

<b>REQUEST FOR COUNCIL ACTION</b> CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Real Estate Assets	DATE: 12/31/2014
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SUBJECT: SECOND Amendment to Office Lease at 525 B Street, San Diego, CA 92101

PRIMARY CONTACT (NAME, PHONE): Cybele Thompson,(619) 236-6145	SECONDARY CONTACT (NAME, PHONE): Brad Bennett, (619) 236-6191
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**COMPLETE FOR ACCOUNTING PURPOSES**

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

**COST SUMMARY (IF APPLICABLE):** Public Works lease relocation is estimated to start July 1, 2015 for 60 months ending June 30, 2020. The Cost Summary for the 12th floor relocation is: FY 2016 - \$234,240; FY 2017 - \$413,364; FY 2018 - \$425,175; FY 2019 - \$439,347; and FY 2020 - \$451,157 Funding Public Works Fund 720057.

Cost summary:  
1 Year lease extension to original lease FY 2020 \$1,794,688

**ROUTING AND APPROVALS**

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Thompson, Cybele	01/15/2015
Equal Opportunity Contracting	CFO		
Liaison Office	DEPUTY CHIEF		
Financial Management	COO		
Comptroller	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:     RESOLUTIONS     ORDINANCE(S)     AGREEMENT(S)     DEED(S)

1. Authorizing the Mayor or his designee to execute and deliver a Second Amendment of that certain Office Lease [Lease] dated June 18, 2013, between the City and Hines 525 B Street LP, a Delaware limited partnership, allowing the City to expand and extend City leased spaces at 525 B street, San Diego, California now ending June 30, 2020.

2. Authorizing the Chief Financial Officer to expend: (1) funds for rent of the expansion/relocation leased space and as otherwise required by the Lease of up to \$1,963,283 in fiscal years 2016 – 2020 from Public Works Department fund 720057; and (2) funds for the FY 2020 lease extension of the original space and as otherwise required by the Lease of up to \$1,794,696.00, 47.66% from Public Works Department Fund 720057; 12.71% from Muni Sewer Revenue Fund 700000; 7.27% from Metro Sewer Utility Fund 700001; and 32.36% from Water Utility Operating Fund 700011; all of which funds shall be contingent upon the adoption of the Fiscal Year 2016 Appropriation Ordinance and contingent upon the Chief Financial Officer furnishing a certificate certifying that the funds necessary for the expenditure are, or will be, on deposit with the City Treasurer.

**STAFF RECOMMENDATIONS:**

Approve the Ordinances

**SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)**

<b>COUNCIL DISTRICT(S):</b>	3
<b>COMMUNITY AREA(S):</b>	Downtown
<b>ENVIRONMENTAL IMPACT:</b>	This activity is not subject to CEQA in accordance with CEQA Guidelines Section 15060(c)(2), as the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.
<b>CITY CLERK INSTRUCTIONS:</b>	DO NOT RECORD - Please deliver to Brad Bennett, MS 51-A, for further handling. This item is subject to Charter Section 99 (10 day published notice, approval by Ordinance and 6 votes required).

**COUNCIL ACTION**  
**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE: 12/31/2014

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: SECOND Amendment to Office Lease at 525 B Street, San Diego, CA 92101

COUNCIL DISTRICT(S): 3

CONTACT/PHONE NUMBER: Cybele Thompson/(619) 236-6145

**DESCRIPTIVE SUMMARY OF ITEM:**

Entering into a Second Amendment to an existing Office Lease at 525 B Street, San Diego, California 92101, for the City to expand into the entire 12th floor (19,684 SF) and extend the Original lease on 90,778 SF, plus storage space, for one additional year now ending June 30, 2020.

**STAFF RECOMMENDATION:**

Approve the Ordinances

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:**

The City and Hines 525 B Street LP [Landlord], a Delaware limited partnership, entered into an office lease dated June 18, 2013, for the City's Public Works and Public Utilities departments' offices in the Landlord's building located at 525 B Street, San Diego, California 92101. The lease term currently ends June 30, 2019.

The Public Works Department staff is currently located in two buildings downtown and they desire to relocate from the 11 & 12 floors of the Executive Complex and to 525 B Street to consolidate operations and expand into the 12th floor containing 19,684 SF. The City requested, and the Landlord has agreed, to allow the City to amend the existing office lease to include additional space for the Public Works Department. The Public Works Department increased percentage of the building area by virtue of the expansion space on the 12th floor is 4.38%. The lease term for the expansion space is 60 months assuming a start date of June 1, 2015 and a fixed lease termination date of July 30, 2020.

The lease rate for Public Works Department relocation space on the 12th floor starts at \$1.70/SF/month full service gross. The lease rate increases each year by a fixed 3% per year. The first 5 months of the lease will be free rent. Also, included in the base rent of \$1.70/sf/month is a \$20/sf tenant improvement modification allowance (\$393,680) to further improve the space for City use and/or if surplus applied towards rent credit. The landlord will also provide the City additional tenant improvement funding up to an additional \$15/SF (\$295,260) in which case for each one dollar per square foot of increase to the tenant improvement allowance, the monthly base rent would be increased by \$0.0175 per SF. No operating expense increases shall be incurred for the first 12 months from the start of the expansion space. In addition to the base rent listed above, the Public Works Department shall be solely responsible for increases in building operating expenses established over the 2015 Base Year. The funding source for Rent and Rent Expenses shall be Public Works Department Fund 720057.

The City also retains its two one-year lease extensions to extend the term.

Based upon time elapsing on the Original Lease and the City's ability to lock in an attractive rate, the City has agreed to extend the Original lease by one additional year on 90,778 SF plus the storage area. The lease extension will be from July 1, 2019 to June 30, 2020.

An amendment to the Lease has been prepared to incorporate this expansion and extension into the lease to protect the City's best interests as contained below.

**FISCAL CONSIDERATIONS:**

Fiscal Year 2016 - \$234,240

Fiscal Year 2017 - \$413,364

Fiscal Year 2018 - \$425,175

Fiscal Year 2019 - \$439,347

Fiscal Year 2020 - \$451,157

City and Landlord also agreed to extend the Original lease by one additional year on all City leased spaces at 525 B Street (including storage space) from July 1, 2019 to June 30, 2020.

FY 2020 - \$1,794,688. Estimated costs do not include increases in operating expenses over the 2014 Base Year. New base rent fixed at \$1.61/SF/month full service gross on 90,778 SF (\$146,152.58/month) plus storage space at \$.65/SF/month on 5,239 SF (\$3,404.35/month).

**EQUAL OPPORTUNITY CONTRACTING INFORMATION:**

This agreement is subject to the City's Equal opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

San Diego Ordinance O-20273 July 9, 2013, authorizing the original six-year lease

San Diego Ordinance O-20324 December 9, 2013, authorizing the first amendment and early termination of lease.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

N/A

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

The key stakeholders are the City of San Diego, as tenant, and Hines 525 B Street LP, a Delaware limited partnership, as landlord.

Thompson, Cybele

Originating Department

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Deputy Chief/Chief Operating Officer

## SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("**Second Amendment**") is dated as of February 6, 2015 ("**Amendment Date**"), and is made and entered into by and between HINES 525 B STREET LP, a Delaware limited partnership ("**Landlord**"), and THE CITY OF SAN DIEGO, a California municipal corporation ("**Tenant**").

### R E C I T A L S:

A. Landlord and Tenant entered into that certain Office Lease dated as of June 18, 2013 (the "**Original Lease**"), whereby Landlord leased to Tenant and Tenant leased from Landlord certain office space in that certain building located and addressed at 525 B Street, San Diego, California (the "**Building**"). The Original Lease was subsequently amended by that certain First Amendment to Lease also dated as of June 18, 2013 by and between Landlord and Tenant (the "**First Amendment**"). The Original Lease, as amended by the First Amendment, may be referred to herein as the "**Lease.**"

B. By this Second Amendment, Landlord and Tenant desire to expand the Existing Premises (as defined in Section 1 below), extend the Lease Term and to otherwise modify the Lease as provided herein.

C. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Original Lease.

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

### A G R E E M E N T:

1. The Existing Premises. Landlord and Tenant hereby agree that pursuant to the Lease, Landlord currently leases to Tenant and Tenant currently leases from Landlord a total of approximately 90,778 rentable square feet of space in the Building consisting of the following: (i) the entire third (3<sup>rd</sup>) floor of the Building containing approximately 19,425 rentable square feet; (ii) the entire fourth (4<sup>th</sup>) floor of the Building containing approximately 19,383 rentable square feet; (iii) the entire fifth (5<sup>th</sup>) floor of the Building containing approximately 19,409 rentable square feet; (iv) the entire sixth (6<sup>th</sup>) floor of the Building containing approximately 19,388 rentable square feet; (v) Suites 730, 750 and 760 on the seventh (7<sup>th</sup>) floor of the Building containing approximately 12,696 rentable square feet; and (vi) that certain ground floor space with an address of 1110 Sixth Avenue, San Diego, California containing approximately 477 rentable square feet, as all such spaces are more particularly described on Exhibit A-1 to the Original Lease (collectively, the "**Existing Premises**").

2. Tenant Improvement Allowance as to Existing Premises. Pursuant to Section 2.5 of Exhibit B of the Original Lease, Tenant exercised the Allowance Option to increase the Tenant Improvement Allowance for the Existing Premises by Five Hundred Sixty-Nine Thousand Six Hundred Eighty-Nine and 00/100 Dollars (\$569,689.00). Based upon such increase in the Tenant Improvement Allowance for the Existing Premises, the total Tenant Improvement Allowance for the Existing Premises was One Million Five Hundred Seventy-Seven Thousand Four Hundred Sixty-Nine and 00/100 Dollars (\$1,577,469.00).

3. Monthly Base Rent Increase as to the Existing Premises. Pursuant to Section 2.5 of **Exhibit B** of the Original Lease, if Tenant exercised the Allowance Option, monthly Base Rent payable by Tenant for the Existing Premises during the initial Lease Term was to be increased by \$0.0175 per rentable square foot of the Premises per month for each One Dollar (\$1.00) per rentable square foot increase in the Tenant Improvement Allowance. Based upon the Tenant Improvement Allowance increase for the Existing Premises of Five Hundred Sixty-Nine Thousand Six Hundred Eighty-Nine and 00/100 Dollars (\$569,689.00) set forth in Section 2 above, the monthly Base Rent for the Existing Premises shall increase by Nine Thousand Nine Hundred Sixty-Nine and 56/100 Dollars (\$9,969.56) per month from September 18, 2013 through June 30, 2019. Based upon such increase in the monthly Base Rent, the Base Rent schedule for the Existing Premises set forth in Section 4.1 of the Summary of the Original Lease shall be restated in its entirety as follows:

<u>Period of Lease Term</u>	<u>Monthly Installment of Base Rent</u>
9/18/13 – 9/30/14	\$123,442.06
10/1/14 – 9/30/15	\$128,888.74
10/1/15 – 9/30/16	\$134,335.42
10/1/16 – 9/30/17	\$139,782.10
10/1/17 – 9/30/18	\$145,228.78
10/1/18 – 6/30/19	\$150,675.46

4. Expansion of the Existing Premises. That certain space located on the entire twelfth (12<sup>th</sup>) floor of the Building consisting of approximately 19,684 rentable square feet known as Suite 1200, as outlined on the floor plan attached hereto as **Exhibit "A"** and made a part hereof, may be referred to herein as the "**Expansion Space**." Landlord and Tenant hereby stipulate that for purposes of the Lease (as amended), the Expansion Space shall be deemed to contain 19,684 rentable square feet. Effective as of the date ("**Expansion Commencement Date**") that is the earlier of (a) the date Tenant commences business operations in the Expansion Space, and (b) the date upon which the Expansion Space is Ready for Occupancy, Tenant shall lease from Landlord and Landlord shall lease to Tenant the Expansion Space. Accordingly, effective upon the Expansion Commencement Date, the Existing Premises shall be increased to include the Expansion Space. Landlord and Tenant hereby agree that such addition of the Expansion Space to the Existing Premises shall, effective as of the Expansion Commencement Date, increase the number of rentable square feet leased by Tenant in the Building to a total of 110,462 rentable square feet. The Expansion Commencement Date is anticipated to occur on or about July 1, 2015. Effective as of the Expansion Commencement Date, all references in the Lease or this Second Amendment to the "Premises" shall mean and refer to the Existing Premises as expanded by the Expansion Space.

5. Extended Lease Term. The Lease Expiration Date shall be extended such that the Lease as to the Existing Premises and the Expansion Space shall expire on June 30, 2020 ("**New Expiration Date**"). The period from the Expansion Commencement Date through the New Expiration Date specified above, shall be referred to herein as the "**Revised Term**." The Termination Option set forth in Section 1 of the First Amendment shall not be applicable to the Expansion Space.

6. Monthly Base Rent. During the Revised Term, Tenant shall pay in accordance with the provisions of this Section 6 and subject to abatement as set forth in Section 7 below, monthly Base Rent for the Expansion Space as follows:

<u>Period</u>	<u>Monthly Base Rent Rate Per Rentable Square Foot</u>	<u>Monthly Installment of Base Rent</u>
Expansion Commencement Date – 12 <sup>th</sup> full calendar month of Revised Term	\$1.70	\$33,462.80
Months 13 – 24 of Revised Term	\$1.75	\$34,447.00
Months 25 – 36 of Revised Term	\$1.80	\$35,431.20
Months 37 – 48 of Revised Term	\$1.86	\$36,612.24
Months 49 – 60 of Revised Term	\$1.91	\$37,596.44
Month 61 of Revised Term – New Expiration Date, if applicable	\$1.97	\$38,777.48

Tenant shall pay Base Rent for the Existing Premises as set forth in Section 2 above through June 30, 2019. For the period from July 1, 2019 through June 30, 2020, the monthly Base Rent for the Existing Premises shall be \$146,152.58 (based upon \$1.61 per rentable square foot of the Existing Premises per month with the Existing Premises containing 90,778 rentable square feet).

7. Base Rent Abatement as to the Expansion Space. Notwithstanding anything to the contrary contained in the Lease or in this Second Amendment, and provided that Tenant faithfully performs all of the terms and conditions of the Lease, as amended by this Second Amendment, Landlord hereby agrees to abate Tenant's obligation to pay monthly Base Rent for the Expansion Space only for the first five (5) full calendar months of the Revised Term ("**Expansion Space Abatement Period**"). During such abatement period, Tenant shall still be responsible for the payment of all of its other monetary obligations under the Lease, as amended by this Second Amendment, including, without limitation, the payment of monthly Base Rent for the Existing Premises during such period. In the event of a default by Tenant under the terms of the Lease, as amended by this Second Amendment, that results in early termination pursuant to the provisions of Article 19 of the Original Lease, then as a part of the recovery set forth in Article 19 of the Original Lease, Landlord shall be entitled to the recovery of the monthly Base Rent that was abated under the provisions of this Section 7.

8. Tenant's Share and Base Year. Effective as of the Expansion Commencement Date and continuing throughout the Revised Term, (i) Tenant's Share of any increase in Operating Expenses and Tax Expenses for the Expansion Space shall be 4.38% (based on 19,684 rentable square feet in the Expansion Space and 449,180 rentable square feet in the Building) and (ii) the Base Year for the Expansion Space shall be the calendar year 2015. The Base Year for the Existing Premises shall remain the calendar year 2014. Notwithstanding anything to the contrary in the Lease (as amended), Tenant shall not be responsible for the payment of Tenant's Share of any increase in Operating Expenses and Tax Expenses for the Expansion Space only for the first twelve (12) months of the Revised Term. For purposes of clarification, during the Revised Term, the provisions in Section 4.2.4.1 of the Original Lease shall continue to be applicable as to both the Existing Premises and the Expansion Space.

9. Controllable Operating Expenses as to the Expansion Space. Notwithstanding anything to the contrary contained in the Lease (as amended), as to the Expansion Space, the aggregate Controllable Operating Expenses (as that term is defined below) shall not increase more than five percent (5%) in any calendar year over the maximum amount of Controllable Operating Expenses for the

immediately preceding calendar year calculated on a cumulative and compounding basis, with no limit on the Controllable Operating Expenses during the Base Year (i.e., the actual Controllable Operating Expenses for the 2015 Base Year shall be the maximum amount for the Base Year for purposes of this provision). The term "**Controllable Operating Expenses**" shall mean property management staff and overhead, repair and maintenance costs (including elevator and HVAC service), trash removal costs, janitorial costs, interior plant maintenance and general and administrative costs; provided, however, to the extent that any increase in any of these costs is attributable to unionized labor costs, such costs shall not be considered to be Controllable Operating Expenses. By way of example only, and not as a limitation upon the foregoing, if Controllable Operating Expenses for the 2015 Base Year are \$3.00 per rentable square foot, the maximum Controllable Operating Expenses for the calendar year 2016 shall be \$3.15 per rentable square foot and the maximum Controllable Operating Expenses for the calendar year 2017 would be \$3.3075 per rentable square foot.

10. Tenant Improvements. Improvements in the Expansion Space shall be installed and constructed in accordance with the terms of the Tenant Work Letter attached hereto as **Exhibit "B"** and made a part hereof.

11. Parking. Effective as of the Expansion Commencement Date and continuing throughout the Revised Term (and the Option Terms, if applicable), Tenant shall have the right, but not the obligation, to rent from Landlord an additional twenty (20) unreserved parking passes for use in the Parking Facility ("**Additional Passes**"). On or before each June 1 (except as it relates to Tenant's first notice to Landlord, which shall be required no later than sixty (60) days following the Expansion Commencement Date) of the Revised Term (and the Option Terms, if applicable), Tenant shall, by written notice to Landlord ("**Additional Parking Notice**"), indicate the number of Additional Passes to which Tenant will rent for the next twelve (12) months, but not to exceed twenty (20) additional unreserved parking passes. If Tenant fails to timely deliver an Additional Parking Notice to Landlord, Tenant shall be deemed to have elected to rent for the next twelve (12) months the same number of Additional Passes as Tenant was renting during the previous twelve (12) months; provided, however, if Tenant fails to deliver an Additional Parking Notice to Landlord within sixty (60) days following the Expansion Commencement Date, Tenant shall be deemed to have elected not to rent any of the twenty (20) Additional Passes for the period commencing on the Expansion Commencement Date through May 31, 2016. Except as set forth in this Section 11, Tenant's rental and use of such Additional Passes shall be in accordance with, and subject to, all provisions of Article 28 of the Original Lease including, without limitation, payment of the monthly parking rate specified therein.

12. Options to Extend. If Tenant does not exercise the Termination Option set forth in Section 1 of the First Amendment, Tenant shall have the right to exercise the two (2) one year Options set forth in Section 2.2 of the Original Lease on a collective basis as to the Existing Premises and the Expansion Space (i.e. Tenant must exercise each Option as to both of such spaces or none of such spaces). Notwithstanding anything to the contrary in Section 2.2.2 of the Original Lease, if Tenant properly exercises the Options, the Base Year for the Premises for the first (1<sup>st</sup>) Option Term shall be the calendar year 2020 and the Base Year for the Premises for the second (2<sup>nd</sup>) Option Term shall be the calendar year 2021. If Tenant exercises the Termination Option set forth in Section 1 of the First Amendment as to the Existing Premises, Tenant shall have no right to exercise either Option as to the Expansion Space.

13. Carpet Steam Cleaning. Upon written request by Tenant, which request may not be made more frequently than once per twelve (12) month period, Landlord shall, within thirty (30) days after receiving such request, at Landlord's sole cost and expense and in Landlord's Building-standard manner, steam clean the carpet in the Existing Premises and the Expansion Space. Landlord will not be responsible for moving any of Tenant's furniture or equipment in connection with the performance of

such carpet cleaning, and Tenant shall be solely responsible for such furniture and equipment. Tenant hereby acknowledges that Landlord may be performing such steam cleaning during the Revised Term and the Option Terms (if applicable), and Landlord's performance of such work shall not be deemed a constructive eviction of Tenant, nor shall Tenant be entitled to any abatement of Rent in connection therewith.

14. Hazardous Materials. The "Tenant Indemnity" as to Hazardous Materials set forth in Section 5.3.1 of the Original Lease shall also be applicable to the Expansion Space. The "Landlord Indemnity" as to Hazardous Materials set forth in Section 5.3.3 of the Original Lease shall also be applicable to the Expansion Space.

15. Storage Space. In addition to the Existing Premises, Tenant currently leases from Landlord certain Storage Space as more particularly set forth in Section 1.5 of the Original Lease. Notwithstanding anything to the contrary in Section 1.5.1 of the Original Lease, during the Revised Term and the Option Terms (if applicable), the Monthly Storage Rent shall be fixed at \$3,405.35 per month.

16. Certified Access Specialist. For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Existing Premises and the Expansion Space have not undergone inspection by a Certified Access Specialist (CASp).

17. Notice of Revised Term Dates. Landlord may deliver to Tenant a commencement letter in a form substantially similar to that attached hereto as Exhibit "C" and made a part hereof at any time after the Expansion Commencement Date. Tenant agrees to execute and return to Landlord said commencement letter within five (5) days after Tenant's receipt thereof.

18. Broker. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent entitled to a commission in connection with the negotiation of this Second Amendment, excepting only Cushman & Wakefield of San Diego, Inc. on behalf of Landlord (the "**Broker**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Second Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Broker, occurring by, through, or under the indemnifying party in connection with this Second Amendment.

19. Signing Authority. Each individual executing this Second Amendment on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in the State of California and that Tenant has full right and authority to execute and deliver this Second Amendment and that each person signing on behalf of Tenant is authorized to do so.

20. Counterparts. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Second Amendment may be executed by a party's signature transmitted by facsimile or PDF email, and copies of this Second Amendment executed and delivered by means of facsimile signatures or PDF email shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon facsimile or email signatures as if such signatures were originals.

21. Defaults. Tenant hereby represents and warrants to Landlord that, as of the date of this Second Amendment, Tenant is in full compliance with all terms, covenants and conditions of the Lease

and that there are no breaches or defaults under the Lease by Landlord or Tenant, and that Tenant knows of no events or circumstances which, given the passage of time, would constitute a default under the Lease by either Landlord or Tenant.

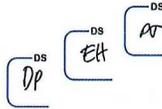
22. No Further Modification. Except as set forth in this Second Amendment, all of the terms and provisions of the Lease shall apply with respect to the Expansion Space and shall remain unmodified and in full force and effect. Effective as of the Expansion Commencement Date, all references to the "Lease" shall refer to the Lease as amended by this Second Amendment.

IN WITNESS WHEREOF, this Second Amendment has been executed as of the day and year first above written.

"LANDLORD"

HINES 525 B STREET LP,  
a Delaware limited partnership

By: Hines 525 B Street GP LLC,  
a Delaware limited liability company  
its General Partner



By:   
Name: A. Blake Williams  
Title: Authorized Agent

"TENANT"

THE CITY OF SAN DIEGO,  
a California municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form

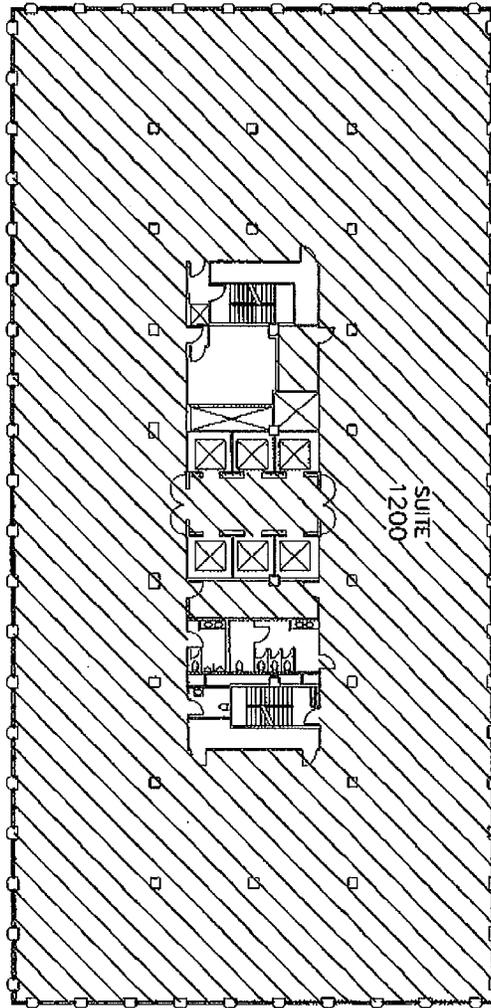
this \_\_\_\_\_ day of \_\_\_\_\_, 2015

JAN I. GOLDSMITH, City Attorney

By: \_\_\_\_\_  
Debra J. Bevier,  
Deputy City Attorney

**EXHIBIT "A"**

**OUTLINE OF EXPANSION SPACE**



This Exhibit "A" is provided for informational purposes only and is intended to be only an approximation of the layout of the Expansion Space and shall not be deemed to constitute any representation by Landlord as to the exact layout or configuration of the Expansion Space.

EXHIBIT "A"

**EXHIBIT "B"**

**525 B STREET**

**TENANT WORK LETTER**

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of the Expansion Space. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Expansion Space, in sequence, as such issues will arise during the actual construction of the Expansion Space. All references in this Tenant Work Letter to Sections of "this **Tenant Work Letter**" shall mean the relevant portions of Sections 1 through 5 of this Tenant Work Letter.

SECTION 1

**DELIVERY OF THE EXPANSION SPACE AND BASE BUILDING**

1.1 **Base Building as Constructed by Landlord.** Landlord shall deliver the Expansion Space and "**Base Building**," as that term is defined in Section 8.2 of the Original Lease, to Tenant, and Tenant shall accept the Expansion Space and Base Building from Landlord in their presently existing, "as-is" condition (except as provided in Sections 1.2 and 1.4 below).

1.2 **Landlord's Work.** As of the Expansion Commencement Date, Landlord shall, at Landlord's sole cost and expense and not as a cost deducted from the Tenant Improvement Allowance or included in Operating Expenses, (a) cause any existing HVAC (in sufficient quantity and design based upon the Final Space Plan attached hereto as **Schedule 1**), mechanical, electrical (including lights and light fixtures), blinds, doors, door hardware, elevator, fire sprinkler, fire life safety and plumbing systems/fixtures serving the Expansion Space to be in good working order and condition and with such systems having been recently operated and regularly serviced, (b) cause the Expansion Space, the restrooms and kitchen on the 12<sup>th</sup> floor of the Building only and the Common Areas of the Building (including the Parking Facility) to meet all applicable laws, codes and conditions in effect as of the Expansion Commencement Date including Title 24 subject to Section 1.4 below (taking into account any permitted grandfathering) including seismic, fire sprinkler, life safety, structural support of existing MEP items and ceiling, exit lighting within the Common Areas of the Building and egress lighting at all doors leaving the Building, environmental laws (including, without limitation, those areas containing no mold or asbestos in violation of currently applicable laws) and the Americans with Disabilities Act requirements (including path or travel to and from the Building and the Parking Facility) and (c) at Landlord's option, either remove any existing communication cabling above the ceiling grid of the Expansion Space or properly hang any such existing communication cabling (collectively, "**Landlord's Work**"). As Tenant's sole remedy for a violation of the previous sentence, whether discovered before or after the Expansion Commencement Date, Landlord shall, at Landlord's sole cost and expense and not as a cost deducted from the Tenant Improvement Allowance or included in Operating Expenses, promptly correct such matter after written notice thereof from Tenant. Upon the expiration or earlier termination of the Lease (as amended), Tenant shall not be required to remove any cabling in the Expansion Space unless installed by or on behalf of Tenant.

1.3 **Landlord's Provision of Existing Items.** Upon written request from Tenant, Landlord shall provide the Contractor with doors, doorframes and hardware to the extent such items are available from existing recycled stock within the Building, at no charge to Tenant and not deducted from the Tenant Improvement Allowance. Such items shall be made available in their "as-is" condition, and

Landlord makes no representations or warranties with respect to such items. Without limitation on the foregoing, Landlord makes no representation or warranty with respect to the useful life of such items, the number of such items that will be available from recycled stock, or the compliance of such items with any applicable codes and legal requirements.

1.4 Legal Compliance Triggered by the Improvements. Notwithstanding anything to the contrary in the Lease (as amended), any and all costs associated with (a) the Americans with Disabilities Act and life safety compliance in the Expansion Space and/or the Building triggered as a result of building permits being issued for the Improvements in the Expansion Space and (b) Title 24 compliance in the Expansion Space triggered as a result of the Improvements as depicted on the Final Space Plan attached hereto as **Schedule 1**, shall be undertaken at Landlord's sole cost and expense and not as a cost deducted from the Tenant Improvement Allowance or included in Operating Expenses. However, if the scope of the Improvements changes (excluding changes cosmetic in nature such as paint and carpet) from what is depicted on the Final Space Plan attached hereto as **Schedule 1** due to changes requested by Tenant and such changes trigger any new Title 24 compliance work in the Expansion Space, such new Title 24 compliance work shall be at Tenant's sole cost and expense (subject to the use of any available Tenant Improvement Allowance).

## SECTION 2

### TENANT IMPROVEMENTS

2.1 Tenant Improvement Allowance. Tenant shall be entitled to a one-time tenant improvement allowance (the "**Tenant Improvement Allowance**") in the amount set forth in Section 2.5 below for the costs relating to the design, permitting and construction of Tenant's improvements which are permanently affixed to the Expansion Space (the "**Improvements**") and for the other Tenant Improvement Allowance Items described in Section 2.2 below. In no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Tenant Improvement Allowance.

#### 2.2 Disbursement of the Tenant Improvement Allowance.

2.2.1 Tenant Improvement Allowance Items. Except as otherwise set forth in this Tenant Work Letter, the Tenant Improvement Allowance shall be disbursed by Landlord (each of which disbursements shall be made pursuant to Landlord's disbursement process) only for the following items and costs (collectively the "**Tenant Improvement Allowance Items**"):

2.2.1.1 Payment of the fees of the "**Architect**" and the "**Engineers**," as those terms are defined in Section 3.1 of this Tenant Work Letter (including, without limitation, any space planning, test fit planning and/or pricing planning services provided prior to the date of this Second Amendment), and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the "**Construction Drawings**," as that term is defined in Section 3.1 of this Tenant Work Letter;

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Improvements;

2.2.1.3 The cost of construction of the Improvements, including, without limitation, testing and inspection costs, trash removal costs, and contractors' fees and general conditions;

2.2.1.4 The cost of any changes in the Base Building when such changes are required by the Construction Drawings, such cost to include all architectural and/or engineering fees and expenses incurred in connection therewith;

2.2.1.5 The cost of any changes to the Construction Drawings or Improvements required by all applicable building codes (the "**Code**");

2.2.1.6 The cost of the "Coordination Fee," as that term is defined in Section 4.2 of this Tenant Work Letter;

2.2.1.7 Sales and use taxes; and

2.2.1.8 Moving expenses, furniture, fixtures, equipment, wiring, network cabling, security systems, audio-visual systems, signage and telecommunications systems.

2.2.2 Other Terms. All Improvements shall be deemed Landlord's property under the terms of the Lease (as amended).

2.3 Standard Tenant Improvement Package. Landlord has established specifications (the "**Building Standard Tenant Improvements**") for the Building standard components to be used in the construction of the Improvements in the Expansion Space, which Building Standard Tenant Improvements are set forth on **Schedule 1** to **Exhibit B** of the Original Lease. The quality of the Improvements shall be equal to or of greater quality than the quality of the Building Standard Tenant Improvements, provided that Landlord may, at Landlord's option, prior to final approval of the Final Working Drawings, require the Improvements to comply with certain Building Standard Tenant Improvements.

2.4 Removal of Above Standard Tenant Improvements. "**Above Standard Tenant Improvements**" shall mean any internal staircase (subject to the limitations below), and any Improvements which are not usual and customary for general office use. Concurrently with Landlord's approval of the Final Working Drawings, Landlord shall immediately notify Tenant in writing, that upon the expiration or earlier termination of the Term of the Lease (as amended), Tenant shall, at its sole cost and expense, remove any such Above-Standard Tenant Improvements so reasonably designated by Landlord, and Tenant shall replace such non-standard Improvements with Building Standard Tenant Improvements; provided, however, notwithstanding anything to the contrary in this Section 2.4, Landlord agrees that Tenant shall not be required to remove any of the Improvements depicted on the Final Space Plan attached hereto as **Schedule 1**. Any such work of Tenant shall be performed promptly and shall be completed by Tenant on or before the end of the Term of the Lease (as amended), and if Tenant fails to timely remove and/or replace any Above Standard Tenant Improvements, Landlord (or Landlord's property manager) may do so and Tenant shall reimburse Landlord (or Landlord's property manager) for the actual and reasonable cost of such removal and/or replacement. The immediately preceding sentence shall survive the expiration or earlier termination of the Lease (as amended).

2.5 Tenant Improvement Allowance. The Tenant Improvement Allowance for the Expansion Space shall be in the amount of Three Hundred Ninety-Three Thousand Six Hundred Eighty and No/100 Dollars (\$393,680.00). Tenant shall have the option ("**ES Allowance Option**"), exercisable by written notice to Landlord on or before the Expansion Commencement Date, to have Landlord increase the Tenant Improvement Allowance for the Expansion Space by up to an additional Two Hundred Ninety-Five Thousand Two Hundred Sixty and No/100 Dollars (\$295,260.00), based on Fifteen Dollars (\$15.00) per rentable square foot of the Expansion Space (the "**Allowance Increase Amount**") as designated by Tenant in such written notice. If Tenant exercises the ES Allowance Option, monthly Base Rent payable

by Tenant for the Expansion Space during the Revised Term shall be increased by \$0.0175 per rentable square foot of the Expansion Space per month for each One Dollar (\$1.00) per rentable square foot of increase in the Tenant Improvement Allowance, and the parties shall promptly execute an amendment to the Lease in order to document such increase in the Tenant Improvement Allowance and monthly Base Rent.

2.6 Failure to Perform Landlord Work or to Fund Allowance. If Landlord fails to timely complete the Landlord Work or to timely fund any payment of the Tenant Improvement Allowance, Tenant shall be entitled to deliver written notice ("**Improvement Failure Notice**") thereof to Landlord. If Landlord still fails to complete the Landlord Work within thirty (30) days after Landlord's receipt of the Improvement Failure Notice or to fulfill any such payment obligation within ten (10) business days after Landlord's receipt of the Improvement Failure Notice from Tenant and if Landlord fails to deliver written notice to Tenant within such thirty (30) day or ten (10) business day period (as applicable) explaining Landlord's reasons that the amounts described in the Improvement Failure Notice are not due and payable by Landlord ("**Refusal Notice**"), Tenant shall be entitled to perform such work or fund such amount(s) itself (as applicable) and to offset such amount(s) plus any actual lender's fees and costs incurred by Tenant in obtaining financing for such work, together with interest at the actual interest rate incurred by Tenant in financing such work (or, to the extent Tenant does not finance such work, with interest at the Interest Rate) from the date of payment by Tenant until the date of offset, against Tenant's first obligations to pay monthly Base Rent for the Expansion Space. However, Tenant shall not be entitled to any such offset if Tenant is in default under the Lease (after expiration of any applicable cure period) at the time that such offset would otherwise be applicable). If Landlord delivers a Refusal Notice, and if Landlord and Tenant are not able to agree on the work to be performed or the amounts to be so paid by Landlord, if any, within ten (10) business days after Tenant's receipt of a Refusal Notice, Landlord or Tenant may elect to have such dispute resolved by binding arbitration before a retired judge of the Superior Court of the State of California under the auspices of JAMS (or any successor to such organization) in San Diego County, California, according to the then rules of commercial arbitration of such organization. If Tenant prevails in any such arbitration, Tenant shall be entitled to offset the amount determined to be payable by Landlord in such proceeding together with interest at the actual interest rate incurred by Tenant in financing such work (or, to the extent Tenant does not finance such work, with interest at the Interest Rate) from the date of payment to the date of offset against Tenant's next obligations to pay monthly Base Rent.

