KERN REGIONAL CENTER

Board of Directors Meeting Agenda
Tuesday, November 28, 2023
6:00 – 7:30 p.m.

Kern Regional Center, 3200 N. Sillect Ave., Bakersfield CA 93308
Malibu Room

General Business			
1. Call to Order and Introductions		Kevin Gosselin, President	6:00-6:05 p.m.
2. Approval of Agenda	Action	Kevin Gosselin, President	6:05 – 6:07 p.m.
3. Approval of October 24, 2023 Board Minutes (Attachment 1)	Action	Kevin Gosselin, President	6:07 – 6:10 p.m.
4. Early Start and Lanterman: Case Finding Outreach, Eligibility, IFSP/IPP, Person-Centered Approach, Education Partnership	Info.	Celia Pinal, Director of Client Services Paulina Blanco, School Transition Liaison Carissa Martinez, Program Manager Nicola Perkins, Program Manager	6:10 – 6:40 p.m.
5. Vendorization of Independent Facilitators and Insurance Requirements (099) – (Attachment 2)	Action	Enrique Roman, Director, Community Services	6:40 – 6:50 p.m.
6. Approval of ARCA Membership Documents (Attachment 3)	Action	Kevin Gosselin, President	6:50 – 7:00 p.m.
7. KRC Office Expansion (Attachment 4)	Action	Tom Wolfgram, CFO	7:00 – 7:05 p.m.
8. Nominations and Voting for 2024 KRC Board of Directors Officers	Action	Kevin Gosselin, President	7:05 – 7:15 p.m.
9. Public Input	Info.		7:15 – 7:20 p.m.
Reports			
10. Board President Report	Info.	Kevin Gosselin, President	7:20 – 7:25 p.m.
11. Executive Director Report	Info.	Dr. Michi Gates, Executive Director	7:25 – 7:30 p.m.
12. Financial Report *a.* POS Report for September 2023 (Attachment 5) *b.* Operations Report for September 2023 (Attachment 6)	Info.	Tom Wolfgram, CFO	7:30 – 7:35 p.m.
13. Vendor Advisory Committee Report	Info.	Tamerla Prince, VAC Representative	7:35 – 7:40 p.m.

Please click the link below to join the webinar:
https://us02web.zoom.us/j/81157235724?pwd=bGt6RWxTNDFUU2xzVzJZaHVnYlpMZz09

Webinar ID: 811 5723 5724 Passcode: 491216
Dial-In Number: (213) 338-8477

Next Board Meeting is January 24, 2024, 6:00 – 7:30 PM
Kern Regional Center, 3200 N. Sillect Ave., Bakersfield CA 93308
Malibu Room

Attachment 1

Kern Regional Center
Board of Directors Meeting
October 24, 2023

This meeting was conducted as a hybrid meeting at Kern Regional Center, 3300 N. Sillect Ave., Bakersfield, California in the Malibu Room and by the use of remote teleconferencing technology provided by Zoom.

Board of Directors Present:
Ana Alonso, Board Member; Carlos Isidoro, Board Member; Tracey Mensch, Vice President; Tamerla Prince, Vendor Advisory Representative; Donald Tobias, Board Member; Mark Tolentino, Board Member; Martin Vasquez, Secretary; Simon Verdugo, Board Member; and Ruth Watterson, Board Member. A quorum was established.

Board of Directors Absent:
Oscar Axume, Treasurer; Kevin Gosselin, President; Ryan Jones, Board Member

Kern Regional Center Staff Present:
Adriana Antonio, Participant Choice Specialist; Lulu Calvillo, Assistant Director, Early Childhood; Tomas Cubias, Assistant Director, Service Access & Equity; Michi Gates, Executive Director; Chloe Hayes, Participant Choice Specialist; Kristine Khuu, Assistant Director, Client Services; Yesenia Mackie, Assistant Director, Client Services; Darlene Pankey, Executive Assistant; Celia Pinal, Director of Client Services; Karina Proffer, Program Manager; Enrique Roman, Director, Community Services; Jose Santana, IT Department; Tom Wolfgram, CFO

Attendees:
Cindy Cox, Advocate for Donald Tobias; Adeyinka Glover, OCRA; Adriana Gutierrez; Briseida Moreno; John Noriega, Advocate for Simon Verdugo; Edwin Pineda, DDS; Samantha Pinto; Christina Rockwell; Mitzi Villalon.

Attendees Identifying by E-Mail Username:
Samsung SM-S916U; Sammiegirl412

Interpreters: Kimberly Diez, ASL; Nidya Madrigal-Navia, Spanish; Kayelle Morgan, ASL

CALL TO ORDER: Tracey Mensch, Vice President, called the meeting to order at 6:02 p.m. and introductions were made.

AGENDA APPROVAL: Vice President Mensch asked for a motion to approve the agenda.

Moved by Alonso and seconded by Isidoro to:
Accept the agenda for the meeting of October 24, 2023.
PASSED: 9

APPROVAL OF MINUTES: Vice President Mensch asked for a motion to approve the minutes of the board meeting held on September 26, 2023. Ana Alonso noted that an attendee's name was misspelled.

Moved by Verdugo and seconded by Alonso to:
Approve the Kern Regional Center Board of Directors Meeting Minutes for September 26, 2023, with the correction of attendee's last name from Chocateco to Chocoteco.
PASSED: 9

SELF-DETERMINATION PROGRAM: GOALS, PROGRESS, PROJECTS, OUTCOMES

An educational lecture, *Self-Determination Program: Goals, Progress, Projects Outcomes* was presented to the Board of Directors by Chloe Hayes and Adriana Antonio, KRC Participant Choice Specialists. Tomas Cubias, Assistant Director, Service Access and Equity, gave a brief introduction of the program.

A copy of the PowerPoint presentation will be filed with the minutes of this meeting.

Questions were presented regarding independent facilitators completing vendorization for 099. Enrique Roman, KRC Director of Community Services, responded that, currently, KRC's independent facilitators have not completed vendorization; however, he anticipates resolution soon. KRC continues to work through insurance requirements for vendorization. This topic is a planned agenda item for the November Board of Directors meeting.

PUBLIC INPUT

Adeyinka Glover, Clients Rights Advocate and Attorney at Disability Rights California, announced that OCRA is hosting a Central Valley event in Tulare, California on November 15, 9:00 a.m. – 4:00 p.m. This workshop will focus on education, IPP planning and discussion of issues communicated by the client community. Ms. Glover included the web link and her contact number in the chat for those needing further information. KRC will also promote this event on their website and social media.

Samantha Pinto asked for any information about FMS. Enrique referred to the DDS website that has a list of the vendored FMS agencies and the modalities they each provide.

Ana Alonso announced that Padres Unidos will be having an event on November 11. This event will cover topics such as asthma and home care services. This event will be promoted on KRC's website and social media.

BOARD PRESIDENT REPORT

At the November board meeting, we will be receiving nominations and voting for our 2024 KRC Board of Directors Officers. Nominees who have a background in finance are especially needed. Information was provided in the chat for anyone who would like to request a KRC Board of Directors application.

EXECUTIVE DIRECTOR REPORT

Dr. Michi Gates presented the Executive Director's report to the Board of Directors.

- KRC has received the E1 Budget Allocation from DDS for 2023-24. Hiring continues. KRC's focus this year will be to use the additional funds that were allocated by the legislature and approved by the governor to meet the caseload ratio of 1:40 for children who are ages 0-5.
- KRC is regularly participating in community events; i.e., Resource Fair at Beale Library, television interview about Down Syndrome Awareness month, HIRE Luncheon, and VAC Luncheon. KRC strives to maintain a good presence on our website and social media. Planning is being done around creating videos featuring some of the individuals we serve.
- One of the statewide events that Dr. Gates is involved with is the DDS Complex Needs work group. This work group addresses individuals whose complex needs, i.e., dual diagnoses, make it more difficult for them to remain in their community in a home-like setting. Of the three additional subgroups created from this work group, Dr. Gates is participating in a subgroup about Coordinated Family Support, focusing on individuals who choose to remain in their family home versus living in their own apartment or other living arrangement. Culturally, this is important. Coordinated Family Support is an attempt to fill the gap for those cultures that prefer to have adult children remain with the family. KRC is working on identifying clients that can be served by Coordinated Family Support.
- KRC is working with Kern Behavioral Health to update their Memorandum of Understanding (MOU) to maximize collaboration and ensure quality services.

