant shall, at Landlord’s request, sign the Working Drawings to evidence its review and approval thereof. After the Working Drawings have been approved, Landlord shall cause the Work to be performed in a good and workmanlike manner in substantial accordance with the Working Drawings.

4. Bidding of Work. Prior to commencing the Work, Landlord shall competitively bid the Work to three contractors approved by Landlord and Tenant. If the estimated Total Construction Costs are expected to exceed the Construction Allowance, Tenant shall notify Landlord of any items in the Working Drawings that Tenant desires to change within two business days after Landlord’s submission thereof to Tenant. If Tenant fails to notify Landlord of

its election within such two business day period, Tenant shall be deemed to have approved the bids. Landlord and Tenant shall select the successful bidder to construct the tenant improvements and Landlord shall enter into a contract with such successful bidder. Landlord's approval of such contractor shall not be unreasonably withheld provided that such contractor meets Landlord's insurance and related requirements. Within five business days following Landlord's submission of the initial construction bids to Tenant under the foregoing provisions (if applicable), Tenant shall have completed all of the following items: (a) finalized with Landlord's representative and the proposed contractor, the pricing of any requested revisions to the bids for the Work, and (b) approved in writing any overage in the Total Construction Costs in excess of the Construction Allowance.

5. Change Orders. Tenant may initiate changes in the Work. Each such change must receive the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed; however, if such requested change would adversely affect (in the reasonable discretion of Landlord) (1) the Building Structure or Mechanical Systems (including the Building's restrooms or mechanical rooms), (2) the exterior appearance of the Building, or (3) the appearance of the Building's common areas or elevator lobby areas, Landlord may withhold its consent in its sole and absolute discretion. Tenant shall, upon completion of the Work, furnish Landlord with an accurate architectural "as-built" plan of the Work as constructed, including electronic CD's of same. If Tenant requests any changes to the Work described in the Premises Plans or the Working Drawings, then such increased costs and any additional design costs incurred in connection therewith as the result of any such change shall be added to the Total Construction Costs.

6. Definitions. As used herein, "Substantial Completion," "Substantially Completed," and any derivations thereof mean the Work in the Premises is substantially completed (as reasonably determined by Landlord) in substantial accordance with the Working Drawings. Substantial Completion shall have occurred even though minor details of construction, decoration, and mechanical adjustments remain to be completed by Landlord.

7. Walk-Through; Punchlist. When Landlord considers the Work in the Premises to be Substantially Completed, Landlord will notify Tenant and within three business days thereafter, Landlord's representative and Tenant's representative shall conduct a walk-through of the Premises and identify any necessary touch-up work, repairs and minor completion items that are necessary for final completion of the Work. Neither Landlord's representative nor Tenant's representative shall unreasonably withhold his or her agreement on punchlist items. Landlord shall use reasonable efforts to cause the contractor performing the Work to complete all punchlist items within 30 days after agreement thereon; however, Landlord shall not be obligated to engage overtime labor in order to complete such items.

8. Excess Costs. The entire cost of performing the Work (including design of and Premises planning for the Work and preparation of the Working Drawings and the final "as-built" plan of the Work (collectively, the "Plan Work")), costs of construction labor and materials, electrical usage during construction, additional janitorial services, related taxes and insurance costs, licenses, permits, certifications, surveys and other approvals required by applicable law, and the construction supervision fee set forth below, all of which costs are herein collectively called the "Total Construction Costs") in excess of the Construction Allowance and

any amount of the Amortized Construction Allowance requested by Tenant and funded by Landlord, shall be paid by Tenant. Upon approval of the Working Drawings and selection of a contractor, Tenant shall promptly (a) execute a work order agreement prepared by Landlord which identifies such drawings and itemizes the Total Construction Costs and sets forth the Construction Allowance, and (b) pay to Landlord 50% of any amount by which Total Construction Costs exceed the Construction Allowance. Upon Substantial Completion of the Work, Tenant shall pay to Landlord an amount equal to the Total Construction Costs (as adjusted for any approved changes to the Work), less (1) the amount of the advance payment already made by Tenant, and (2) the amount of the Construction Allowance. In the event of a Default in payment of such excess costs, Landlord (in addition to all other remedies) shall have the same rights as for a Default under this Lease.

9. Construction Allowance. If there exists no default by Tenant under this Lease continuing past any applicable notice and cure period, Landlord shall provide to Tenant the Construction Allowance and the Amortized Construction Allowance to be applied toward the Total Construction Costs, as adjusted for any changes to the Work (the Construction Allowance and the Amortized Construction Allowance shall sometimes be referred to collectively in this Exhibit as the "Allowance"). The Allowance shall not be disbursed to Tenant in cash, but shall be applied by Landlord to the payment of the Total Construction Costs, if, as, and when the cost of the Work is actually incurred and paid by Landlord (and in addition, in connection with the Amortized Construction Allowance, if, as and when Tenant requests disbursement of a portion of the Amortized Construction Allowance). The Construction Allowance must be disbursed by July 31, 2009 or any undisbursed portion shall be deemed forfeited with no further obligation by Landlord with respect thereto, time being of the essence with respect thereto. The Amortized Construction Allowance must be disbursed by January 31, 2011 or any undisbursed portion shall be deemed forfeited with no further obligation by Landlord with respect thereto, time being of the essence with respect thereto.

10. Construction Management. Landlord or its Affiliate or agent shall supervise the Work, make disbursements required to be made to the contractor, and act as a liaison between the contractor and Tenant and coordinate the relationship between the Work, the Building and the Building's operating systems. In consideration for Landlord's construction supervision services, Landlord or Landlord's designee shall be paid a construction supervision fee equal to five percent (5%) of Total Construction Costs. The fee shall be included in Total Construction Costs, and paid from the Allowance.

11. California Labor Code Compliance. Landlord shall cause the third party management company that manages the Work to comply with the California Labor Code Section 1720 regarding the payment of prevailing wages for the work described herein.

12. Construction Representatives. Landlord's and Tenant's representatives for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative upon written notice to the other:

Landlord's Representative:

c/o _____

Telephone: _____

Telecopy: _____

Tenant's Representative:

c/o _____

Telephone: _____

Telecopy: _____