### SECTION 3

#### CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Landlord and Tenant hereby approve, and Landlord shall retain, Gensler (the "**Architect**") to prepare the "**Final Space Plan**," as that term is defined in Section 3.2 below, and the architectural sheets for the Final Working Drawings ("**Architectural Sheets**"). Tenant and Landlord agree that all mechanical, electrical, plumbing and structural plans will be done on a "design build" basis by subcontractors (the "**Engineers**") selected by Contractor. The Engineers shall work under the direction of the Contractor. The Engineers will prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work in the Expansion Space, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications determined by Landlord, and shall be subject to Landlord's approval.

3.2 Final Space Plan. The Architect has prepared the final space plan for the Improvements in the Expansion Space (collectively, the "**Final Space Plan**"), which Final Space Plan has been approved by Landlord and Tenant and is attached hereto as Schedule 1.

3.3 Final Working Drawings. Immediately following full execution and delivery of this Second Amendment, Landlord shall cause the Architect and the Engineers to complete the architectural and engineering drawings for the Expansion Space, and the final architectural working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same to Landlord for Landlord's approval. Upon Landlord's approval of the Final Working Drawings, Landlord shall submit the Final Working Drawings to Tenant for Tenant's approval, which shall not be unreasonably withheld. Tenant shall approve or disapprove any draft of the Final Working Drawings within five (5) business days after Tenant's receipt thereof. Tenant's disapproval of the Final Working Drawings shall include the reasonable reasons for Tenant's disapproval. If Tenant fails to disapprove any draft of the Final Working Drawings by written notice to Landlord within said five (5) business day period, said draft of the Final Working Drawings shall be deemed to be approved by Tenant.

3.4 Approved Working Drawings. The Final Working Drawings as approved by Landlord and Tenant may be referred to herein as the "**Approved Working Drawings**." Landlord may submit the Final Working Drawings to the appropriate municipal authorities for all applicable building permits simultaneously with the parties' review of the same. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of both parties, which consent may not be unreasonably withheld.

#### SECTION 4

##### CONSTRUCTION OF THE TENANT IMPROVEMENTS

4.1 Contractor. A general contractor shall be retained by Landlord to construct the Improvements. Such general contractor ("**Contractor**") shall be selected by Landlord and reasonably approved by Tenant.

4.2 Cost Proposal. After the Approved Working Drawings are signed by Landlord and Tenant, Landlord shall provide Tenant with a cost proposal in accordance with the Approved Working Drawings, which cost proposal shall include, as nearly as possible, the cost of all Tenant Improvement Allowance Items to be incurred by Tenant in connection with the design and construction of the Improvements (the "**Cost Proposal**"). The entire process associated with the bidding for and construction of the Improvements shall be on an "open book" basis, meaning that Tenant shall have the right to participate and review all aspects of the bid process, including the right to review the bid solicitation package, the bids received, and the Cost Proposal. Tenant shall approve and deliver the signed Cost Proposal to Landlord within five (5) business days after Tenant's receipt thereof, and upon receipt of the same by Landlord, Landlord shall be released by Tenant to purchase the items set forth in the Cost Proposal and to commence the construction relating to such items. The date by which Tenant must approve and deliver the Cost Proposal to Landlord shall be known hereafter as the "**Cost Proposal Delivery Date**". Within thirty (30) days following the Cost Proposal Delivery Date, Tenant shall deliver to Landlord cash in an amount (the "**Over-Allowance Amount**") equal to the difference between (i) the amount of the Cost Proposal and (ii) the amount of the Tenant Improvement Allowance. In the event that, after the Cost Proposal Delivery Date, any revisions, changes, or substitutions shall be made to the Construction Drawings or the Improvements by Tenant, any additional costs which arise in connection with such revisions, changes or substitutions or any other additional costs shall be paid by Tenant to Landlord within thirty (30) days following Landlord's request as an addition to the Over-Allowance

Amount. Tenant shall pay a logistical coordination fee (the "**Coordination Fee**") to Landlord (or Landlord's property manager) in an amount equal to the product of (i) two percent (2%) and (ii) the sum of the Tenant Improvement Allowance, the Over-Allowance Amount (as such amount may be increased hereunder) and any other amounts expended by Tenant in connection with the design and construction of the Improvements, which Coordination Fee shall be for services relating to the coordination of the construction of the Improvements.

4.3 Governmental Compliance. The Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.4 Inspection by Tenant. Tenant shall have the right to inspect the Improvements at all times; provided, however, that Tenant's failure to inspect the Improvements shall in no event constitute a waiver of any of Tenant's rights hereunder nor shall Tenant's inspection of the Improvements constitute Tenant's approval of the same. Should Tenant reasonably disapprove any portion of the Improvements, Tenant shall notify Landlord in writing of such disapproval and shall specify the items disapproved. Notwithstanding anything to the contrary in this Section 4.4, Tenant may only disapprove matters which are contrary to the Approved Working Drawings or are in violation of Laws. Any defects or deviations in, and/or disapproval by Tenant of, the Improvements shall be rectified by Landlord at no expense to Tenant, provided the same are noted by Landlord in a timely fashion so as to avoid unnecessarily causing Landlord to incur additional expenses due to said defect or deviation being covered up by subsequent work.

4.5 Meetings. Commencing upon the full execution and delivery of this Second Amendment by Landlord and Tenant, Landlord shall hold periodic meetings at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Improvements, which meetings shall be held in the Building and Tenant and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings. Tenant shall use commercially reasonable efforts and all due diligence to cooperate with the Architect, Engineers, and Landlord to complete all phases of the Construction Drawings and the permitting process and to receive the permits, and with Contractor for approval of the "Cost Proposal," as that term is defined in Section 4.2 of this Tenant Work Letter, as soon as possible after the execution of the Second Amendment.

4.6 Contractor's Warranties and Guaranties. Landlord hereby assigns to Tenant all warranties and guaranties by Contractor relating to the Improvements.

4.7 Ready for Occupancy. The Expansion Space shall be deemed "**Ready for Occupancy**" upon the Substantial Completion of the Expansion Space. For purposes of this Second Amendment, "**Substantial Completion**" of the Expansion Space shall occur upon the completion of construction of the Improvements in the Expansion Space pursuant to the Approved Working Drawings, with the exception of any punch list items. Landlord shall use commercially reasonable efforts to notify Tenant approximately forty-five (45) days prior to Landlord's estimated date of when Substantial Completion of the Expansion Space will occur. Except as provided in this Section 4.7, the Expansion Commencement Date shall occur as set forth in the Second Amendment. However, if there shall be a delay or there are delays in the Substantial Completion of the Improvements in the Expansion Space as a result of the following (collectively, "**Tenant Delays**"):

4.7.1 Tenant's failure to timely approve any matter requiring Tenant's approval;

4.7.2 A breach by Tenant of the terms of this Tenant Work Letter or the Lease (as amended);

4.7.3 Tenant's request for changes in the Approved Working Drawings that results in actual time delays; or

4.7.4 Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time given the anticipated date of Substantial Completion of the Improvements in the Expansion Space, or which are different from, or not included in, the Building Standard Tenant Improvements provided Landlord notifies Tenant within five (5) business days after ordering such items of possible associated delays;

then, notwithstanding anything to the contrary set forth in the Second Amendment or this Tenant Work Letter and regardless of the actual date of the Substantial Completion of Improvements in the Expansion Space, the date of Substantial Completion thereof shall be deemed to be the date that Substantial Completion would have occurred if no Tenant Delay or Delays, as set forth above, had occurred.

## SECTION 5

### MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated James Nagelvoort (Phone Number: 619-533-5100), Angela Colton (Phone Number: 619-533-4180) and Brad Bennett (Phone Number: 619-236-6191) as its sole representatives with respect to the matters set forth in this Tenant Work Letter, each of whom, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

5.2 Landlord's Representative. Landlord has designated Lynne Lyons and Don Petros as its sole representatives with respect to the matters set forth in this Tenant Work Letter, each of whom, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

5.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely and reasonably disapproved by a party, the procedure for preparation of the document and approval thereof shall be repeated until the document is reasonably approved by the disapproving party.

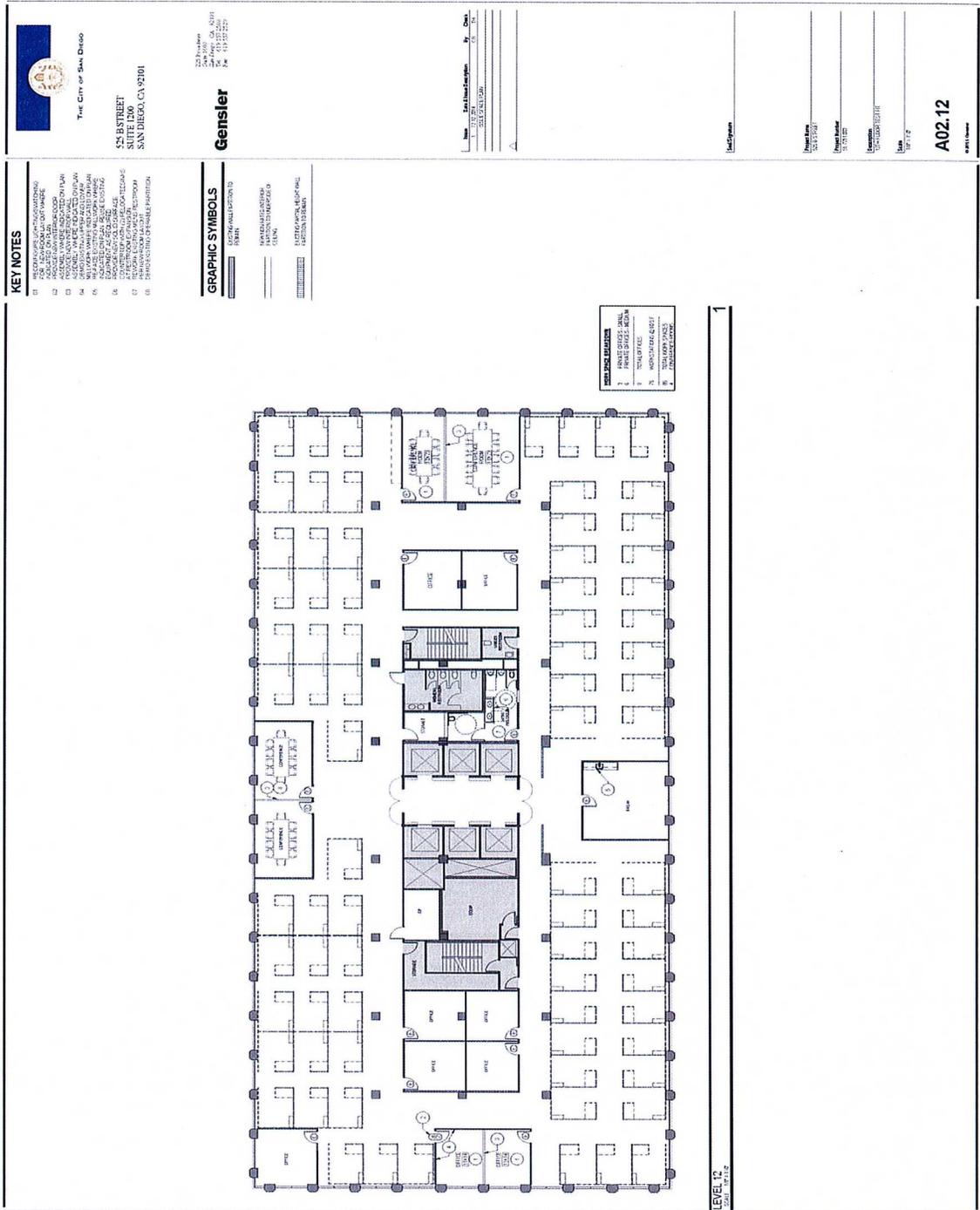
5.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in the Lease (as amended), if an event of default as described in the Lease or this Tenant Work Letter has occurred at any time on or before the Substantial Completion of the Expansion Space, then (i) in addition to all other rights and remedies granted to Landlord pursuant to the Lease (as amended), Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may cause Contractor to cease the construction of the Expansion Space (in which case, Tenant shall be responsible for any delay in the substantial completion of the Expansion Space caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Tenant Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of the Lease, as amended (in which case, Tenant shall be responsible for any delay in the substantial completion of the Expansion Space caused by such inaction by Landlord).

5.5 Tenant's Entry Into the Expansion Space Prior to Substantial Completion. Provided that Tenant and its agents do not interfere with Contractor's work in the Building and the Expansion Space, Contractor shall allow Tenant access to the Expansion Space approximately thirty (30) days prior to the Substantial Completion of the Expansion Space for the purpose of Tenant installing its furniture, trade fixtures, data and telecommunications wiring and equipment, photocopy equipment and other business equipment in the Expansion Space. Prior to Tenant's entry into the Expansion Space as permitted by the terms of this Section 5.5, (a) Tenant shall submit a schedule to Landlord and Contractor, for their approval, which schedule shall detail the timing and purpose of Tenant's entry and (b) Tenant or its agents or contractors shall provide evidence of insurance reasonably satisfactory to Landlord. Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Building or Expansion Space and against injury to any persons caused by Tenant's actions pursuant to this Section 5.5.

5.6 Base Rent Credit. If the cost to design, permit and construct the Improvements in the Expansion Space is less than the Tenant Improvement Allowance (as the same may be increased pursuant to Section 2.5 above), Landlord shall notify Tenant thereof in writing ("**Landlord's Notice**") within thirty (30) days following the Expansion Commencement Date or reasonably thereafter. Tenant may then request by providing written notice ("**Request Notice**") to Landlord no later than one hundred twenty (120) days following the delivery of Landlord's Notice to Tenant, an amount equal to the unused portion of the Tenant Improvement Allowance for the Expansion Space be applied as a credit against Tenant's Base Rent obligations for the Expansion Space ("**Rent Credit**"). If Tenant timely delivers the Request Notice, the Rent Credit will be applied as a credit to Tenant's monthly Base Rent obligations for the Expansion Space commencing with the first day of the first full month following Landlord's receipt of the Request Notice (but in no event prior to the expiration of the Expansion Space Abatement Period), and continuing thereafter until exhausted. If Tenant timely delivers the Request Notice, Landlord will provide a written notice to Tenant detailing the exact application of the Rent Credit, consistent with Tenant's instructions. If Tenant does not timely provide the Request Notice, Tenant shall not be entitled to any Rent Credit or use of any unused Tenant Improvement Allowance and such unused amount shall instead revert to Landlord.

5.7 Punchlist. Concurrently with Substantial Completion of the Improvements in the Expansion Space consistent with the Approved Working Drawings and Landlord's delivery of the Expansion Space to Tenant, a representative of Landlord and a representative of Tenant shall perform a walk-through inspection of the Improvements in the Expansion Space to identify any "punchlist" items (i.e., minor defects or conditions in such Improvements that do not impair Tenant's ability to utilize the Expansion Space for the purposes permitted hereunder), which items Landlord shall repair or correct no later than ninety (90) days after the date of such walk-through (unless the nature of such repair or correction is such that more than ninety (90) days are required for completion, in which case Landlord shall commence such repair or correction work within such ninety (90) day period and diligently prosecute the same to completion).

**SCHEDULE 1 TO EXHIBIT "B"**  
**APPROVED FINAL SPACE PLAN**



**EXHIBIT "C"**

**NOTICE OF REVISED TERM DATES**

TO: \_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_, 2015

Attention: \_\_\_\_\_

RE: Second Amendment to Lease ("**Second Amendment**") dated \_\_\_\_\_, 201\_\_\_\_, between HINES 525 B STREET LP, a Delaware limited partnership ("**Landlord**"), and THE CITY OF SAN DIEGO, a California municipal corporation ("**Tenant**"), concerning Suite 1200 (the "**Expansion Space**"), located at 525 B Street, San Diego, California.

Dear Mr. [or **Ms.**] \_\_\_\_\_:

In accordance with the Second Amendment, Landlord wishes to advise and/or confirm the following:

1. That the Tenant is in possession of the Expansion Space and Tenant acknowledges that under the provisions of the Second Amendment, the Revised Term commenced as of \_\_\_\_\_, 2015 and shall expire on June 30, 2020.

2. That in accordance with the Second Amendment, monthly Base Rent for the Expansion Space commenced to accrue on \_\_\_\_\_, 2015.

AGREED AND ACCEPTED:

TENANT:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_



THE CITY OF SAN DIEGO

January 10, 2014

HAND DELIVERED

Mr. Don Petros, CPM  
Property Manager  
Hines GS Properties, Inc.  
525 B Street, Suite 220  
San Diego, CA 92101

Reference: Fully Executed First Amendment to Lease, Hines 525 B St., LP and The City of San Diego

Dear Don:

Please find (2) two original fully executed First Amendment to Lease at 525 B Street between Hines 525 B Street, LP and The City of San Diego.

Thank you for your assistance in this matter.

Sincerely,

Brad Bennett  
Asset Manager

BB/cb

I:\Support Staff Group\WPO\2014\BENNETT\L-PETROS.docx

**Real Estate Assets Department**

1200 Third Avenue, Suite 1700, MS 51A • San Diego, CA 92101-4199  
Tel (619) 236-6020 Fax (619) 236-6706

item 043 10-29-13

(O-2014-50)

ORDINANCE NUMBER O- 20324 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 09 2013

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AND DIRECTING THE COUNCIL PRESIDENT, OR HIS DESIGNEE, TO EXECUTE AND DELIVER THAT CERTAIN FIRST AMENDMENT TO LEASE – 525 B STREET, BETWEEN HINES 525 B STREET LP, A DELAWARE LIMITED PARTNERSHIP, AND THE CITY OF SAN DIEGO, TO ADD A NEW TERMINATION OPTION TO THE LEASE.

WHEREAS, on July 9, 2013, the date of final passage, the Council of the City of San Diego authorized by ordinance that certain Office Lease (Lease) for office space at 525 B Street, between Hines 525 B Street LP (Hines) and the City of San Diego (City), on file with the Office of the City Clerk as Document No. OO-20273; and

WHEREAS, Hines and City have agreed to amend the Lease by adding a “Termination Option” provision to the Lease which will allow City a one-time right to terminate the Lease early. If exercised, the Termination Option would be effective, and the Lease would terminate, as of the third (3<sup>rd</sup>) anniversary of the Lease Commencement Date. The terms and conditions of the Termination Option are more fully set forth in the proposed First Amendment to Lease;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. That the Council President in his capacity under Charter section 265(i), or his designee, is hereby authorized and directed to execute and deliver that certain First

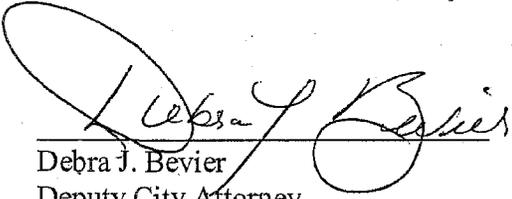
Amendment to Lease between Hines 525 B Street LP, a Delaware limited partnership, as landlord, and the City of San Diego, as tenant, and on file with the Office of the City Clerk as Document No. OO- 20324.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

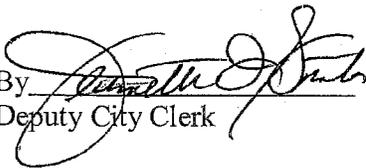
By

  
Debra J. Bevier  
Deputy City Attorney

DJB:mm  
10/10/13  
Or.Dept.: Real Estate Assets Dept.  
Doc. No. 652042

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 21 2013.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

For Gil Sanchez

Approved pursuant to Charter section 265(i):

\_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Council President

Passed by the Council of The City of San Diego on NOV 21 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

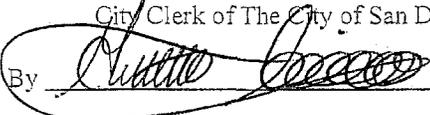
Date of final passage DEC 09 2013

AUTHENTICATED BY:

TODD GLORIA, COUNCIL PRESIDENT  
as interim Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By , Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

OCT 29 2013

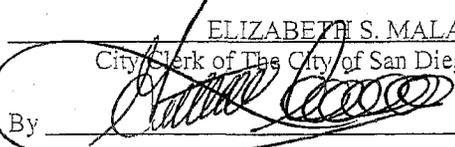
and on

DEC 09 2013

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20324

**FIRST AMENDMENT TO LEASE**  
**525 B STREET**

THIS FIRST AMENDMENT TO LEASE ("**First Amendment**") shall be deemed dated the same date as the Lease, June 18, 2013, and is made and entered into by and between HINES 525 B STREET LP, a Delaware limited partnership ("**Landlord**"), and THE CITY OF SAN DIEGO, a California municipal corporation ("**Tenant**").

**R E C I T A L S :**

A. Landlord and Tenant entered into that certain Office Lease, dated for reference purposes as June 18, 2013 (the "**Lease**"), whereby Landlord leased to Tenant and Tenant leased from Landlord certain office space located in that certain building located and addressed at 525 B Street, San Diego, California (the "**Building**").

B. By this First Amendment, Landlord and Tenant desire to modify the Lease as provided herein.

C. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Lease.

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

**A G R E E M E N T :**

1. Termination Option. Landlord and City hereby agree that from and after the date hereof, the following text shall be deemed inserted as a new Section 2.3 to the Lease:

2.3 **Termination Option.** Provided Tenant fully and completely satisfies each of the conditions set forth in this Section 2.3, Tenant shall have a one-time only option ("**Termination Option**") to terminate the Lease early. If exercised, the Termination Option shall be effective, and the Lease shall terminate, as of the third (3<sup>rd</sup>) anniversary date of the Lease Commencement Date (the "**Termination Date**"). In order to exercise the Termination Option, Tenant must fully and completely satisfy each and every one of the following conditions:

(a) Tenant must give Landlord written notice ("**Termination Notice**") of its exercise of the Termination Option, which Termination Notice must be delivered to Landlord at least fifteen (15) months prior to the Termination Date (i.e., City must give a Termination Notice to Landlord no later than 21 months from the Lease Commencement Date);

(b) at the time of delivery of the Termination Notice, Tenant shall not be in default under the Lease after expiration of any applicable notice and cure periods; and

(c) concurrently with Tenant's delivery of the Termination Notice to Landlord, Tenant shall pay to Landlord a termination fee ("**Termination Fee**") equal to the unamortized balance, as of the Termination Date, of the Tenant Improvement Allowance actually utilized by Tenant (including, without limitation, any increase in the Tenant Improvement Allowance pursuant to Section 2.5 of Exhibit B of the Lease). Amortization pursuant to the preceding sentence shall be determined on a straight-line basis over an amortization period from the Lease Commencement Date through the Lease Expiration Date. However, if Tenant exercises its right of first refusal pursuant to Section 1.4 of the Lease, the Termination Fee shall be increased by the unamortized amount of any out-of-pocket sums expended by Landlord in connection with any such expansion (including, without limitation, any sums expended by Landlord to improve the First Refusal Space) with such amortization to be determined on a straight-line basis over an amortization period from the date Tenant first commences to lease the First Refusal Space through the date of expiration of the term for such First Refusal Space.

2. Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This First Amendment may be executed by a party's signature transmitted by facsimile or PDF email, and copies of this First Amendment executed and delivered by means of facsimile signatures or PDF email shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon facsimile or email signatures as if such signatures were originals.

3. No Further Modification. Except as set forth in this First Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect. Effective as of the date hereof, all references to the "Lease" shall refer to the Lease as amended by this First Amendment.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this First Amendment has been executed to have the same reference date as that of the Lease, as first above written.

"LANDLORD"

HINES 525 B STREET LP,  
a Delaware limited partnership

By: Hines 525 B Street GP LLC,  
a Delaware limited liability company,  
its General Partner

DS  
DP  
DS  
ET  
DS

By: [Signature]  
Name: Kenneth Jett  
Title: Authorized Agent

"TENANT"

THE CITY OF SAN DIEGO,  
a California municipal corporation

By: [Signature]  
Print Name: James F. Barwick, CCIM  
Title: Director, Real Estate Assets

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: N/A DB

Approved as to form and legality  
this 8th day of January, 2013

JANI. GOLDSMITH, City Attorney

By: [Signature]  
Debra J. Bevier  
Deputy City Attorney

DUPLICATE

**OFFICE LEASE**

**525 B STREET**

**HINES 525 B STREET LP,**

a Delaware limited partnership,

as Landlord,

and

**THE CITY OF SAN DIEGO,**

a California municipal corporation,

as Tenant.

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**525 B STREET**

**OFFICE LEASE**

This Office Lease (the "**Lease**"), dated as of the date set forth in Section 1 of the Summary of Basic Lease Information (the "**Summary**"), below, is made by and between HINES 525 B STREET LP, a Delaware limited partnership ("**Landlord**"), and THE CITY OF SAN DIEGO, a California municipal corporation ("**Tenant**").

**SUMMARY OF BASIC LEASE INFORMATION**

<b><u>TERMS OF LEASE</u></b>	<b><u>DESCRIPTION</u></b>
1. Date:	June 18, 2013
2. Premises	
2.1 Building:	525 B Street San Diego, CA 92101
2.2 Premises:	<p>A total of approximately 90,778 rentable square feet of space in the Building consisting of (i) the entire third (3<sup>rd</sup>) floor containing approximately 19,425 rentable square feet; (ii) the entire fourth (4<sup>th</sup>) floor containing approximately 19,383 rentable square feet; (iii) the entire fifth (5<sup>th</sup>) floor containing approximately 19,409 rentable square feet; (iv) the entire sixth (6<sup>th</sup>) floor containing approximately 19,388 rentable square feet; (v) Suites 730, 750 and 760 on the seventh (7<sup>th</sup>) floor containing approximately 12,696 rentable square feet; and (vi) that certain ground floor space with an address of 1110 Sixth Avenue containing approximately 477 rentable square feet ("<b>Ground Floor Space</b>"), as further set forth in <b><u>Exhibit A-1</u></b> to this Lease.</p> <p>Separate from the "Premises", Tenant will lease an additional 5,239 rentable square feet of "Storage Space", as set forth in Section 1.5 and <b><u>Exhibit A-2</u></b> to this Lease.</p>

3. Lease Term  
(Article 2).

- 3.1 Length of Term: The period from the Lease Commencement Date through the Lease Expiration Date.
- 3.2 Lease Commencement Date: The earlier to occur of (i) the date upon which Tenant first commences to conduct business in the Premises, and (ii) the later to occur of (a) September 1, 2013, and (b) the date upon which the Premises are Ready for Occupancy.
- 3.3 Lease Expiration Date: June 30, 2019.

4. Base Rent for Ground Floor and Office Space (other than Storage Space)  
(Article 3):

4.1 Amount Due:

<u>Period of Lease Term</u>	<u>Monthly Base Rent Rate per Rentable Square Foot</u>	<u>Monthly Installment of Base Rent</u>
Commencement Date – 12 <sup>th</sup> full calendar month	\$1.25	\$113,472.50
Months 13-24	\$1.31	\$118,919.18
Months 25-36	\$1.37	\$124,365.86
Months 37-48	\$1.43	\$129,812.54
Months 49-60	\$1.49	\$135,259.22
Month 61 – Lease Expiration Date	\$1.55	\$140,705.90

- 4.2 Rent Payment Address: Hines 525 B Street LP  
Department 33738  
P.O. Box 39000  
San Francisco, CA 94139

- |     |   |  |
|-----|---|--|
| 5.  | Base Year   | Calendar year 2014.  |
| 6.  | Tenant's Share<br>(Article 4):                                    | 20.21% (based on 90,778 rentable square feet in the Premises and 449,180 rentable square feet in the Building).  |
| 7.  | Permitted Use<br>(Article 5):                                     | General office use and any other use permitted under all applicable laws and zoning consistent with a first-class office building; provided, however, Tenant may only conduct retail operations in the Ground Floor Space. |
| 8.  | Security Deposit<br>(Article 21):                                 | Waived.  |
| 9.  | Parking Pass Allocation<br>(Article 28):                          | Twenty-five (25) unreserved parking passes in the Parking Facility, subject to the terms of Article 28 of this Lease.  |
| 10. | Address of Tenant<br>(Section 29.18):                             | The City of San Diego<br>202 C Street<br>San Diego, California 92101<br>Attention: Mayor   |
| 11. | Address of Landlord<br>(Section 29.18):                           | See Section 29.18 of the Lease.  |
| 12. | Broker<br>(Section 29.24):  | Cushman & Wakefield of San Diego, Inc.   |
| 13. | Tenant Improvement Allowance<br>(Section 2 of <b>Exhibit B</b> ): | \$1,007,780.00.  |

**ARTICLE 1**

**PREMISES, BUILDING, PROJECT, COMMON AREAS AND STORAGE SPACE**

**1.1 Premises, Building, Project and Common Areas.**

1.1.1 **The Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 2.2 of the Summary (the "**Premises**"). The outline of the Premises is set forth in **Exhibit A-1** attached hereto and each floor or floors of the Premises has the number of rentable square feet as set forth in Section 2.2 of the Summary. The parties hereto agree that the lease of the Premises is upon and subject to the terms, covenants and conditions herein set forth, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance. The

parties hereto hereby acknowledge that the purpose of **Exhibit A-1** is to show the approximate location of the Premises in the "**Building**," as that term is defined in Section 1.1.2, below, only, and such Exhibit is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the "**Common Areas**," as that term is defined in Section 1.1.3, below, or the elements thereof or of the accessways to the Premises or the "**Project**," as that term is defined in Section 1.1.2, below. Except as specifically set forth in this Lease and in the Tenant Work Letter attached hereto as **Exhibit B** (the "**Tenant Work Letter**"), Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises. Tenant also acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Project or with respect to the suitability of any of the foregoing for the conduct of Tenant's business, except as specifically set forth in this Lease and the Tenant Work Letter.

1.1.2 **The Building and The Project.** The Premises are a part of the building set forth in Section 2.1 of the Summary (the "**Building**"). The term "**Project**," as used in this Lease, shall mean (i) the Building and the Common Areas, (ii) the land (which is improved with landscaping, parking facilities and other improvements) upon which the Building and the Common Areas are located, and (iii) the Parking facility located immediately south of the Building ("**Parking Facility**").

1.1.3 **Common Areas.** Tenant shall have the non-exclusive right to use in common with other tenants in the Project, and subject to the rules and regulations referred to in Article 5 of this Lease, those portions of the Project which are provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Project, including (i) the areas on the ground floor and all other floors of the Project devoted to non-exclusive uses such as corridors, stairways, loading and unloading areas, walkways, driveways, fire vestibules, elevators and elevator foyers, lobbies, electric and telephone closets, restrooms, mechanical areas, janitorial closets and other similar facilities for the general use of and/or benefit of all tenants and invitees of the Project (provided that on single tenant floors that are a part of the Premises, any corridors, elevator foyers and restrooms shall be deemed a part of the Premises and not Common Areas), (ii) those areas of the Project devoted to mechanical and service rooms servicing more than one (1) floor or the Project as a whole and which service the Project tenants as a whole, (iii) the workout facility located in the basement level of the Building (the "**Workout Facility**") and (iv) Project atriums and plazas (such areas are collectively referred to herein as the "**Common Areas**"). The manner in which the Common Areas are maintained and operated shall be at the sole discretion of Landlord but consistent with maintenance and operation of a first-class, high rise office building and the use thereof shall be subject to such rules, regulations and restrictions as Landlord may make from time to time so long as the same does not materially and negatively impact the Project or Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease (except to the extent required by Law). To the extent consistent with the operation of a first-class project and so long as the same is consistent with Tenant's rights under this Lease, Landlord reserves the right to close temporarily, make alterations or additions to, or change the location of elements of the Project and the Common Areas. Notwithstanding anything to the contrary contained herein, Landlord shall maintain and operate the Workout Facility (including, without limitation, lockers and showers) in good condition consistent with a first-class project throughout the Lease Term.

1.2 **Rentable Square Feet of Premises and Building.** For purposes of this Lease, "rentable square feet" shall mean the area or areas of space within the Building as follows: (i) on a single-tenant floor, the rentable square feet shall be determined by measuring from the inside surface of the outer pane of glass, exterior column or exterior wall to the inside surface of the opposite outer pane of glass, exterior column or exterior wall and shall include all areas within the outside walls, excluding Major Vertical Penetrations, and Tenant's pro-rata share of Common Areas, (ii) on a multi-tenant floor, the rentable square feet shall include all space within the demising walls (measured from the mid-point of such demising walls and in the case of exterior walls, measured as set forth in (i) above), excluding Major Vertical Penetrations, plus Tenant's pro-rata share of the Common Areas within the perimeter walls of the Building and any corridor extension (which may be used in common as a multi-tenant corridor) currently existing as of the date of this Lease (or which are required to provide access to any partial floor additional space leased by Tenant under this Lease). "**Major Vertical Penetration**" shall mean the area or areas within the Building stairs, elevator shafts, flues, vents, stacks, pipe shafts and vertical ducts and the like, that service more than one (1) floor of the Building. The area within Major Vertical Penetrations shall be bounded and defined by the mid-point of the perimeter walls thereof (or the extended plane of such walls over areas that are not enclosed). Major Vertical Penetrations shall exclude, however, areas for specific use of a tenant or installed at the request of a tenant, such as special stairs or elevators. No deductions from rentable square feet shall be made for columns or projections necessary to the Building (including bracing elements and walls enclosing the same), except for Major Vertical Penetrations.

1.2.1 Landlord and Tenant hereby stipulate that for purposes of this Lease, the Premises shall be deemed to contain 90,778 rentable square feet, the Storage Space shall be deemed to contain 5,239 rentable square feet and the Building shall be deemed to contain 449,180 rentable square feet.

1.2.2 Intentionally Omitted.

1.3 **Condition of the Premises.** Except as specifically set forth in this Lease and in the Tenant Work Letter, Tenant shall accept the Premises and the Building, including the base, shell, and core of (i) the Premises and (ii) the floor of the Building on which the Premises is located (collectively, the "**Base, Shell, and Core**") in their "AS-IS" condition as of the Lease Commencement Date and Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises except as specifically provided by this Lease. The existing leasehold improvements in the Premises as of the date of this Lease which remain after initial renovation, together with the Improvements to be constructed pursuant to **Exhibit B**, may be collectively referred to herein as the "**Tenant Improvements.**" Tenant also acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises, the Building or the Project except as specifically set forth in this Lease and the Tenant Work Letter. Landlord represents and warrants to Tenant that, as of the date of this Lease, Landlord has good title to the Project (including, without limitation, the Building and the Premises) and Landlord has full right and authority to enter into this Lease and to perform as required under this Lease and this Lease does not conflict with any other agreement to which Landlord is bound.