- Dr. Gates and Tracey Mensch attended the ARCA Board of Directors meeting in San Diego October 19-20. Standardization of practices was a main focus. Topics discussed were: 1) a standard format for all regional center websites; 2) standardization of vendorization processes; 3) a uniform intake process during client transition between regional centers; 4) standardization of regional center staff competencies and 5) a standardized template for Person-Centered IPP.
- Kern Regional Center met all performance measures, so far, for the 2022-23 Performance Plan. The employment measure data is pending.
- The Senate Human Services Committee has requested a briefing on autism and regional center services. Dr. Gates, along with ARCA, has been asked to be part of this briefing.
- Disability Voices United's SDP conference *Our Future, Our Fight: Our Right to Self-Determination* will take place on November 3. KRC has five staff members who will attend and Dr. Gates will be on a panel for the event.
- Cultural/Implicit Bias training has been scheduled for all KRC staff in November.
- The HCBS Waiver audit will take place in November.

FINANCIAL REPORT
Tom Wolfgram, CFO, provided the Financial Report for Purchase of Services and Operations as of August 31, 2023.

Purchase of Services
Total spent for month ending August 31, 2023: $19,648,273
YTD: $39,400,821

An estimated $5 Million more has been spent this year than at this time last year, specifically in the Community Care Facility, Day Training, and Respite Care categories.

Operations Report
Total expenses for month ending August 31, 2023: $2,803,640
YTD: $5,513,061

$1.5 Million more was spent on salaries and benefits. The E-1 budget allocation was greater than it has been in the past year and meeting the 1:40 ratio requires the addition of more staff.

A copy of the Purchase of Services Report and the Operations Report for the month ending August 31, 2023, are attached to these minutes.

VENDOR ADVISORY COMMITTEE
The VAC Luncheon will take place on November 3 at the Doubletree Hotel.

Tracey Mensch, Vice-President adjourned the meeting at 7:33 p.m.

The next meeting of the KRC Board of Directors is scheduled for Tuesday, November 28, 2023, at 6:00 p.m.

Darlene Pankey
Executive Assistant

Attachment 2

MEMORANDUM

TO: BOARD OF DIRECTORS, KERN REGIONAL CENTER

FROM: ENRIQUE ROMAN, DIRECTOR OF COMMUNITY SERVICES

SUBJECT: INSURANCE REQUIREMENTS FOR SDP TRANSITION SERVICES (099)

DATE: NOVEMBER 20, 2023

Board of Directors,

I come before you this evening as a follow-up to last month's discussion concerning KRC insurance requirements as they pertain to the completion of the vendor application process for service code 099, Self-Determination Pre-Enrollment Services.

During last month's Board of Director's meeting, some of KRC's stakeholders/potential service providers expressed concern about their ability to meet KRC's vendor insurance requirements, specifically the Abuse and Molestation coverage requirement. Attached to this memorandum is a draft contract that will be provided to all prospective parties interested in becoming vendors of KRC who wish to provide Self-Determination pre-enrollment services. This contract details KRC's expectation of our vendors and their responsibility to KRC and our consumers.

At this time, KRC seeks Board approval to allow KRC to include a provision into this contract that will waive the Abuse & Molestation coverage requirement for this particular service, so long as prospective service providers agree to only provide SDP Supports and other services to Consumers remotely (such as via Zoom or Microsoft Teams), and conduct no in-person meetings with Consumers.

Note that this agreement only applies to KRC. If a service provider wishes to vendor with other regional centers, KRC will share vendor information, when requested; the service provider must abide by the other regional center's insurance requirements.

Respectfully,

Enrique Roman

Enrique Roman
Director of Community Services

SELF-DIRECTED SUPPORTS AGREEMENT
FOR THE SELF DETERMINATION PROGRAM

This Self-Directed Supports Agreement for the Self Determination Program (this "**Agreement**"), dated for reference purposes as of Date, is entered into by and between Kern Regional Center, a California nonprofit corporation ("**KRC**") and Insert Vendor Name and State of Formation ("**Service Provider**") pursuant to the following facts:

A. KRC is a nonprofit corporation which, pursuant to a contract with the State of California, Department of Developmental Services ("**DDS**"), provides services to persons with developmental disabilities ("**Consumers**") in Kern, Inyo and Mono Counties.

B. DDS has implemented a statewide Self-Determination Program (the "**SDP**") under California Welfare and Institutions Code §4685.8 to provide Consumers and their families increased flexibility and choice, and greater control over decisions, resources, and needed and desired services and supports, to implement their respective Individual Program Plans.

C. Service Provider desires to provide pre-enrollment transition supports under the SDP ("**Self-Directed Supports**", aka "**SD Supports**") to Consumers and their families who have completed an SDP orientation and who are transitioning to enrollment in the SDP (collectively, the "**Participants**"). The SD Supports can be either (i) General Self-Directed Supports ("**General SD**") or (ii) Financial Management Services Self-Directed Supports ("**FMS SD**").

NOW THEREFORE, in consideration of the following mutual covenants, the parties agree as follows:

1. **TERM OF AGREEMENT**. The term of this Agreement shall commence on Date, and shall end on Date, subject to the early termination provisions below. At the end of the stated term of this Agreement, if Service Provider continues to provide services to KRC's Consumers with KRC's consent, this Agreement shall continue on a month-to-month basis, subject to termination by either party at any time on thirty (30) days' advance written notice to the other.

2. **SERVICES TO BE PROVIDED; SERVICE AGREEMENT**.

2.1 As part of its vendorization, Service Provider has signed, or will sign concurrently with this Agreement, a "Qualifications and Agreement Form" on the form published by DDS (the "**Service Agreement**"), which describes the types of SD Services to be provided by Service Provider. DDS publishes one form of Service Agreement for General SD and another form of Service Agreement for FMS SD; the particular Service Agreement signed by Service Provider is incorporated herein by reference. If any inconsistencies exist between the Service Agreement and this Agreement, the terms of this Agreement shall control.

2.2 Service Provider may provide SD Supports only after a Participant's SDP orientation and before the Participant is enrolled in the SDP. General SD is for any assistance, coaching and/or training supports needed by a Participant to successfully enroll in SDP.

However, only FMS agencies serving Participants can provide FMS SD.

2.3 KRC may place a cap on the number of Participants concurrently served by the Service Provider if KRC believes such cap is necessary to maintain the quality of SD Supports for the benefit of the Participants.

3. BILLINGS, RATE AND PAYMENTS

3.1 Pursuant to DDS Directive dated July 28, 2022, SD Supports shall be billed under Service Code 099, and may be split between General SD and FMS SD. KRC hereby authorizes up to [40][lesser number] hours of total SD Supports for each Consumer Participant; provided, however, KRC may authorize additional hours on a case-by-case basis.

3.2 The rates for SD Supports are established by DDS. DDS may periodically change the rates. Rate changes do not require Service Provider's signature, and shall become effective on the date determined by DDS. Each change in the SD Supports rate is incorporated into this Agreement by this reference.

3.3 Service Provider shall submit all billings to KRC by utilizing KRC's electronic billing system. Reimbursement will follow KRC's regular payment cycle. KRC shall reimburse the Service Provider in arrears for payment of services provided. As a condition to payment, Service Provider agrees to submit other supporting document if required or as may be requested by KRC.

3.4 Service Provider must be vendorized with KRC at all times during the term of this Agreement, which is a condition to the validity of this Agreement.

4. APPLICABLE LAWS AND REGULATIONS

4.1 Compliance with Applicable Laws. Service Provider shall at all times comply with all applicable Federal and State statutes and regulations in connection with its performance of SD Supports under this Agreement. Service Provider represents and warrants that it has reviewed and is familiar with all applicable Federal and State statutes and regulations, including but not limited to all applicable provisions in (1) WIC §§4500 et seq. (the Lanterman Developmental Disabilities Services Act) and (2) the regulations promulgated thereunder (e.g., Division 2 of Title 17 [entitled, "Health and Welfare Agency - Department of Developmental Services Regulations"], §50201 et seq., and the applicable provisions in Title 22 of the California Code of Regulations). Service Provider further represents that it is in possession of a copy of such statutes and regulations. The terms of this Agreement shall not be construed to excuse Service Provider's compliance with any applicable existing statutes and regulations.

4.2 Amendments by Law. Any provision of this Agreement in conflict with statutes, regulations or directives is hereby amended to conform to the provisions of such statutes, regulations and directives. Such amendment shall be binding on the parties even though such amendment may not have been reduced to writing or formally agreed upon and executed by the parties. KRC shall endeavor in good faith to notify Service Provider upon gaining notice of any amendment or new law which would materially affect this Agreement.

5. **EARLY TERMINATION**. Notwithstanding anything in this Agreement to the contrary, either party to this Agreement may terminate this Agreement at any time without cause upon thirty (30) calendar days prior written notice to the other party.

6. **INDEPENDENT CONTRACTOR**. No relationship of employer and employee is created by this Agreement. Service Provider, and its agents and employees, shall act hereunder as independent contractors, and not as officers, employees or representatives of KRC or the State of California.

7. **GENERAL LIABILITY AND PROPERTY DAMAGE**

7.1 Worker's Compensation Insurance. Since Service Provider is not an employee of KRC, Service Provider has no right to receive workers compensation for any injury or death arising out of services to be performed by Service Provider under this Agreement. Service Provider shall maintain Workers' Compensation insurance for its employees at all time during the term of this Agreement in the statutory maximum amount.

7.2 Liability Insurance. Service Provider agrees to procure and maintain in full force and effect during the term of this Agreement an insurance policy or policies protecting KRC and Service Provider against any loss, liability or expense due to personal injury, death or property damage, arising out of or in any way connected with the services to be performed by Service Provider or its personnel. The minimum liability under each such policy shall be $1,000,000 per occurrence. Service Provider shall also obtain a broad form property (including contractual liability) endorsement to its liability insurance policy for the benefit of KRC.

7.3 Non-Owned and Hired Auto Liability Insurance; Auto Insurance. If Service Provider uses vehicles to transport any Participant or in connection with its SD Supports, Service Provider shall procure and maintain in full force and effect during the term of this Agreement Non-Owned and Hired Auto Liability Insurance of at least $1,000,000 limit of liability per accident.

7.4 Other Insurance. Service Provider shall also obtain Professional Liability coverage (if applicable) and Abuse & Molestation coverage at all times during the term of this Agreement. The minimum liability under each such policy shall be $1,000,000 per occurrence. Notwithstanding the foregoing, KRC hereby agrees to waive Service Provider's obligation to carry Abuse & Molestation coverage as long as Service Provider only provides SD Supports and other services to Consumers remotely (such as via Zoom or Microsoft Teams), and conducts no in-person meetings with Consumers.

7.5 Licenses and Ratings. All of Service Provider's insurance carriers shall at all times be licensed to transact the business of insurance in the State of California, shall have a rating of A-:IX or higher in the most current edition of Best's Insurance Guide, and shall be acceptable to KRC.

7.6 Notice to KRC. All of Service Provider's policies or certificates of insurance shall include substantially the following clause: "*This policy shall not be canceled, reduced in required limits of liability, or modified as to coverage until written notice has been*

given to Kern Regional Center of such cancellation or reduction. The date of cancellation or reduction shall not be less than 20 days after such notice is given." If Service Provider's insurance is modified or cancelled, Service Provider shall notify KRC in writing of such fact, within five days after Service Provider's receipt of the insurance company's first notice of modification or cancellation.

7.7 KRC Named as an Additional Insured; Insurance Certificates. Service Provider's liability insurance, including but not limited to the Owned, Non-Owned and Hired Automobile Insurance (and, if commercially available, Service Provider's other insurance policies as well) shall contain a Named Insured Endorsement which names Kern Regional Center as an additional insured. In addition, each certificate of insurance shall list KRC as additional insured, shall state the extent of insured, the locations and operations to which insurance applies and the expiration date of the insurance. Service Provider shall at all times provide KRC with current copies of Service Provider's insurance certificates.

7.8 Waiver of Subrogation. Service Provider's insurance policies shall contain a waiver of subrogation clause for the benefit of KRC.

7.9 No Compensation While Uninsured or Underinsured: Remedies Available to KRC. If at any time during the term of this Agreement the insurance required pursuant to this Section is canceled, reduced or modified, or is otherwise not in force, (1) Service Provider shall not be entitled to payment for any services rendered during any such time period and (2) KRC shall have the option (but not the obligation) to pay any premium necessary to reinstate such insurance to the amount and coverage required under this Agreement, in which even KRC shall deduct such costs from the next sums owed to Service Provider.

8. **INDEMNITY**.

8.1 Service Provider's Indemnification. Service Provider shall indemnify, defend, and hold harmless KRC and its representatives, officers, directors, agents and employees and their respective heirs, executors, administrators, successors and assigns, including but not limited to the State of California and its agents and employees (collectively referred to as the "**Kern Indemnitees**"), from any and all losses, costs, expenses, (including but not limited to reasonable attorney's fees), liabilities, claims, court costs, demands, debts, causes of action, fines, judgments and penalties which arise from or relate to (a) death or injury to people or damage to property in connection with the negligent or willful acts, errors or omissions of Service Provider or its employees, agents, consultants or anyone employed by them to act on their behalf, (b) claims under workers' compensation laws or other employee benefit laws by Service Provider's agents or employees, (c) Service Provider's failure to fulfill its obligations under this Agreement in strict accordance with its terms, including Service Provider's breach of any representations or covenants given in this Agreement or (d) violation of any local, state, or federal law, regulation or code by Service Provider or by any of Service Provider's employees, agents or consultants in connection with the conduct of its activities and Services performed in connection with this Agreement. Service Provider's indemnity obligations in this paragraph shall apply even in the circumstance where the Kern Indemnitees or any of them are actively negligent; provided, however, Service Provider shall have no indemnity obligation where the

damage or injury is caused by the sole negligence or intentional misconduct of the Kern Indemnitees or any of them. Kern Indemnities are not required to first pay any sums in order to be indemnified.

8.2 Assumption of Defense. Service Provider will assume the defense, at its sole expense, and with legal counsel acceptable to KRC, of any claims or litigation as to which it has an indemnification obligation hereunder; KRC shall cooperate with Service Provider and its counsel, in the defense of any such claims, provided, however, that any costs or expenses associated with such cooperation shall be reimbursed by Service Provider. If Service Provider fails to assume the defense of any claim or litigation as to which it has or is determined to have had the obligation to indemnify, the Kern Indemnitees will have the right to assume their own defense, and Service Provider will be obligated to reimburse the Kern Indemnitees for any and all reasonable expenses (including, but not limited to attorney's fees) incurred in defense of such claims or litigation, in addition to Service Provider's other indemnity obligations thereunder. Service Provider shall control the defense and settlement of any claim; provided, however, that if Service Provider fails to assume the defense of any claim or litigation as to which it has or is determined to have had the obligation to indemnify, KRC shall have such control.

8.3 Survival of Provisions. The indemnity set forth in this Section shall apply during the term of this Agreement and shall also survive the expiration or termination of this Agreement, until such time as action against the Kern Indemnitees on account of any matter covered by such indemnity is barred by the applicable statute of limitations..

9. INDEPENDENT AUDIT REQUIREMENTS

9.1 This Section shall only apply if all payments Service Provider cumulatively receives from KRC and other regional centers during each state fiscal year equals or exceeds the threshold amount noted in Welfare and Institutions Code Section 4652.5 (which is currently $500,000). In such event, Service Provider shall, at Service Provider's cost, cause an independent accounting firm to annually provide an independent review report or audit (the "**Report**") of Service Provider's financial statements, as provided in such statute.

9.2 Service Provider shall commence the independent audit or review within 120 days after the end of Service Provider's fiscal year. Service Provider shall complete the audit or review within 210 days after the end of Service Provider's fiscal year. In accordance with WIC Section 4652.5(b), Service Provider shall provide copies of the Report to KRC within 30 days after completion of the audit or review.

9.3 If KRC believes that any issues identified in the Report have an impact on services Service Provider provides to KRC's Consumers, KRC will so notify Service Provider and provide Service Provider with 30 days to resolve such issues. Service Provider's failure to resolve such issues to KRC's reasonable satisfaction within such 30 day period shall constitute a material breach of this Agreement.

9.4 If KRC does not find any issues in Service Provider's prior year Report, Service Provider may apply, in writing, to KRC for a two-year exemption, to the extent

permitted by applicable law.

10. **BOOKS, RECORDS AND ACCOUNTING**. Service Provider will submit monthly progress and fiscal reports upon request in a method prescribed by KRC as outlined in regulation. Service Provider attests that such fiscal and program related documentation is complete, accurate to the best of the Service Provider's knowledge, supported by records and documentation, prepared in accordance with DDS regulations, and subject to audit. Service Provider also agrees to maintain and preserve until five years after the service has been performed, and to permit KRC, the State of California and any of their duly authorized representatives to have access to and to examine and audit, any pertinent books, documents, papers, and records relative to this Agreement. Should KRC or the State of California, according to applicable law, determine that any funds paid by KRC hereunder were not expended in accordance with the terms of this Agreement, Service Provider shall repay such fund to KRC within thirty (30) days of demand.