1.4 **Right of First Refusal.** Landlord hereby grants to Tenant a right of first refusal with respect to any space on the same floor of the Building that is adjacent to space that Tenant is then leasing pursuant to this Lease (collectively, the "**First Refusal Space**"); provided, however, no space on the ground floor of the Building shall be First Refusal Space. Notwithstanding the foregoing, (i) for First Refusal Space which is subject to a lease as of the date of this Lease, in the event Tenant exercises its right of first refusal pursuant to this Section 1.4, the lease of such First Refusal Space by Tenant shall commence only following the expiration or earlier termination of such existing lease (such existing leases may be collectively referred to herein as the "**Superior Leases**"), including any renewal of such Superior Leases, regardless of whether any such renewal is consummated pursuant to an express provision in such lease or pursuant to a lease amendment or a new lease and (ii) such first refusal right shall be subordinate and secondary to all rights of expansion, first refusal, first offer or similar rights granted to the tenant(s) of the Superior Leases or any other leases in existence as of the date of this Lease (the rights described in items (i) and (ii), above to be known collectively as "**Superior Rights**"). Tenant's right of first refusal shall be on the terms and conditions set forth in this Section 1.4.

1.4.1 **Procedure.** Landlord shall notify Tenant (the "**First Refusal Notice**") from time to time when Landlord receives a proposal that Landlord would seriously consider accepting for all or any portion of the First Refusal Space, where no holder of a Superior Right desires to lease such space. The First Refusal Notice shall (a) describe the space which is the subject of the proposal and shall set forth the terms and conditions (including the proposed lease term) set forth in the proposal (collectively, the "**Terms**") and (b) include a copy of the proposal that Landlord would seriously consider accepting. Notwithstanding the foregoing, Landlord's obligation to deliver the First Refusal Notice shall not apply during the last eleven (11) months of the initial Lease Term (or first Option Term, as applicable) unless Tenant has delivered Tenant's Acceptance notice (as defined in Section 2.2.3 below).

1.4.2 **Procedure for Acceptance.** If Tenant wishes to exercise Tenant's right of first refusal with respect to the space described in the First Refusal Notice, then within thirty (30) days after delivery of the First Refusal Notice to Tenant (the "**Election Date**"), Tenant shall deliver written notice to Landlord ("**Tenant's Election Notice**") pursuant to which Tenant shall elect either to: (i) lease the entire space described in the First Refusal Notice upon the Terms set forth in the First Refusal Notice; or (ii) refuse to lease such space identified in the First Refusal Notice, in which event Landlord may lease such space to any person or entity on any terms Landlord desires, so long as the terms are the material economic equivalent of those offered to Tenant. If Tenant does not so respond in writing to Landlord's First Refusal Notice by the Election Date, Tenant shall be deemed to have elected the option described in clause (ii) above.

1.4.3 **Lease of First Refusal Space.** If Tenant timely exercises Tenant's right to lease the First Refusal Space as set forth herein, Landlord and Tenant shall execute, an amendment to this Lease incorporating into this Lease the Terms applicable to such First Refusal Space.

1.4.4 **Termination of Right of First Refusal.** The rights set forth in this Section 1.4, and Landlord's obligations with respect thereto, shall be personal to the original Tenant executing this Lease (the "**Original Tenant**"), and may be only exercised if the Original

Tenant occupies the entire Premises on the Election Date. Tenant shall not have the right to lease the First Refusal Space if, at Landlord's option, as of the date of the attempted exercise of any right of first refusal by Tenant, or, at Landlord's option, as of the scheduled date of delivery of such First Refusal Space to Tenant, Tenant is in default under this Lease after any applicable notice and cure periods.

1.4.5 **Third Party Notice.** If Tenant refuses, or is deemed to have refused, to lease any First Refusal Space or portion thereof so offered by Landlord in a First Refusal Notice (herein, the "**Rejected First Refusal Space**"), then Landlord shall not be obligated to again extend to Tenant the right of first refusal with respect to such Rejected First Refusal Space (or any portion thereof) for a period of one hundred eighty (180) days following the date of such First Refusal Notice, and Landlord may, throughout such one hundred eighty (180) day period, lease the Rejected First Refusal Space (or any portion thereof) to any third party subject to clause (ii) of Section 1.4.2 above; provided, however, if Landlord and a third party do not enter into a lease for the Rejected First Refusal Space (or any portion thereof) within such one hundred eighty (180) day period, Landlord shall again be required to comply with the provisions of this Section 1.4 before leasing such Rejected First Refusal Space (or any portion thereof) to that or any other third party; provided further, however, if Landlord remains in continuous lease negotiations for the Rejected First Refusal Space (or any portion thereof) or has a lease document therefor out for signature beyond such 180-day period, then Landlord shall be allowed to complete the transaction without requiring Landlord to comply with the provisions of this Section 1.4.

1.5 **Storage Space.** Commencing as of the Lease Commencement Date, and continuing throughout the Lease Term, Tenant shall lease from Landlord and Landlord shall lease to Tenant certain storage area located in the basement of the Building and known as Suite C ("**Storage Space**") which Storage Space consists of approximately 5,239 rentable square feet, at the location shown on **Exhibit A-2** attached hereto. Tenant agrees to accept the Storage Space in its "as-is" condition and Tenant hereby acknowledges that Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Storage Space. Tenant also acknowledges that Landlord has made no representation or warranty regarding the condition of the Storage Space.

1.5.1 **Monthly Storage Rent.** The monthly rental rate for the Storage Space ("**Monthly Storage Rent**") shall be Sixty Cents (\$0.60) per rentable square foot per month of the Storage Space for the first Lease Year. The Monthly Storage Rent shall increase by Five Cents (\$0.05) per rentable square foot per month on the first day of the third (3<sup>rd</sup>) Lease Year. Such Monthly Storage Rent shall be payable on the first day of each month in advance during the Lease Term at the same time and in the same manner as monthly Base Rent for the Premises. In the event the Monthly Storage Rent is not paid when due, Landlord shall have the same rights as provided in Article 19 of this Lease for unpaid Rent. Tenant's Share shall not be increased as a result of Tenant's leasing the Storage Space.

1.5.2 **Use of Storage Space.** Tenant agrees not to store any flammable or highly combustible materials in the Storage Space. Tenant also agrees not to store Hazardous Material in the Storage Space. Tenant agrees to use the Storage Space solely for storage purposes and not as office space. Tenant agrees that Landlord and its agents may enter and

inspect the Storage Space and any goods stored therein at any time during regular business hours upon giving twenty-four (24) hours prior notice to Tenant and so long as Tenant is provided with an opportunity to have a representative of Tenant present. Tenant shall, at its sole cost and expense, deliver to Landlord a key for any locks installed by Tenant for Landlord's emergency entrance purposes. Tenant accepts the Storage Space without any warranties or representations and shall maintain and repair the Storage Space at its sole cost and expense. Landlord shall have no obligation to provide janitorial services to the Storage Space.

1.5.3 **Assignment and Sublease.** The Storage Space may not be assigned or subleased by Tenant or otherwise transferred by Tenant, except that Tenant may assign its rights and obligations under this Section 1.5 in connection with an assignment permissible pursuant to the terms of Article 14 of this Lease.

1.5.4 **Incorporation of Lease Provisions.** The provisions of this Lease with regard to the Premises, to the extent applicable and not inconsistent with the provisions of this Section 1.5, shall be deemed to apply to the Storage Space as though the Storage Space is part of the Premises, and as though the Monthly Storage Rent is part of the monthly Base Rent.

## **ARTICLE 2**

### **LEASE TERM**

2.1 **Initial Lease Term.** The terms and provisions of this Lease shall be effective as of the date of this Lease except for the provisions of this Lease relating to the payment of Rent. The term of this Lease (the "**Lease Term**") shall be as set forth in Section 3.1 of the Summary, shall commence on the date set forth in Section 3.2 of the Summary (the "**Lease Commencement Date**"), and shall terminate on the date determined in accordance with Section 3.3 of the Summary (the "**Lease Expiration Date**") unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Lease Term; provided, however, that the first Lease Year shall commence on the Lease Commencement Date and end on the last day of the twelfth month thereafter and the second and each succeeding Lease Year shall commence on the first day of the next calendar month; and further provided that the last Lease Year shall end on the Lease Expiration Date. This Lease shall not be void, voidable or subject to termination, nor shall Landlord be liable to Tenant for any loss or damage, resulting from Landlord's inability to deliver the Premises to Tenant by any particular date. At any time during the Lease Term, Landlord may deliver to Tenant a notice in the form as set forth in **Exhibit C**, attached hereto, as a confirmation only of the information set forth therein, which Tenant shall execute and return to Landlord within five (5) days of receipt thereof.

### 2.2 **Options to Extend.**

2.2.1 **Option Right.** Landlord hereby grants the Original Tenant two (2) options ("**Options**") to extend the initial Lease Term (or first Option Term, as applicable) for the "**Extension Premises**" (as defined below) for periods of one (1) year each ("**Option Terms**"), which Options shall be exercisable only by written notice delivered by Tenant to Landlord as set forth below. The Options contained in this Section 2.2 shall be personal to the Original Tenant.

In no event shall Tenant be entitled to exercise its second (2<sup>nd</sup>) Option unless the initial Lease Term has been extended for the first (1<sup>st</sup>) Option Term and in no event shall Tenant be entitled to extend the Lease Term beyond the second (2<sup>nd</sup>) Option Term.

2.2.2 **Option Rent.** The Rent payable by Tenant during the Option Term ("**Option Rent**") shall be equal to the "Market Rent" (defined below). "**Market Rent**" shall mean the applicable Base Rent, including all escalations, Operating Expenses, Tax Expenses, additional rent and other charges and giving full consideration to all tenant improvement allowances and other economic concessions at which tenants, as of the commencement of the Option Term, are entering into leases for non-sublease space which is not encumbered by expansion rights and which is comparable in size, location and quality to the Premises in renewal and non-renewal transactions, for a term comparable to the Option Term, which comparable space is located in the Building and in other comparable first-class, comparably sized buildings which are comparable in services and amenities and are located in the Downtown San Diego area ("**Comparable Buildings**"), with appropriate adjustments to account for the quality, scale, services and amenities of the applicable building, taking into account the value of the existing improvements in the Premises to the typical business office tenant, as compared to the value of the existing improvements in such comparable space (and in both cases taking into consideration appropriate allowances), with such value to be based upon the quality and layout of the improvements and the extent to which the same could be utilized by the typical business office tenant. The Base Year for the first (1<sup>st</sup>) Option Term shall be calendar year 2019 and the Base Year for the second (2<sup>nd</sup>) Option Term shall be calendar year 2020.

2.2.3 **Exercise of Options.** The Options shall be exercised by Tenant only in the following manner: (i) Tenant shall not be in monetary Default under this Lease beyond any notice and cure periods on the delivery date of the Interest Notice and Tenant's Acceptance; (ii) Tenant shall deliver written notice ("**Interest Notice**") to Landlord not more than eighteen (18) months nor less than twelve (12) months prior to the expiration of the initial Lease Term (or first Option Term, as applicable), stating that Tenant is interested in exercising the Option and stating Tenant's determination of the Extension Premises; (iii) within fifteen (15) business days of Landlord's receipt of Tenant's written notice, Landlord shall deliver notice ("**Option Rent Notice**") to Tenant setting forth the Option Rent; and (iv) if Tenant desires to exercise such Option, Tenant shall provide Landlord written notice within fifteen (15) business days after receipt of the Option Rent Notice ("**Tenant's Acceptance**") and upon, and concurrent with such exercise, Tenant may, at its option, object to the Option Rent contained in the Option Rent Notice. Tenant's failure to deliver the Interest Notice or Tenant's Acceptance on or before the dates specified above shall be deemed to constitute Tenant's election not to exercise the Option. If Tenant timely and properly exercises its Option, the initial Lease Term (or first Option Term, as applicable) shall be extended for the Option Term upon all of the terms and conditions set forth in this Lease, except that the Rent for the Option Term shall be as indicated in the Option Rent Notice unless Tenant, concurrently with Tenant's Acceptance, objects to the Option Rent contained in the Option Rent Notice, in which case the parties shall follow the procedure and the Option Rent shall be determined, as set forth in Section 2.2.4 below. The term "**Extension Premises**" shall mean that portion of the Premises then leased by Tenant at the time of the Interest Notice and designated for extension by Tenant in the Interest Notice (i.e., Tenant may extend the Term for less than all of the initial Premises); provided, however, that (a) if Tenant includes any space on any floor of the Building as a part of the Extension Premises, Tenant must

include all of the space then leased by Tenant on such floor and may not include only a portion of such space on such floor, (b) as to full floors then leased by Tenant, the Extension Premises must be consecutive floors starting at the uppermost floor or the lowermost floor, and (c) Tenant may not exercise an Option as to solely the Ground Floor Space. In no event may Tenant elect to include within the Extension Premises for the second (2<sup>nd</sup>) Option Term, space which was not included in the Extension Premises for the first (1<sup>st</sup>) Option Term.

2.2.4 **Determination of Option Rent.** If Tenant timely and appropriately objects to the Option Rent in Tenant's Acceptance, Landlord and Tenant shall attempt to agree upon the Option Rent using their best good-faith efforts. If Landlord and Tenant fail to reach agreement within thirty (30) days following Tenant's Acceptance (in either case, the "**Outside Agreement Date**"), then each party shall make a separate determination of the Option Rent which shall be submitted to each other and to arbitration in accordance with Sections 2.2.4.1 through 2.2.4.7 below:

2.2.4.1 Landlord and Tenant shall each appoint, within ten (10) days of the Outside Agreement Date, one arbitrator who shall by profession be a current real estate broker or real estate expert of comparable commercial properties in the general vicinity of the Building, and who has been active in such field over the last ten (10) years and who has not represented Landlord, Landlord's subsidiary or related affiliate entities, any managing or controlling entity or corporate officers of Landlord or Tenant within the last five (5) years. The determination of the arbitrators shall be limited solely to the issue of whether Landlord's or Tenant's submitted Option Rent is the closest to the actual Option Rent as determined by the arbitrators, taking into account the requirements of Section 2.2.2, above (i.e., the arbitrators may only select Landlord's or Tenant's determination of Option Rent and shall not be entitled to make a compromise determination).

2.2.4.2 The two (2) arbitrators so appointed shall within five (5) business days of the date of the appointment of the last appointed arbitrator agree upon and appoint a third arbitrator who shall be employed by JAMS in San Diego, California (or a successor entity, or if no successor entity then exists, a similar commercial arbitration entity).

2.2.4.3 The three (3) arbitrators shall within fifteen (15) days of the appointment of the third arbitrator reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Option Rent, and shall notify Landlord and Tenant thereof.

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

2.2.4.5 If either Landlord or Tenant fails to appoint an arbitrator within ten (10) days after the applicable Outside Agreement Date, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant.

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

### ARTICLE 3

#### BASE RENT

Tenant shall pay, without prior notice or demand, to Landlord or Landlord's agent at the address set forth in Section 4.2 of the Summary, or, at Landlord's option, at such other place as Landlord may from time to time designate in writing, by a check or wire transfer for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent ("**Base Rent**") as set forth in Section 4 of the Summary, payable in equal monthly installments as set forth in Section 4 of the Summary in advance on or before the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever except for deductions, set-offs, or rent abatement specifically permitted by this Lease. The Base Rent for the first full calendar month of the Lease Term shall be paid at the time of Tenant's execution of this Lease. If any Rent payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month or if any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

### ARTICLE 4

#### ADDITIONAL RENT

4.1 **General Terms.** In addition to paying the Base Rent specified in Article 3 of this Lease, commencing on January 1, 2015 and prorated for any partial year, Tenant shall pay "**Tenant's Share**" of each of the annual "**Operating Expenses**," and the annual "**Tax Expenses**" as those terms are defined in Sections 4.2.6, 4.2.4 and 4.2.5.1 of this Lease, respectively, which are in excess of the amount of Operating Expenses and Tax Expenses applicable to the "Base Year," as that term is defined in Section 4.2.1, below; provided, however, and except as provided in Section 4.4 below, that in no event shall any decrease in Operating Expenses or Tax Expenses for any Expense Year below the Operating Expenses and/or Tax Expenses for the Base Year entitle Tenant to any decrease in Base Rent or any credit against sums due under this Lease. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord or Landlord's property manager pursuant to the terms of this Lease, are hereinafter collectively referred to as the "**Additional Rent**", and the Base Rent and the Additional Rent are herein collectively referred to as "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent. Without limitation on other obligations of Landlord or Tenant which survive the expiration of the Lease Term, the obligations of Landlord or Tenant to pay any sums to the other party, including Tenant's obligation to pay to Landlord the Additional Rent (attributable to the period of time prior to the expiration or earlier termination of this Lease) provided for in this Article 4 shall survive the expiration of the Lease Term.

4.2 **Definitions of Key Terms Relating to Additional Rent.** As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 "**Base Year**" shall mean the period set forth in Section 5 of the Summary.

4.2.2 Intentionally Omitted.

4.2.3 "**Expense Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires.

4.2.4 "**Operating Expenses**" shall mean, subject to the exclusions set forth in Section 4.2.4.2, all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof, as reasonably determined by Landlord in accordance with sound accounting and management practices, consistently applied. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, repairing, maintaining, and renovating the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which may affect Operating Expenses, and the costs incurred in connection with a transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord or the property manager of Landlord in connection with the Project in such amounts as Landlord may reasonably determine or as may be required by any mortgagees or the lessor of any underlying or ground lease affecting the Project and/or the Building; (iv) the cost of landscaping, relamping, all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) costs incurred in connection with the parking areas servicing the Project; (vi) fees and other costs, including management fees, consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance or security of the Project, and employer's Social Security taxes, unemployment taxes or insurance, and any other taxes which may be levied on such wages, salaries, compensation and benefits; provided, that if any employees of Landlord provide services for more than one project of Landlord, then a prorated portion of such employees' wages, benefits and taxes shall be included in Operating Expenses based on the portion of their working time devoted to the Project; (vii) payments under any equipment rental agreements and the fair rental value of any management office space (not to exceed the rentable square feet included in the Building office in the Base Year) and the cost of furnishings in such management office space; (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Building; (xi) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in common areas, maintenance and replacement of curbs and walkways, repair to roofs and re-roofing; (xii) amortization (including interest on the unamortized cost) of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof; (xiii) the cost of capital improvements or other costs incurred in connection with the Project (A) which are intended to effect economies in the operation or maintenance of the Project, or any portion thereof, (B) that are required to comply with present or future

governmentally required conservation programs, or (C) that are required under any governmental law or regulation enacted after the Lease Commencement Date; provided, however, that any capital expenditure shall be amortized with interest over the lesser of its useful life or, if applicable, the period of time in which the savings from such capital expenditure is equal to or greater than the cost of the capital expenditure, as Landlord shall reasonably determine; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute "Tax Expenses" as that term is defined in Section 4.2.5, below; and (xv) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Building.

4.2.4.1 If Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would be included in Operating Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. If the Project is not at least one hundred percent (100%) occupied with all tenants paying full rent as contrasted with free rent, half rent and the like during all or a portion of the Base Year or any other Expense Year, Landlord shall make an appropriate adjustment to the components of Operating Expenses for such year to determine the amount of Operating Expenses that would have been incurred had the Project been one hundred percent (100%) occupied with all tenants paying full rent as contrasted with free rent, half rent and the like and with all unleased space grossed up at then average rents in the Building; and the amount so determined shall be deemed to have been the amount of Operating Expenses for such year. Operating Expenses for the Base Year shall not include market-wide labor-rate increases due to extraordinary circumstances, including, but not limited to, acts of war or terrorism, boycotts and strikes, and utility rate increases due to extraordinary circumstances including, but not limited to, conservation surcharges, boycotts, embargoes or other shortages, or amortized costs relating to capital improvements.

4.2.4.2 Notwithstanding the foregoing, Operating Expenses shall not include any of the following:

- (a) costs of a capital nature, including capital additions, capital improvements, and capital replacements, except as provided in clauses (xii) and (xiii) of Section 4.2.4 above;
- (b) cost or expense billed to, or solely designed to benefit, specific tenants of the Project;
- (c) debt service or rentals (other than payments of taxes and insurance) under any loans or ground leases;
- (d) costs incurred by Landlord in connection with any tenant lease in the Project, including leasing commissions, legal fees, and leasehold

improvement expenses (and/or allowances therefor) and other lease concessions of any kind whatsoever and any increased Tax Expenses resulting from above-standard tenant improvements as further described in Section 4.5.2 below;

- (e) cost of repairs, replacements or other work occasioned by fire, windstorm or other casualty, or the exercise by the governmental authorities of the right of eminent domain, except to the extent of a commercially reasonable deductible limit in Landlord's insurance policies and in no event shall the amount of the deductible in Operating Expenses exceed \$1.00 per RSF in the Project, provided that any earthquake deductible shall be amortized over the useful life of the earthquake repair and such amortized earthquake deductible amount shall be included in Operating Expenses subject to the \$1.00 per RSF cap per year;
- (f) attorney or accountant's fees, costs, disbursements and other expenses incurred by Landlord in connection with the negotiation of, disputes with and/or enforcement of, any leases with tenants, other occupants, or prospective tenants or other third parties and in connection with any Landlord ownership matters (such as sales of the Building, financings and refinancings, income tax returns, ownership interest transfers, etc.) and in connection with any default by Landlord under its contractual obligations;
- (g) costs of correcting defects, including all allowances for same, in the construction of the Project or Building (including latent defects) or equipment used therein (or the replacement of defective equipment), any associated parking facilities, or other improvements, or in the equipment used therein;
- (h) depreciation and other amortization, except for amortization charges as provided for in clauses (xii) and (xiii) of Section 4.2.4 above;
- (i) costs in connection with services (including utilities), items or other benefits of a type which are not standard for the Building or which are in excess of the services Landlord is obligated to provide Tenant hereunder, and which are not available to Tenant with or without specific charge therefor, but which are provided to another tenant or occupant of the Building, whether or not such other tenant or occupant is specifically charged therefor by Landlord;
- (j) services, items and benefits for which Tenant or any other tenant or occupant of the Building specifically reimburses Landlord (except pursuant to a lease provision similar to this Section 4.2) or for which Tenant or any other tenant or occupant of the Building pays third persons;
- (k) costs or expenses (including fines, penalties, and legal fees) incurred due to the negligence of Landlord or the violation by Landlord, its employees,

agents and/or contractors, any tenant or other occupant of the Building, of any terms or conditions of this Lease or of the leases of other tenants in the Building, and/or of any valid, applicable laws, rules, regulations and codes of any federal, state, county, municipal or other governmental authority having jurisdiction over the Building that would not have incurred but for such violation by Landlord, its employees, agents, and /or contractors, it being intended that each party shall be responsible for the costs resulting from its own violation of such leases and laws, rules, regulations and codes as same shall pertain to the Building;

- (l) penalties for late payment where such penalties are within Landlord's control, including, without limitation, in connection with taxes, equipment leases, service contracts, etc.;
- (m) costs of Landlord's general overhead and general administrative expenses (individual, partnership, or corporate, as the case may be), which costs would not be chargeable to Operating Expenses of the Building in accordance with generally accepted accounting principles, consistently applied;
- (n) compensation paid to clerks, attendants or other persons in commercial concessions or retail locations (such as a snack bar, shoeshine stand, restaurant or newsstand, but not including parking attendants), if any, operated by Landlord or any subsidiary or affiliate of Landlord;
- (o) rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except (A) equipment which is used in providing janitorial services and which is not affixed to the Building, (B) security equipment, and (C) equipment the cost of which would have been included in Operating Expenses pursuant to clause (xiii) of Section 4.2.4 above had Landlord purchased such equipment;
- (p) advertising and promotional expenses;
- (q) costs or expenses for sculpture, paintings or other works of art, including costs incurred with respect to the purchase, ownership, leasing, showing, promotion, repair of same, provided maintenance and cleaning of the same shall be included in Operating Expenses;
- (r) costs for which Landlord is compensated through or reimbursed by insurance or other means of recovery;
- (s) costs of correcting or repairing defects in the Building or Project, and/or equipment or the replacement of defective equipment;
- (t) contributions to Operating Expense reserves or reserves of any other kind;

- (u) initial costs of interior and exterior landscaping installed as part of the initial construction of the Project;
- (v) contributions to charitable organizations;
- (w) wages, salaries, benefits, and expenses attributable to Landlord's executive personnel above the level of group building manager, including any off site senior property manager, except that Operating Expenses may include an allocation of off-site personnel based upon the percentage of their time allocated for management, maintenance, repair or operation of the Project;
- (x) costs incurred in connection with the initial development and construction of the Building, including, without limitation, impact fees, tap fees, permit fees and any costs whatsoever in connection with the design and construction of the Building;
- (y) costs incurred to test, report on, encapsulate, remove or otherwise deal with any Hazardous Materials located in the Building or in the Project, provided Operating Expenses may include costs to dispose of paint, lamps, ballasts, adhesives and other items that are typical office building items;
- (z) costs incurred to cause the Project to comply with governmental requirements and Law that are applicable to the Project prior to the Lease Commencement Date; or
- (aa) costs incurred by Landlord in connection with the preparation of any income tax and/or sales tax returns.
- (bb) Any entertainment, dining or travel expenses for any purpose;
- (cc) Any flowers, gifts, balloons, etc. provided to any entity whatsoever, to include, but not limited to, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents;
- (dd) The foregone revenue from any "validated" parking for any entity;
- (ee) Any "finders fees", brokerage commissions, job placement costs or job advertising cost;
- (ff) Any "above-standard" cleaning, including, but not limited to construction cleanup (other than for a capital improvement includable in Operating Expenses under Section 4.2.4(xiii) above) or special cleanings associated with parties/events and specific tenant requirements in excess of service provided to Tenant, including related trash collection, removal, hauling and dumping; and
- (gg) The cost of any "tenant relations" parties, events or promotion not consented to by an authorized representative of Tenant in writing, unless

such parties, events or promotions are included in Operating Expenses for the Base Year, and

- (hh) In-house legal and/or accounting fees, provided that costs for in-house accounting personnel may be included in Operating Expenses to the extent (1) such personnel's time is devoted to the management or operation of the Project, and (2) charges for comparable services are included in Operating Expenses for the Base Year.

It is understood that Operating Expenses shall be reduced by all cash discounts, trade discounts, quantity discounts, rebates or other amounts received by Landlord or Landlord's managing agent in the purchase of any goods, utilities, or services in connection with the operation of the Building. Landlord shall make payments for goods, utilities, or services in a timely manner. If capital items which are customarily purchased by landlords of Comparable Buildings are leased by Landlord, rather than purchased, the decision by Landlord to lease the item in question shall not serve to increase Tenant's Share of Operating Expenses beyond that which would have applied had the item in question been purchased.

Landlord shall use reasonable judgment to control Operating Expenses and shall use commercially reasonable efforts to obtain competitive pricing on all Operating Expenses consistent with the operation of the Building in a first-class manner, but in any event shall operate the Building in a first-class manner.

4.2.4.3 Notwithstanding anything to the contrary contained herein, the aggregate Controllable Operating Expenses, as that term is defined below, shall not increase more than five percent (5%) in any calendar year over the maximum amount of Controllable Operating Expenses for the immediately preceding calendar year calculated on a cumulative and compounding basis, with no limit on the Controllable Operating Expenses during the Base Year (i.e., the actual Controllable Operating Expenses for the Base Year shall be the maximum amount for the Base Year for purposes of this provision). The term "**Controllable Operating Expenses**" shall mean property management staff and overhead, repair and maintenance costs (including elevator and HVAC service), trash removal costs, janitorial costs, interior plant maintenance and general and administrative costs; provided, however, to the extent that any increase in any of these costs is attributable to unionized labor costs, such costs shall not be considered to be Controllable Operating Expenses. By way of example only, and not as a limitation upon the foregoing, if Controllable Operating Expenses for the 2014 Base Year are \$3.00 per rentable square foot, the maximum Controllable Operating Expenses for calendar year 2015 shall be \$3.15 per rentable square foot and the maximum Controllable Operating Expenses for calendar year 2016 would be \$3.3075 per rentable square foot.

4.2.4.4 If Landlord, in any year after the Base Year, (i) adds any new services, (ii) adds new forms of insurance or increases insurance limits or coverage or decreases any deductible, (iii) incurs any new category of fees, or (iv) changes any service provider from non-union labor to union labor, then for such period of time in which such new services or new categories or fees or new union labor costs apply, Operating Expenses for the Base Year shall be increased by the amount that Landlord reasonably determines it would have incurred had Landlord provided such service, insurance or incurred such new fees or included such union

labor throughout the Base Year. If Landlord, in any year after the Base Year, discontinues any service or insurance or decreases insurance limits or increases deductibles or no longer incurs a category of fees or discontinues union labor, then for such period of time in which such changes apply, Operating Expenses for the Base Year shall be decreased by the amount that Landlord reasonably determines it incurred for such service or such fees throughout the Base Year.

#### 4.2.5 Taxes.

4.2.5.1 "**Tax Expenses**" shall mean all federal, state, county, or local governmental or municipal taxes, fees, charges or other impositions of every kind and nature, whether general, special, ordinary or extraordinary, (including, without limitation, real estate taxes, general and special assessments, transit taxes, leasehold taxes or taxes based upon the receipt of rent, including gross receipts or sales taxes applicable to the receipt of rent, unless required to be paid by Tenant, personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems and equipment, appurtenances, furniture and other personal property used in connection with the Project, or any portion thereof), which shall be paid or accrued during any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing and operation of the Project, or any portion thereof.

4.2.5.2 Tax Expenses shall include, without limitation: (i) Any tax on the rent, right to rent or other income from the Project, or any portion thereof, or as against the business of leasing the Project, or any portion thereof; (ii) Any assessment, tax, fee, levy or charge in addition to, or in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election ("**Proposition 13**") and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants, and, in further recognition of the decrease in the level and quality of governmental services and amenities as a result of Proposition 13, Tax Expenses shall also include any governmental or private assessments or the Project's contribution towards a governmental or private cost-sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (iii) Any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Premises or the Rent payable hereunder, including, without limitation, any business or gross income tax or excise tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; and (iv) Any assessment, tax, fee, levy or charge, upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises.

4.2.5.3 Except as set forth in Section 4.2.5.4, below, any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are paid. Except as set forth in Section 4.2.5.4, below, refunds of Tax Expenses shall be credited against Tax Expenses and refunded to Tenant regardless of when

received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as Additional Rent under this Article 4 for such Expense Year. If Tax Expenses for any period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Share of any such increased Tax Expenses included by Landlord as Tax Expenses pursuant to the terms of this Lease (provided such increased Tax Expenses constitute Excess (as defined in Section 4.4 below)). Notwithstanding anything to the contrary contained in this Section 4.2.5 (except as set forth in Section 4.2.5.1, above), there shall be excluded from Tax Expenses (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, (iii) any items paid by Tenant under Section 4.5 of this Lease; (iv) reserves for future Tax Expenses; or (v) any personal property taxes attributable to sculptures, paintings or other objects of art (except that personal property taxes for objects of art installed in the Common Areas pursuant to requirements of public authority may be included in Tax Expenses and personal property taxes for objects of art installed in the Common Areas due to reasons other than requirements of public authority may be included in Tax Expenses only if such personal property taxes are included in Tax Expenses for the Base Year).

4.2.5.4 Notwithstanding anything to the contrary set forth in this Lease, except as provided in Section 4.4 below, the amount of Tax Expenses for the Base Year and any Expense Year shall be calculated without taking into account any decreases in real estate taxes obtained in connection with Proposition 8, and, therefore, the Tax Expenses in the Base Year and/or an Expense Year may be greater than those actually incurred by Landlord, but shall, nonetheless, be the Tax Expenses due under this Lease; provided that (i) any costs and expenses incurred by Landlord in securing any Proposition 8 reduction shall not be included in Tax Expenses for purposes of this Lease, and (ii) tax refunds under Proposition 8 shall not be deducted from Tax Expenses, but rather shall be the sole property of Landlord. Landlord and Tenant acknowledge that this Section 4.2.5.4 is not intended to in any way affect (A) the inclusion in Tax Expenses of the statutory two percent (2.0%) annual increase in Tax Expenses (as such statutory increase may be modified by subsequent legislation), or (B) the inclusion or exclusion of Tax Expenses pursuant to the terms of Proposition 13, which shall be governed pursuant to the terms of Sections 4.2.5.1 through 4.2.5.3, above.

4.2.5.5 If the Tax Expenses for the Base Year include special assessments from a prior period and such special assessments terminate during the Lease Term, then from and after the date of such termination of the special assessment, the Tax Expenses for the Base Year shall be deemed to be reduced by the amount of such special assessment so that Tenant pays its full Tenant's Share of increases in the Tax Expenses during the Lease Term.

4.2.5.6 Tax Expenses for the Base Year and each Expense Year shall be calculated on the basis of a fully assessed and occupied Building and Project and, subject to Section 4.5.2 below, with leasehold improvements completed one hundred percent (100%) throughout and the Tenant Improvements in the Premises fully completed.

4.2.5.7 (i) Notwithstanding anything to the contrary contained in this Lease, in the event that, at any time during the Lease Term, any sale, refinancing, or change in ownership of the Project or the real property thereunder (collectively, the "**Real Property**") is consummated, and as a result thereof, and to the extent that in connection therewith, the Real Property is reassessed (the "**Reassessment**") for real estate tax purposes by the appropriate governmental authority pursuant to the terms of Proposition 13, then the following provisions shall apply to such Reassessment of the Real Property. For purposes of this Section 4.2.5.7, the term "**Tax Increase**" shall mean that portion of the Tax Expenses, as calculated immediately following the Reassessment, which is attributable solely to the Reassessment. Accordingly, the term Tax Increase shall not include any portion of the Tax Expenses, as calculated immediately following the Reassessment, which (a) is attributable to the initial assessment of the value of the Real Property, the Base, Shell and Core of the Project or the tenant improvements located in the Project, (b) is attributable to assessments which were pending immediately prior to the Reassessment which assessments were conducted during, and included in, such Reassessment, or which assessments were otherwise rendered unnecessary following the Reassessment, or (c) is attributable to the annual inflationary increase of real estate taxes permitted to be assessed annually under Proposition 13. During the Lease Term, any Tax Increase shall be excluded from Tax Expenses.

(ii) The amount of Tax Expenses which Tenant is not obligated to pay or will not be obligated to pay during the Lease Term in connection with a particular Reassessment pursuant to the terms of Section 4.2.5.7(i), shall be sometimes referred to hereafter as a "**Proposition 13 Protection Amount**." If the occurrence of a Reassessment is reasonably foreseeable by Landlord and the Proposition 13 Protection Amount attributable to such Reassessment can be reasonably quantified or estimated for each Lease Year commencing with the Lease Year in which the Reassessment will occur, the terms of this Section 4.2.5.7(ii) shall apply to each such Reassessment. Upon written notice to Tenant, Landlord shall have the right to purchase the Proposition 13 Protection Amount relating to the applicable Reassessment (the "**Applicable Reassessment**"), at any time during the Lease Term, by paying to Tenant an amount equal to the Proposition 13 Purchase Price, as that term is defined below, provided that the right of any successor of Landlord to exercise its right of repurchase hereunder shall not apply to any Reassessment which results from the event pursuant to which such successor of Landlord became the Landlord under this Lease. As used herein, "**Proposition 13 Purchase Price**" shall mean the present value of the Proposition 13 Protection Amount remaining during the Lease Term, as of the date of payment of the Proposition 13 Purchase Price by Landlord. Such present value shall be calculated (a) by using the portion of the Proposition 13 Protection Amount attributable to each remaining Lease Year (as though the portion of such Proposition 13 Protection Amount benefited Tenant at the end of each Lease Year), as the amounts to be discounted, and (b) by using discount rates for each amount to be discounted equal to (I) the prime interest rate, as reported in the Wall Street Journal as of the date of Landlord's exercise of its right to purchase, as set forth in this Section 4.2.5.7(ii), plus (II) two percent (2%) per annum. Upon such payment of the Proposition 13 Purchase Price, the provisions of Section 4.2.5.7(i) of this Lease shall not apply to any Tax Increase attributable to the Applicable Reassessment. Since Landlord is estimating the Proposition 13 Purchase Price because a Reassessment has not yet occurred, then when such Reassessment occurs, if Landlord has underestimated the Proposition 13 Purchase Price, then upon notice by Landlord to Tenant, Tenant's Base Rent next due shall be credited with the amount of such underestimation, and if Landlord overestimates the

Proposition 13 Purchase Price, then upon notice by Landlord to Tenant, Base Rent next due shall be increased by the amount of the overestimation.