11. **SOLE CONSIDERATION**. The consideration to be paid Service Provider, as provided herein, shall be the sole compensation for Service Provider's expenses incurred in the performance hereof, unless otherwise authorized in writing by KRC.

12. **ASSIGNMENT AND SUBCONTRACT PROHIBITED**. In accordance with 17 CCR Sections 50607(g) and (j), Service Provider shall not assign, transfer, or subcontract any of its duties, burdens, or obligation under this Agreement.

13. **NON-DISCRIMINATION**

13.1 During the performance of this Agreement, the Service Provider shall not unlawfully deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision-making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Service Provider shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

12.2 The Service Provider shall comply with the provision of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provision of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5), and the regulations or standards adopted by the awarding State agency to implement such article.

12.3 The Service Provider shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency, upon reasonable

notice, at any time during normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information and its facilities as such Department or agency shall require to ascertain compliance with this section.

12.4 The Service Provider shall give written notice of its obligations under this section to labor organizations with which it has a collective bargaining or other agreement.

14. **LEGAL EXPENSES**. If any action or proceeding at law is commenced to enforce any provisions or rights under this Agreement, the unsuccessful party to such action or proceeding as determined by the court, shall pay the prevailing party all costs, expenses and reasonable attorneys' fees incurred therein by such party (including, without limitation, such costs, expenses and fees on any appeal), which shall be included as part of the judgment.

15. **NON-WAIVER**. No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision. Failure to KRC to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver thereof. The remedies herein reserved shall cumulative and additional to any other remedies in law or equity.

16. **DRUG FREE WORKPLACE**. Service Provider's employees shall comply with their respective agency's policy of maintaining a drug free workplace. Neither the Service Provider nor Service Provider's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. code Section 812, at any Service Provider facility or work site. Violation of this provision shall constitute a material breach of this Agreement.

17. **HIPAA COMPLIANCE**. Under this Agreement, "**HIPAA**" means the federal Health Insurance Portability and Accountability Act (Pub. L. No. 104-191), the HIPAA regulations as set forth in 45 C.F.R. Parts 160 and 164 (aka the HIPAA Privacy Rule), and regulations on Standards for Privacy of Individually Identifiable Health Information. Both parties shall at all times remain in compliance with the mandatory provisions of HIPAA, including but not limited to the HIPAA Privacy Rule. In performing its duties under this Agreement, Service Provider may have access to "protected health information," including but not limited to "individually identifiable health information," and is therefore a "Business Associate" as those terms are defined in HIPAA. As such, concurrently with its execution of this Agreement, Service Provider shall execute KRC's Business Associate Agreement; provided however, if Service Provider has previously executed a Business Associate Agreement with KRC, such agreement continues to remain in effect. Within five days after the termination of this Agreement for any reason, Service Provider shall (i) return to KRC, or destroy, all protected health information concerning Participants in Service Provider's possession or control and (ii) deliver to KRC a Certificate of Return or Destruction of PHI (the "**Certificate**"). KRC shall provide a form of the Certificate to Service Provider on request.

18. **ZERO TOLERANCE POLICY**. Service Provider shall comply with KRC's Zero Tolerance Policy at all times; such Policy is posted on KRC's website (https://kernrc.org/) and is incorporated herein by reference.

19. **FUNDING CONTINGENCY**. Notwithstanding anything in this Agreement to the contrary, the validity of this Agreement (including KRC's obligation to remit payments to Service Provider) is conditioned on KRC's receipt of adequate funds from DDS to pay for the services described in this Agreement (the "**Funding Contingency**"). KRC shall have the right and option to terminate this Agreement without liability, and such termination shall be deemed a failure of the Funding Contingency, if (1) DDS for any reason fails to deliver funds to KRC for any period covered by this Agreement or (2) KRC receives funds from DDS for a period covered by this Agreement but KRC determines that such funds are inadequate to pay for all of Service Provider services and other expenses which KRC expects to incur in such fiscal year, and therefore elects to fund other services rather than the services identified in this Agreement.

20. **TERMINATION UPON BREACH**. Service Provider shall be in material breach of this Agreement if, in KRC's reasonable opinion, Service Provider fails to perform any of its obligations described herein and, within 30 days after KRC notifies Service Provider of Service Provider's breach, Service Provider fails to cure such matter. KRC shall pay Service Provider all compensation for authorized services rendered in accordance with and through the date of termination of this Agreement, less any offsets to which KRC is entitled.

21. **WEBSITE LINK TO DDS CONSUMER COMPLAINT PROCESS.** This section is applicable if Service Provider has a website. In accordance with WIC, section 4704.6, the Service Provider shall conspicuously post on its Internet Website a hyperlink to the DDS Internet Website page at https://www.dds.ca.gov/general/appeals-complaints-comments/ and DDS's contact information at https://www.dds.ca.gov/general/contact-us/.

22. **NOTICES**. All notices, requests, demands and other communications pertaining to this Agreement shall be in writing and shall be deemed to be duly rendered (i) upon personal delivery, (ii) the next business day if delivered by overnight carrier, or (iii) three days after said notice is deposited in the mail, postage prepaid, registered or certified with return receipt requested, to the following addresses:

If to "KRC":

Kern Regional Center
Attention: _____
3200 N. Sillect Ave
Bakersfield, CA 93308

If to "Service Provider":

Insert Vendor Name
Attention: Name
Address
Address

23. **ENTIRE AGREEMENT**. This Agreement constitutes the parties' entire agreement pertaining to the subject matter contained herein and supersedes all prior agreement, representations, and understanding of the parties, either oral or written. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all parties. The execution of any amendment or modification to this Agreement shall comply with requirements of applicable statutes and regulations.

24. **AUTHORIZED REPRESENTATIVES: COUNTERPARTS; DELIVERY.** Each party represents and warrants that the individual signing below for such party is an

authorized representative of such party and has the authority to bind such party to this Agreement. This Agreement may be executed in counterparts, each which shall be deemed an original and both of which shall be considered a single instrument. Copies of this Agreement signed electronically (such as via DocuSign) and/or delivered electronically (such as via a PDF attachment to an email) shall be deemed the same as originals.

Executed in Bakersfield, California as of the date first written above.

"**KRC**":	"**Service Provider**":
Kern Regional Center, a California nonprofit corporation	Insert Service Provider's Name and State of Formation
By:_____ Name: _____ Title:_____	By:_____ Name:_____ Title: _____

DRAFT

Attachment 3

ASSOCIATION OF REGIONAL CENTER AGENCIES, INCORPORATED

MEMBERSHIP APPLICATION AND AGREEMENT

THIS MEMBERSHIP APPLICATION AND AGREEMENT is made by and between the ASSOCIATION OF REGIONAL CENTER AGENCIES, INCORPORATED ("ARCA") and the undersigned Regional Center (hereinafter "REGIONAL CENTER").

WHEREAS, ARCA is a nonprofit public benefit corporation organized and existing under the laws of the State of California. The principal office for the transaction of business of ARCA is located in the State of California.

WHEREAS, ARCA exists to promote, support, and advance Regional Centers in achieving the intent and mandate of the Lanterman Developmental Disabilities Services Act ("Lanterman Act") in providing community-based services that enable individuals with developmental disabilities to achieve their full potential and highest level of self-sufficiency.

ARCA and the undersigned REGIONAL CENTER hereby agree as follows:

1. MEMBERSHIP. ARCA has no statutory voting members. All members of ARCA are non-voting members. Each ARCA member has two directors on the Board of Directors ("Board"). Membership in ARCA, and thus representation on the Board, is conditioned upon REGIONAL CENTERS signing of and complying with this Agreement, paying any required dues, fees and assessments, and ARCA's approval.

2. QUALIFICATION. By signing below, REGIONAL CENTER agrees that it is a "regional center" as described in the Lanterman Act and is therefore qualified to become a member of ARCA as described in the ARCA bylaws.[1]

3. DUES, FEES, AND ASSESSMENTS. REGIONAL CENTER agrees to pay to ARCA such dues, fees, and/or assessments as are established from time to time by the Board of Directors of ARCA, if any. Dues, fees, and/or assessments paid by REGIONAL CENTER are not refundable upon withdrawal of this application, or upon resignation or termination/expulsion from membership.