4.2.5.8 **"Tenant's Share"** shall mean the percentage set forth in Section 6 of the Summary. Tenant's Share was calculated by multiplying the number of rentable square feet of the Premises by 100 and dividing the product by the total rentable square feet in the Building.

4.3 **Cost Pools.** Landlord may, from time to time, equitably allocate all of the Operating Expenses and Tax Expenses for the Building and Project among different portions or occupants of the Building and Project, including retail and office areas (the "**Cost Pools**"), determined in Landlord's reasonable discretion. The Operating Expenses and Tax Expenses within each such Cost Pool shall be allocated and charged to the tenants within such Cost Pool in an equitable manner.

4.4 **Calculation and Payment of Additional Rent.** Commencing as of January 1, 2015, if for any Expense Year ending or commencing within the Lease Term, Tenant's Share of Operating Expenses and/or Tenant's Share of Tax Expenses for such Expense Year exceeds the Tenant's Share of Operating Expenses or Tenant's Share of Tax Expenses applicable to the Base Year, then Tenant shall pay to Landlord, in the manner set forth in Section 4.4.1, below, and as Additional Rent, an amount equal to the excess (the "**Excess**"). In no event shall Tenant be responsible for any Excess attributable to the period prior to January 1, 2015.

4.4.1 **Statement of Actual Operating Expenses and Tax Expenses and Payment by Tenant.** Landlord shall give to Tenant within four (4) months following the end of each Expense Year, a detailed statement (the "**Statement**") which shall state the Operating Expenses and Tax Expenses incurred or accrued for such preceding Expense Year, and which shall indicate the amount of the Excess, if any. Such Statement shall contain detail setting forth the actual Tax Expenses and Operating Expenses incurred by Landlord for the previous year and shall set forth the manner in which Tenant's Share of the increases in actual Tax Expenses and Operating Expenses was calculated (including a comparison to Tax Expenses and Operating Expenses in the Base Year and the immediately preceding Expense Year). Such Statement shall list, at a minimum, at least fifteen (15) categories such as salaries and wages; janitorial; repairs; fixed and variable electricity; water; gas; elevators; HVAC; maintenance and supplies; landscaping; general expenses; security; parking; general building management services; management fee; insurance; and Tax Expenses. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, if an Excess is present, Tenant shall pay, with its next installment of Base Rent due, the full amount of the Excess for such Expense Year, less the amounts, if any, paid during such Expense Year as "**Estimated Excess**," as that term is defined in Section 4.4.2, below. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4; provided, however, that Landlord's failure to notify Tenant of any Operating Expenses or Tax Expenses due within eighteen (18) months after expiration of the calendar year in which such expenses were incurred shall preclude Landlord from subsequently seeking reimbursement from Tenant for such items (provided that such eighteen (18) month limitation shall not apply where failure to so notify Tenant is beyond Landlord's reasonable control (e.g., tax assessments that are late in arriving from the assessor)). Even though the Lease Term has expired and Tenant

has vacated the Premises, when the final determination is made of Tenant's Share of Operating Expenses and Tax Expenses for the Expense Year in which this Lease terminates, if an Excess is present, Tenant shall immediately pay to Landlord such amount. The provisions of this Section 4.4.1 shall survive the expiration or earlier termination of the Lease Term.

**4.4.2 Statement of Estimated Operating Expenses and Tax Expenses.** In addition, Landlord shall endeavor to give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate (the "**Estimate**") of what the amount of Tenant's Share of Operating Expenses and Tenant's Share of Tax Expenses for the then-current Expense Year shall be and the estimated excess (the "**Estimated Excess**") as calculated by comparing Tenant's Share of Operating Expenses and Tenant's Share of Tax Expenses for such Expense Year, which shall be based upon the Estimate, to Tenant's Share of Operating Expenses and Tenant's Share of Tax Expenses for the Base Year. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Tenant from enforcing its rights hereunder or prevent Landlord from enforcing its rights to collect any Estimated Excess under this Article 4, nor shall Landlord be prohibited from revising any Estimate Statement or Estimated Excess theretofore delivered to the extent necessary. Thereafter, Tenant shall pay, with its next installment of Base Rent due, a fraction of the Estimated Excess for the then-current Expense Year (reduced by any amounts already paid pursuant to the last sentence of this Section 4.4.2). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Excess set forth in the previous Estimate Statement delivered by Landlord to Tenant.

**4.5 Taxes and Other Charges for Which Tenant Is Directly Responsible.**

4.5.1 Tenant shall be liable for and shall pay ten (10) days before delinquency, taxes levied against Tenant's equipment, furniture, fixtures and any other personal property located in or about the Premises. If any such taxes on Tenant's equipment, furniture, fixtures and any other personal property are levied against Landlord or Landlord's property or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such equipment, furniture, fixtures or any other personal property and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof but only under proper protest if requested by Tenant, Tenant shall upon demand repay to Landlord the taxes so levied against Landlord or the proportion of such taxes resulting from such increase in the assessment, as the case may be.

4.5.2 If the tenant improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which tenant improvements conforming to Landlord's "building standard" in other space in the Building are assessed, then the Tax Expenses levied against Landlord or the property by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 4.5.1, above.

4.5.3 Notwithstanding any contrary provision herein, Tenant shall pay prior to delinquency any gross receipts tax or sales tax, service tax, or any other applicable tax on the gross receipts or services herein or otherwise respecting this Lease.

4.6 **Landlord's Books and Records.** Landlord shall promptly respond to any questions Tenant may have with regard to a Statement and shall provide Tenant with backup documentation requested by Tenant with respect to any Statement on a reasonable basis. If, in Landlord's reasonable opinion, such questioning becomes voluminous and unreasonably time consuming, Landlord may require Tenant to follow the Tenant's Audit procedure specified in this Section 4.6 below. In addition, provided no Default then exists under this Lease, and subject to this paragraph, Tenant, at its sole expense, shall have the right once per calendar year during the Lease Term to inspect, copy and/or audit Landlord's books and records relating to the Operating Expenses, Tax Expenses, Additional Rent and Actual Costs for the immediately preceding calendar year ("**Tenant's Audit**"). Tenant's Audit must take place on a mutually agreeable date during reasonable business hours at Landlord's office and only after Tenant has given Landlord at least three (3) business days prior written notice of the date and time Tenant desires to commence such audit. Additionally, Tenant's Audit may be conducted only by (i) a certified public accountant experienced in accounting for office buildings who is not engaged on a contingent fee basis or (ii) Tenant staff experienced in conducting reviews/accountings for office buildings. If Tenant elects to exercise this right, Tenant must do so within eighteen (18) months after the date Landlord delivers to Tenant the Statement described in Section 4.4.1 or Tenant shall be deemed to have accepted the Operating Expenses, Tax Expenses, Additional Rent and Actual Costs as presented by Landlord. If, based on any Tenant's Audit for a calendar year, Tenant believes that Tenant's Operating Expenses, Tax Expenses, Additional Rent or Actual Costs for such calendar year was overstated, Tenant shall have the right to notify Landlord, within thirty (30) days of the date of Tenant's Audit, that Tenant disputes the amount included in that calendar year for Tenant's Operating Expenses, Tax Expenses, Additional Rent or Actual Costs. Tenant may dispute Tenant's Operating Expenses, Tax Expenses, Additional Rent or Actual Costs for any legitimate reason which includes, without limitation, the inclusion of an item which is specifically required to be excluded under Section 4.2.4, the miscalculation of Operating Expenses, Tax Expenses, Additional Rent or Actual Costs, and/or the inclusion of an item which is includable only to the extent the cost is reasonable is, in fact, not reasonable in amount. Upon receipt of any notice of dispute from Tenant, Landlord and Tenant shall meet and attempt, in good faith, to resolve the dispute. If the parties have been unable to resolve the dispute within ninety (90) days of the date Tenant's notice of dispute is delivered to Landlord, the parties shall designate a reputable certified public accounting firm experienced in accounting for office buildings (which has not been employed either by Landlord or Tenant) and will submit the dispute to the selected certified public accounting firm for resolution. If the parties are unable to agree on a certified public accounting firm, the parties shall submit a request to the local chapter of the American Arbitration Association for designation of an appropriate certified public accounting firm. The resolution of the dispute by the certified public accounting firm shall be final and binding upon both Landlord and Tenant and shall not be subject to any further challenge in a legal proceeding or otherwise. If the designated certified public accountant determines that Operating Expenses, Tax Expenses, Additional Rent or Actual Costs were overstated in the applicable calendar year by two percent (2%) or more, Landlord shall reimburse Tenant for the reasonable third party out-of-pocket costs of Tenant's Audit. The confidentiality

of information obtained during an inspection by Tenant of Landlord's books and records shall be provided by law.

## ARTICLE 5

### USE OF PREMISES

5.1 **Permitted Use.** Tenant shall use the Premises solely for the use specified in Section 7 of the Summary only and Tenant shall not use or permit the Premises or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's reasonable discretion. Subject to Landlord's reasonable security requirements, repairs made by Landlord to the Project and Articles 11 and 13 below, Tenant shall have access to the Premises and the Parking Facility twenty-four (24) hours per day, seven (7) days per week throughout the Lease Term. Tenant acknowledges and agrees that the City of San Diego departments that will initially use the Premises are Public Works and Public Utilities. Tenant shall have the right to permit other City of San Diego departments to use the Premises subject to Landlord's prior written determination in its reasonable discretion that the use of such department(s) are consistent with the character of a first class office building.

5.2 **Prohibited Uses.** The uses prohibited under this Lease shall include, without limitation, use of the Premises or a portion thereof for (i) offices or agencies of any foreign governmental or political subdivision thereof, unless Landlord has leased space in the Building to comparable (in terms of use, security issues, express or implied power of eminent domain, reputation, character and size of space) foreign governmental offices or agencies; (ii) offices of any health care professionals or service organization (including a pharmacy); (iii) schools or other training facilities which are not ancillary to corporate, executive or professional office use; (iv) retail (except for the Ground Floor Space) or restaurant uses; (v) communications firms such as radio and/or television stations, or (vi) an executive suites subleasing business or operation. Tenant shall not permit regular occupancy density within the Premises of greater than six (6) individuals per 1,000 rentable square feet of the Premises, other than for meetings, conferences and other comparable events. Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the provisions of the Rules and Regulations set forth in **Exhibit D**, attached hereto, as the same may be amended by Landlord from time to time (so long as such amendments do not materially and negatively impact the Project or Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease (except to the extent required by Law), or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project) including, without limitation, any such laws, ordinances, regulations or requirements relating to Hazardous Materials or substances, as those terms are defined by applicable laws now or hereafter in effect. Tenant shall not do or permit anything to be done in or about the Premises or the Building which will unreasonably interfere with the rights of other tenants or occupants of the Building, or injure or annoy them or use or allow the Premises to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Project.

### 5.3 Hazardous Material.

5.3.1 Tenant Indemnity. Tenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept or used in or about the Premises or the Project by Tenant or its agents, employees, contractors or invitees without the prior written consent of Landlord. Notwithstanding the foregoing, Tenant may, without Landlord's prior written consent, introduce onto, and handle, service, repair, store and use, in the normal course of Tenant's business, any substances, materials or equipment necessary or useful to Tenant's business; provided, that such Hazardous Material will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises or the Project. Notice shall be sent to Landlord for each Hazardous Material. If Tenant breaches the obligations stated in the preceding sentences, or if the presence of Hazardous Material on the Premises or the Project caused or permitted by Tenant results in contamination of the Premises or the Project, then Tenant shall indemnify, defend and hold Landlord Parties harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, without limitation, diminution in value of the Premises, damages, penalties, fines, costs, liabilities or losses (including, without limitation, restriction on use of rentable or usable space or of any amenity of the Premises or the Project, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) (collectively, "**Environmental Claims**") which arise during or after the Term of the Lease as result of such contamination. Promptly following Tenant's surrender of the Premises to Landlord with Tenant having removed all items required to be removed by Tenant pursuant to this Lease, Landlord and Tenant shall conduct a walk through inspection of the Premises in order to determine whether there is any evidence of Hazardous Materials in the Premises ("**Final Inspection**"). Unless identified as part of the Final Inspection, Tenant shall have no responsibility for any Environmental Claims that first arise after the Lease Term. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or the Project. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises or the Project caused or permitted by Tenant results in any contamination of the Premises or the Project, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises and the Project to the condition existing prior to the introduction of any such Hazardous Material to the Premises or the Project; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or the Project. Tenant shall notify Landlord of its method, time and procedure for any clean-up or removal of toxic or hazardous materials under this provision and Landlord shall have the right to require reasonable changes in such method, time or procedure or to require the same to be done after normal business hours or when the Building is otherwise closed (i.e., weekends or holidays). The indemnification of Landlord by Tenant contained in this Section 5.3.1 shall survive the expiration or earlier termination of this Lease.

5.3.2 Definition. As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local

governmental authority, the State of California or the United States of America, including, but not limited to, any material or substance that is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Water Pollution Control Act (33 U.S.C. §1321), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, or (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act, 42 U.S.C. §6991; all corresponding and related State of California and local statutes, ordinances and regulations, including, without limitation, any dealing with underground storage tanks; and any other environmental law, regulation or ordinance now existing or hereinafter enacted (collectively, "**Hazardous Materials Laws**").

5.3.3 **Landlord's Indemnity**. Landlord shall indemnify, defend and hold harmless Tenant, of, from and against any and all Environmental Claims and any and all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (excluding consequential and punitive damages), costs and expenses (including reasonable attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on, or asserted against Tenant, directly or indirectly, based on, or arising or resulting from, any Hazardous Materials in violation of currently applicable Hazardous Materials Laws on or below the Premises, Building and Project within the existing mechanical, electrical, plumbing and fire sprinkler systems.

5.4 **Right to Cease Operation of Business**. Notwithstanding anything in this Lease to the contrary, nothing herein shall be construed as an obligation for Tenant to open or operate its business in the Premises. Tenant shall have the right to remove Tenant's property and cease operations in the Premises at any time and at Tenant's sole discretion; provided, however, that due to the visibility of the Ground Floor Space within the Building, Tenant may not remove Tenant's furniture from the Ground Floor Space (unless replaced with comparable furniture), must keep the Ground Floor Space reasonably free of debris and must keep the lights in the Ground Floor Space on during Building Hours. However, the right to cease to operate its business shall not affect Tenant's obligation to pay all amounts due hereunder, and to perform all covenants and obligations hereunder.

5.5 **Compliance by Other Tenants**. Upon Landlord's receipt of Tenant's written notice that another tenant or occupant of the Building is engaging in conduct prohibited by Section 5.2 to the detriment of Tenant, Landlord agrees to use commercially reasonable efforts to cause such party to desist from such prohibited conduct as soon as reasonably possible. Notwithstanding the foregoing, Landlord shall not be liable to Tenant for any such conduct on the part of other tenants or occupants of the Building, except as expressly provided in the immediately preceding sentence.

## **ARTICLE 6**

### **SERVICES AND UTILITIES**

6.1 **Standard Tenant Services**. Landlord (or Landlord's property manager) shall provide the following services on all days and nights (unless otherwise stated below) during the

Lease Term. Landlord agrees that the caliber and level of the following services, will be at least comparable to the caliber and level of such services generally provided by other first class office buildings in downtown San Diego.

6.1.1 Subject to limitations imposed by all governmental rules, regulations and guidelines applicable thereto, Landlord shall provide heating, ventilation and air conditioning ("HVAC") when necessary for normal comfort for normal office use in the Premises from 7:00 A.M. to 6:00 P.M. Monday through Friday, and on Saturdays from 8:00 A.M. to 1:00 P.M. (collectively, the "**Building Hours**"), except for the date of observation of New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and, at Landlord's discretion, other nationally recognized holidays generally recognized in other Comparable Buildings (collectively, the "**Holidays**").

6.1.2 Landlord shall provide adequate electrical wiring and facilities for normal general office use and electricity at levels consistent with normal general office use, as reasonably determined by Landlord. Tenant shall bear the cost of replacement of lamps, starters and ballasts for non-Building standard lighting fixtures within the Premises.

6.1.3 Landlord shall provide city water from the regular Building outlets for drinking, lavatory, kitchen and toilet purposes in the Common Areas and Premises (as applicable).

6.1.4 Landlord shall provide janitorial services to the Premises (including, without limitation, any restrooms on single tenant floors that are a part of the Premises) and the Common Areas five (5) days per week, except on the date of observation of the Holidays, in accordance with the specifications attached hereto as Exhibit E and made a part hereof, and window washing services in a manner consistent with other comparable buildings in the vicinity of the Building.

6.1.5 Landlord shall provide nonexclusive, non-attended automatic passenger elevator service during the Building Hours, except on Holidays. Notwithstanding the foregoing sentence, Landlord shall have at least one elevator available at all times.

6.1.6 Landlord shall provide nonexclusive freight elevator service subject to scheduling by Landlord.

6.1.7 Landlord shall provide full-time, on-site security guard(s) for the Project twenty-four (24) hours per day, three hundred sixty-five (365) days per year or other comparable automated measures which do not compromise the security of the Building or the Parking Facility. Without limiting the foregoing, the Building shall maintain security measures that are similar to the level of security measures that are generally implemented in Comparable Buildings and their parking facilities.

6.1.8 If Tenant wishes to establish or install any automated and/or non-automated security system in, on, or about the Premises, Tenant shall first notify Landlord of Tenant's plan for any such system, and Landlord shall have the right to confirm that such system is compatible with the Building's systems and to review and approve or disapprove said plan in Landlord's reasonable discretion. In any event, no such systems shall inhibit Landlord's access

to the Premises as permitted in this Lease. If Landlord approves any such plan and Tenant establishes or installs any automated and/or non-automated security system in, on, or about the Premises, and should such system adversely affect the Premises or the Project or the Project as commercial space for its then current uses, or have an adverse effect on other tenants, respectively, Landlord shall subsequently have the right to review Tenant's security system from time to time and request Tenant to make such reasonable changes in personnel and/or equipment. Tenant shall make said requested changes within thirty (30) business days of written request by Landlord or sooner in an emergency.

6.1.9 When reasonably necessary as determined by Landlord, provide to the Project appropriate pest control services for vermin, flies, pests, insects and the like.

6.1.10 Replace Building-standard electric light bulbs, tubes and ballast as required from time to time as a result of normal usage.

6.1.11 Provide HVAC (during Building Hours), lighting, electrical power, and janitorial service in those areas of the Building (including but not limited to the Conference Facility, but at no charge to Tenant other than as included in Operating Expenses as provided in Section 29.35 and the set-up fee described in Section 29.35 below) from time to time as designated by Landlord for use by Tenant in common with all tenants and other persons of the Building but under the exclusive control of Landlord.

6.1.12 Use commercially reasonable efforts, seven (7) days per week, to minimize pests, insects, loitering and smoking in areas other than designated smoking areas at the Project.

6.1.13 Landlord shall provide day porter service and an engineer fully devoted to the Project on-site, which day porter service and on-site engineer shall be provided on all days except Saturdays, Sundays and Holidays (in which case such engineer shall be available in emergencies). Such day porter service shall include, without limitation, servicing the restrooms at least two (2) times per day (other than Saturdays, Sundays and Holidays), assisting in the clean-up of any spills and laying additional floor coverings in the lobby of the Building during rainy days.

Tenant shall cooperate fully with Landlord at all times and abide by all regulations and requirements that Landlord may reasonably prescribe for the proper functioning and protection of the HVAC, electrical, mechanical and plumbing systems.

6.2 **Overstandard Tenant Use.** Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal office machines, or equipment or lighting other than Building standard lights and lights approved by Landlord in accordance with Tenant's build out of the Premises, which are likely to affect the temperature otherwise maintained by the air conditioning system or increase the water normally furnished for the Premises by Landlord (or Landlord's property manager) pursuant to the terms of Section 6.1 of this Lease. If such consent is given, Landlord (or Landlord's property manager) shall have the right to require Tenant to install supplementary air conditioning units or other facilities in the Premises, and the cost thereof, including the cost of installation, operation and maintenance, and

other similar charges, shall be paid by Tenant to Landlord (or Landlord's property manager) upon billing by Landlord (or Landlord's property manager). If Tenant uses water, electricity, heat or air conditioning in excess of that supplied by Landlord (or Landlord's property manager) pursuant to Section 6.1 of this Lease, Tenant shall pay to Landlord (or Landlord's property manager), upon billing, the Actual Cost of such excess consumption, the cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption; and Landlord (or Landlord's property manager) may install devices to separately meter any increased use and in such event Tenant shall pay the increased Actual Cost directly to Landlord (or Landlord's property manager), on demand, at the rates charged by the public utility company furnishing the same, including the cost of such additional metering devices. Tenant's use of electricity shall never exceed the capacity of the feeders to the Project or the risers or wiring installation. If Tenant desires to use HVAC during hours other than those for which Landlord (or Landlord's property manager) is obligated to supply HVAC pursuant to the terms of Section 6.1 of this Lease, Tenant shall give Landlord such prior notice, if any, as Landlord shall from time to time establish as appropriate (provided that no more than three (3) hours' advance notice shall be required for after-hours HVAC use on weekdays immediately after Building Hours and notice must be provided on or before 3:00 p.m. on Friday for weekend service), of Tenant's desired use in order to supply such utilities, and Landlord (or Landlord's property manager) shall supply such HVAC to Tenant on an hourly basis (subject to a two (2) hour minimum on Sundays), as Additional Rent, at the After Hours HVAC Rate (as defined below). The "**After Hours HVAC Rate**" shall be Seventy-Five Dollars (\$75.00) per hour per floor as of the date of this Lease (which rate is Landlord's good-faith non-binding estimate, as of the date of this Lease, of Landlord's current actual cost (without mark-up for profit) to provide after-hours HVAC), which may be increased by Landlord only to the extent Landlord reasonably determines that Landlord's actual cost (without markup-up for profit) to provide such service increases after the date of this Lease ("**Actual Costs**").

6.3 **Interruption of Use.** Tenant agrees that, except as provided in Sections 10.1 and 19.7 and Articles 11 and 13 below, neither Landlord nor Landlord's property manager shall be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, neither Landlord nor Landlord's property manager shall be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 6 and Articles 11 and 13 and Section 19.7. Landlord (or Landlord's property manager) may comply with voluntary controls or guidelines promulgated by any governmental entity relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other

emissions without creating any liability of Landlord (or Landlord's property manager) to Tenant under this Lease, provided that the Premises are still usable for the Permitted Use.

6.4 **Indoor Air Quality**. Landlord shall comply with any current or future laws, ordinances, rules, and regulations concerning office building indoor air quality, promulgated by any government authority having jurisdiction over the Building or persons occupying or working in the Building, to the extent applicable to Landlord and the Building ("**Indoor Air Quality Standard**"). Notwithstanding the foregoing, Landlord shall have no liability with respect to maintaining indoor air quality to the extent that the air quality issues are caused by (a) emissions from furnishings, fixtures, or equipment installed in the Premises; (b) interference with the air flow requirements of the ventilation rate procedure caused by Tenant's Improvements or Alterations; (c) inability to adapt the Building's HVAC system, based on then current technology, to meet the Indoor Air Quality Standard; (d) decreased quality of the air outside the Building; or (e) the acts or omissions of Tenant or its employees or agents.

## **ARTICLE 7**

### **REPAIRS**

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

7.2 **Repairs by Tenant**. Except to the extent specified to be included in Landlord's obligations under Section 7.1 above, Tenant shall, at Tenant's own expense, pursuant to the terms of this Lease, including without limitation Article 8 hereof, keep the Premises, including all improvements, fixtures and furnishings therein, in good order, repair and condition at all times during the Lease Term, normal wear and tear excepted. In addition, Tenant shall, at Tenant's own expense, but under the supervision and subject to the prior approval of Landlord, and within any reasonable period of time specified by Landlord, pursuant to the terms of this Lease, including without limitation Article 8 hereof, promptly and adequately repair all damage (except to the extent the Section 10.5 waiver of subrogation is applicable) to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances, except for damage caused by ordinary wear and tear or beyond the reasonable control of Tenant; provided however, that, at

Landlord's option, or if Tenant fails to make such repairs, Landlord (or Landlord's property manager) may on ten (10) business days' notice to Tenant unless Tenant commences to make such repairs within such ten (10) business day period and diligently proceeds to complete such repairs, but need not, make such repairs and replacements, and Tenant shall pay Landlord (or Landlord's property manager) the cost thereof, including three percent (3%) of the hard construction cost thereof sufficient to reimburse Landlord (or Landlord's property manager) for all overhead, general conditions, fees and other costs or expenses arising from Landlord's (or Landlord's property manager's) involvement with such repairs and replacements forthwith upon being billed for same. Landlord may, but shall not be required to, enter the Premises at all reasonable times to make such repairs, alterations, improvements or additions to the Premises or to the Project or to any equipment located in the Project as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

**7.3 Tenant's Right to Make Repairs.** If Tenant provides notice to Landlord of an event or circumstance which requires the action of Landlord with respect to the provision of utilities and/or services to the Premises and/or repairs and/or maintenance to the Premises and/or the elevators, electrical system or HVAC system of the Building, and Landlord fails to provide such action as required by the terms of this Lease, then Tenant may proceed to take the required action upon delivery of an additional five (5) business days notice to Landlord specifying that Tenant is taking such required action, and if such action was required under the terms of this Lease to be taken by Landlord, then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable costs and expenses in taking such action plus interest at the Interest Rate during the period from the date Tenant incurs such costs and expenses until such time as payment is made by Landlord. However, if the work so performed by Tenant pertains to items that would otherwise be includable in Operating Expenses pursuant to Article 4 above, then Landlord may include the amount of such reimbursement in Operating Expenses. In the event Tenant takes such action, and such work will affect the systems and equipment of the Building ("**Systems and Equipment**"), structural integrity of the Building or exterior appearance of the Building, Tenant shall use only those contractors used by Landlord in the Building for such work unless such contractors are unwilling or unable to 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. Further, if Landlord does not deliver a detailed written objection to Tenant, within thirty (30) days after receipt of an invoice by Tenant of its costs of taking action which Tenant claims should have been taken by Landlord, and if such invoice from Tenant sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking such action on behalf of Landlord, then Tenant shall be entitled to deduct from Rent payable by Tenant under this Lease, the amount set forth in such invoice together with interest at the Interest Rate. If, however, Landlord in good faith delivers to Tenant within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of this Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not be entitled to such deduction from Rent, but as Tenant's sole remedy, Tenant may proceed to claim a default by Landlord and if Tenant obtains a final judgment in its favor in

such proceedings, Tenant shall have the right to deduct the amount of such judgment and attorneys' fees awarded in such proceedings from the Rent next due and owing by Tenant under this Lease if such amount and attorneys' fees are not paid within thirty (30) days after such judgment is issued.

## ARTICLE 8

### ADDITIONS AND ALTERATIONS

8.1 **Landlord's Consent to Alterations.** This Article 8 shall not apply to initial Improvements to be constructed by Tenant pursuant to the Tenant Work Letter. Tenant may not make any improvements, alterations, additions or changes to the Premises or any mechanical, plumbing or HVAC facilities or systems pertaining to the Premises (collectively, the "**Alterations**") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than thirty (30) days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord, which will be granted or not granted by notice to Tenant within five (5) business days of Tenant's notice to Landlord requesting Landlord's consent (but such five (5) business day period shall be extended to the extent special circumstances are presented (e.g., structural engineering review is required). The construction of the initial improvements to the Premises shall be governed by the terms of the Tenant Work Letter and not the terms of this Article 8. Notwithstanding anything to the contrary set forth in this Article 8, although thirty (30) days advance written notice to Landlord is required, Landlord's consent shall not be required for any Alterations proposed by Tenant that (a) will cost less than Fifty Thousand Dollars (\$50,000.00) to construct during any Lease Year of the Lease Term, (b) are non-structural, including painting and carpeting, and would not reasonably be anticipated to materially affect the Building's electrical, mechanical or life safety systems or require a building permit and (c) will not result in changes to the Premises or Building that are visible from the outside of the Building or the Common Areas (collectively, the "**Cosmetic Changes**").

8.2 **Manner of Construction.** Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors, subcontractors, materials, mechanics and materialmen approved by Landlord (such approval not to be unreasonably withheld and given or withheld within five (5) business days of a request), and the requirement that all Alterations conform or exceed in terms of quality and style to the building's standards established by Landlord. If such Alterations will involve the use of or disturb Hazardous Materials existing in the Premises, Tenant shall comply with Landlord's reasonable rules and regulations concerning such Hazardous Materials. Landlord's approval of the plans, specifications and working drawings for Tenant's Alterations shall create no responsibility or liability on the part of Landlord for their completeness, design sufficiency, or compliance with all Laws. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations (collectively, "**Applicable Laws**") and pursuant to a valid building permit, issued by the City of San Diego, all in conformance with Landlord's reasonable construction rules and regulations to the extent not inconsistent with the provisions of this Lease

and the plans and specifications previously approved by Landlord. In the event Tenant performs any Alterations in the Premises which require or give rise to governmentally required changes to the "Base Building," as that term is defined below, then Landlord (or Landlord's property manager) shall, at Tenant's expense, make such changes to the Base Building. The "**Base Building**" shall include the Building Structure and the Building Systems, and the public restrooms and the systems and equipment located in the internal core of the Building on the floor or floors on which the Premises are located. In performing the work of any such Alterations, Tenant shall have the work performed in such manner so as not to obstruct access to the Project or any portion thereof, by any other tenant of the Project, and so as not to obstruct the business of Landlord or other tenants in the Project. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of San Diego in accordance with Section 3093 of the California Civil Code or any successor statute and furnish a copy thereof to Landlord upon recordation, and timely give all notices required pursuant to Section 3259.5 of the California Civil Code or any successor statute (failing which, Landlord may itself execute and file such Notice of Completion and give such notices on behalf of Tenant as Tenant's agent for such purpose), and Tenant shall deliver to the Project management office a reproducible copy of the "as built" drawings of the Alterations as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

**8.3 Payment for Improvements.** If payment is made directly to contractors, Tenant shall comply with Landlord's requirements for final lien releases and waivers in connection with Tenant's payment for work to contractors. Whether or not Tenant orders any work directly from Landlord (or Landlord's property manager), Tenant shall reimburse to Landlord (or Landlord's property manager) the actual out-of-pocket cost paid to third parties arising from Landlord's (or Landlord's property manager's) involvement with such work and for Alterations which are not Cosmetic Changes. Except in connection with Cosmetic Changes, Tenant shall pay to Landlord a coordination fee in the amount of one percent (1%) of the hard cost of construction for any Alterations.

**8.4 Construction Insurance.** In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant or Tenant's contractor carries "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof

**8.5 Landlord's Property.** All Alterations and improvements which may be installed or placed in or about the Premises, from time to time, shall be at the sole cost of Tenant and shall be and become the property of Landlord. Tenant shall not be required to remove Tenant Improvements except as provided in Section 2.4 of the Tenant Work Letter. However, Landlord may, however, by written notice to Tenant at least sixty (60) days prior to the end of the Lease

Term, or given following any earlier termination of this Lease, require Tenant, at Tenant's expense, to remove any Alterations which are "Above Standard Tenant Improvements," as that term is defined in Section 2.4 of the Tenant Work Letter, located within the Premises and replace the same with then existing "Building Standard Tenant Improvements," as that term is defined in Section 2.3 of the Tenant Work Letter, and to repair any damage to the Premises and Building caused by such removal and return the affected portion of the Premises to a building standard tenant improved condition. Landlord may, however, only require removal of such Alterations if Landlord notifies Tenant at the time of Landlord's approval of construction drawings for such Alterations that Landlord will require such removal as provided in this Section 8.5; provided, however, Landlord may subsequently withdraw the requirement for such removal by written notice to Tenant. If Tenant fails to comply with Tenant's obligations under this Section 8.5 above, then Landlord may do so and may charge the Actual Cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures and/or equipment in, on or about the Premises, which obligations of Tenant shall survive the expiration or earlier termination of this Lease.

## ARTICLE 9

### COVENANT AGAINST LIENS

Tenant shall keep the Project and Premises free from any liens (or cause such liens to be removed within five (5) business days of receipt of notice from Landlord) arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least fifteen (15) days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and recording appropriate notices of non-responsibility. Tenant shall remove any such lien by bond or otherwise within five (5) business days after notice by Landlord, and if Tenant shall fail to do so, Landlord may, on five (5) additional business days' notice to Tenant, pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Building or Premises arising in connection with any such work or respecting the Premises not performed by or at the request of Landlord shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Project, Building and Premises.

## ARTICLE 10

### INSURANCE

10.1 **Indemnification and Waiver.** Tenant shall indemnify, defend, protect, and hold Landlord and its authorized representatives ("**Landlord Parties**") harmless from any and all claims, loss, proceedings, damages, causes of action, liability, costs or expenses (collectively, a "**Claim**") in connection with, or caused by, or arising from any use of the Premises, the Storage Space, the Building, the Project or the conduct of its business, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises, the Storage Space, the Building or the Project, excluding any such Claim to the extent arising from or in connection with, or caused by Landlord's negligence or willful misconduct. Landlord shall hold Tenant, its contractors, agents, servants, employees, invitees, guests or licensees (collectively, "**Tenant Parties**") harmless from all damages arising out of any such Claims to the extent arising from, or in connection with, or caused by Landlord's negligence or willful misconduct. A party's obligation under this paragraph to indemnify and hold the other party harmless shall be limited to the sum that exceeds the amount of insurance proceeds, if any, received by the party being indemnified. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to person in, upon or about the Premises from any cause whatsoever except that which is caused by Landlord's gross negligence or willful misconduct. Further, any party's agreement to indemnify the other party pursuant to this Section 10.1 is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by either party pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to such party's indemnification obligations. Notwithstanding the foregoing limitations or exceptions to Landlord's liability contained in this Section 10.1, because Landlord is required to maintain insurance on the Building and Tenant compensates Landlord for such insurance as part of Tenant's Share of Operating Expenses and because of the existence of waivers of subrogation set forth in Section 10.5 of this Lease, Landlord hereby indemnifies, defends, protects, and holds Tenant harmless from any Claims for personal injury arising in the Common Areas and any Claims for property damage or loss to the Project or Building or any portion of the Project or Building located outside the Premises or to Landlord's property to the extent such claim is covered by such insurance (or if Landlord had carried the insurance required hereunder would have been covered), even if resulting from the negligent acts or omissions of Tenant or those of its agents, contractors, servants, employees or licensees. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination and shall not be limited by reason of any insurance carried by Landlord and Tenant.