4. TERM. If REGIONAL CENTER is approved by ARCA, this Agreement shall become effective on the date a signed copy is received by ARCA and shall terminate upon written notice of resignation by REGIONAL CENTER to ARCA, or by ARCA's termination of the membership pursuant to the procedures in ARCA bylaws (termination or expulsion). If membership is not resigned or terminated, and the member is not suspended or expelled, the membership shall continue indefinitely upon timely payment by REGIONAL CENTER of any required dues, fees, and/or assessments set by the Board and compliance with this agreement and any other requirements established by the Board.

5. BYLAWS, POLICIES AND PROCEDURES. REGIONAL CENTER hereby accepts and consents to be bound by, and promises and agrees to fully comply with, ARCA's Bylaws and all policies and procedures adopted by ARCA's Board of Directors which are now in effect or may be adopted later and as amended from time to time.

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[1] Any "Regional Center" (as defined in the Lanterman Developmental Disabilities Services Act) within the State of California may be admitted to ARCA as a non-voting member. All members are admitted to membership on condition of signing any required membership application/agreement (which includes agreeing to comply with these Bylaws and any policies and procedures adopted by the Board), and the payment of such dues, fees, and assessments as shall be established by the Board.

6. BOARD MEETING PARTICIPATION. The undersigned REGIONAL CENTER agrees to bear the cost of participation by their Board representatives at Board meetings, including but not necessarily limited to travel (travel accommodations, mileage or airfare), lodging, meals, disability-related support needs, etc.

7. TERMINATION/SUSPENSION/EXPULSION. Pursuant to the ARCA bylaws, membership terminates automatically if a member resigns, or if the member entity dissolves, or if required dues, fees, or assessments are not timely paid. The bylaws further provide that after a fair procedure, a member may be suspended or expelled from membership upon a finding by the Board that the member has failed in a material and serious degree to comply with ARCA's Articles of Incorporation, bylaws, policies, procedures, or any law applicable to ARCA and its members, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of ARCA.

8. NOTICES. All notices to be given under this Agreement shall be considered delivered when deposited in the U.S. Mail or with an express mail service, postage prepaid, to the parties addressed as follows:

ARCA

980 9th Street, Suite 1450

Sacramento, CA 95814

REGIONAL CENTER: (please fill in street address

_____

_____

9. SEVERABILITY. Should any portion of this Agreement be determined to be unlawful, and provided that such portion of this Agreement is severable, it shall be eliminated from this Agreement and the other provisions of this Agreement shall continue in effect.

10. ASSIGNMENT. This Agreement shall not be assignable by either party without the prior written consent of the other party.

11. MEDIATION/ARBITRATION FOR DISPUTES. By signing this Agreement, the parties agree that they have not and will not file a class action suit or any other type of lawsuit against the other party or its directors, officers, employees, contractors, or agents. Relative to any and all disputes, claims or controversies arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, the parties agree to first participate, in good faith, in an informal mediation process, using a mediator agreed upon by the parties. Either party may request informal mediation by written request to the other party. The parties will share the cost of the mediator and related expenses, but shall pay their own attorneys' fees incurred during mediation, if any. Any informal mediation shall take place in Sacramento, California if in person, or by electronic video conference (Zoom or similar) if the latter is agreed to by both parties. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

If the informal mediation process is unsuccessful, the parties agree that the dispute, claim or controversy shall be submitted to JAMS, or its successor, for final and binding arbitration.

Either party may initiate arbitration at JAMS with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or 45 days after the date of filing that written request for mediation, whichever occurs first. The mediation may continue after the commencement of arbitration if the parties so desire. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. Any arbitration shall take place in Sacramento, California if in person, or by electronic video conference (Zoom or similar) if

the latter is agreed to by both parties. The provisions of this section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered. Any mediation or arbitration shall take place in Sacramento, California.

12. ATTORNEYS' FEES AND VENUE. If an action at law or in equity is necessary to enforce the required mediation and/or arbitration in paragraph 10 above, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in addition to any other reasonable relief to which it may be entitled. With respect to any such action or proceeding, the parties agree and submit to the jurisdiction and venue of the appropriate court in the County of Sacramento, State of California.

13. GOVERNING LAW. This Agreement and any mediation or arbitration shall be subject to, construed, enforced and governed by the laws of the State of California.

By signing below, the undersigned REGIONAL CENTER represents that the statements made above are true and correct, and that it understands the foregoing agreement and agrees to abide by the terms and conditions herein.

Date:_____ REGIONAL CENTER name:_____

_____
Signature of REGIONAL CENTER Board President, with authorization from the REGIONAL CENTER Board of Directors

_____
Print name of REGIONAL CENTER Board President

_____
Telephone number(s)

_____
Email Address(es)

Date:_____ Membership APPROVED by ARCA ____

Membership NOT APPROVED by ARCA ____

_____
Signature of ARCA Board Officer

_____
Print name and title of ARCA Officer

Attachment 4

KERN REGIONAL CENTER

To:	Board of Directors, Kern Regional Center
From:	Tom Wolfgram, CFO
Subject:	Lease Agreement over $250,000.00
Date:	November 20, 2023

I present the attached finalized copy of the lease for Bakersfield expansion space, located at 5001 E. Commercenter Drive, Suite 170, Bakersfield, CA 93309 to the Board of Directors for review. I request approval of the lease if the board agrees.

The lease is for a 7-year term with a renewal option of 5 years. There is 12,722 square feet of office space, which gives us 75 workspaces.

The base rent for the first year is $22,263.50 monthly or $1.75 per square foot. Kern Regional Center will also be responsible for the utilities used by the rented space.

Kern Regional Center's attorney has reviewed and amended the lease. Both parties are in agreement. DDS has also given their approval for the lease expansion.

TW

Attachment

AIRCRE contracts

STANDARD MULTI-TENANT OFFICE LEASE - GROSS

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("**Lease**"), dated for reference purposes only October 19, 2023, is made by and between LinMar IV, LLC, a California limited liability company ("**Lessor**") and Kern Regional Center, a California nonprofit corporation ("**Lessee**"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises:** That certain Portion of the Project (as defined below), commonly known as (street address, suite, city, state): 5001 E. Commercenter Drive, Suite 170, Bakersfield, CA 93309 ("**Premises**"). The Premises are located in the County of Kern, and consist of approximately 12,722 rentable square feet and approximately 11,492 useable square feet. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, the area above the dropped ceilings, or the utility raceways of the building containing the Premises ("**Building**") or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." The Project consists of approximately 76,217 rentable square feet. (See also Paragraph 2)

1.2(b) **Parking:** 46 unreserved and 5 reserved vehicle parking spaces in the subterranean parking level at a monthly cost of $0 per unreserved space and $0 per reserved space. (See Paragraph 2.6)

1.3 **Term:** Seven (7) years and Zero (0) months ("**Original Term**") commencing See Addendum ¶ 52.2. ("**Commencement Date**") and ending on the seventh anniversary of the Commencement Date ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing thirty (30) days prior to the Commencement Date to install cabling, as well as furniture, fixtures, and equipment. ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $22,263.50 per month ("**Base Rent**"), payable on the first day of each month commencing See Addendum ¶ 52. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50.

1.6 **Lessee's Share of Operating Expense Increase.** sixteen and 69/100 percent (16.69 %) ("**Lessee's Share**"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $22,263.50 for the period first month of Original Term.

(b) **Security Deposit:** $0 ("**Security Deposit**"). (See also Paragraph 5)

(c) **Parking:** $0 for the period n/a.

(d) **Other:** $0 for N/A.

(e) **Total Due Upon Execution of this Lease:** $22,263.50.

1.8 **Agreed Use:** business and professional offices. (See also Paragraph 6)

1.9 **Base Year; Insuring Party.** The Base Year is 2024. Lessor is the "**Insuring Party**". (See also Paragraphs 4.2 and 8)

1.10 **Real Estate Brokers.** (See also Paragraphs 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers

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("**Broker(s)**") and/or their agents ("Agent(s)"):

Lessor's Brokerage Firm Colliers Tingey International, Inc. License No. 00452468 Is the broker of (check one): ☐ the Lessor; or ☑ both the Lessee and Lessor (dual agent).

Lessor's Agent Jason Alexander License No. 01360995 is (check one): ☐ the Lessor's Agent (salesperson or broker associate); or ☑ both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Colliers Tingey International, Inc. License No. 00452468 Is the broker of (check one): ☐ the Lessee; or ☑ both the Lessee and Lessor (dual agent).

Lessee's Agent David Williams License No. 00855489 is (check one): ☐ the Lessee's Agent (salesperson or broker associate); or ☑ both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement ~~(or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.~~

~~1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by _____ ("Guarantor"). (See also Paragraph 37)~~

1.12 **Business Hours for the Building:** 7:00 a.m. to 6:00 p.m., Mondays through Fridays (except Building Holidays) and 8:00 a.m. to 1:00 p.m. on Saturdays (except Building Holidays). "**Building Holidays**" shall mean the dates of observation of New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and _____.

1.13 **Lessor Supplied Services.** Notwithstanding the provisions of Paragraph 11.1, Lessor is NOT obligated to provide the following within the Premises:

☑ Janitorial services

☐ Electricity (For clarification, Lessor is obligated to provide electricity, water and gas utilities to the Premises, but Lessee is responsible for paying for all electricity, water and gas used by Lessee, in addition to Base Rent.)

☐ Other (specify): _____

1.14 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ ~~an~~ Addendums consisting of Paragraphs 50 through 52.10 ;

☑ a plot plan depicting the Premises;

☑ a current set of the Rules and Regulations;

☐ a Work Letter;

☐ a janitorial schedule;

☑ other (specify): Lessee Advisory; Agency Disclosure .

2. Premises.

2.1 **Letting**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.** See Addendum ¶ 52.6.

2.2 **Condition**. Lessor shall deliver the Premises to Lessee in a clean condition on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), and all other items which the Lessor is obligated to construct pursuant to the Work Letter attached hereto, if any, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

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2.3 **Compliance**. Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the zoning and other Applicable Requirements are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises, ~~the remediation of any Hazardous Substance,~~ or the reinforcement or other physical modification of the Premises ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. ~~Lessee shall not have any right to terminate this Lease.~~

2.4 **Acknowledgements**. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, ~~(b) Lessee has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use,~~ (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the

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Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants. Lessor will be making repairs to the Premises in conformance with Applicable Requirements, as set forth in greater detail in the Addendum at ¶ 52.3. Therefore, nothing in this paragraph limits Lessor's obligations to deliver the Premises in compliance with the Applicable Requirements and in good operating condition (including, but not limited to, all existing systems, doors, plumbing, mechanical, electrical, life safety, fire sprinklers, HVAC, cabinetry, counterops, glass, window coverings, ceiling tiles, etc.), since the Premises will be so repaired by Lessor.

~~2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.~~

2.6 **Vehicle Parking**. ~~So long as Lessee is not in default, and s~~Subject to the Rules and Regulations attached hereto, and as established by Lessor from time to time, Lessee shall be entitled to rent and use the number of parking spaces specified in Paragraph 1.2(b) without charge. ~~at the rental rate applicable from time to time for monthly parking as set by Lessor and/or its licensee.~~

(a) If Lessee commits, permits or allows any of the prohibited activities described in the Lease or the rules then in effect, then Lessor shall have the right, with~~out~~ 5 days' advance written notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

~~(b) The monthly rent per parking space specified in Paragraph 1.2(b) is subject to change upon 30 days prior written notice to Lessee. The rent for the parking is payable one month in advance prior to the first day of each calendar month.~~

2.7 **Common Areas - Definition**. The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roofs, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights**. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations**. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to adopt, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. The Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its commercially reasonable best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the noncompliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes**. As long as access to and use of the Premises by Lessee and its

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invitees are not materially affected thereby, Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of the lobbies, windows, stairways, air shafts, elevators, escalators, restrooms, driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 **Term**. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession**. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of the Operating Expense Increase) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay In Possession**. Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by December 31, 2023. ~~the Commencement Date.~~ If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease and ~~or change~~ the Expiration Date shall be extended accordingly. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the negligent acts or omissions of Lessee. If Lessee (i) executes the Lease by not later than November 15, 2023, and (ii) selects finishes that are in stock and do not have to be manufactured within 15 days after Lessor provides a choice of finishes to Lessee, then If possession is not delivered by March 1, 2024, ~~within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties,~~ Lessee may, at its option, by notice in writing on or after March 1, 2024~~within 10 days after the end of such 60 day period~~, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor prior to delivery of possession to Lessee, ~~within said 10 day period,~~ Lessee's right to cancel shall terminate. If possession of the Premises is not delivered by May 1, 2024, ~~within 120 days after the Commencement Date,~~ this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance**. Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

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4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("**Rent**").

4.2 **Operating Expense Increase.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's Share of the amount by which all Operating Expenses for each Comparison Year exceeds the amount of all Operating Expenses for the Base Year, such excess being hereinafter referred to as the "**Operating Expense Increase**", in accordance with the following provisions:

(a) "**Base Year**" is as specified in Paragraph 1.9.

(b) "**Comparison Year**" is defined as each calendar year during the term of this Lease subsequent to the Base Year; provided, however, Lessee shall have no obligation to pay a share of the Operating Expense Increase applicable to the first 12 months of the Lease Term (other than such as are mandated by a governmental authority, as to which government mandated expenses Lessee shall pay Lessee's Share, notwithstanding they occur during the first twelve (12) months). Lessee's Share of the Operating Expense Increase for the first and last Comparison Years of the Lease Term shall be prorated according to that portion of such Comparison Year as to which Lessee is responsible for a share of such increase.

(c) The following costs relating to the ownership and operation of the Project, calculated as if the Project was at least 95% occupied, are defined as "**Operating Expenses**":

(i) Costs relating to the operation, repair, and maintenance in neat, clean, safe, good order and condition, but not the replacement (see subparagraph (g)), of the following:

(aa) The Common Areas, including their surfaces, coverings, decorative items, carpets, drapes and window coverings, and including parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, Common Area lighting facilities, building exteriors and roofs, fences and gates;

(bb) All heating, air conditioning, plumbing, electrical systems, life safety equipment, communication systems and other equipment used in common by, or for the benefit of, tenants or occupants of the Project, including elevators and escalators, tenant directories, fire detection systems including sprinkler system maintenance and repair.

(cc) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of trash disposal, janitorial and security services, and pest control services~~, and the costs of any environmental inspections~~;

(iii) The cost of any other service to be provided by Lessor that is elsewhere in this Lease stated to be an "Operating Expense";

(iv) The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 and any deductible portion of an insured loss concerning the Building or the Common Areas;

(v) The amount of the Real Property Taxes payable by Lessor pursuant to paragraph 10;

(vi) The cost of water, sewer, gas, electricity, and other publicly mandated services not separately metered;

(vii) Labor, salaries, and applicable fringe benefits and costs, materials, supplies and tools, used in maintaining and/or cleaning the Project and accounting and management fees attributable to the operation of the Project;

(viii) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such Capital Expenditure in any given month;

(ix) The cost to replace equipment or improvements that have a useful life for accounting purposes of 5 years or less.

~~(x) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.~~ See Addendum ¶ 52.7 for additional provisions on calculation of Operating Expenses.

(d) Any item of Operating Expense that is specifically attributable to the Premises, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Premises, Building, or other building. However, any such item that is not specifically attributable to the Building or to any other

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building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(e) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(c) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(f) Lessee's Share of Operating Expense Increase is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the Operating Expenses. By March 1st of each year ~~Within 60 days after written request (but not more than once each year)~~ Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding calendar year. If Lessee's payments during such Year exceed Lessee's Share, Lessee shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such Year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of said statement. Lessor and Lessee shall forthwith adjust between them by cash payment any balance determined to exist with respect to that portion of the last Comparison Year for which Lessee is responsible as to Operating Expense Increases, notwithstanding that the Lease term may have terminated before the end of such Comparison Year.

(g) Operating Expenses shall not include the costs of replacement for equipment or capital components such as the roof, foundations, exterior walls or a Common Area capital improvement, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(h) Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or by insurance proceeds.

4.3 **Payment**. Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States on or before the day on which it is due, without offset or deduction (except as specifically permitted in this Lease). All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. Security Deposit. There shall be no Security Deposit as long as Lessee's annual revenue during any fiscal year (July 1 - June 30) exceeds $200 million. If such revenue falls below such amount, the Security Deposit shall be $22,263.50 and the following shall apply: Lessee shall deposit with Lessor ~~upon execution hereof~~ the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. ~~If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to~~

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~~account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition~~. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 **Use**. Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements of the Building, will not adversely affect the mechanical, electrical, HVAC, and other systems of the Building, and/or will not affect the exterior appearance of the Building. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent**. The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, byproducts or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use such as ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor**. If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or

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other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation**. Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any inviteethird party.