10.2 **Tenant's Compliance With Landlord's Fire and Casualty Insurance.** Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any material increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such material increase.

10.3 **Tenant's Insurance.** Tenant shall maintain the following coverages in the following amounts.

10.3.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Tenant's operations, and contractual liabilities (covering the performance by Tenant of its indemnity agreements) including a Broad Form endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Section 10.1 of this Lease, for limits of liability not less than:

Bodily Injury and	\$3,000,000 each occurrence
Property Damage Liability	\$3,000,000 annual aggregate

10.3.2 Special Form (Cause of Loss) Property Insurance covering (i) all office furniture, business and trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant, (ii) the "Tenant Improvements," as that term is defined in Section 1.3 above, and (iii) all Alterations. Such insurance shall be for the full replacement cost (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, and explosion, and providing business interruption coverage for a period of one year (provided that such business interruption coverage need not include rental payment insurance).

10.3.3 Worker's Compensation and Employer's Liability or other similar insurance pursuant to all applicable state and local statutes and regulations.

Notwithstanding anything to the contrary contained herein, the Original Tenant (and not any assignee, subtenant or other transferee) may, subject to the provisions of this paragraph, fulfill any of its insurance obligations under this Section 10.3 above by self-insurance. Any self-insurance so maintained by Tenant shall be deemed to contain all of the terms and conditions applicable to such insurance as required in this Article 10, including, without limitation, a deemed additional insured provision (as to the coverage in Section 10.3.1) and a deemed waiver of subrogation (as to the coverage in Section 10.3.2); consequently, Landlord shall be treated, for all purposes, as if Tenant had actually purchased such insurance from a third party. If Tenant elects to so self-insure, then with respect to any claims which may result from incidents occurring during the Lease Term, such self-insurance obligation shall survive the expiration or earlier termination of this Lease to the same extent as the insurance required hereunder would survive.

10.4 **Form of Policies.** The minimum limits of policies of insurance required of any party under this Lease shall in no event limit the liability of any party under this Lease. Tenant's insurance shall (i) name Landlord, Landlord's lender, and any other party the Landlord so specifies, as an additional insured, including Landlord's managing agent, if any; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A-VIII in Best's Insurance Guide or which is otherwise acceptable to

Landlord and licensed to do business in the State of California; (iv) be primary insurance as to all claims arising within the Premises thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (v) be in form and content reasonably acceptable to Landlord; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord; and (vii) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least five (5) day before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, and such failure continues for five (5) business days after notice from Landlord, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor. Either party may satisfy its insurance obligations under this Lease with a blanket insurance policy covering additional locations.

10.5 **Subrogation.** Landlord and Tenant intend that their respective property loss risks shall be borne by insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such loss is the result of a risk insurable under policies of property damage insurance. Notwithstanding anything to the contrary in this Lease, the parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder from the insurance provider or from anyone other than Landlord and Tenant. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder.

10.6 **Intentionally Omitted.**

10.7 **Landlord's Insurance.** Landlord shall, as a cost to be included in Operating Expenses, procure and maintain during the Lease Term, a policy or policies of insurance covering (a) loss or damage to the Project on a one hundred percent (100%) replacement cost basis (adjusted periodically to account for changes in replacement cost) due to fire and other casualties covered within the classification of fire and extended coverage, vandalism coverage and malicious mischief, sprinkler leakage, water damage and special extended coverage on the Project, and (b) commercial general liability insurance in amounts not less than required of Tenant hereunder and any other insurance that Landlord or its lender may require. Except as set forth above, such insurance shall be in such amounts, from such companies, and on such terms and conditions as Landlord or its lender may deem appropriate from time to time.

**ARTICLE 11**

**DAMAGE AND DESTRUCTION**

11.1 **Repair of Damage to Premises by Landlord.** Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Project, Building or Premises or any Common Areas serving or providing access to the Project, Building

or Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the Premises and such Common Areas, Project and Building. Such restoration shall be to substantially the same condition of the Base Building and the Common Areas prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Building or Project or any other modifications to the Common Areas deemed desirable by Landlord, provided that access to and use of the Premises, Project and Building and any common restrooms serving the Premises shall not be materially impaired. Upon the occurrence of any damage to the Premises, upon notice (the "**Landlord Repair Notice**") to Tenant from Landlord, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant, if any, under Tenant's insurance required under Section 10.3.2 of this Lease, and Landlord shall repair any injury or damage to the Tenant Improvements and Alterations and shall return such Tenant Improvements and Alterations to their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, or if Tenant is self insuring Tenant's insurance required under Section 10.3.2 of this Lease, the cost of such repairs shall be paid by Tenant to Landlord's contractor or, when appropriate, to Landlord on a progress payment basis after the insurance proceeds (if any) have been exhausted and only after Tenant has received the appropriate conditional lien releases. Prior to the commencement of construction of the Tenant Improvements and Alterations, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord shall not be liable (subject to Section 19.7) for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Common Areas or Project necessary to Tenant's occupancy, Landlord shall allow Tenant an abatement of Rent in accordance with Section 19.7.

11.2 **Landlord's Option to Repair.** Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Project, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of discovery of the damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Building or Project shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within three hundred sixty-five (365) days after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums) and Landlord terminates the leases of all other similarly situated tenants in the Building; (ii) the damage exceeds 50% of the full insurable value of the Building and the holder of any mortgage on the Building or Project or ground lessor with respect to the Building or Project shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, or shall terminate the ground lease, as the case may be and Landlord terminates the leases of all other similarly affected tenants in the Building; (iii) the damage is not covered by insurance required to be carried by Landlord under this Lease nor actually covered by Landlord's insurance, the cost of repairs not covered by insurance are estimated to exceed Twenty Million Dollars (\$20,000,000) and Landlord terminates the leases of all other similarly

affected tenants; or (iv) the damage occurs during the last twelve (12) months of the Lease Term and Tenant has not exercised an extension Option.

11.3 **Waiver of Statutory Provisions.** The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises, the Building or the Project, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises, the Building or the Project.

11.4 **Tenant's Termination Right.** Within thirty (30) days after the occurrence of any damage to the Project or Building, Landlord shall provide Tenant with its reasonable estimate of how long it will take to complete the repairs following the occurrence of the damage. Tenant shall then have the termination rights set forth in Section 19.7.

## **ARTICLE 12**

### **NONWAIVER**

No provision of this Lease shall be deemed waived by either party hereto unless expressly waived in a writing signed thereby. The waiver by either party hereto of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No acceptance of a lesser amount than the Rent herein stipulated shall be deemed a waiver of Landlord's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the full amount due. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

## **ARTICLE 13**

### **CONDEMNATION**

If the whole or any material part of the Project, Premises or Building shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-

public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any major part of the Premises or Building, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord and Tenant shall each have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority by sixty (60) days' notice to the other. Tenant shall not because of such taking assert any claim against Landlord for any compensation because of such taking. Landlord shall be entitled to any award for its interests in the Project, Premises or Building. Tenant shall have the right to assert any separate claim available by law to Tenant. All Rent shall be apportioned as of the date of such termination.

If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated and Landlord and Tenant shall each be entitled to assert any separate claim(s) available to them by law.

In the event of a taking of the Premises, or any part thereof, for a temporary use (180 days or less), (i) this Lease shall be and remain unaffected thereby and rent shall not abate, and (ii) Landlord and Tenant shall be entitled to receive for itself such portion or portions of any award(s) provided by law for such use with respect to the period of the taking which is within the Term of this Lease.

## ARTICLE 14

### ASSIGNMENT AND SUBLETTING

14.1 **Transfers.** Tenant shall not, without the prior written consent of Landlord (which consent shall not be unreasonably withheld), assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including calculation of the "**Transfer Premium**", as that term is defined in Section 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and an executed copy of all documentation effectuating the proposed Transfer, including all operative documents to evidence such Transfer and all agreements incidental or related to such Transfer, provided that Landlord shall have the right to require Tenant to utilize Landlord's standard Transfer documents in connection with the documentation of such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information

required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space and (v) an executed estoppel certificate from Tenant stating the information set forth in items (a) through (d) in Article 17 below. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's (or Landlord's property manager's) review and processing fees (which shall not exceed \$1,000.00 for each proposed Transfer), as well as any reasonable out-of-pocket professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord (or Landlord's property manager), within thirty (30) days after written request by Landlord. Except to the extent required by law, Landlord shall keep any financial information provided by Tenant or any proposed Transferee confidential and shall not disclose such information to any person or entity other than its actual or prospective lender(s) and purchaser(s) and Landlord's and their agents, consultants and employees. Landlord shall, at the request of any proposed Transferee, enter into a commercially reasonable confidentiality agreement in connection with such proposed Transferee's provision of financial information to Landlord.

14.2 **Landlord's Consent.** Landlord shall not unreasonably withhold or delay its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building as judged with reference to the other tenants of the Building;

14.2.2 The Transferee intends to use the Subject Space for purposes which are not permitted under this Lease;

14.2.3 The Transferee is not a party of reasonable financial worth and/or financial stability (when judged with whatever credit enhancements are being offered and the then credit standing of Tenant) in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested;

14.2.4 The proposed Transfer would cause a violation of another lease for space in the Building, or would give an occupant of the Building a right to cancel its lease (but Landlord shall respond to Tenant's request for a list of any such restrictions then in effect within ten (10) days after such request);

14.2.5 Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) is negotiating with Landlord (which for purposes of this item (i) and (ii), below, shall be evidenced by the transmittal of one or more letters of intent, draft proposals or lease documents by Tenant to Landlord or Landlord to Tenant) to lease space in the Project at such time, or

(ii) has negotiated with Landlord for space in the Building during the one (1)-month period immediately preceding the Transfer Notice (provided that such one (1)-month period shall be extended to two (2) months if any initial draft of the Lease has been circulated or if both the Landlord and the prospective Transferee have delivered a proposal to the other);

14.2.6 The Transferee does not intend to occupy the entire Subject Space and conduct its business therefrom for a substantial portion of the term of the Transfer; or

14.2.7 The Transfer provides for a rental or other payment for the use, occupancy or utilization of the Subject Space based in whole or in part on the income or profits derived by any person or entity from the Subject Space (other than an amount based on a fixed percentage or percentages of gross receipts or sales).

Notwithstanding anything to the contrary contained herein, in no event shall Tenant enter into any Transfer for the possession, use, occupancy or utilization (collectively, "use") of the part of the Premises which (i) provides for a rental or other payment for such use based in whole or in part on the income or profits derived by any person from the Premises (other than an amount based on a fixed percentage or percentages of gross receipts or sales), and Tenant agrees that all Transfers of any part of the Premises shall provide that the person having an interest in the use of the Premises shall not enter into any lease or sublease which provides for a rental or other payment for such use based in whole or in part on the income or profits derived by any person from the Premises (other than an amount based on a fixed percentage or percentages of gross receipts of sales), or (ii) would cause any portion of the amounts payable to Landlord hereunder to not constitute "rents from real property" within the meaning of Section 512(b)(3) of the Internal Revenue Code of 1986, and any such purported Transfer shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy or utilization of any part of the Premises.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2, Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Subject Space, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease, provided that if there are any material changes in the terms and conditions from those specified in the Transfer Notice such that Landlord would initially have been entitled to refuse its consent to such Transfer under this Section 14.2, Tenant shall again submit the Transfer to Landlord for its approval under this Article 14. Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a declaratory judgment and an injunction for the relief sought and the right to monetary damages, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

14.3 **Transfer Premium.** If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium," as that term is defined in this Section 14.3, received by Tenant from

such Transferee in any particular calendar month, which amount shall be paid to Landlord only after Tenant has first recovered, without amortization, all of its Subleasing Costs, within thirty (30) days following Tenant's receipt of the same. "**Transfer Premium**" shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred, after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises in connection with the Transfer, (ii) any market rate, third party brokerage commissions in connection with the Transfer, (iii) attorneys' fees, and (iv) allowances and other out-of-pocket economic concessions which Tenant pays to the Transferee (collectively, the "**Subleasing Costs**"); provided, however, that if, at the time of any such sublease or assignment, Landlord determines that Landlord's receipt of the foregoing amounts may result in the receipt by Landlord of amounts that the Landlord may not be permitted to receive pursuant to any requirements, obligation or understanding applicable to Landlord, the parties agree to enter into an amendment to this Lease which revises such amounts in a manner that (x) is mutually agreed to by the parties and (y) does not result in any material increase in the expected costs or benefits to either party under this Section 14.3.

14.4 **Landlord's Option as to Subject Space.** Notwithstanding anything to the contrary contained in this Article 14, if Tenant proposes to sublease the Premises for all or substantially all of the remainder of the Lease Term or if Tenant proposes to assign this Lease, Landlord shall have the option, by giving written notice to Tenant within thirty (30) days after receipt of any Transfer Notice, to recapture the Subject Space for the remainder of the Lease Term. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the date stated in the Transfer Notice as the effective date of the proposed Transfer (or at Landlord's option, shall cause the Transfer to be made to Landlord or its agent, in which case the parties shall execute the Transfer documentation promptly thereafter). In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. If Landlord declines, or fails to elect in a timely manner to recapture the Subject Space under this Section 14.4, then, provided Landlord has consented to the proposed Transfer, Tenant shall be entitled to proceed to transfer the Subject Space to the proposed Transferee, subject to provisions of this Article 14.

14.5 **Effect of Transfer.** If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee (which must be accomplished in accordance with the provisions of this Article 14), (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any

liability under this Lease, including, without limitation, in connection with the Subject Space. In no event shall any Transferee assign, sublease or otherwise encumber its interest in this Lease or further sublet any portion of the Subject Space, or otherwise suffer or permit any portion of the Subject Space to be used or occupied by others without first complying with the provisions of this Article 14 as if it were the Tenant. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than two percent (2%), Tenant shall pay Landlord's costs of such audit.

14.6 **Intentionally Omitted.**

14.7 **Occurrence of Default.** Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If Tenant shall be in Default under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such Default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in Default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

**ARTICLE 15**

**SURRENDER OF PREMISES; OWNERSHIP  
AND REMOVAL OF TRADE FIXTURES**

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

merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises or terminate any or all such sublessees or subtenancies.

15.2 **Removal of Tenant Property by Tenant.** Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions, cabling installed by or at the request of Tenant that is not contained in protective conduit or metal raceway and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

## **ARTICLE 16**

### **HOLDING OVER**

If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Rent shall be payable at a monthly rate equal to the product of 150% (but the 150% shall be 125% for the first sixty (60) days of any holdover) of the Rent applicable during the last rental period of the Lease Term under this Lease. Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. For purposes of this Article 16, a holding over shall include Tenant's remaining in the Premises after the expiration or earlier termination of the Lease Term, as required pursuant to the terms of Section 8.5, above, to remove any Alterations or Above Building Standard Tenant Improvements located within the Premises and replace the same with Building Standard Tenant Improvements. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law; provided, however, if Landlord provides Tenant with at least ninety (90) days' prior written notice that Landlord has a signed proposal or lease from a succeeding tenant to lease all or any portion of the Premises, and if Tenant fails to surrender such portion of the Premises upon the later of (A) the date of expiration of such ninety (90) day period, or (B) the date of expiration or termination of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

## ARTICLE 17

### ESTOPPEL CERTIFICATES

Within twenty (20) days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, stating (a) that this Lease is unmodified and is in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and setting forth such modifications), (b) the dates to which Rent and other sums payable hereunder have been paid, (c) either that, to the knowledge of Tenant no default exists hereunder or, specifying each such default of which Tenant has knowledge and (d) any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee or in accordance with the last sentence of this Article 17, any subtenant or assignee of Tenant. Any such certificate may be relied upon by any current or prospective mortgagee or purchaser of all or any portion of the Project. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. At any time during the Lease Term, but not more than one (1) time per calendar year, Landlord may require Tenant, as Tenant maintains in the regular course of its business, to provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be delivered by Tenant to Landlord within fifteen (15) days after Landlord's written request therefor. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception. Except as required by Law, Landlord shall keep confidential and shall not disclose to any person or entity other than its present and prospective purchaser(s) and lender(s) and their agents, consultants and employees, and shall use commercially reasonable efforts to ensure that its agents, consultants and employees do not disclose to any other person or entity, any financial information provided by Tenant and Landlord shall, at the request of Tenant, enter into a commercially reasonable confidentiality agreement in connection with financial information to be provided to Landlord. Landlord hereby agrees to provide to Tenant an estoppel certificate signed by Landlord, containing the same types of information as set forth in subsections (a), (b), (c) and (d) above, and within the same periods of time, and subject to the same conditions and consequences, as set forth above, with such changes as are reasonably necessary to reflect that the estoppel certificate is being granted and signed by Landlord to Tenant, rather than from Tenant to Landlord or a lender.

## ARTICLE 18

### SUBORDINATION

This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof ("**Landlord Mortgagees**"), if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Landlord shall use commercially reasonable efforts to obtain a

Subordination, Non-Disturbance and Attornment ("SNDA") in a form substantially similar to the form attached hereto as **Exhibit F** to be executed by Tenant and the current Landlord's Mortgagee (who Landlord warrants and represents to Tenant is Northwestern Mutual) for the benefit of Tenant. In addition, a condition to Tenant's obligation to subordinate its interest under this Lease to the interest of any future Landlord's Mortgagee shall be Tenant's receipt of an SNDA in commercially reasonable form at no cost to Tenant. Any such SNDAs shall provide that in the event any proceedings are brought for the foreclosure of any such mortgage or deed of trust or deed in lieu thereof (or if any ground lease is terminated), Tenant shall attorn to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), and recognize such purchaser or lienholder or ground lessor as the lessor under this Lease and such lienholder or purchaser or ground lessor shall agree to accept and be bound by this Lease and not disturb Tenant's occupancy, so long as Tenant timely pays the rent and observes and performs the terms, covenants and conditions of this Lease to be observed and performed by Tenant prior to the expiration of all applicable notice and cure periods. All SNDA's shall be in recordable form (and may be recorded at Tenant's election and expense) and shall acknowledge Tenant's offset rights as expressly described in this Lease. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within twenty (20) days of request by Landlord, execute a commercially reasonable SNDA to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale.

## **ARTICLE 19**

### **DEFAULTS; REMEDIES**

19.1 **Events of Default.** The occurrence of any of the following shall constitute a default of this Lease ("**Default**") by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due, which failure continues for five (5) business days after notice from Landlord that such amount was not paid when due; or

19.1.2 Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant (other than as provided in 19.1.1 or 19.1.3) where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default; or

19.1.3 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease where such failure continues for more than ten (10) business days after notice from Landlord.

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law.

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

19.2.1 Terminate this Lease, in which event Tenant shall promptly surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

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

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

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant (whether performed by Landlord or Landlord's property manager), whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(v) At Landlord's election, such other amounts in addition to or in lieu of, but not duplicative of, the foregoing as may be permitted from time to time by applicable law.

The term "**rent**" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the rate set forth in Article 25 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Paragraph 19.2.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative (but not to the extent they permit a duplicate recovery) with each other and cumulative (but not to the extent they permit a duplicate recovery) and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Subleases of Tenant.** If Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 **Intentionally Omitted.**

19.5 **Efforts to Relet.** No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant.

19.6 **Landlord Default.** Notwithstanding anything to the contrary set forth in this Lease, Landlord shall not be in default in the performance of any obligation required to be performed by Landlord pursuant to this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be in default under this Lease if it shall commence such performance within such thirty (30) day period and thereafter diligently pursue the same to completion. Upon any such default by Landlord under this Lease, Tenant may, except as otherwise specifically provided in this Lease to the contrary and subject to the provisions of Section 29.13 below, exercise any of its rights provided in law or in equity.

19.7 **Abatement of Rent.** In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, as a result of (i) any repair, maintenance or alteration performed by Landlord, or which Landlord failed to perform, after the Lease Commencement Date and required by this Lease, which substantially interferes with Tenant's use of the Premises or the Parking Facility, (ii) any failure to provide services or access to the Premises, the Project or the Parking Facility, regardless of whether caused by circumstances beyond Landlord's control, (iii) the presence of Hazardous Materials in, on or around the Building or the Parking Facility taking into account the standards and guidelines included in the definition of Applicable Laws with respect to Hazardous Materials, which pose a significant health risk to occupants of the Premises and are not caused by Tenant or any of the Tenant Parties, or (iv) because of the occurrence of a casualty (each such set of circumstances as set forth in items (i), (ii), (iii) and (iv), above, to be known as an "**Abatement Event**"), then Tenant shall give Landlord notice of such Abatement Event, and if such Abatement Event continues for three (3) consecutive business days after Landlord's receipt of any such notice or ten (10) days after Landlord's receipt of any such notice(s) in any consecutive twelve (12) month period (the "**Eligibility Period**"), then the Base Rent and Additional Rent and Tenant's obligation to pay for parking shall be abated or reduced, as the case may be, retroactive to the date of the commencement of the Abatement Event, for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises; provided, however, in the event that Tenant is prevented from using, and does not use, a portion of the Premises for a period of time in excess of the Eligibility Period and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after the commencement of the Abatement Event during which Tenant is so prevented from effectively conducting its business therein, the Base Rent and Additional Rent and Tenant's obligation to pay for parking for the entire Premises shall be abated for such time as Tenant continues to be so prevented from using, and does not use, the Premises for the purpose of conducting business therein. If, however, Tenant reoccupies any portion of the Premises during such period for the purpose of conducting business therein, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant during the period Tenant reoccupies such portion of the Premises. If Tenant's right to abatement occurs during a free rent period which arises after the Lease Commencement Date, Tenant's free rent period shall be extended for the number of days that the abatement period overlapped the free rent period (the "**Overlap Period**"). Landlord shall have the right to extend the expiration date of this Lease for a period of time equal to the Overlap Period if Landlord sends a notice to Tenant of such election within ten (10) days following the end of the extended free rent period. Subject to the provisions of Section 10.1 respecting personal injury or damage to Tenant's property, such right to abate Base Rent, Additional Rent and parking charges shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event; provided, however, that if Landlord has not cured such Abatement Event within two hundred seventy (270) days after receipt of notice from Tenant, Tenant shall have the right to terminate this Lease during the first five (5) business days of each calendar month following the end of such 270-day period until such time as Landlord has cured the Abatement Event, which right may be exercised only by delivery of notice to Landlord (the "**Abatement Event Termination**").

Notice") during such five business-day period, and shall be effective as of a date set forth in the Abatement Event Termination Notice (the "**Abatement Event Termination Date**"), which Abatement Event Termination Date shall not be less than ten (10) business days, and not more than six (6) months, following the delivery of the Abatement Event Termination Notice. Notwithstanding the foregoing, if Tenant delivers an Abatement Event Termination Notice to Landlord, then Landlord shall have the right to suspend such termination for a period of thirty (30) days by delivering to Tenant, within five (5) business days of Landlord's receipt of the Abatement Event Termination Notice, a certificate of Landlord's contractor responsible for curing such Abatement Event stating that it is such contractor's reasonable judgment that such Abatement Event will be substantially cured (*i.e.*, cured other than "punch list" items) within thirty (30) days after the date of delivery of the Abatement Event Termination Notice. If the Abatement Event is so substantially cured prior to the expiration of such thirty (30) day period, then the Abatement Event Termination Notice shall be of no force or effect, but if the Abatement Event is not substantially cured within such thirty (30) day period, this Lease shall terminate as of the Abatement Event Termination Date. If Tenant's right to abatement occurs because of an eminent domain taking and/or because of damage or destruction to the Premises, Tenant's abatement period shall continue until Tenant has been given sufficient time and sufficient access to the Premises to rebuild that portion of the Premises, if any, which it is required to rebuild pursuant to this Lease and to install its property, furniture, fixtures, and equipment and to move in over a weekend. To the extent Tenant is entitled to abatement without regard to the Eligibility Period, because of an event described in Articles 11 or 13 of this Lease, then the Eligibility Period shall not be applicable. Notwithstanding the foregoing, Tenant shall not have the right to terminate this Lease pursuant to the terms of this Section 19.7, if (A) as of the date of delivery by Tenant of the Abatement Event Termination Notice, the first trust deed holder of the Building (the "**Bank**") has recorded a notice of default on the Building or filed a notice evidencing a legal action by the Bank against Landlord on the Building, and (B) within ten (10) business days following the date of the Abatement Event Termination Notice the Bank notifies Tenant of its intent to proceed to gain possession of the Building, the Bank diligently proceeds to gain possession of the Building, and, to the extent the Bank does gain possession of the Premises, the Bank diligently proceeds to cure such Abatement Event. Except as provided in this Section 19.7, nothing contained herein shall be interpreted to mean that Tenant is excused from paying Rent due hereunder.

## ARTICLE 20

### COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and as long as no Default is then in existence beyond any applicable notice and cure period, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

**ARTICLE 21**

**INTENTIONALLY OMITTED**

**ARTICLE 22**

**INTENTIONALLY OMITTED**

**ARTICLE 23**

**SIGNS**

23.1 **Full Floors.** Subject to Landlord's prior written approval, in its sole discretion, and provided all signs are in keeping with the quality, design and style of the Building and Project, Tenant, if the Premises comprise an entire floor of the Building, at its sole cost and expense, may install identification signage anywhere in the Premises including in the elevator lobby of the Premises, provided that such signs must not be visible from the exterior of the Building.

23.2 **Multi-Tenant Floors.** If other tenants occupy space on the floor on which the Premises is located, Tenant's identifying signage shall be provided by Landlord, at Tenant's cost, and such signage shall be comparable to that used by Landlord for other similar floors in the Building and shall comply with Landlord's Building standard signage program.

23.3 **Building Directory.** Tenant shall be entitled, at Tenant's sole cost and expense, to its pro rata share of lines on the Building directory to display Tenant's name and location in the Building. The location, quality, design, style, and size of such signage shall be consistent with the Landlord's Building standard signage program. Any changes to Tenant's directory signage shall be at Tenant's sole cost and expense.

23.4 **Prohibited Signage and Other Items.** Any signs, notices, logos, pictures, names or advertisements which are installed and that have not been separately approved by Landlord may be removed without notice by Landlord at the sole expense of Tenant. Tenant may not install any signs on the exterior or roof of the Project or the Common Areas. Any signs, window coverings, or blinds (even if the same are located behind the Landlord-approved window coverings for the Building), or other items visible from the exterior of the Premises or Building, shall be subject to the prior approval of Landlord, in its sole discretion.

**ARTICLE 24**

**COMPLIANCE WITH LAW**

Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with any law, statute, ordinance or other governmental

rule, regulation or requirement now in force or which may hereafter be enacted or promulgated, including, without limitation, the Americans with Disabilities Act of 1990 (as may be amended) (collectively, the "Laws"). At its sole cost and expense, Tenant shall promptly comply with all such Laws, including, without limitation, the making of any alterations and improvements to the Premises but not Base, Core and Shell of the Building unless required by Tenant's installation of other than normal and customary business office improvements to the Premises. Notwithstanding the foregoing to the contrary, Landlord shall be responsible, as part of Operating Expenses to the extent permitted under Article 4 above, for making all alterations to the following portions of the Building and Project required by applicable Laws: (i) structural portions of the Premises and Building, but not including Tenant Improvements or any Alterations installed by or at the request of Tenant; and (ii) those portions of the Building and Project located outside the Premises; provided, however, Tenant shall reimburse Landlord (or Landlord's property manager), within ten (10) days after invoice, for the costs of any such improvements and alterations and other compliance costs to the extent necessitated by or resulting from (A) any Alterations or Tenant Improvements installed by or on behalf of Tenant that do not constitute normal and customary business office improvements, (B) the negligence or willful misconduct of Tenant or any Tenant Parties that is not covered by insurance obtained or required to be obtained by Landlord and as to which the waiver of subrogation applies, and/or (C) Tenant's specific manner of use of the Premises for municipal government purposes (as distinguished from general office use). Landlord shall not do anything or suffer anything to be done on or about the Premises and/or the Project which will in any way conflict with any Laws.

## ARTICLE 25

### LATE CHARGES

If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) business days after notice from Landlord that said amount was not paid when due, then Tenant shall pay to Landlord a late charge equal to two percent (2%) of the overdue amount plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within five (5) business days after the date that the non-paying party receives notice from the other party that such amounts were not paid when due shall bear interest from the date when due until paid at a rate ("**Interest Rate**") per annum equal to the lesser of (i) the annual "**Bank Prime Loan**" rate cited in the Federal Reserve Statistical Release Publication G.13(415), published on the first Tuesday of each calendar month (or such other comparable index as Landlord and Tenant shall reasonably agree upon if such rate ceases to be published) plus four (4) percentage points, and (ii) the highest rate permitted by applicable law.

## ARTICLE 26

### LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

26.1 **Landlord's Cure.** All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent, except to the extent, if any, otherwise expressly provided herein. If Tenant shall fail to perform any obligation under this Lease, and, except in case of an emergency, such failure shall continue in excess of the time allowed under Section 19.1.2, above, unless a specific time period is otherwise stated in this Lease, Landlord may, but shall not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

26.2 **Tenant's Reimbursement.** Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord (or Landlord's property manager), upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 26.1; and (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

## ARTICLE 27

### ENTRY BY LANDLORD

Landlord (or Landlord's property manager) reserves the right at all reasonable times and upon reasonable notice to Tenant which shall not be less than two (2) business days (except in the case of an emergency) to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, mortgagees or tenants (but as to prospective tenants, only during the last twelve (12) months of the Lease Term or any applicable Option Term or any time that a Default exists), or to current or prospective mortgagees, ground or underlying lessors or insurers; (iii) post notices of nonresponsibility; or (iv) alter, improve or repair the Premises or the Building, or for structural alterations, repairs or improvements to the Building or the Building's systems and equipment, provided that no such alterations, improvements or repairs shall negatively impact the Project or the Premises or Tenant's use, occupancy or enjoyment thereof or Tenant's rights under this Lease, except to the extent required by Law. Notwithstanding anything to the contrary contained in this Article 27, Landlord (or Landlord's property manager) may enter the Premises at any time to (A) perform normal services required of Landlord, including janitorial service; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant which Tenant fails to perform after reasonable notice and opportunity to cure under Article 26 above. Landlord (or Landlord's property manager) may make any such entries without the abatement of Rent (except as provided in Section 19.7) and may take such reasonable steps as required to accomplish the stated purposes; provided, however, that Landlord shall use commercially reasonable efforts not to negatively impact Tenant's use, occupancy and enjoyment of the Premises. For each of the above purposes, Landlord shall at all times have a

key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord herein. Tenant may on five (5) business days' notice to Landlord, designate certain portions of its Premises which contain valuable property and/or confidential information as a "**Secured Area**" and Landlord shall not enter such areas absent an emergency threatening safety or property. Landlord shall have no obligation to perform janitorial services in any area so designated as a Secured Area. Landlord shall have the right to use reasonable force to gain access to such Secured Area in an emergency threatening safety or property; however, Landlord shall otherwise enter such Secured Area only on two (2) business days' prior notice to Tenant and only after providing Tenant with the opportunity to have a representative of Tenant present as an escort.

## ARTICLE 28

### TENANT PARKING

28.1 **Tenant Parking Passes.** Tenant shall have the right to rent from Landlord, commencing on the Lease Commencement Date, the number of unreserved parking passes set forth in Section 9 of the Summary, on a monthly basis throughout the Lease Term, which parking passes shall pertain to the Project parking facility and shall entitle Tenant and/or its personnel to park one (1) vehicle in one (1) parking space per pass rented. Any such passes for unreserved parking spaces shall be on a first-come, first-serve basis. Within two (2) months after the Lease Commencement Date, Tenant shall, by written notice ("**Parking Notice**") to Landlord, indicate the number of unreserved parking passes to which Tenant initially wants to utilize, but not to exceed the number of unreserved parking passes specified in Section 9 of the Summary. If Tenant's Parking Notice indicates that Tenant commits to lease less than the entire number of unreserved parking passes to which Tenant is entitled, any such unreserved parking passes which Tenant does not commit to lease shall be subsequently available to Tenant only if, at the time Tenant wishes to rent such additional unreserved parking passes, Landlord reasonably determines that such unreserved parking passes are then available. Tenant shall pay to Landlord for automobile parking passes on a monthly basis the prevailing rate charged from time to time at the location of such parking passes. In addition, Tenant shall be responsible for the full amount of any taxes, if any, imposed by any governmental authority in connection with the renting of such parking passes by Tenant or the use of the parking facility by Tenant. Tenant's continued right to use the parking passes is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility where the parking passes are located, including any sticker or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations and Tenant not being in default under this Lease. In addition, Tenant shall comply with all applicable governmental resolutions, laws, rules and regulations.

28.2 **Other Terms.** Landlord specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Project Parking Facility at any time (subject to Tenant's rights under this Article 28 and provided that such changes do not materially diminish Tenant's beneficial use of the Parking Facility unless such changes are required by Law) and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease (except as provided in Section 19.7), from time to time, close-off or restrict access to the Project Parking Facility for purposes of permitting or facilitating any such construction, alteration or improvements. Notwithstanding the foregoing, Tenant shall have no obligation to pay for parking passes to the extent Tenant is unable to utilize such parking passes due to an Abatement Event and if Tenant is unable to use its parking passes as a result of an Abatement Event, Landlord agrees to work with Tenant in good faith to secure substitute parking within reasonable proximity to the Building at no additional cost to Tenant. The parking passes rented by Tenant pursuant to this Article 28 are provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval. Tenant may validate visitor parking (in 20 minute increments) by such method or methods as may be established from time to time, at the validation rate from time to time generally applicable to visitor parking, but in no event greater than the validation rate generally charged in Comparable Buildings for similar validation. Notwithstanding the foregoing, and in addition thereto, Tenant's visitors may utilize unreserved visitor parking in the Parking Facility on a first-come, first-served basis.

28.3 **Parking Procedures.** The parking passes applicable to unreserved parking spaces will not be separately identified. Landlord shall have no obligation to monitor the use of such Parking Facility (except as expressly provided in Section 28.1 above), nor shall Landlord be responsible for any loss or damage to any vehicle or other property or for any injury to any person, except as expressly provided in Section 10.1 above. The parking passes shall be used only for parking of automobiles no larger than full size passenger automobiles, sport utility vehicles or pick-up trucks in connection with Tenant's business operations at the Premises only during the hours that Tenant and/or its personnel are conducting business operations from the Premises; provided, however, occasional overnight parking (not to exceed three (3) consecutive nights) associated with Tenant's or its personnel's conduct of business from the Premises shall be permitted, subject to Tenant's and/or its personnel's compliance with Landlord's rules related to such overnight parking. Tenant shall comply with all reasonable and non-discriminatory rules and regulations which may be reasonably prescribed from time to time with respect to parking and/or the parking facilities servicing the Project. Tenant shall not at any time use more parking spaces in the Project parking facility than the number of parking passes so allocated to Tenant unless Tenant pays the visitor rate or, except as provided in Section 28.1 above, park its vehicles or the vehicles of others in any portion of the Project parking facility not designated by Landlord as a non-exclusive parking area. Except as provided in Section 28.1 above, Tenant shall not have the exclusive right to use any specific parking space. If any person or entity has the exclusive right to use any particular parking space(s), Tenant shall not use such spaces. All trucks (other than pick-up trucks) and delivery vehicles shall be (i) loaded and unloaded in a manner which does not interfere with the businesses of other occupants of the Project, and (ii) permitted to remain on the Project only so long as is reasonably necessary to complete loading and unloading. In the event Landlord elects in its reasonable discretion or is required by any law to limit or control parking, whether by validation of parking tickets or any other method of

assessment, Tenant agrees to participate in such validation or assessment program under such reasonable rules and regulations as are from time to time established by Landlord, but subject to the provisions of Section 28.2 above with respect to validation pricing.