(d) **Lessee Indemnification**. Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any inviteethird party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease for a period of one year. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification**. Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations**. Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option**. If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

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6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements~~, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises~~, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately endeavor to give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "**Lender**" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater ~~for the remainder to the Lease~~until Lessee allows such inspections or testing. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 **Lessee's Obligations.** Notwithstanding Lessor's obligation to keep the Premises in good condition and repair, Lessee shall be responsible for payment of the cost thereof to Lessor as additional rent for that portion of the cost of any maintenance and repair of the Premises, or any equipment (wherever located) that serves only Lessee or the Premises, to the extent such cost is attributable to abuse or misuse. In addition, Lessee rather than the Lessor shall be responsible for the cost of painting, repairing or replacing wall coverings, and to repair or replace any similar improvements within the Premises. Lessor may, at its option, upon reasonable notice, elect to have Lessee perform any particular such maintenance or repairs the cost of which is otherwise Lessee's responsibility hereunder."

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, fire alarm and/or smoke detection systems, fire hydrants, and the Common Areas.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air lines, vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any

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modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent**. Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof, ceilings, floors or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24~~, and the cumulative cost thereof during this Lease as extended does not exceed $2000~~. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor ~~chosen and/or~~ approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. ~~For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.~~

(c) **Liens; Bonds**. Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration**.

(a) **Ownership**. Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal**. By delivery to Lessee of written notice from Lessor concurrently with Lessor's consent to the installation of the Lessee Owned Alterations and Utility Installations ~~not earlier than 90 and not later than 30 days prior to the end of the term of this Lease~~, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration**. Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then

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Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any inviteethird party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity. [NOTE: Subject to review by Lessee's insurance broker]

8.1 **Insurance Premiums**. The cost of the premiums for the insurance policies maintained by Lessor pursuant to paragraph 8 are included as Operating Expenses (see paragraph 4.2 (c)(iv)). Said costs shall include increases in the premiums resulting from additional coverage related to requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. Said costs shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. If the Project was not insured for the entirety of the Base Year, then the base premium shall be the lowest annual premium reasonably obtainable for the required insurance as of the Start Date, assuming the most nominal use possible of the Building and/or Project. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of $2,000,000 procured under Paragraph 8.2(b).

8.2 **Liability Insurance**.

(a) **Carried by Lessee**. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor**. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value**.

(a) **Building and Improvements**. Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Building and/or Project. The amount of such insurance shall be equal to the full insurable replacement cost of the Building and/or Project, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris

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removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $5,000 per occurrence.

~~(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.~~

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements**. Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 **Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

~~(c) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.~~

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 10 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its

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property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity**. Except for Lessor's ~~gross~~ negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the negligent use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified. Except for Lessee's negligence or willful misconduct, Lessor shall indemnify, protect, defect and hold harmful Lessee and its agents and employees from and against any and all claims, damages, liens, penalties, attorneys' and consultants' fees, expenses and liabilities arising out of, involving, or in connection with a Breach of this Lease by Lessor and/or the negligent use, maintenance or operation of the Project by Lessor and/or Lessor's employees, contractors or invitees.

8.8 **Exemption of Lessor and its Agents from Liability**. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) ~~injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii)~~ any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (~~ii~~i) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance**. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater, until such insurance is provided. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 **Definitions**.

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "**Premises Total Destruction**" shall mean damage or destruction to the improvements on the Premises, other

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than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $5,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the

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cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement**. In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired~~, but not to exceed the proceeds received from the Rental Value insurance~~. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies**. If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments**. Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. Real Property Taxes.

10.1 **Definitions**. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. "**Real Property Taxes**" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes**. Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements**. Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Operating Expenses are payable under Paragraph 4.2, the entirety of any

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increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment**. If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes**. Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. Utilities and Services.

11.1 **Services Provided by Lessor**. Lessor shall provide heating, ventilation, air conditioning, reasonable amounts of electricity for normal lighting and office machines, water for reasonable and normal drinking and lavatory use in connection with an office, and replacement ~~light bulbs and/or fluorescent tubes and~~ ballasts for standard overhead fixtures. Lessor shall also provide janitorial services to the ~~Premises and~~ Common Areas 5 times per week, excluding Building Holidays, or pursuant to the attached janitorial schedule, if any. Lessor shall not, however, be required to provide janitorial services to ~~kitchens or storage areas included within~~ the Premises.

11.2 **Services Exclusive to Lessee**. Notwithstanding the provisions of paragraph 11.1, Lessee shall pay for all water, gas, light, power, telephone and other utilities and services specially or exclusively supplied and/or metered exclusively to the Premises or to Lessee, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2(vi), if a service is deleted by Paragraph 1.13 and such service is not separately metered to the Premises, Lessee shall pay at Lessor's option, either Lessee's Share or a reasonable proportion to be determined by Lessor of all charges for such jointly metered service.

11.3 **Hours of Service**. Said services and utilities shall be provided during times set forth in Paragraph 1.12. Utilities and services required at other times shall be subject to advance request and reimbursement by Lessee to Lessor of the cost thereof.

11.4 **Excess Usage by Lessee**. Lessee shall not make connection to the utilities except by or through existing outlets and shall not install or use machinery or equipment in or about the Premises that uses excess water, lighting or power, or suffer or permit any act that causes extra burden upon the utilities or services, including but not limited to security and trash services, over standard office usage for the Project. Lessor shall require Lessee to reimburse Lessor for any excess expenses or costs that may arise out of a breach of this subparagraph by Lessee. Lessor may, in its sole discretion, install at Lessee's expense supplemental equipment and/or separate metering applicable to Lessee's excess usage or loading. The Parties acknowledge and agree that Lessee shall be liable for the utility cost associated with Lessee's usage of the HVAC system outside the normal business hours set forth in the Lease when requested in writing by Lessee (the "Overtime Usage"). Lessee agrees to pay on a monthly basis Lessor's costs incurred in connection with the Overtime Usage. Lessor and Lessee acknowledge and agree that such costs are estimated at $55 per hour, but such costs may increase or decrease during the Lease Term.

11.5 **Interruptions**. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions, except due to the negligence or willful misconduct of Lessor or its agents, contractors or invitees.

11.6 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

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12. Assignment and Subletting.

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which consent shall not be unreasonable delayed, conditioned or withheld, provided that: Tenant shall have the right during the Original Term and Option Terms to assign or sublease all or any portion of the Premises to a related entity or affiliate upon notification to Landlord. A related or affiliated entity is any organization that directly or indirectly controls Lessee, or is directly or indirectly controlled by Lessee, or which is under common control alongside another entity.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, ~~which results or will~~ result in a reduction of the Net Worth of Lessee ~~by an amount greater than 25% of such Net Worth~~ as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, ~~whichever was or is greater~~, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "**Net Worth of Lessee**" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, ~~at Lessor's option,~~ be a Default curable after notice per Paragraph 13.1(d), ~~or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent~~.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall : (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or

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sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 **Additional Terms and Conditions Applicable to Subletting**. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A "**Default**" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith

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prior to the expiration or termination of this Lease.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of ~~3~~5 business days following written notice to Lessee. ~~In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.~~

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ~~10~~30 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies**. If Lessee fails to perform any of its affirmative duties or obligations, within ~~10~~30 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 100~~115~~% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover

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from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (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 the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges**. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to ~~10~~5% of each such overdue amount or $100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such

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overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest**. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor**. In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the rentable floor area of the Premises, or more than 25% of Lessee's Reserved Parking Spaces, if any, are taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 **Additional Commission**. In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

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15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. ~~In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent.~~ In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater for remainder of the Lease, until the Estoppel Certificate is provided. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's most currently available financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

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18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 **Notice Requirements**. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice**. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 **Options.** Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by either party~~Lessor~~ of the Default or Breach of any term, covenant or condition hereof by the other party~~Lessee~~, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such

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payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) *Lessor's Agent*. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: *To the Lessor*: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. *To the Lessee and the Lessor*: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Lessee's Agent*. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. *To the Lessee*: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. *To the Lessee and the Lessor*: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) *Agent Representing Both Lessor and Lessee*. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that ~~no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that~~ the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any ~~gross~~ negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

_____ _____

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26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month, provided that Lessor shall give Lessee 30 days' notice of sale Base Rent increase. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30. Subordination; Attornment; Non-Disturbance.