## ARTICLE 29

### MISCELLANEOUS PROVISIONS

29.1 **Terms; Captions.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.2 **Binding Effect.** Subject to all other provisions of this Lease, each of the covenants, conditions and provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective heirs, personal representatives, successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 **No Air Rights.** No rights to any view or to light or air over any property, whether belonging to Landlord or any other person, are granted to Tenant by this Lease. If at any time any windows of the Premises are temporarily darkened or the light or view therefrom is obstructed by reason of any repairs, improvements, maintenance or cleaning in or about the Project, the same shall be without liability to Landlord and without any reduction or diminution of Tenant's obligations under this Lease.

29.4 **Intentionally Omitted.**

29.5 **Transfer of Landlord's Interest.** Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, to the extent of the assumption of the liabilities under this Lease by the transferee by law or otherwise, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, and Tenant shall attorn to such transferee. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

29.6 **Intentionally Omitted.**

29.7 **Landlord's Title.** Landlord's title is and always shall be paramount to the title of Tenant. Nothing herein contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord.

29.8 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

29.9 **Application of Payments.** Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect.

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

29.11 **Partial Invalidity.** If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.12 **No Warranty.** In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Additional Rent or the amount of the Additional Rent in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis, or any warranty or any statement of Landlord which is not set forth herein or in one or more of the exhibits attached hereto.

29.13 **Landlord Exculpation.** The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount ("**Recourse Amount**") which is equal to the lesser of (a) the interest of Landlord in the Building (including Landlord's interest in rental income, insurance proceeds, condemnation awards and sales and refinancing proceeds, in each case related to or arising out of the Project), or (b) the equity interest Landlord would have in the Building if the Building were encumbered by third-party debt in an amount equal to eighty percent (80%) of the value of the Building (as such value is determined by Landlord). However, subsection 29.13(b) shall not apply (so that the Recourse Amount shall equal the amount in subsection 29.13(a) above) if Landlord has encumbered the Building with third-party debt in an amount greater than eighty percent (80%) of the then value of the Building. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Section 29.13 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision

herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

29.14 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease constitutes the parties' entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. Neither party shall have waived or released any of its rights hereunder unless in writing and executed by the waiving or releasing party.

29.15 **Right to Lease.** Landlord reserves the right to effect such other tenancies in the Project as Landlord in the exercise of its good faith business judgment shall determine to best promote the interests of the Building or Project. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Building or Project.

29.16 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, delays beyond the normal time periods for issuing permits that existed as of the date of this Lease (except to the extent such delays are within the control of the party seeking such permit or caused by the failure of the party seeking such permit to submit required materials in compliance with all applicable codes or other requirements of the permitting office) and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (unless Tenant is entitled to Rent abatement under Articles 11, 13 or 19.7) (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

29.17 **Waiver of Redemption by Tenant.** Tenant hereby waives, for Tenant and for all those claiming under Tenant, any and all rights now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

29.18 **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) delivered by a nationally recognized overnight courier, or (C) delivered personally. Any Notice shall be sent, transmitted,

or delivered, as the case may be, to Tenant at the appropriate address set forth in Section 10 of the Summary, or to such other place as Tenant may from time to time designate in a Notice to Landlord, or to Landlord at the addresses set forth below, or to such other places as Landlord may from time to time designate in a Notice to Tenant. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the overnight courier delivery is made or refused, or (iii) the date personal delivery is made or refused. If Tenant is notified of the identity and address of Landlord's mortgagee or ground or underlying lessor, Tenant shall give to such mortgagee or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee or ground or underlying lessor shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant. As of the date of this Lease, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

Hines 525 B Street LP  
c/o Hines Interests Limited Partnership  
525 B Street, Suite 220  
San Diego, California 92101  
Attention: Property Manager

and

Hines 525 B Street LP  
c/o Hines Interests Limited Partnership  
2800 Post Oak Boulevard  
50<sup>th</sup> Floor  
Houston, Texas 77056-6118  
Attention: Mr. C. Hastings Johnson

29.19 **Joint and Several.** If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.20 **Authority; Tenant Representation.** If a party is a corporation, trust, partnership or limited liability company, each individual executing this Lease on behalf of such party hereby represents and warrants that such party is a duly formed and existing entity qualified to do business in California and that such party has full right and authority to execute and deliver this Lease and that each person signing on behalf of such party is authorized to do so. Each party hereby represents to the other that neither the representing party nor any members, partners, subpartners, parent organization, affiliate or subsidiary, or their respective officers, directors, contractors, agents, servants, employees, or licensees, to the representing party's current actual knowledge, appears on any of the following lists (collectively, "**Government Lists**") maintained by the United States government:

29.20.1 The two (2) lists maintained by the United States Department of Commerce (Denied Persons and Entities; the Denied Persons list can be found at <http://www.bxa.doc.gov/DPL/Default.shtm>; the Entity List can be found at <http://www.bxa.doc.gov/Entitied/Default.htm>);

29.20.2 The list maintained by the United States Department of Treasury (Specially Designated Nationals and Blocked Persons, which can be found at <http://www.ustreas.gov/ofac/t11sdn.pdf>);

29.20.3 The two (2) lists maintained by the United States Department of State (Terrorist Organizations and Debarred Parties; the State Department List of Terrorists can be found at <http://www.state.gov/s/ct/rls/fs/2001/6531.htm>; the List of Debarred Parties can be found at <http://www.pmdtc.org/debar059.htm>); and

29.20.4 Any other list of terrorists, terrorist, organizations or narcotics traffickers maintained pursuant to any of the rules and regulations of the Office of Foreign Assets Control, United States Department of Treasury, or by any other government or agency thereof.

29.21 **Attorneys' Fees.** In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys', experts' and arbitrators' fees and costs, incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action. For purposes hereof, "prevailing party" shall mean the party in whose favor final judgment, after appeal (if any), is rendered with respect to the claims asserted in any such action or proceeding.

29.22 **Governing Law; WAIVER OF TRIAL BY JURY.** This Lease shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) TO THE EXTENT PERMITTED BY LAW, IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY.

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

29.24 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent entitled to a commission in connection with the negotiation of this Lease, excepting only the real estate broker specified in Section 12 of the Summary (the "**Broker**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation

reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Broker, occurring by, through, or under the indemnifying party.

29.25 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent on any other provision of this Lease.

29.26 **Project or Building Name and Signage.** Landlord shall have the right at any time to change the name of the Project and to install, affix and maintain any and all signs on the exterior and on the interior of the Project as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Project or use pictures or illustrations of the Project in advertising or other publicity or for any purpose other than as the address of the business to be conducted by Tenant in the Premises, without the prior written consent of Landlord.

29.27 **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single lease.

29.28 **Intentionally Omitted.**

29.29 **Transportation Management.** Landlord and Tenant shall comply with all present or future government-mandated programs intended to manage parking, transportation or traffic in and around the Building, and in connection therewith, Landlord and Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with the other party, any governmental transportation management organization or any other transportation-related committees or entities.

29.30 **Building Renovations.** Except as provided to the contrary in this Lease, it is specifically understood and agreed that Landlord has made no representation or warranty to Tenant and has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, or any part thereof and that no representations respecting the condition of the Premises or the Building have been made by Landlord to Tenant except as specifically set forth herein or in the Tenant Work Letter and this Lease. However, Tenant hereby acknowledges that Landlord may during the Lease Term renovate, improve, alter, or modify (collectively, the "**Renovations**") the Project, the Building and/or the Premises including without limitation the parking structure, Common Areas, systems and equipment, roof, and structural portions of the same, which Renovations may include, without limitation, (i) installing sprinklers in the Building Common Areas and tenant spaces, (ii) modifying the Common Areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, seismic conditions, and building safety and security, and (iii) installing new floor covering, lighting, and wall coverings in the Building Common Areas, and in connection with any Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in the Building, limit or eliminate access to portions of the Project, including portions of the Common Areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Tenant hereby agrees that such Renovations and Landlord's actions in connection with such Renovations shall

in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent except as provided in Section 19.7. Notwithstanding any provision of this Lease to the contrary, Landlord may not alter the Parking Facility or Common Areas or make any renovations in a manner that would unreasonably interfere with Tenant's use of or access to the Premises, Tenant's parking rights or that would result in a material increase in Tenant's cost without Tenant's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

29.31 **No Violation.** Each party hereby warrants and represents that neither its execution of nor performance under this Lease shall cause it to be in violation of any agreement, instrument, contract, law, rule or regulation by which it is bound, and Tenant shall protect, defend, indemnify and hold Landlord harmless against any claims, demands, losses, damages, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees and costs, arising from its breach of this warranty and representation.

29.32 **Communications and Computer Lines.** Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the "Lines") at the Project in or serving the Premises, provided that (i) Tenant shall obtain Landlord's reasonable prior written consent, use an experienced and qualified contractor reasonably approved in writing by Landlord or use qualified City of San Diego staff, and comply with all of the other provisions of Articles 7 and 8 of this Lease, (ii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Project, as determined in Landlord's reasonable opinion but Landlord shall nevertheless provide sufficient space to Tenant to install such Lines as are necessary for normal and customary business office operations of Tenant (but not in excess of Tenant's prorata share of riser space available to all tenants), (iii) the Lines therefor (including riser cables) shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, and shall be surrounded by an industry standard protective conduit reasonably acceptable to Landlord, (iv) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, and (v) Tenant shall pay all costs in connection with the installation of its Lines, including any fees charged by Landlord for Tenant's use of the Building's telecommunications capacity in excess of Tenant's pro-rata share thereof. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which are at any time in violation of any laws or represent a dangerous or potentially dangerous condition.

29.33 **Office and Communications Services.**

29.33.1 **The Provider.** Landlord has advised Tenant that certain office and communications services may be offered to tenants of the Building by a concessionaire under contract to Landlord ("Provider"). Tenant shall be permitted but not obligated to contract with Provider for the provision of any or all of such services on such terms and conditions as Tenant and Provider may agree.

29.33.2 **Other Terms.** Tenant acknowledges and agrees that: (i) Landlord has made no warranty or representation to Tenant with respect to the availability of any such services, or the quality, reliability or suitability thereof; (ii) the Provider is not acting as the agent

or representative of Landlord in the provision of such services, and Landlord shall have no liability or responsibility for any failure or inadequacy of such services, or any equipment or facilities used in the furnishing thereof, or any act or omission of Provider, or its agents, employees, representatives, officers or contractors; (iii) Landlord shall have no responsibility or liability for the installation, alteration, repair, maintenance, furnishing, operation, adjustment or removal of any such services, equipment or facilities; and (iv) any contract or other agreement between Tenant and Provider shall be independent of this Lease, the obligations of Tenant hereunder, and the rights of Landlord hereunder, and, without limiting the foregoing, no default or failure of Provider with respect to any such services, equipment or facilities, or under any contract or agreement relating thereto, shall have any effect on this Lease or give to Tenant any offset or defense to the full and timely performance of its obligations hereunder, or entitle Tenant to any abatement of rent or additional rent or any other payment required to be made by Tenant hereunder, or constitute any accrual or constructive eviction of Tenant, or otherwise give rise to any other claim of any nature against Landlord.

29.34 **Asbestos Disclosures.** Tenant acknowledges that Landlord has advised Tenant that the Project contains or, because of its age, is likely to contain, asbestos-containing materials ("ACMs"). If Tenant undertakes any Alterations or repairs to the Premises (to the extent permitted under Article 8), Tenant shall, in addition to complying with the requirements of Article 8, undertake the Alterations or repairs in a manner that avoids disturbing any ACMs present in the Project. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable environmental laws, including giving all notices required by the California Health and Safety Code. Notwithstanding the foregoing, any ACMs disturbed in the course of construction of the Improvements to be performed pursuant to **Exhibit "B"**, shall be encapsulated or removed by Landlord at Landlord's sole cost and expense (and not as a deduction to the Tenant Improvement Allowance) in accordance with all applicable environmental laws.

29.35 **Building Conference Center.** The Building contains an approximately 2,000 square foot conference facility with a kitchen facility, restrooms, audio-visual equipment and flexible furnishings (the "**Conference Facility**") on the ground floor of the Building. The Conference Facility shall be available to Tenant and the other tenants of the Building, subject to scheduling, on a first-come, first-served basis throughout the initial Lease Term and any applicable Option Terms at no cost to Tenant; provided, however, that the cost to operate, maintain and repair the Conference Facility shall be included in Operating Expenses (provided that HVAC after Building Hours shall be at the rate specified in Section 6.2). Landlord and Tenant acknowledge that Landlord may charge a reasonable set-up fee for functions to ensure the Conference Facility is maintained to a high standard. Landlord agrees to reasonably coordinate the scheduling of the Conference Facility so that no tenant of the Building is entitled to reserve the Conference Facility for periods which are materially inconsistent with the number of rentable square feet leased by such tenant (as compared to the total rentable square footage of the Building).

29.36 **Landlord Waiver.** Landlord hereby waives any and all rights it may have in Tenant's personal property, including without limitation, Tenant's inventory, trade fixtures, and

removable equipment and fixtures. Landlord agrees to execute, upon request, a confirmation of such waiver in form reasonably satisfactory to Tenant or its lenders.

29.37 **Parties to Act Reasonably and in Good Faith.** Except in instances where the words "sole" or "absolute" are utilized, whenever in this Lease the consent or approval of the Landlord or Tenant is required, such consent or approval shall not be unreasonably withheld or delayed (except, however, with respect to any Landlord consent, for matters which could have an adverse effect on the Building's plumbing, heating, mechanical, life safety, ventilation, air conditioning, or electrical systems, which could affect the structural integrity of the Building, or which could affect the exterior appearance of the Building, Landlord may withhold such consent or approval in its sole discretion but shall act in good faith). Except in those instances where a contrary standard or right is set forth in this Lease, whenever the Landlord or Tenant is granted a right to take action, exercise discretion, or make an allocation, judgment, or other determination, such party shall act reasonably and in good faith.

29.38 **Landlord Non-Discrimination.** Landlord agrees that it shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Landlord shall provide equal opportunity in all employment practices. Landlord shall ensure that its agents and contractors comply with the law; however, nothing in this section shall be interpreted to hold Landlord liable for any discriminatory practices of its agents or contractors.

29.39 **Subcontractor Non-Discrimination.** Landlord shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Landlord shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Landlord understands and agrees that violation of this clause shall be considered a material breach of this Lease and may result in Lease termination, debarment or other actions.

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

"Landlord":

HINES 525 B STREET LP,  
a Delaware limited partnership

*EP*  
*Person*

By: Hines 525 B Street GP LLC  
a Delaware limited liability company,  
its General Partner

By: [Signature]  
Name: Kevin L. McMeans  
Title: Authorized Agent

"Tenant":

THE CITY OF SAN DIEGO,  
a California municipal corporation

By: [Signature]  
Its: MAYOR

By: \_\_\_\_\_  
Its: \_\_\_\_\_

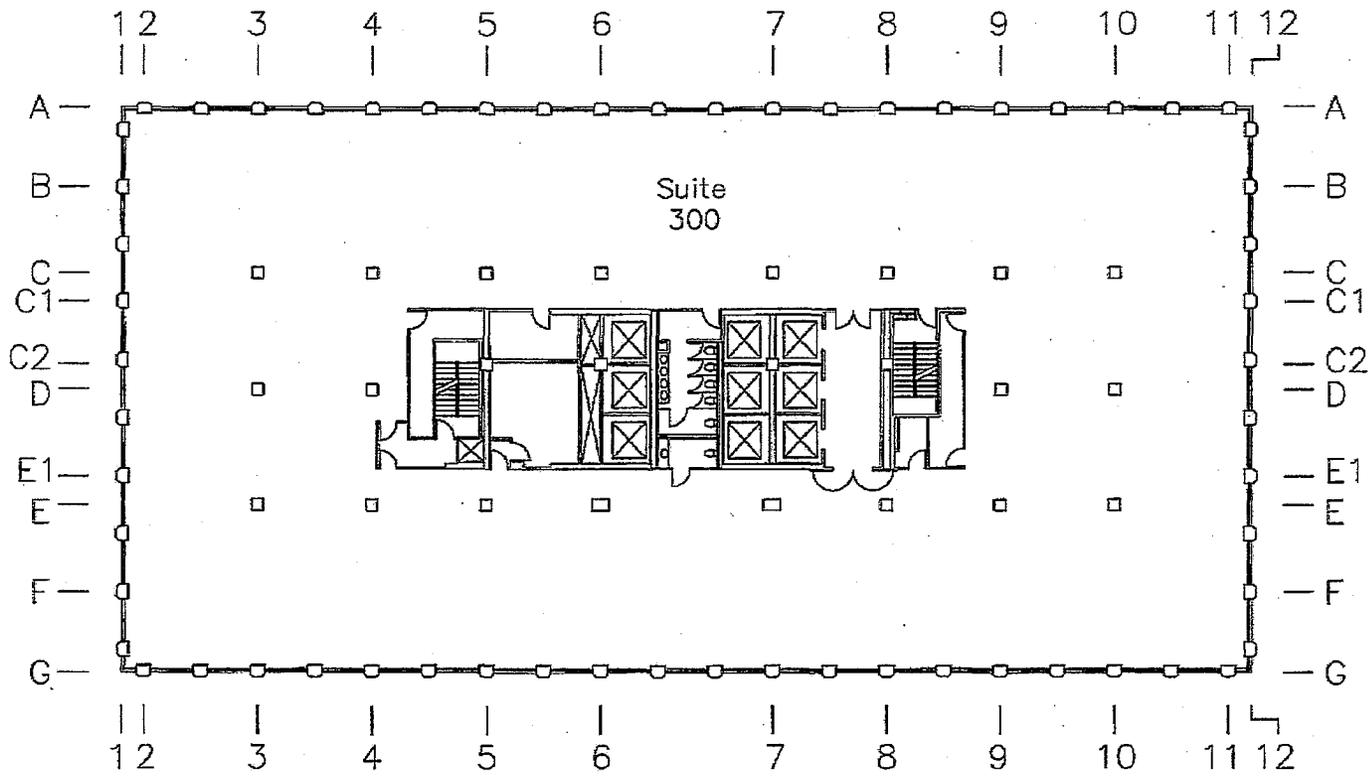
Approved as to form and legality  
this 9<sup>th</sup> day of July, 2013  
JAN I. GOLDSMITH, City Attorney  
By [Signature]  
Deputy City Attorney

**EXHIBIT A-1**

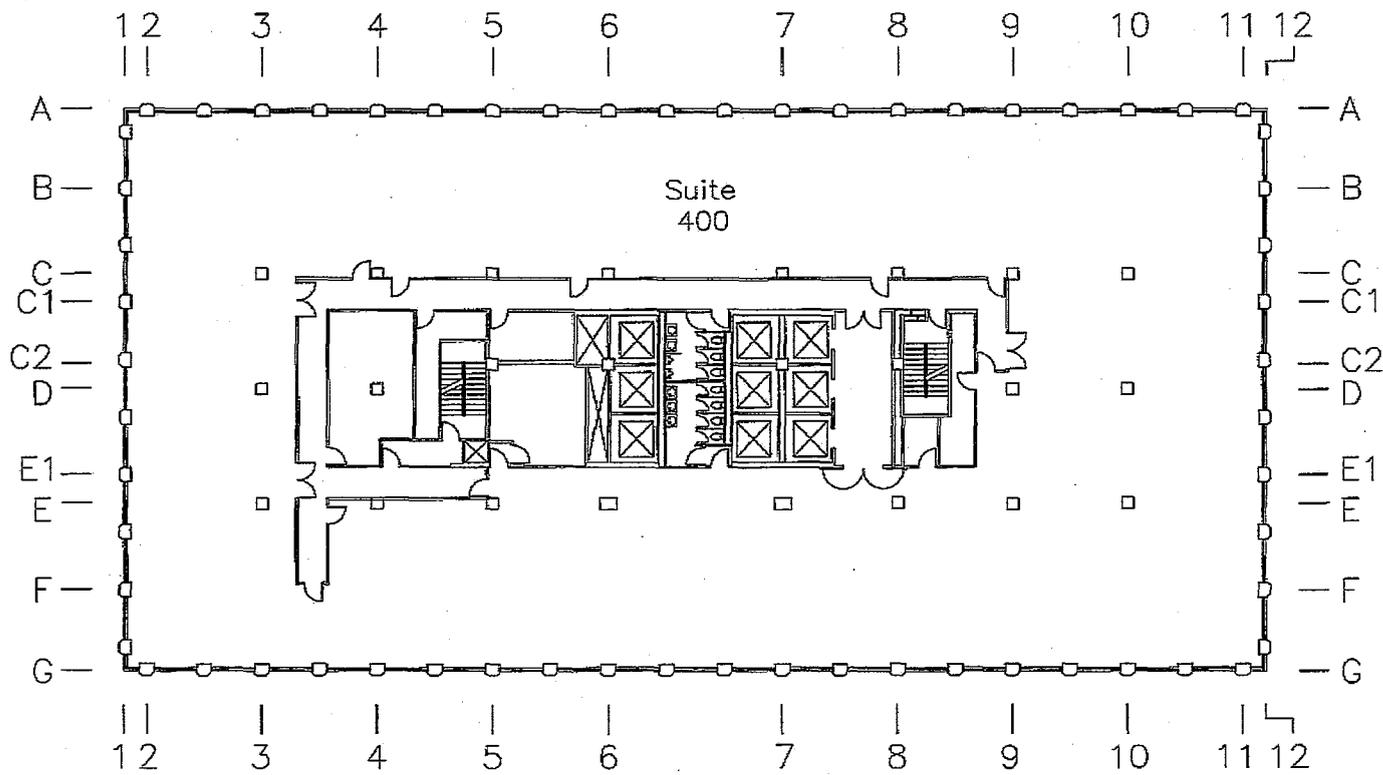
**525 B STREET**

**OUTLINE OF PREMISES**

**[SEE ATTACHED]**



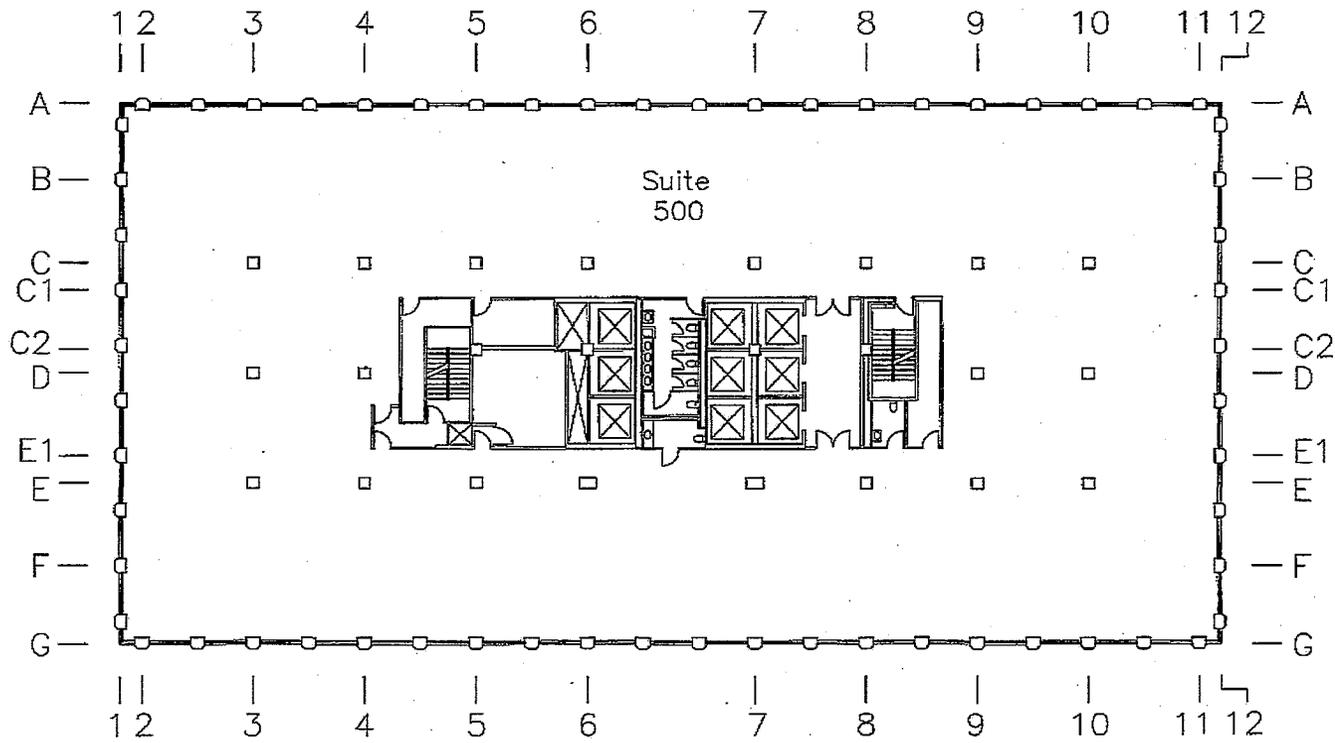
525 B Street - Floor 3  
525 B Street, San Diego, CA 92101



525 B Street - Floor 4  
525 B Street, San Diego, CA 92101

EXHIBIT A-1  
-3-

803973 06/SD  
183496-00041/6-10-13/ldr

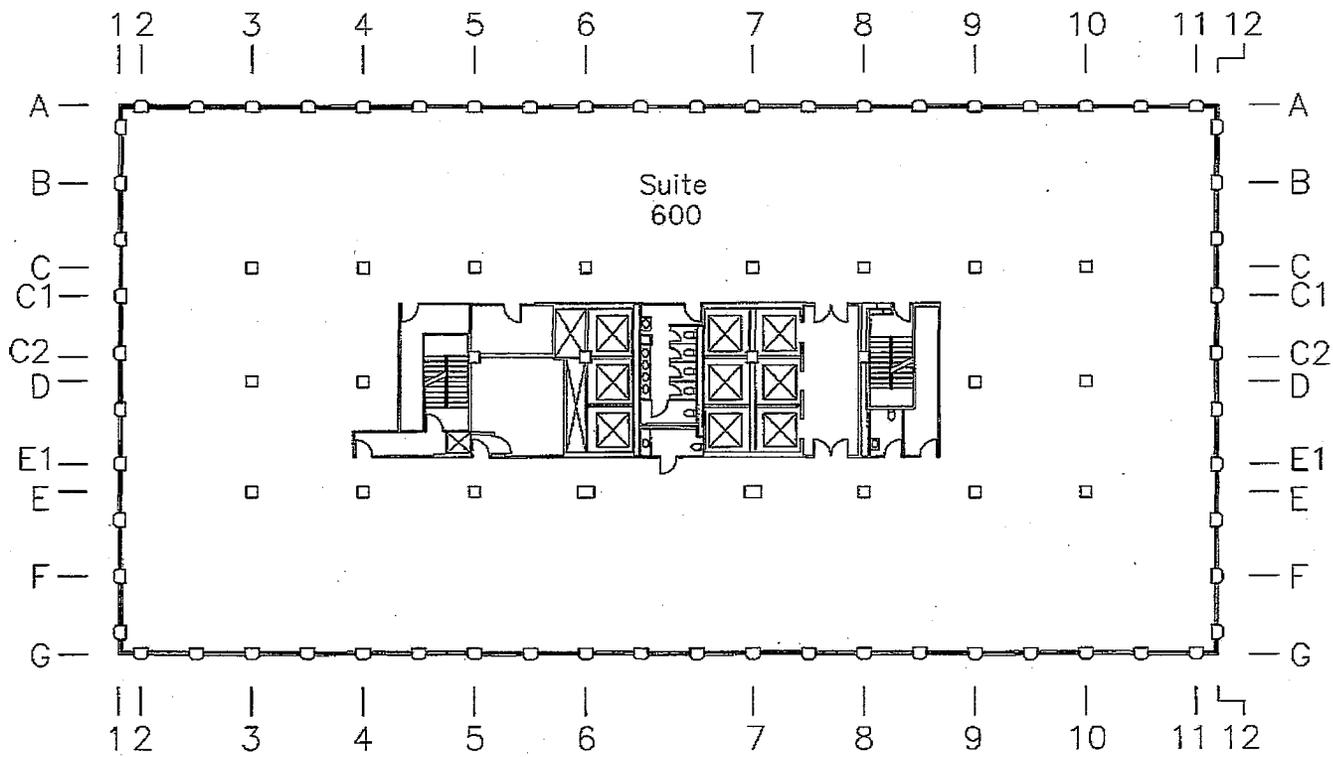


525 B Street - Floor 5  
 525 B Street, San Diego, CA 92101

EXHIBIT A-1

-4-

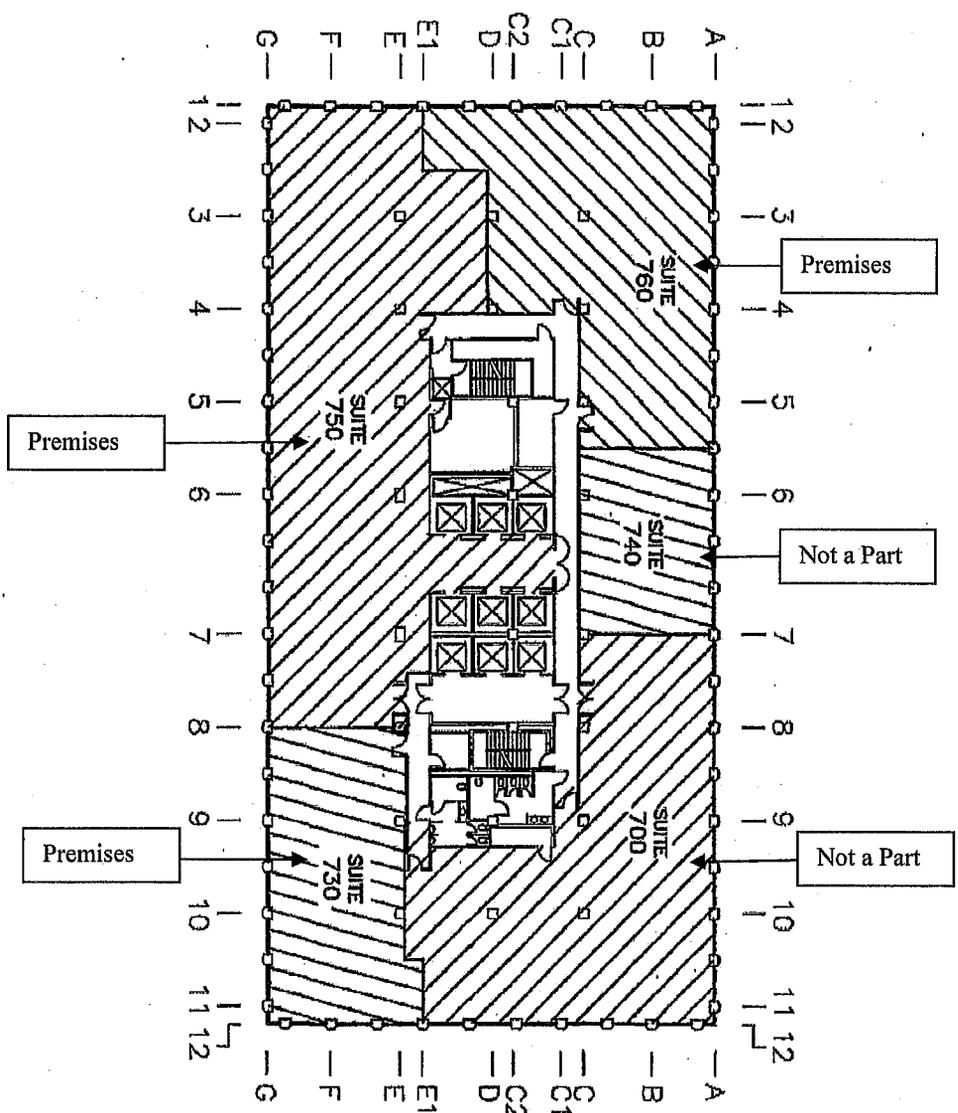
803973.06/SD  
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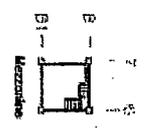
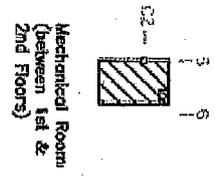
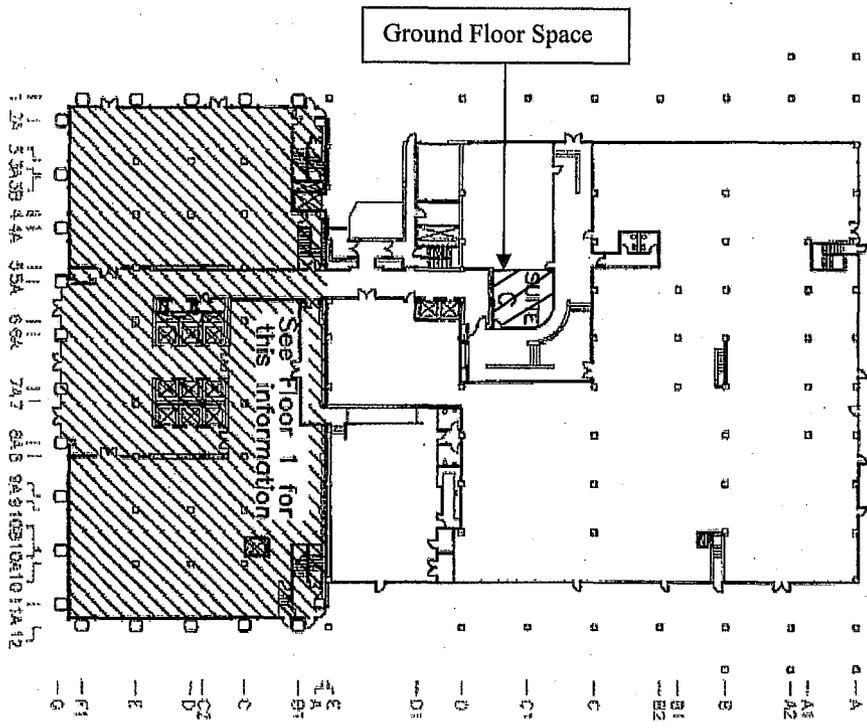
525 B Street - Floor 6  
 525 B Street, San Diego, CA 92101

EXHIBIT A-1  
 -5-

803973.06/SD  
 183496-00041/6-10-13/ltr



**FLOOR 7**  
  
 525 B Street  
 525 B Street  
 San Diego, CA 92101



525 B Street  
 525 B Street  
 San Diego, CA 92101

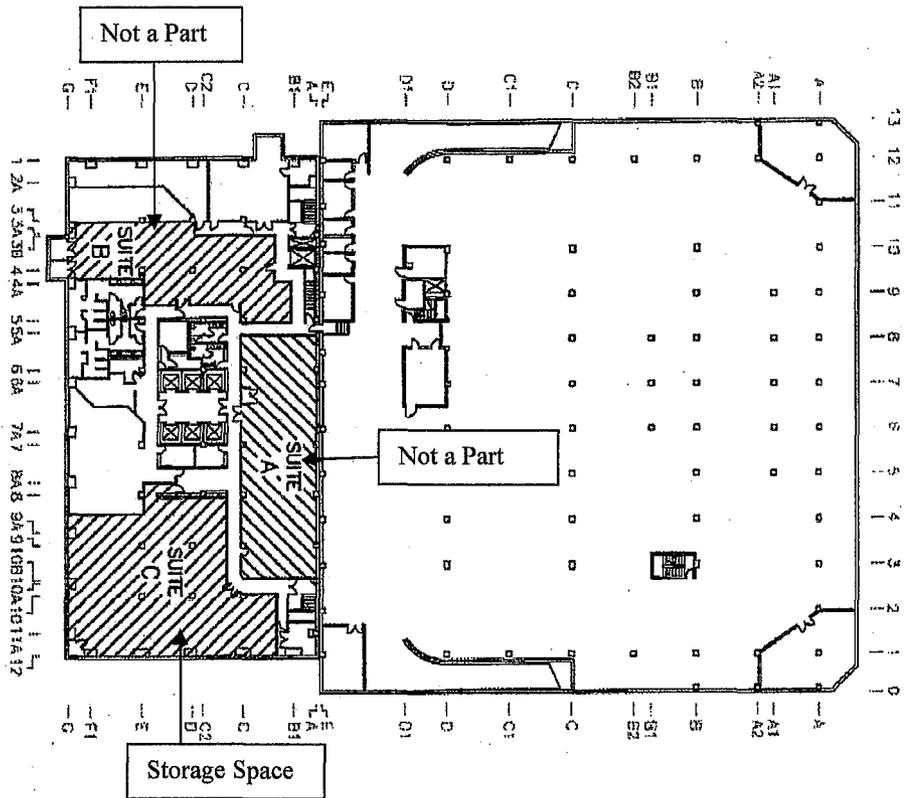
FLOOR 1R 

**EXHIBIT A-2**

**525 B STREET**

**OUTLINE OF STORAGE SPACE**

**[SEE ATTACHED]**



FLOOR B 

525 B Street  
 525 B Street  
 San Diego, CA 92101

**EXHIBIT B**

**525 B STREET**

**TENANT WORK LETTER**

This Tenant Work Letter shall set forth the terms and conditions relating to the construction of the Premises. This Tenant Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Tenant Work Letter to Articles or Sections of "this Lease" shall mean the relevant portions of Articles 1 through 29 of the Office Lease to which this Tenant Work Letter is attached as **Exhibit B**, and all references in this Tenant Work Letter to Sections of "this **Tenant Work Letter**" shall mean the relevant portions of Sections 1 through 5 of this Tenant Work Letter.