30.1 **Subordination.** Subject to Section 30.3 below, this ~~This~~ Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of

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this Lease, Lessor shall ~~, if requested by Lessee, use its commercially reasonable efforts to~~ obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement or Lessee may terminate this Lease. Execution and delivery of the Non-Disturbance Agreement is a tenant-oriented condition to the validity of this Lease.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall within ten (10) days after receipt, execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Lessor may not place any sign on the exterior of the Building that covers any of the windows of the Premises. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent,

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including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 **Execution**. The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE.

37.2 **Default**. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 **Definition**. "**Option**" shall mean: (a) the right to extend or reduce the term of ~~or renew~~ this Lease ~~or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.~~

39.2 **Options Personal To Original Lessee**. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options**. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options**.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property

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from the acts of third parties. In the event, however, that Lessor should elect to provide security services, then the cost thereof shall be an Operating Expense.

41. Reservations.

(a) Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessor may also: change the name, address or title of the Building or Project upon at least 90 days prior written notice; provide and install, at Lessee's expense, Building standard graphics on the door of the Premises and such portions of the Common Areas as Lessor shall reasonably deem appropriate; grant to any lessee the exclusive right to conduct any business as long as such exclusive right does not conflict with any rights expressly given herein; and to place such signs, notices or displays as Lessor reasonably deems necessary or advisable upon the roof, exterior of the Building or the Project or on signs in the Common Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights. The obstruction of Lessee's view, air, or light by any structure erected in the vicinity of the Building, whether by Lessor or third parties, shall in no way affect this Lease or impose any liability upon Lessor.

~~(b) Lessor also reserves the right to move Lessee to other space of comparable size in the Building or Project. Lessor must provide at least 45 days prior written notice of such move, and the new space must contain improvements of comparable quality to those contained within the Premises. Lessor shall pay the reasonable out of pocket costs that Lessee incurs with regard to such relocation, including the expenses of moving and necessary stationary revision costs. In no event, however, shall Lessor be required to pay an amount in excess of two months Base Rent. Lessee may not be relocated more than once during the term of this Lease.~~

(c) Lessee shall not: (i) use a representation (photographic or otherwise) of the Building or Project or their name(s) in connection with Lessee's business; or (ii) suffer or permit anyone, except in emergency, to go upon the roof of the Building.

42. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. ~~A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.~~

43. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. Offer. Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all

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Parties hereto.

46. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☑ is not attached to this Lease.

49. Accessibility; Americans with Disabilities Act.

(a) The Premises:

☑ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES,

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THE ZONING AND SIZE OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____
On: _____

By LESSOR:
LinMar IV, LLC, a California limited liability company

By: _____
Name Printed: Jeffrey Wohler
Title: CEO
Phone: (619) 972-4062
Fax: _____
Email: jeffreywohler@gmail.com

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: C/O M.D. Atkinson Co.
1401 19th Street, Suite 400
Bakersfield, CA 93301
661-334-4800
Federal ID No.: _____

Executed at: _____
On: _____

By LESSEE:
Kern Regional Center, a California nonprofit corporation

By: _____
Name Printed: Michi Gates Ph.D.
Title: Executive Director
Phone: (661) 852-3301
Fax: (661) 324-0604
Email: mgates@kernrc.org

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____

Address: 3300 N. Sillect Avenue
Bakersfield, CA 93308
Federal ID No.: _____

BROKER

Colliers Tingey International, Inc.

Attn: Jason Alexander
Title: Senior Vice President | Principal

Address: 10000 Stockdale Hwy., Suite 102,
Bakersfield, CA 93311
Phone: 661-631-3800
Fax: 661-631-3829
Email: jason.alexander@colliers.com
Federal ID No.: _____
Broker DRE License #: 00452468
Agent DRE License #: 01360995

BROKER

Colliers Tingey International, Inc.

Attn: David Williams
Title: Senior Vice President | Principal

Address: 10000 Stockdale Hwy., Suite 102
Bakersfield, CA 93311
Phone: 661-631-3800
Fax: 661-631-3829
Email: david.a.williams@colliers.com
Federal ID No.: _____
Broker DRE License #: 00452468
Agent DRE License #: 00855489

_____ _____
INITIALS INITIALS

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Attachment 5

KERN REGIONAL CENTER
PURCHASE OF SERVICE
FY 2023-2024
AS OF SEPTEMBER 30,2023

PURCHASE OF SERVICES	July 2023	August 2023	September 2023	2023-2024 Total
OUT-OF-HOME				
Community Care Facility	5,660,941	5,621,839	5,614,929	16,897,709
ICF/SNF Facility	249,354	259,831	248,322	757,507
TOTAL OUT OF HOME	5,910,295	5,881,670	5,863,251	17,655,216
DAY PROGRAMS				
Day Care	35,966	44,016	43,267	123,249
Day Training	3,396,110	3,800,786	3,435,407	10,632,303
Supported Employment	327,147	359,151	331,739	1,018,037
Work Activity Program				-
SUBTOTAL DAY PROGRAMS	3,759,223	4,203,953	3,810,413	11,773,589
OTHER SERVICES				
Non Medical Services Prof	353,876	351,453	306,120	1,011,449
Non Medical Services Prog	1,627,980	1,791,826	1,751,586	5,171,392
Home Care Services Prog	19,689	21,146	13,452	54,287
Transportation	441,124	503,732	423,193	1,368,049
Transportation Contracts	590,138	602,948	560,920	1,754,006
Prevention Services	761,211	855,731	755,699	2,372,641
Other Authorized Services	3,718,403	3,887,898	3,795,359	11,401,660
P & I Expense	9,943	9,943	9,943	29,829
Hospital Care				-
Medical Equipment	7,915	5,115	4,630	17,660
Medical Services Prof	219,777	231,833	197,058	648,668
Medical Servces Prog	38,092	36,840	28,826	103,758
Respite Care - In Home	2,535,489	2,585,118	1,601,038	6,721,645
Respite Care - Out of Home	24,759	20,114	11,962	56,835
				-
				-
TOTAL OTHER SERVICES	10,348,396	10,903,697	9,459,786	30,711,879
TOTAL PURCHASE OF SERVICES	20,017,914	20,989,320	19,133,450	60,140,684
COMMUNITY PLACEMENT PLAN				
Community Care Facility	96,759	96,759	96,759	290,277
ICF/SNF Facility				-
Day Training				-
Non-Medical Services				-
Non-Medical Services-Programs	4,724	5,348	8,270	18,342
Transportation				
Other Authorized Services				-
Other Services	349			349
Medical Care - Prof				-
Community Care Facility				-
TOTAL COMMUNITY PLACEMENT PLAN	101,832	102,107	105,029	308,968
TOTAL PURCHASE OF SERVICE	20,119,746	21,091,427	19,238,479	60,449,652

Attachment 6

KERN REGIONAL CENTER
OPERATIONS
FY 2023/2024
AS OF SEPTEMBER 30, 2023

	PROPOSED EXPENDITURES	PROPOSED YEAR TO DATE BUDGET	07/31/23	08/31/23	09/30/23	TOTAL	(OVER)/UNDER
OPERATIONS							
Salaries & Benefits	27,164,701	7,313,573	1,889,926	2,581,320	1,934,030	6,405,277	908,296
Operating Expenses	5,932,500	684,519	798,702	195,452	785,089	1,779,243	(1,094,724)
SUBTOTAL OPS	33,097,201	7,998,093	2,688,628	2,776,772	2,719,119	8,184,520	(186,428)
COMMUNITY PLACEMENT PLAN							
Salaries & Benefits		-				-	-
Operating Expenses		-				-	-
SUBTOTAL CPP	-	-	-	-	-	-	-
FOSTER GRANDPARENT PROGRAM							
Salaries & Benefits	95,176	25,624	6,461	8,385	6,974	21,821	3,803
Operating Expenses	182,301	45,575	5,976	8,288	11,706	25,969	19,606
SUBTOTAL FGP	277,477	71,200	12,437	16,673	18,680	47,790	23,409
SENIOR COMPANION PROGRAM							
Salaries & Benefits	71,800	19,331	4,308	6,890	5,261	16,459	2,872
Operating Expenses	138,797	34,699	4,048	3,304	6,389	13,741	20,958
SUBTOTAL SCP	210,597	54,030	8,355	10,194	11,650	30,200	23,830
TOTAL OPERATIONS	33,585,275	8,123,322	2,709,421	2,803,640	2,749,450	8,262,510	(139,188)