SECTION 1

**DELIVERY OF THE PREMISES AND BASE BUILDING**

1.1 **Base Building as Constructed by Landlord.** Landlord shall deliver the Premises and "**Base Building**," as that term is defined in Section 8.2 of the Lease, to Tenant, and Tenant shall accept the Premises and Base Building from Landlord in their presently existing, "as-is" condition (except as provided in Section 1.2 below).

1.2 **Landlord Work.** Landlord shall, at Landlord's sole cost and expense and not as part of Operating Expenses, perform the following work (collectively, the "**Landlord's Work**"): (i) utilizing Building-standard specifications and materials, install new ceiling grid and ceiling lighting throughout the sixth (6<sup>th</sup>) floor of the Building and in the portion of the fourth (4<sup>th</sup>) floor of the Building which currently lacks a ceiling grid and lighting and (ii) cause the Building's HVAC systems, electrical, lighting, fire sprinkler, and plumbing systems serving the Premises to be in good working condition. Landlord shall cause Landlord's Work to be completed on or before September 1, 2013, subject to delays caused by Tenant or the Tenant Parties.

1.3 **Landlord's Provision of Existing Items.** Upon request from Tenant, Landlord shall provide the Contractor with doors, doorframes and hardware to the extent such items are available from existing recycled stock within the Building, at no charge to Tenant and not deducted from the Tenant Improvement Allowance. Such items shall be made available in their "as-is" condition, and Landlord makes no representations or warranties with respect to such items. Without limitation on the foregoing, Landlord makes no representation or warranty with respect to the useful life of such items, the number of such items that will be available from recycled stock, or the compliance of such items with any applicable codes and legal requirements.

## SECTION 2

### TENANT IMPROVEMENTS

2.1 Tenant Improvement Allowance. Tenant shall be entitled to a one-time tenant improvement allowance (the "**Tenant Improvement Allowance**") in the amount set forth in Section 2.5 below for the costs relating to the design and construction of Tenant's improvements which are permanently affixed to the Premises (the "**Improvements**") and for the other Tenant Improvement Allowance Items described in Section 2.2 below. In no event shall Landlord be obligated to make disbursements pursuant to this Tenant Work Letter in a total amount which exceeds the Tenant Improvement Allowance.

#### 2.2 Disbursement of the Tenant Improvement Allowance.

2.2.1 Tenant Improvement Allowance Items. Except as otherwise set forth in this Tenant Work Letter, the Tenant Improvement Allowance shall be disbursed by Landlord (each of which disbursements shall be made pursuant to Landlord's disbursement process) only for the following items and costs (collectively the "**Tenant Improvement Allowance Items**"):

2.2.1.1 Payment of the fees of the "**Architect**" and the "**Engineers**," as those terms are defined in Section 3.1 of this Tenant Work Letter, and payment of the fees incurred by, and the cost of documents and materials supplied by, Landlord and Landlord's consultants in connection with the preparation and review of the "**Construction Drawings**," as that term is defined in Section 3.1 of this Tenant Work Letter;

2.2.1.2 The payment of plan check, permit and license fees relating to construction of the Tenant Improvements;

2.2.1.3 The cost of construction of the Tenant Improvements, including, without limitation, testing and inspection costs, trash removal costs, and contractors' fees and general conditions;

2.2.1.4 The cost of any changes in the Base Building when such changes are required by the Construction Drawings, such cost to include all architectural and/or engineering fees and expenses incurred in connection therewith;

2.2.1.5 The cost of any changes to the Construction Drawings or Tenant Improvements required by all applicable building codes (the "**Code**");

2.2.1.6 Intentionally Omitted;

2.2.1.7 Sales and use taxes; and

2.2.1.8 Moving expenses, network cabling, security systems, audio-visual systems, signage, and telecommunications costs.

2.2.2 Other Terms. All Tenant Improvements shall be deemed Landlord's property under the terms of this Lease.

2.3 Standard Tenant Improvement Package. Landlord has established specifications (the "**Building Standard Tenant Improvements**") for the Building standard components to be used in the construction of the Improvements in the Premises, which Building Standard Improvements are set forth on **Schedule 1** attached hereto. The quality of Improvements shall be equal to or of greater quality than the quality of the Building Standard Tenant Improvements, provided that Landlord may, at Landlord's option, prior to final approval of the Final Working Drawings, require the Improvements to comply with certain Building Standard Tenant Improvements.

2.4 Removal of Above Standard Tenant Improvements. "**Above Standard Tenant Improvements**" shall mean any internal staircase (subject to the limitations below), and any Improvements which are not usual and customary for general office use. If so directed by Landlord upon the expiration or earlier termination of the Lease Term, Tenant shall, at its sole cost and expense, remove any such Above-Standard Tenant Improvements so designated by Landlord at the time of Landlord's approval of the Final Space Plan (if such item is shown on the Final Space Plan) or at the time of Landlord's approval of the Final Working Drawings (if such item is not shown on the Final Space Plan but is reflected on the Final Working Drawings), and Tenant shall replace such non-standard Improvements with Building Standard Tenant Improvements. Any such work of Tenant shall be performed promptly and shall be completed by Tenant on or before the end of the Term of this Lease if notice of removal is given at least sixty (60) days prior to the end of the Term, and if Tenant fails to timely remove and/or replace any Above Standard Tenant Improvements, Landlord (or Landlord's property manager) may do so and Tenant shall reimburse Landlord (or Landlord's property manager) for the actual and reasonable cost of such removal and/or replacement. The immediately preceding sentence shall survive the expiration or earlier termination of this Lease.

2.5 Tenant Improvement Allowance. The Tenant Improvement Allowance shall be in the amount of One Million Seven Thousand Seven Hundred Eighty and No/100 Dollars (\$1,007,780.00). Tenant shall have the option ("**Allowance Option**"), exercisable by written notice to Landlord on or before the Commencement Date, to have Landlord increase the Tenant Improvement Allowance by up to an additional One Million Three Hundred Sixty-One Thousand Six Hundred Seventy and No/100 Dollars (\$1,361,670.00), based on Fifteen Dollars (\$15.00) per rentable square foot of the Premises (the "**Allowance Increase Amount**") as designated by Tenant in such written notice. If Tenant exercises the Allowance Option, Monthly Base Rent payable by Tenant during the initial Lease Term shall be increased by \$0.0175 per rentable square foot of the Premises per month for each One Dollar (\$1.00) per rentable square foot of increase in the Tenant Improvement Allowance, and the parties shall promptly execute an amendment to this Lease in order to document such increase in the Tenant Improvement Allowance and Monthly Base Rent.

2.6 Failure to Perform Landlord Work or to Fund Allowance. If Landlord fails to timely complete the Landlord Work or to timely fund any payment of the Tenant Improvement Allowance, Tenant shall be entitled to deliver written notice ("**Improvement Failure Notice**") thereof to Landlord. If Landlord still fails to complete the Landlord Work within thirty (30) days after Landlord's receipt of the Improvement Failure Notice or to fulfill any such payment obligation within ten (10) business days after Landlord's receipt of the Improvement Failure Notice from Tenant and if Landlord fails to deliver written notice to Tenant within such thirty

(30) day or ten (10) business day period (as applicable) explaining Landlord's reasons that the amounts described in the Improvement Failure Notice are not due and payable by Landlord ("**Refusal Notice**"), Tenant shall be entitled to perform such work or fund such amount(s) itself (as applicable) and to offset such amount(s) plus any actual lender's fees and costs incurred by Tenant in obtaining financing for such work, together with interest at the actual interest rate incurred by Tenant in financing such work (or, to the extent Tenant does not finance such work, with interest at the Interest Rate) from the date of payment by Tenant until the date of offset, against Tenant's first obligations to pay monthly Base Rent. However, Tenant shall not be entitled to any such offset if Tenant is in default under the Lease (after expiration of any applicable cure period) at the time that such offset would otherwise be applicable. If Landlord delivers a Refusal Notice, and if Landlord and Tenant are not able to agree on the work to be performed or the amounts to be so paid by Landlord, if any, within ten (10) business days after Tenant's receipt of a Refusal Notice, Landlord or Tenant may elect to have such dispute resolved by binding arbitration before a retired judge of the Superior Court of the State of California under the auspices of JAMS (or any successor to such organization) in San Diego County, California, according to the then rules of commercial arbitration of such organization. If Tenant prevails in any such arbitration, Tenant shall be entitled to offset the amount determined to be payable by Landlord in such proceeding together with interest at the actual interest rate incurred by Tenant in financing such work (or, to the extent Tenant does not finance such work, with interest at the Interest Rate) from the date of payment to the date of offset against Tenant's next obligations to pay monthly Base Rent.

### SECTION 3

#### CONSTRUCTION DRAWINGS

3.1 Selection of Architect/Construction Drawings. Landlord and Tenant hereby approve, and Tenant shall retain, Gensler (the "**Architect**") to prepare the "**Final Space Plan**," as that term is defined in Section 3.2 below, and the architectural sheets for the Final Working Drawings ("**Architectural Sheets**"). Tenant and Landlord agree that all mechanical, electrical, plumbing and structural plans will be done on a "design build" basis by subcontractors (the "**Engineers**") selected by Contractor. The Engineers shall work under the direction of the Contractor. The Engineers will prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work in the Premises, which work is not part of the Base Building. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "**Construction Drawings**." All Construction Drawings shall comply with the drawing format and specifications determined by Landlord, and shall be subject to Landlord's approval. Tenant and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the base Building plans, and Tenant and Architect shall be solely responsible for the same, and Landlord shall have no responsibility in connection therewith. Landlord's review of the Final Space Plan and Architectural Sheets as set forth in this Section 3, shall be for its sole purpose and shall not imply Landlord's review of the same, or obligate Landlord to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that the Final Space Plan and Architectural Sheets are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants,

Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Final Space Plan and Architectural Sheets, and Tenant's waiver and indemnity set forth in this Lease shall specifically apply to the Final Space Plan and Architectural Sheets.

3.2 Final Space Plan. On or before the date set forth on Schedule 2, Tenant shall supply Landlord with four (4) copies signed by the Architect of the final space plan for the Premises before any architectural working drawings or engineering drawings have been commenced. The final space plan (the "**Final Space Plan**") shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein. Landlord may request clarification or more specific drawings for special use items not included in the Final Space Plan. Landlord shall approve or reasonably disapprove the Final Space Plan on or before the date set forth on Schedule 2. Landlord's disapproval of the Final Space Plan shall include the reasonable reasons for Landlord's disapproval. If Landlord fails to disapprove any draft of the Final Space Plan by written notice to Landlord on or before the date set forth on Schedule 2, said draft of the Final Space Plan shall be deemed to be approved by Landlord. If Tenant is so advised of reasonable revisions to be made, Tenant shall cause the Final Space Plan to be revised to correct any deficiencies or other matters Landlord may reasonably require and resubmitted to Landlord within one (1) business days after Landlord's disapproval.

3.3 Final Working Drawings. Upon the approval of the Final Space Plan by Landlord and Tenant, the Architect and the Engineers shall complete the architectural and engineering drawings for the Premises and compile a fully coordinated set of architectural, structural, mechanical, electrical and plumbing working drawings in a form which is complete to allow subcontractors to bid on the work and to obtain all applicable permits (collectively, the "**Final Working Drawings**") and shall submit the same on or before the date set forth on Schedule 2 to Landlord and Tenant for their approval. If any aspect of the Final Working Drawings is reasonably disapproved by a party, the party responsible for completing that portion of the Final Working Drawings shall revise and resubmit such aspect of the Final Working Drawings to the other party within three (3) business days following disapproval and the disapproving party shall have one (1) business day after receipt of such revised Final Working Drawings to approve.

3.4 Approved Working Drawings. The Final Working Drawings shall be approved by Landlord and Tenant (the "**Approved Working Drawings**") on or before the date set forth on Schedule 2 attached hereto. Landlord may submit the Final Working Drawings to the appropriate municipal authorities for all applicable building permits simultaneously with the parties' review of the same. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of both parties, which consent may not be unreasonably withheld.

## SECTION 4

### CONSTRUCTION OF THE TENANT IMPROVEMENTS

4.1 Contractor. A general contractor shall be retained by Landlord to construct the Tenant Improvements. Such general contractor ("**Contractor**") shall be selected by Landlord.

4.2 Cost Proposal. After the Approved Working Drawings are signed by Landlord and Tenant, Landlord shall provide Tenant with a cost proposal in accordance with the Approved Working Drawings, which cost proposal shall include, as nearly as possible, the cost of all Tenant Improvement Allowance Items to be incurred by Tenant in connection with the design and construction of the Tenant Improvements (the "**Cost Proposal**"). Tenant shall approve and deliver the signed Cost Proposal to Landlord on or before the date set forth on Schedule 2 attached hereto, and upon receipt of the same by Landlord, Landlord shall be released by Tenant to purchase the items set forth in the Cost Proposal and to commence the construction relating to such items. The date by which Tenant must approve and deliver the Cost Proposal to Landlord shall be known hereafter as the "**Cost Proposal Delivery Date**". Within thirty (30) days following the Cost Proposal Delivery Date, Tenant shall deliver to Landlord cash in an amount (the "**Over-Allowance Amount**") equal to the difference between (i) the amount of the Cost Proposal and (ii) the amount of the Tenant Improvement Allowance. In the event that, after the Cost Proposal Delivery Date, any revisions, changes, or substitutions shall be made to the Construction Drawings or the Improvements by Tenant, any additional costs which arise in connection with such revisions, changes or substitutions or any other additional costs shall be paid by Tenant to Landlord within thirty (30) days following Landlord's request as an addition to the Over-Allowance Amount.

4.3 Governmental Compliance. The Tenant Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) building material manufacturer's specifications.

4.4 Inspection by Tenant. Tenant shall have the right to inspect the Tenant Improvements at all times, provided however, that Tenant's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Tenant's rights hereunder nor shall Tenant's inspection of the Tenant Improvements constitute Tenant's approval of the same. Should Tenant reasonably disapprove any portion of the Tenant Improvements, Tenant shall notify Landlord in writing of such disapproval and shall specify the items disapproved. Notwithstanding anything to the contrary in this Section 4.4, Tenant may only disapprove matters which are contrary to the Approved Working Drawings or are in violation of Laws. Any defects or deviations in, and/or disapproval by Tenant of, the Tenant Improvements shall be rectified by Landlord at no expense to Tenant, provided the same are noted by Landlord in a timely fashion so as to avoid unnecessarily causing Landlord to incur additional expenses due to said defect or deviation being covered up by subsequent work.

4.5 Meetings. Commencing upon the execution of this Lease, Landlord shall hold periodic meetings at a reasonable time, with the Architect and the Contractor regarding the progress of the preparation of Construction Drawings and the construction of the Tenant Improvements, which meetings shall be held in the Building and Tenant and/or its agents shall receive prior notice of, and shall have the right to attend, all such meetings. Tenant shall use commercially reasonable efforts and all due diligence to cooperate with the Architect, Engineers, and Landlord to complete all phases of the Construction Drawings and the permitting process and to receive the permits, and with Contractor for approval of the "Cost Proposal," as that term is defined in Section 4.2 of this Tenant Work Letter, as soon as possible after the execution of the Lease. The applicable dates for approval of items, plans and drawings as described in this Tenant Work Letter are set forth and further elaborated upon in Schedule 2 (the "**Time Deadlines**"), attached hereto. Tenant agrees to comply with the Time Deadlines.

4.6 Contractor's Warranties and Guaranties. Landlord hereby assigns to Tenant all warranties and guaranties by Contractor relating to the Tenant Improvements.

4.7 Ready for Occupancy. The Premises shall be deemed "**Ready for Occupancy**" upon the Substantial Completion of the Premises. For purposes of this Lease, "**Substantial Completion**" of the Premises shall occur upon the completion of construction of the Improvements in the Premises pursuant to the Approved Working Drawings, with the exception of any punch list items. Except as provided in this Section 4.7, the Lease Commencement Date shall occur as set forth in the Lease. However, if there shall be a delay or there are delays in the Substantial Completion of the Improvements in the Premises as a result of the following (collectively, "**Tenant Delays**"):

4.7.1 Tenant's failure to comply with the Time Deadlines;

4.7.2 Tenant's failure to timely approve any matter requiring Tenant's approval;

4.7.3 A breach by Tenant of the terms of this Tenant Work Letter or the Lease;

4.7.4 Tenant's request for changes in the Approved Working Drawings that results in actual time delays; or

4.7.5 Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time given the anticipated date of Substantial Completion of the Improvements in the Premises, or which are different from, or not included in, the Building Standard Tenant Improvements;

then, notwithstanding anything to the contrary set forth in the Lease or this Tenant Work Letter and regardless of the actual date of the Substantial Completion of Improvements in the Premises, the date of Substantial Completion thereof shall be deemed to be the date that Substantial Completion would have occurred if no Tenant Delay or Delays, as set forth above, had occurred. Furthermore and notwithstanding anything to the contrary set forth in the Lease or this Tenant Work Letter, in the event the cumulative number of days of Tenant Delays exceed thirty (30) days, the Lease Commencement Date shall be deemed to be September 1, 2013.

4.8 Tenant's Covenants. Tenant hereby indemnifies Landlord for any loss, claims, damages or delays arising from the actions of Architect on the Premises or in the Building. In addition, immediately after the Substantial Completion of the Premises, Tenant shall have prepared and delivered to the Building a copy of the "as built" plans and specifications (including all working drawings) for the Tenant Improvements.

## SECTION 5

### MISCELLANEOUS

5.1 Tenant's Representative. Tenant has designated James Nagelvoort (Phone Number: 619-533-5100), as its sole representative with respect to the matters set forth in this Tenant Work Letter, who, until further notice to Landlord, shall have full authority and responsibility to act on behalf of the Tenant as required in this Tenant Work Letter.

5.2 Landlord's Representative. Landlord has designated Samantha Shaughnessy and Don Petros as its sole representatives with respect to the matters set forth in this Tenant Work Letter, each of whom, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Tenant Work Letter.

5.3 Time of the Essence in This Tenant Work Letter. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. If any item requiring approval is timely and reasonably disapproved by a party, the procedure for preparation of the document and approval thereof shall be repeated until the document is reasonably approved by the disapproving party.

5.4 Tenant's Lease Default. Notwithstanding any provision to the contrary contained in this Lease, if an event of default as described in the Lease or this Tenant Work Letter has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Landlord pursuant to this Lease, Landlord shall have the right to withhold payment of all or any portion of the Tenant Improvement Allowance and/or Landlord may cause Contractor to cease the construction of the Premises (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such work stoppage), and (ii) all other obligations of Landlord under the terms of this Tenant Work Letter shall be forgiven until such time as such default is cured pursuant to the terms of this Lease (in which case, Tenant shall be responsible for any delay in the substantial completion of the Premises caused by such inaction by Landlord).

## SCHEDULE 1

### BUILDING STANDARD TENANT IMPROVEMENTS

#### **DIVISION 6 WOOD AND PLASTIC**

##### **06400 Millwork**

###### **Typical Tenant Cabinetry:**

Plastic Laminate: Wilsonart #D439-60 Wallaby

#### **DIVISION 8 DOORS AND WINDOWS**

##### **08200 Wood Doors**

###### **Wood Doors (Typical Tenant Entrance and Tenant Interior Office):**

Manufacturer: Algoma Hardwood, Egger Industries, Ipik Door Co., VTI, Buell

Type: Solid core, select Mahogany veneer, quarter sliced, factory finished with custom stain to match Architect's sample

Size: 1-3/4" thick x 3'0" wide x full height (approx. 8'-10" at office fronts and 8'-6" at corridors)

##### **08410 Metal-Framed Storefronts (Entrance & Tenant Doors)**

###### **Door & Glazing Frames:**

Manufacturer: Western Integrated 300 Series or Equal by American, Avalon "Eagle", RACO Aluminum

Type: Knockdown aluminum door frames with optional integral sidelight

Pre Finished: 1" Type 302 Profile

Height: Top of frame to be flush with ceiling tile

##### **08700 Hardware**

###### **Door Closers:**

Manufacturer: LCN (or Equal)

Type: 4011/4111

Finish: AL

###### **Manual Flush Bolts:**

Manufacturer: Quality (or Equal)

Type: 1358

Finish: US26 Bright Chrome, BHMA 625

###### **Automatic Flush Bolts (rated):**

Manufacturer: Glynn Johnson (or Equal)

Type: FB31P

Finish: US26 Bright Chrome, BHMA 625

###### **Gasketing:**

Manufacturer: Pemko (or Equal)

Type: As noted on Drawings

Finish: Black

**Hinges:**

Manufacturer: Hager (or Equal)  
Type: BB1199  
Finish: US26 Bright Chrome, BHMA 625

**Lockset:**

Manufacturer: Schlage (No Substitutions)  
Type: L 9050-03-625; lock cylinders; keyway style  
Finish: US26 Bright Chrome, BMHA 625

**Latchset:**

Manufacturer: Schlage (No Substitutions)  
Type: L 9010-03-625  
Finish: US26 Bright Chrome, BMHA 625

**Doorstop:**

Manufacturer: Glynn Johnson (or Equal)  
Type: GJ-FB-13  
Finish: US26 Bright Chrome, BMHA 625

**Strikes:**

Manufacturer: Glynn Johnson (or Equal)  
Type: DustProof #1 & #2  
Finish: US26 Bright Chrome, BMHA 625

**DIVISION 9 FINISHES****09250 Gypsum Board****Standard Partition:**

Studs: Rolled Formed, Electro-Galvanized Steel Sheet 20 Gauge; ASTM, C645 Non-load bearing with punched webs; 2-1/2" wide; 24" O.C.  
Drywall: 5/8" Type X - Single layer  
Height: Floor to underside of finished ceiling

**Fire Rated Partition (1 Hour):**

Studs: Rolled Formed, Electro-Galvanized Steel Sheet 20 Gauge; ASTM, C645 Non-load bearing with punched webs; 3-5/8" wide; 24" O.C.  
Drywall: 5/8" Type X - Single layer  
Height: Floor to fire rated structural slab above  
Seals: Continuous fire sealant top, bottom and all penetrations

**Fire Rated Partition (2 Hour):**

Studs: Rolled Formed, Electro-Galvanized Steel Sheet 20 Gauge; ASTM, C645 Non-load bearing with punched webs; 3-5/8" wide; 24" O.C.  
Drywall: 5/8" Type X - Double Layer  
Height: Floor to fire rated structural slab above

**Demising Partition:**

Studs: Rolled Formed, Electro-Galvanized Steel Sheet 20 Gauge; ASTM, C645 Non-load bearing with punched webs; 2-1/2" wide; 24" O.C.  
Drywall: 5/8" Type X - Single layer  
Height: Floor to underside of slab above  
Insulation: 2 1/2" thick sound attenuating blanket. Owens/Corning fiberglass sonobatts

**Acoustical Partition:**

Studs: Rolled Formed, Electro-Galvanized Steel 2-1/2" wide; 24" O.C.  
Drywall: 5/8" Type X - Double layer  
Height: Floor to underside of finished ceiling  
Insulation: 2 1/2" thick sound attenuating blanket. Owens/Corning fiberglass sonobatts

**09500 Ceilings****For 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floors:**

15/16" Armstrong Sonata ceiling grid and 2X2 Armstrong Cirrus tegular ceiling tiles

**For 6<sup>th</sup> floor:**

15/16" Armstrong Prelude ceiling grid and 2X2 Armstrong Dune tegular ceiling tiles

**09650 Resilient Flooring****Vinyl Composition Tile:**

Manufacturer: Mannington Commercial Flooring  
Type: Essentials Vinyl Composition Tile  
Size: 12" x 12" x 1/8" thick  
Color: Tenant selection from building standard colors

**Resilient Base:**

Manufacturer: Johnsonite  
Type: Extruded Rubber Base; straight at carpet, coved at hard surfaces  
Size: 2-1/2" high x 1/8" thick  
Color: Tenant selection from building standard colors

**09680 Carpeting****Tenant Carpeting (Cut-Pile):**

Manufacturer: Bentley Prince Street  
Quality: "Intersect30" #8IS3006301  
Installation: Over Pad  
Color: Tenant selection from building standard colors

## **Carpeting**

### **Tenant Carpeting (Level Loop):**

Manufacturer: Bentley Prince Street

Quality: Interfold #8IF2606301

Installation: Direct glue

Color: Tenant selection from building standard colors

## **09910 Painting**

### **Paint:**

Manufacturer: Benjamin Moore, Pratt & Lambert, Dunn-Edwards

Type: 1 Prime Coat + 2 Finish Coats

Finish: Eggshell; Smooth

Color: Tenant selection from building standard colors

## **DIVISION 10 SPECIALTIES**

### **10520 Fire Protection Specialties**

#### **Fire Extinguisher & Cabinet:**

Cabinet

Manufacturer: Larsen Manufacturing Company

Model: Occult Series #4016, Fully Recessed

Size: 40"H x 16"W x 8-1/2"D

Door Style: Solid style door, Black horizontal letters

Finish: Paint to match adjacent wall, baked white enamel interior

Extinguisher:

Manufacturer: Larsen Manufacturing Company

Model: #MP-10

Type: Rated 4A:60B:C 10 Lb. Capacity

Multi-purpose dry chemical; Pressure indicating gauge

## **DIVISION 12 FURNISHINGS**

### **12490 Window Treatments**

#### **Horizontal Louver Blinds:**

Manufacturer: Levolor Lorentzen

Type: "Riviera" dust guard

Size: 1" wide horizontal aluminum slats; standard manual operating

Color: Bronze

Installation: To be installed at exterior windows only

## **DIVISION 13 SPECIAL CONSTRUCTION**

### **13850 Detection and Alarm**

#### **Fire alarm control panel and system design:**

Manufacturer: Fire Control Instruments

Type: Analog addressable

Model: 7200 Series

#### **Activation/Control Devices:**

Manufacturer: Fire Control Instruments  
Type: Ceiling Mounted  
Model: ASD-PL Photoelectric Detector  
ATD-RL Heat Detector  
DH100 Duct Detector  
MS7A Pull Station (Plastic)  
MS2 Pull Station (Metal)  
AMM2 Monitor Module  
AOM2 Control Relay  
FM-998-24 Flush wall mounted Door Holder

**Evacuation Signal Devices/Horn/Strobe:**

Manufacturer: EST (Edwards Systems Technology) - Enhanced Integrity  
Type: Wall Mounted @ 68"  
Lens: Clear, Fire  
Model: 4 inch Speaker Strobe – 4inch Haut-Parleur/Stroboscope / 70V RMS  
/White

**13900 Fire Suppression**

**Fire Protection Sprinkler Heads (1<sup>st</sup> Floor Lobby only):**

Manufacturer: Central  
Type: GB4-FR; Royal Flush Quick Response; concealed  
Rating: 165 Degrees Fahrenheit  
Finish: White cover plate

**Fire Protection/Sprinkler Heads (Core restrooms & TI areas)**

Manufacturer: Central  
Type: Model GB-QR Recessed, Rapid Response Adjustable  
Rating: 165 Degrees Fahrenheit  
Finish: Polished Chrome with White Enamel Escutcheon

**DIVISION 15 MECHANICAL**

**15840 Air Terminal Units**

**Perimeter Dual Duct VAV Heating Unit**

Manufacturer: Titus  
Model: 30RW with heating coil  
Dampers: Normally Closed  
Controls: Factory mounted, Allerton DDC controllers  
Siemens BMS through BACNet open protocol system

HW Piping: Copper, Insulated

Heating Coil shall have the following:

Inlet: Gate Valve  
Control Valve: Allerton DDC N.C. Valve  
Test Port  
Outlet: Gate Valve  
Test Port  
Calibrating balancing valve (Tour Anderson)

**Interior Dual Duct VAV (exception: Single Duct – Elevator lobbies)**

Manufacturer: Titus

Model: DEDV

Dampers: Normally Closed

Controls: Factory mounted, Microset DDC controller by Allerton

**15850 Air Distribution Equipment**

**Air Outlets & Inlets:**

Manufacturer: Titus

Type: Diffuser (TMS), Return (TMR)

Size: 24" x 24"

**Slot Diffusers:**

Manufacturer: Titus

Type: ML Series, Type C, 5310 Plenums

**15905 HVAC Instrumentation**

**Temperature Sensors:**

Manufacturer: Allerton

Type: Microset 2

Direct Vertical

Finish: White – free of all manufacturers' label

**DIVISION 16 ELECTRICAL**

**16140 Wiring Devices**

**Floor Outlets (Type A):**

Manufacturer: Walker

Type: RC-700A

Capacity: One Duplex and Two Signal

Core Size: 3" diameter

Finish: Black

**Floor Outlets (Type B):**

Manufacturer: Walker

Type: RC-2001BL

Capacity: One Duplex and Four Signal

Core Size: 4" diameter

Finish: Black

**Switches, Receptacles, Cover Plates:**

Manufacturer: Levitron, Pass & Seymour

Type: Decora, Sierraplex

Finish: White

**Motion Sensors:**

Manufacturer: Novitas

Type: Ultrasonic / PIR (Ceiling mounted)

Finish: White

## 16510 Interior Luminaries

### 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Floors:

#### Lighting Fixtures: 2' x 4'

Lithonia MVolt

4" Louver

GEB10ISLP835SSR

### 6<sup>th</sup> Floor:

#### Lighting Fixtures: 2' x 4'

Lithonia MVolt

3" Louver

GEB10IS

#### Lighting Fixtures - Fluorescent Downlight:

Manufacturer: Prescolite

Type: 6" diameter

CFT632EB-STF602-WT

Electronic Ballast

Lamps: 1-CF26TRT-3500K

#### Lighting Fixtures - Compact Fluorescent Wall Washer:

Manufacturer: Prescolite

Type: CFT632EB-STF602WW

White self trim ring; clear reflector; 26 watts

## 16530 Emergency Lighting

### Exit signs:

Manufacturer: Prescolite Emergency (ER/ERT)

Type: Green letters, edge lit, fluorescent, 277 volts

Mounting: Wall, ceiling or pendant as shown

Lamps: 2-Compact florescent 8W twin tube

**SCHEDULE 2**

**TIME DEADLINES**

<b><u>ACTION</u></b>	<b><u>DEADLINE</u></b>
Tenant submits Final Space Plan to Landlord for approval	June 28, 2013
Landlord approves the Final Space Plan	July 1, 2013
Final Workings Drawings submitted to Landlord and Tenant for joint approval	July 10, 2013
Landlord and Tenant to approve the Final Working Drawings	July 12, 2013
Tenant to approve the Cost Proposal	July 17, 2013

**EXHIBIT C**

**525 B STREET**

**NOTICE OF LEASE TERM DATES**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Office Lease dated \_\_\_\_\_, 20\_\_ between Hines 525 B Street LP, a Delaware limited partnership ("**Landlord**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Tenant**") concerning Suite \_\_\_\_\_ on floor(s) \_\_\_\_\_ of the office building located at \_\_\_\_\_, \_\_\_\_\_, California.

Ladies and gentlemen:

In accordance with the Office Lease (the "**Lease**"), we wish to advise you and/or confirm as follows:

1. The Lease Term shall commence on or has commenced on \_\_\_\_\_ for a term of \_\_\_\_\_ ending on \_\_\_\_\_.
2. Rent commenced to accrue on \_\_\_\_\_, in the amount of \_\_\_\_\_.
3. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.
4. Your rent checks should be made payable to \_\_\_\_\_ at \_\_\_\_\_.

**"Landlord":**

HINES 525 B STREET LP,  
a Delaware limited partnership

By: Hines 525 B Street GP LLC,  
a Delaware limited liability company,

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed to and Accepted

as of \_\_\_\_\_, 20\_\_.

**"Tenant":**

\_\_\_\_\_

a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT D**

### **525 B STREET**

#### **RULES AND REGULATIONS**

Tenant shall observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Project. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent which will not be unreasonably withheld. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Upon the termination of this Lease, Tenant shall restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, Tenant and in the event of the loss of keys so furnished, Tenant shall pay to Landlord the cost of replacing same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes. All reference to costs shall be Landlord's reasonable estimate of Actual Costs. A sufficient number of Building access cards will be furnished by Landlord for the Premises prior to the Lease Commencement Date so that each of Tenant's employees then working at the Premises will have his or her own access card and any additional Building access cards required by Tenant must be obtained from Landlord at Landlord's reasonable estimate of Actual Cost.

2. For any multi-tenant floors, all doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises; provided, however, Tenant may keep such doors open so long as such doors are in compliance with applicable fire codes.

3. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for comparable buildings in the downtown San Diego, California area. Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register but shall nevertheless have 24/7 access to its Premises (subject to the terms of the Lease), the Building and the parking areas. Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged pass for access to the Building. Landlord will furnish passes to persons for whom Tenant requests same in writing. Tenant shall be responsible for all persons for whom Tenant requests passes and shall be liable subject to Section 10.5 of this Lease to Landlord for all acts of such persons. Subject to Section 10.1 of the Lease, Landlord and its agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the

Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

4. No furniture, freight or equipment of any kind shall be brought into the Building without prior notice to Landlord. All moving activity into or out of the Building shall be scheduled with Landlord and done only at such time and in such manner as Landlord designates. Landlord shall have the right to prescribe the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property in any case. Any damage to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other property shall be the sole responsibility and expense of Tenant.

5. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such reasonable hours established by Landlord from time to time, in such specific elevator as shall be designated by Landlord.

6. The requirements of Tenant will be attended to only upon application at the management office for the Project or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

7. No sign, except as permitted in accordance with Article 23, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Tenant on any part of the Premises or the Building without the prior written consent of the Landlord. Tenant shall not disturb, solicit, peddle, or canvass any occupant of the Project and shall cooperate with Landlord and its agents of Landlord to prevent same.

8. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein.

9. Tenant shall not overload the floor of the Premises. Tenant shall not mark, drive nails or screws, or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's prior written consent. Tenant shall not purchase spring water, ice, towel, linen, maintenance or other like services from any person or persons not approved by Landlord, such approval not to be unreasonably withheld or conditioned.

10. Except for vending machines intended for the sole use of Tenant's employees and invitees, no vending machine or machines other than fractional horsepower office machines shall be installed, maintained or operated upon the Premises without the written consent of Landlord.

11. Tenant shall not use or keep in or on the Premises, the Building, or the Project any kerosene, gasoline, explosive material, corrosive material, material capable of emitting toxic

fumes, or other inflammable or combustible fluid chemical, substitute or material. Tenant shall provide material safety data sheets for any Hazardous Material used or kept on the Premises.

12. Tenant shall not without the prior written consent of Landlord use any method of heating or air conditioning other than that supplied by Landlord.

13. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner reasonably objectionable to Landlord or other occupants of the Project by reason of noise, odors, or vibrations, or interfere with other tenants or those having business therein, whether by the use of any musical instrument, radio, phonograph, or in any other way. Tenant shall not throw anything out of doors, windows or skylights or down passageways.

14. Tenant shall not bring into or keep within the Project, the Building or the Premises any animals (other than seeing eye dogs), birds, fish, aquariums, or, except in areas designated by Landlord, bicycles or other vehicles. The current locations for the storing of bicycles in the Project are on level P2 of the Building's parking structure and on the basement level of the Building's parking structure.

15. No cooking shall be done or permitted on the Premises, nor shall the Premises be used for the storage of merchandise, for lodging or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens and other food heating and warming devices may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and visitors, provided that such use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.

16. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Premises provided for in the Summary. Tenant shall not occupy or permit any portion of the Premises to be occupied as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau without the express prior written consent of Landlord. Tenant shall not advertise for laborers (as contrasted with office workers and professionals) giving an address at the Premises.

17. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

18. Tenant, its employees and agents shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, vestibules or any Common Areas (but excluding the designated smoking area in the exterior Common Area) for the purpose of smoking tobacco products or for any other purpose, nor in any way obstruct such areas, and shall use them only as a means of ingress and egress for the Premises.

19. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to ensure the effective operation of the Building's heating and air

conditioning system, and shall refrain from attempting to adjust any controls. Tenant shall participate in all reasonable recycling programs undertaken by Landlord.

20. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in San Diego, California without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes at such times as Landlord shall designate. Tenant shall make alternate arrangements, at Tenant's cost, for the disposal of high volumes of trash in excess of the amount determined by Landlord to be an office tenant's typical volume of trash (i.e., excessive moving boxes or shipping materials). If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expense, cause the Premises to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

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

22. Any persons employed by Tenant to do janitorial work shall be subject to the prior written approval of Landlord, and while in the Building and outside of the Premises, shall be subject to the reasonable directions of the Building manager (but not as an agent or servant of such manager or of Landlord), and Tenant shall be responsible for all acts of such persons.

23. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord, and no curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard drapes. All electrical ceiling fixtures hung in the Premises or spaces along the perimeter of the Building must be fluorescent and/or of a quality, type, design and a warm white bulb color approved in advance in writing by Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreensed without the prior written consent of Landlord. Tenant shall be responsible for any damage to the window film on the exterior windows of the Premises and shall promptly repair any such damage at Tenant's sole cost and expense. Tenant shall abide by Landlord's reasonable regulations concerning the opening and closing of window coverings which are attached to the windows in the Premises, if any, which have a view of any interior portion of the Building or Common Areas.

24. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by Tenant, nor shall any bottles, parcels or other articles be placed on the windowsills.

25. Tenant must comply with requests by the Landlord concerning the informing of their employees of items of importance to the Landlord.

26. Tenant shall instruct its employees to comply with all applicable "NO-SMOKING" or similar ordinances. If Tenant is required under the ordinance to adopt a written smoking policy, a copy of said policy shall be on file in the office of the Building.

27. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed, even though Landlord provides security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord provides may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant shall, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by law.

28. All office equipment of any electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise and annoyance.

29. Tenant shall not use in any space or in the public halls of the Building, any hand trucks except those equipped with rubber tires and rubber side guards.

30. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without the prior written consent of Landlord.

31. No tenant shall use or permit the use of any portion of the Premises for living quarters, sleeping apartments or lodging rooms.

32. Intentionally Omitted.

33. To the extent required by Applicable Laws or by insurance company requirements, Tenant shall install and maintain, at Tenant's sole cost and expense, an adequate, visibly marked and properly operational fire extinguisher next to any duplicating or photocopying machines or similar heat producing equipment, which may or may not contain combustible material, in the Premises.

34. Tenant shall not permit any portion of the Project, including the Parking Facilities, to be used for the washing, detailing or other cleaning of automobiles.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable, non-discriminating Rules and Regulations as in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, Building, the Common Areas and the Project, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant, nor prevent Landlord from thereafter enforcing any such Rules or Regulations against any or all tenants of

the Project. Landlord shall not be responsible to Tenant for the nonperformance by any other tenant or occupant of any of said Rules and Regulations. Landlord reserves the right to make reasonable exceptions for specific tenants or occupants with respect to the application of certain rules and regulations. Subject to the foregoing, Landlord agrees to use commercially reasonable efforts, consistent with Landlord's rights under applicable leases, to enforce the Rules and Regulations in a fair, responsible, and equitable manner to the extent necessary to allow Tenant to operate its Permitted Use. In the event any other tenant or occupant of the Building fails to comply with the Rules and Regulations, and such non-compliance unreasonably interferes with Tenant's Permitted Use of the Premises, Landlord shall use reasonable efforts to cause such other tenants or occupants to comply with the Rules and Regulations. Landlord agrees that the Rules and Regulations shall not be changed, revised or enforced in any unreasonable way by Landlord nor enforced or changed by Landlord in such a way as to interfere with Tenant's Permitted Use of the Premises pursuant to this Lease. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

## EXHIBIT E

### CLEANING AND JANITORIAL SERVICES

#### I ENTRANCE, LOBBY AND BUILDING CORRIDORS

##### A. **Nightly Services – Five (5) days per week.**

1. Empty waste baskets and carry trash to pick up area. Install plastic waste liners as necessary, from owner's stock.
2. Empty and clean ashtrays and sand urns. Replace sand, if necessary.
3. Vacuum traffic lanes and accessible areas.
4. Dust mop hard surface floors with a chemically treated dust mop.
5. Damp mop hard surface floor areas. Clean all edges and corners.
6. Spot clean carpeted areas and mats for spills. (Spot cleaning consists of spots that are silver dollar sized or smaller.)
7. Clean and polish all transoms, metal doors, door frames, etc.
8. Clean glass doors, adjacent panels, windows and partition glass.
9. Dust vases, vase stands and other horizontal surfaces.
10. Vacuum entrance doormats.
11. Spot clean directory boards and graphics.
12. Clean top and sides of security desk.

##### B. **Weekly Services:**

1. Perform high dusting over six feet.
2. Spot clean leather and vinyl furniture.
3. Vacuum accessible carpeted corners and edges.
4. Dust accessible baseboards.
5. Clean all ceiling vents, air diffusers and grills.

**C. Monthly Services:**

1. Vacuum upholstered lobby seating.
2. Dust Venetian blinds.

Dust picture frames.

**II GENERAL OFFICE AREAS**

**A. Nightly Services – Five (5) days per week.**

1. Empty and clean (when necessary) all waste receptacles and remove waste paper and rubbish to designated area. Install plastic waste liners as necessary, from owner's stock.
2. Hand dust or wipe clean with damp or treated cloth all horizontal surfaces, desks, chairs, tables, credenzas, file cabinets, telephones, picture frames, etc. Do not re-arrange materials on desks.
3. Spot clean carpeted areas and mats for spills. (Spot cleaning consists of spots that are silver dollar sized or smaller.)
4. Properly position furniture in offices.
5. Vacuum all carpeted areas. (Broom-sweep any oriental antique rugs). Edges should either be swept or vacuumed with appropriate edge cleaning tool, as required.
6. Spot clean all windows and partition glass including lobby glass.
7. Remove all finger marks and smudges from all glass, wood and metal surfaces taking care not to mar material finishes.
8. Dust mop and spot clean all tiled areas.
9. Damp wash and wipe dry all plastic and Formica desk tops.
10. Pick up small items (paper, clips, etc.,) from non-vacuumed areas
11. Clean and sanitize drinking fountains, follow with stainless steel cleaner as needed taking care not to leave any oily residue.

**B. Weekly Services:**

1. Wash waste receptacles. To be done if liquids have leaked into the receptacle through the plastic liner or in other areas, as required. Plastic liners should be used only in areas with wet trash.

2. Machine buff all non-carpet floors – not less than monthly. Strip and re-coat as necessary.
3. Dust ledges and windowsills.
4. Perform high dusting over six (6) feet.
5. Remove fingerprints from woodwork, walls and partitions.

**C. Monthly Services:**

1. Dust all doors top to bottom and tops of partitions.
2. Dust picture frames.
3. Dust all Venetian Blinds.
4. Vacuum wall and ceiling vents, lighting fixtures.
5. Dust fire extinguishers/fire extinguisher cabinets as needed.

**III KITCHENS & LUNCHROOMS**

**A. Nightly Services – Five (5) days per week.**

1. Empty and clean (when necessary) all waste receptacles and remove waste paper and rubbish to designated area. Install plastic waste liners as necessary, from owner's stock.
2. Clean counter tops and cupboard faces.
3. Wipe off tables, chairs and re-position furniture as needed.
4. Clean interior of microwave ovens.
5. Thoroughly clean sinks and fixtures.
6. Damp wipe outside of trash containers and lids.
7. Sweep or dust mop hard surface floors.
8. Damp mop hard surface floors.
9. Check below sinks for possible leaks and report any to cleaning supervisor.

**B. Weekly Services:**

1. Spot clean doors, walls and light switches for fingerprints.

2. Clean exterior of refrigerators and vending machines.
3. Dust window ledges.

**C. Monthly Services:**

1. Clean ceiling vents.
2. Dust Venetian blinds.

Wipe down accessible baseboards.

Vacuum accessible corners.

Dust top of refrigerators and vending machines.

**IV RESTROOMS**

**A. Nightly Service – Five (5) days per week.**

1. Empty and clean (when necessary) all waste receptacles and remove waste paper and rubbish to the designated area.
2. Wash and disinfect all basins, urinals and bowls using nonabrasive cleaners to remove stains and clean undersides of rim on urinals and bowls. Wash both sides of toilet seats.
3. Clean all mirrors, bright work and enameled surfaces.
4. Spot clean all partitions, tile walls, doors and outside surfaces of all dispensers and receptacles. Damp wipe all lavatory tops and remove water spots from wall surfaces next to dispensers/receptacles. Spot clean around light fixtures.
5. Clean flush-o-meters, piping and other metal. Do not leave oily film on any metal finish.
6. Fill toilet tissue, soap, towel and sanitary napkin dispensers. Do not place any extra supplies on top of dispenser or counter top.
7. Sweep, wet mop and thoroughly rinse floor. Clean all corners and edges to prevent dirt buildup. Do not leave standing water on the floor.
8. Thoroughly clean shower stalls.

**B. Weekly Service:**

1. Thoroughly clean toilet compartment partitions.

2. Perform high dusting over six feet.
3. Completely clean and sanitize fixtures.
4. Pour clean water down floor drains to prevent sewer gases from escaping.

**C. Monthly Service:**

1. Wipe down ceramic tile walls.
2. Vacuum and clean ceiling and wall vents.
3. Scrub all floors (intent is to prevent buildup of dirt)
4. Clean soap dispensers – as needed
5. Clean light fixtures annually

**V STAIRWAYS, LANDINGS AND ELEVATORS**

**A. Daily Services – Five (5) days per week.**

1. Police for trash, remove gum daily.
2. Sweep/mop for spills.
3. Clean print and marks from doors.

**B. Weekly Services:**

1. Thoroughly sweep.
2. Dust all light fixtures.
3. Dust painted piping and vents.
4. Dust handrails and other vertical railings.

**C. Monthly Services:**

1. Damp mop stairwells and landings.

**VI ELEVATORS**

**A. Daily Services – Five (5) days per week.**

1. Dust light lenses, damp wipe, if necessary.
2. Spot clean walls.

3. Dust or damp wipe finish metal and floor buttons.
4. Clean and polish all thresholds & door tracks.
5. Vacuum carpeted floors including edges.
6. Spot clean carpets. (Spot cleaning consists of spots that are silver dollar sized or smaller.)
7. Spot clean hall side of doors, frame and hall call button.

**B. Services as needed:**

1. Dust Ceiling.
2. Shampoo carpets.
3. Wash hall side of doors and frame.

**VII BASEMENT CLEANING - HALLWAYS**

**A. Nightly Services – Five (5) days per week.**

1. Vacuum traffic lanes and accessible areas.
2. Dust mop hard surface floors with a chemically treated dust mop.
3. Damp mop hard surface floor areas.
4. Spot clean carpeted areas for spills. (Spot cleaning consists of spots that are silver dollar sized or smaller.)
5. Wipe metal and bright work.
6. Dust horizontal surfaces within six feet.

**B. Weekly Services:**

1. Perform high dusting over six feet.
2. Vacuum accessible carpeted corners and edges.
3. Dust accessible baseboards.

**C. Monthly Services:**

1. Vacuum ceiling vents.
2. Dust picture frames

## VIII FITNESS CENTER

### 1. **LOCKER ROOMS**

#### A. **Nightly Service – Five (5) days per week.**

1. Empty and clean (when necessary) all waste receptacles and remove waste paper and rubbish to the designated area.
2. Wash and disinfect all basins, urinals and bowls using nonabrasive cleaners to remove stains and clean undersides of rim on urinals and bowls. Wash both sides of toilet seats.
3. Clean all mirrors, bright work and enameled surfaces.
4. Spot clean all partitions, tile walls, doors and outside surfaces of all dispensers and receptacles. Damp wipe all lavatory tops and remove water spots from wall surfaces next to dispensers/receptacles. Spot clean around light fixtures.
5. Clean flush-o-meters, piping and other metal. Do not leave oily film on any metal finish.
6. Fill toilet tissue, soap, towel and sanitary napkin dispensers. Do not place any extra supplies on top of dispenser or counter top.
7. Sweep, wet mop and thoroughly rinse floor. Clean all corners and edges to prevent dirt buildup. Do not leave standing water on the floor.
8. Thoroughly clean shower stalls.

#### B. **Weekly Service:**

1. Thoroughly clean toilet compartment partitions.
2. Perform high dusting over six feet.
3. Completely clean and sanitize fixtures.
4. Pour clean water down floor drains to prevent sewer gases from escaping.

#### C. **Monthly Service:**

1. Wipe down ceramic tile walls.
2. Vacuum and clean ceiling and wall vents.
3. Scrub all floors (intent is to prevent buildup of dirt)
4. Clean soap dispensers -- as needed

5. Clean light fixtures annually

1. **FITNESS AREA**

**Nightly Service – Five (5) days per week.**

1. Wipe clean all fitness equipment
2. Vacuum carpets and mat area
3. Remove any trash
4. Clean Water Fountain
5. Spot clean carpeted areas for spills. (Spot cleaning consists of spots that are silver dollar sized or smaller.)

**DAY PORTER SPECIFICATIONS – MONDAY THROUGH FRIDAYS**

**I AS NEEDED THROUGHOUT THE DAY**

1. Routinely check men's and women's washrooms for paper stock replacements. Wipe down and clean all lavatory tops and fixtures. Police restrooms to prevent paper/trash on floor. Report to Management Office any problems.
2. Empty trash and debris from trash enclosure, loading dock, ramps, and sidewalks.
3. Sweep and mop sidewalks around building perimeters.
4. Clean glass windows, door hardware and elevator fixtures in main lobby, retail and common areas.
5. Routinely vacuum lobby carpets and elevator carpets throughout the day.
6. Routinely monitor the lobby and sidewalk areas to ensure cleanliness.
7. Routinely remove fingerprints and smudges from metal surfaces.
8. Sweep parking stairwells at least once a day.
9. Wipe down fitness equipment in Fitness Center.
10. Clean and re-stock Fitness Center restrooms.
11. Clean window sills, frames and granite columns on ground floor retail and perimeters below 6 feet.
12. Police landscaping planters for trash.
13. Clean trashcans and ash urns.

14. Scrape chewing gum off surfaces and remove graffiti as needed.
15. Wipe down emergency exit doors.
16. Other duties as assigned by Building Management.

**EXHIBIT F**

**525 B STREET**

**FORM OF NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

Loan No.  
RECORDING REQUESTED BY

\_\_\_\_\_  
WHEN RECORDED MAIL TO

The Northwestern Mutual Life Ins. Co.  
720 East Wisconsin Ave. - Rm N16WC  
Milwaukee, WI 53202  
Attn:

\_\_\_\_\_  
SPACE ABOVE THIS LINE FOR RECORDER'S USE

**NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS AGREEMENT is entered into as of \_\_\_\_\_, 20\_\_ between \_\_\_\_\_, whose mailing address is \_\_\_\_\_, ("Tenant"), \_\_\_\_\_, whose mailing address is \_\_\_\_\_, ("Borrower"), and THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, a Wisconsin corporation ("Lender"), whose address for notices is 720 East Wisconsin Avenue, Milwaukee, WI 53202, Attention: Real Estate Investment Department, Reference Loan No. 338865.

**RECITALS**

- A. Tenant is the lessee or successor to the lessee, and Borrower is the lessor or successor to the lessor under a certain lease dated \_\_\_\_\_, 20\_\_ (the "Lease").
- B. Lender has made, a mortgage loan to be secured by a mortgage, deed to secure a debt or deed of trust from Borrower for the benefit of Lender (as it may be amended, restated or otherwise modified from time to time, the "Lien Instrument") encumbering the fee title to and/or leasehold interest in the land described in Exhibit A attached hereto and the improvements thereon (collectively, the "Property"), wherein the premises covered by the Lease (the "Demised Premises") are located.
- C. Borrower and Lender have executed an Absolute Assignment of Leases and Rents (the "Absolute Assignment"), pursuant to which (i) the Lease is assigned to Lender and (ii) Lender grants a license back to Borrower permitting Borrower to collect all rents, income and other sums payable under the

Lease until the revocation by Lender of such license, at which time all rents, income and other sums payable under the Lease are to be paid to Lender.

D. Lender has required the execution of this Agreement by Borrower and Tenant as a condition to Lender making the requested mortgage loan or consenting to the Lease.

E. Tenant acknowledges that, as its consideration for entering into this Agreement, Tenant will benefit by entering into an agreement with Lender concerning Tenant's relationship with any purchaser or transferee of the Property (including Lender) in the event of foreclosure of the Lien Instrument or a transfer of the Property by deed in lieu of foreclosure (any such purchaser or transferee and each of their respective successors or assigns is hereinafter referred to as "Successor Landlord").

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant, Borrower and Lender agree as follows:

1. Tenant and Borrower agree for the benefit of Lender that:
  - (a) Tenant shall not pay, and Borrower shall not accept, any rent or additional rent more than one month in advance;
  - (b) Except as specifically provided in the Lease, Tenant and Borrower will not enter into any agreement for the cancellation of the Lease or the surrender of the Demised Premises without Lender's prior written consent;
  - (c) Tenant and Borrower will not enter into any agreement amending or modifying the Lease without Lender's prior written consent, except for amendments or modifications specifically contemplated in the Lease for confirming the lease commencement date, the rent commencement date, the term, the square footage leased, the renewal or extension of the Lease, or the leasing of additional space at the Property;
  - (d) Tenant will not terminate the Lease because of a default thereunder by Borrower unless Tenant shall have first given Lender written notice and a reasonable opportunity to cure such default;

- (e) Tenant, upon receipt of notice from Lender that it has exercised its rights under the Absolute Assignment and revoked the license granted to Borrower to collect all rents, income and other sums payable under the Lease, shall pay to Lender all rent and other payments then or thereafter due under the Lease, and any such payments to Lender shall be credited against the rent or other obligations due under the Lease as if made to Borrower;
- (f) Tenant will not conduct any dry cleaning operations on the Demised Premises using chlorinated solvents nor will Tenant use any chlorinated solvents in the operation of their business on the Demised Premises; and
- (g) Tenant shall pay any and all termination fees due and payable under the Lease directly to Lender to be held in an account satisfactory to Lender.

2. The Lease is hereby subordinated in all respects to the Lien Instrument and to all renewals, modifications and extensions thereof, subject to the terms and conditions hereinafter set forth in this Agreement, but Tenant waives, to the fullest extent it may lawfully do so, the provisions of any statute or rule of law now or hereafter in effect that may give or purport to give it any right or election to terminate or otherwise adversely affect the Lease or the obligations of Tenant thereunder by reason of any foreclosure proceeding.

3. Borrower, Tenant and Lender agree that, unless Lender shall otherwise consent in writing, the fee title to, or any leasehold interest in, the Property and the leasehold estate created by the Lease shall not merge but shall remain separate and distinct, notwithstanding the union of said estates either in Borrower or Tenant or any third party by purchase, assignment or otherwise.

4. If the interests of Borrower in the Property are acquired by a Successor Landlord:

- (a) If Tenant shall not then be in default in the payment of rent or other sums due under the Lease or be otherwise in material default under the Lease, the Lease shall not terminate or be terminated and the rights of Tenant thereunder shall continue in full force and effect except as provided in this Agreement;
- (b) Tenant agrees to attorn to Successor Landlord as its lessor; Tenant shall be bound under all of the terms, covenants and conditions of

the Lease for the balance of the term thereof, including any renewal options which are exercised in accordance with the terms of the Lease;

- (c) The interests so acquired shall not merge with any other interests of Successor Landlord in the Property if such merger would result in the termination of the Lease;
- (d) If, notwithstanding any other provisions of this Agreement, the acquisition by Successor Landlord of the interests of Borrower in the Property results, in whole or part, in the termination of the Lease, there shall be deemed to have been created a lease between Successor Landlord and Tenant on the same terms and conditions as the Lease, except as modified by this Agreement, for the remainder of the term of the Lease with renewal options, if any; and
- (e) Successor Landlord shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Successor Landlord's acquisition of the interests of Borrower in the real estate, have the same remedies against Successor Landlord for the breach of the Lease that Tenant would have had under the Lease against Borrower if the Successor Landlord had not succeeded to the interests of Borrower; provided, however, that Successor Landlord shall not be:
  - (i) Liable for the breach of any representations or warranties set forth in the Lease or for any act, omission or obligation of any landlord (including Borrower) or any other party occurring or accruing prior to the date of Successor Landlord's acquisition of the interests of Borrower in the Demised Premises, except for any repair and maintenance obligations of a continuing nature as of the date of such acquisition;
  - (ii) Liable for any obligation to construct any improvements in, or make any alterations to, the Demised Premises, or to reimburse Tenant by way of allowance or otherwise for any such improvements or alterations constructed or made, or to be constructed or made, by or on behalf of Tenant in the Demised Premises;

- (iii) Subject to any offsets or defenses which Tenant might have against any landlord (including Borrower) prior to the date of Successor Landlord's acquisition of the interests of Borrower in the Demised Premises;
- (iv) Liable for the return of any security deposit under the Lease unless such security deposit shall have been actually deposited with Successor Landlord;
- (v) Bound to Tenant subsequent to the date upon which Successor Landlord transfers its interest in the Demised Premises to any third party;
- (vi) Liable to Tenant under any indemnification provisions set forth in the Lease; or
- (vii) Liable for any damages in excess of Successor Landlord's equity in the Property.

The provisions of this paragraph shall be effective and self-operative immediately upon Successor Landlord succeeding to the interests of Borrower without the execution of any other instrument.

5. Tenant represents and warrants that Tenant, all persons and entities owning (directly or indirectly) an ownership interest in Tenant and all guarantors of all or any portion of the Lease: (i) are not, and shall not become, a person or entity with whom Lender is restricted from doing business with under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated Nationals and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; (ii) are not, and shall not become, a person or entity with whom Lender is restricted from doing business under the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders thereunder; and (iii) are not knowingly engaged in, and shall not engage in, any dealings or transaction or be otherwise associated with such persons or entities described in (i) and (ii) above.

6. This Agreement may not be modified orally or in any other manner except by an agreement in writing signed by the parties hereto or their respective

successors in interest. In the event of any conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall prevail. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, successors and assigns, and shall remain in full force and effect notwithstanding any renewal, extension, increase, or refinancing of the indebtedness secured by the Lien Instrument, without further confirmation. Upon recorded satisfaction of the Lien Instrument, this Agreement shall become null and void and be of no further effect.

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

TENANT: \_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

Add appropriate acknowledgment for Tenant.

*(Signatures of Borrower and Lender continued on following pages)*

*(Signatures continued)*

BORROWER: \_\_\_\_\_

By: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

Add appropriate acknowledgment for Borrower.

*(Signature of Lender continued on following pages)*

*(Signatures continued)*

LENDER: THE NORTHWESTERN MUTUAL  
LIFE INSURANCE COMPANY, a  
Wisconsin corporation

By: Northwestern Mutual Real Estate  
Investments, LLC, a Delaware  
limited liability company, its  
wholly-owned affiliate and  
authorized representative

By: \_\_\_\_\_,  
Managing Director

Attest: \_\_\_\_\_,  
Assistant Secretary

Add appropriate acknowledgment for NML  
Add scrivener's statement

EXHIBIT "A"  
(Description of Property)

ORDINANCE NUMBER O- 20273 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 09 2013

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AND DELIVER THAT CERTAIN LEASE WITH HINES 525 B STREET LP, A DELAWARE LIMITED PARTNERSHIP, FOR OFFICE SPACE TO BE USED BY CITY STAFF IN THE BUILDING LOCATED AT 525 B STREET IN DOWNTOWN SAN DIEGO; AND AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR.

WHEREAS, the City of San Diego (City) currently leases office space in a building located at 600 B Street in downtown San Diego. The 600 B Street office space is used by approximately four hundred (400) employees of the City's Public Works and Public Utilities Departments. The negotiated term for the office space at 600 B Street expires on May 31, 2013. After May 31, 2013, the City's tenancy at 600 B Street is subject to the holdover provisions of the 600 B Street lease; and

WHEREAS, new office space for City staff has been located at 525 B Street in downtown San Diego. The 525 B Street space is owned by Hines 525 B Street LP, a Delaware limited partnership (Hines) and is sufficient to accommodate all of the employees currently located at 600 B Street; however, tenant improvements will be necessary; and

WHEREAS, a proposed (6) year lease, with two (2) one-year options, has been negotiated with Hines for the 525 B Street space, the terms and conditions of which are more fully set forth in that certain proposed lease; and

WHEREAS, San Diego Charter section 99 requires that no contract, agreement, or obligation requiring expenditure of public funds in excess of five years may be authorized except by ordinance adopted by two-thirds majority vote of the Council of the City of San Diego; and

WHEREAS, Pursuant to Section 99 of the San Diego Charter, a public hearing was duly noticed and held in regard to the matters set forth in the recitals hereof; NOW, THEREFORE,

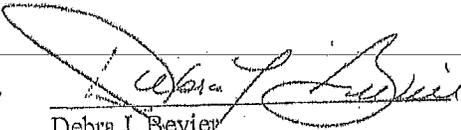
BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. That the Mayor, or his designee, is hereby authorized and directed to execute, deliver, and effectuate the terms and conditions of that certain lease, on file with the Office of the City Clerk as Document No. OO- 20273, between the City of San Diego, as tenant, and Hines 525 B Street LP, a Delaware limited partnership, as landlord, for office space in the building located at 525 B Street, San Diego, California.

Section 2. That the Chief Financial Officer is authorized to expend funds, for rent and as otherwise required by the lease agreement, including rent in an amount not to exceed \$1,399,391 for Fiscal Year 2014, from the following funds and in the following percentages: General Fund 100000, 47.66%; Muni Sewer Revenue Fund 700000, 12.71%; Metro Sewer Utility Fund 700001, 7.27%; and Water Utility Operating Fund 700011, 32.36%, contingent upon the adoption of the Fiscal Year 2014 Appropriation Ordinance and contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

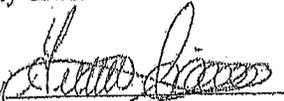
APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Debra J. Bevier  
Deputy City Attorney

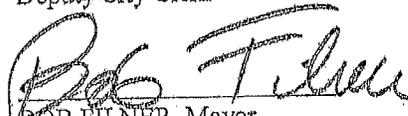
DJB:mm  
06/11/2013  
Or.Dept.: Public Works/Engineering-ROW  
Doc. No. 578503\_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 7/9/13.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 7/9/13  
(date)

  
BOB FILNER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
BOB FILNER, Mayor

DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO

DATE:

**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

February 18, 2015

SUBJECT: Second Amendment to Office Lease at 525 B Street, San Diego, CA 92101

**GENERAL CONTRACT INFORMATION**

Recommended Contractor: Hines 525 B Street LP (Not Certified, M – Cauc.)

**Amount of this Action:** \$ 268,686.00 (FY 2016)  
\$ 414,348.00 (FY 2017)  
\$ 426,367.00 (FY 2018)  
\$ 440,331.00 (FY 2019)  
\$ 38,777.48 (FY 2020)

Cumulative Amount: \$1,588,509.48

Funding Source: City of San Diego

Goal: 20% Voluntary

**SUBCONTRACTOR PARTICIPATION**

There is no subcontractor participation associated with this action; however, subsequent actions must adhere to funding agency requirements.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required.

Hines 525 B Street LP submitted a submitted a Work Force Report for their San Diego County employees dated, February 17, 2015 indicating 8 employees in their Administrative Work Force. The firm has fewer than 15 employees and therefore, is exempt from the employment category goals.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

**ADDITIONAL COMMENTS**

Entering into a Second Amendment to an existing Office Lease at 525 B Street, San Diego, California 92101, for the City to expand into the entire 12<sup>th</sup> floor (19,684 SF) and extend the original lease on 90,778 SF, plus storage space, for one additional year now ending June 30, 2020.

KM



City of San Diego

**EQUAL OPPORTUNITY CONTRACTING (EOC)**

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

**WORK FORCE REPORT**

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED  
CONTRACTOR IDENTIFICATION**

Type of Contractor:  Construction  Vendor/Supplier  Financial Institution  Lessee/Lessor  
 Consultant  Grant Recipient  Insurance Company  Other

Name of Company: Hines

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): Williams Tower, 2800 PostOak Blvd.

City: Houston County: \_\_\_\_\_ State: TX Zip: 77056

Telephone Number: (713) 621-8000 Fax Number: ( ) \_\_\_\_\_

Name of Company CEO: Jeffrey Hines

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: 525 B. Street, Suite 220

City: San Diego County: San Diego State: CA Zip: 92101

Telephone Number: (619) 233-7621 Fax Number: (619) 234-9423

Type of Business: Property Management Type of License: Real Estate

The Company has appointed: Donald Petros

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 525 B. Street, Suite 220 San Diego, CA 92101

Telephone Number: (619) 233-7621 Fax Number: (619) 234-9423

- One San Diego County (or Most Local County) Work Force - Mandatory
- Branch Work Force \*
- Managing Office Work Force

Check the box above that applies to this WFR.

\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of Hines

San Diego (County), CA (State) hereby certify that information provided

herein is true and correct. This document was executed on this 17th day of February, 2015

[Signature]  
(Authorized Signature)

Donald Petros  
(Print Authorized Signature Name)

**WORK FORCE REPORT - Page 2**

NAME OF FIRM: Hines DATE: 2/17/15

OFFICE(S) or BRANCH(ES): San Diego - 525 B. Street COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial			1			1					1	1		
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support				1										
Services														
Crafts														
Operative Workers	1		1								1			
Transportation														
Laborers*														

\*Construction laborers and other field employees are not to be included on this page

Totals Each Column	1		2	1		1					2	1		
--------------------	---	--	---	---	--	---	--	--	--	--	---	---	--	--

Grand Total All Employees

8

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

**WORK FORCE REPORT - Page 3**

NAME OF FIRM: Hines

DATE: 2/17/15

OFFICE(S) or BRANCH(ES): San Diego

COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Grand Total All Employees 0

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--



# CITY OF SAN DIEGO WORK FORCE REPORT

## HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

## WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

## MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.<sup>1,3</sup> In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.<sup>3</sup>

## TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one <sup>1</sup>, two <sup>2</sup> & three <sup>3</sup>. These numbers coincide with the types of work force report required in the example. See below:

- <sup>1</sup> One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- <sup>2</sup> Branch Work Force \*
- <sup>3</sup> Managing Office Work Force

*\*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

## **Exhibit A: Work Force Report Job categories-Administration**

Refer to this table when completing your firm's Work Force Report form(s).

### **Management & Financial**

Advertising, Marketing, Promotions, Public Relations, and Sales Managers	
Business Operations Specialists	
Financial Specialists	✓
Operations Specialties Managers	
Other Management Occupations	✓
Top Executives	

### **Professional**

Art and Design Workers	
Counselors, Social Workers, and Other Community and	

Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

**Architecture & Engineering, Science, Computer**

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

**Technical**

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

**Sales**

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

**Administrative Support**

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants ✓
Supervisors, Office and Administrative Support Workers

**Services**

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

**Crafts**

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

**Operative Workers**

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations ✓
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

**Transportation**

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

**Laborers**

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

## Exhibit B: Work Force Report Job categories-Trade

### Brick, Block or Stone Masons

Brickmasons and Blockmasons
Stonemasons

### Carpenters

#### Carpet, floor and Tile Installers and Finishers

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

### Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

### Construction Laborers

#### Drywall Installers, Ceiling Tile Inst

Drywall and Ceiling Tile Installers
Tapers

### Electricians

### Elevator Installers and Repairers

### First-Line Supervisors/Managers

First-line Supervisors/Managers of Construction Trades and Extraction Workers
---

### Glaziers

#### Helpers, Construction Trade

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

### Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

### Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

### Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

### Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

### Plasterers and Stucco Masons

### Roofers

### Security Guards & Surveillance Officers

### Sheet Metal Workers

### Structural Iron and Steel Workers

### Welding, Soldering and Brazing Workers

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

### Workers, Extractive Crafts, Miners