

**Orden del día de la reunión de la Mesa Directiva
Martes, 28 de noviembre de 2023
6:00 – 7:30 p.m.**

**Centro Regional de Kern, 3200 N. Sillect Ave., Bakersfield CA 93308
Habitación Malibú**

Negocios Generales			
1. Llamada al orden y presentaciones		Kevin Gosselin, Presidente	6:00-6:05 p.m.
2. Aprobación del Orden del Día	Acción	Kevin Gosselin, Presidente	6:05 – 6:07 p.m.
3. Aprobación de las Actas de la mesa directiva del 24 de octubre de 2023 (Anexo 1)	Acción	Kevin Gosselin, Presidente	6:07 – 6:10 p.m.
4. Intervención Temprana y Lanterman: Alcance para la Búsqueda de Casos, Elegibilidad, IFSP/IPP, Enfoque Centrado en la Persona, Asociación Educativa	Inform.	Celia Pinal, Directora de Atención al Cliente Paulina Blanco, Enlace de Transición Escolar Carissa Martínez, Gerente de Programas Nicola Perkins, Directora de Programas	6:10 – 6:40 p.m.
5. Contratación de Facilitadores Independientes y Requisitos de Seguros (099) – (Anexo 2)	Acción	Enrique Román, Director de Servicios Comunitarios	6:40 – 6:50 p.m.
6. Aprobación de los Documentos de Membresía de ARCA (Anexo 3)	Acción	Kevin Gosselin, Presidente	6:50 – 7:00 p.m.
7. Ampliación de la oficina del KRC (Anexo 4)	Acción	Tom Wolfgram, director financiero	7:00 – 7:05 p.m.
8. Nominaciones y votaciones Funcionarios de la Junta Directiva de KRC 2024	Acción	Kevin Gosselin, Presidente	7:05 – 7:15 p.m.
9. Aportes del público	Información.		7:15 – 7:20 p.m.
Informes			
10. Informe del Presidente de la Mesa Directiva	Información.	Kevin Gosselin, Presidente	7:20 – 7:25 p.m.
11. Informe de la Directora Ejecutiva	Información.	Dra. Michi Gates, Directora Ejecutiva	7:25 – 7:30 p.m.
12. Informe Financiero a. Informe POS de septiembre de 2023 (Anexo 5) b. Informe de Operaciones para septiembre 2023 (Anexo 6)	Información.	Tom Wolfgram, director financiero	7:30 – 7:35 p.m.
13. Informe del Comité Asesor de Proveedores	Información.	Tamerla Prince, Representante de VAC	7:35 – 7:40 p.m.

Haga clic en el siguiente enlace para unirse al seminario web:

<https://us02web.zoom.us/j/81157235724?pwd=bGt6RWxTNDFUU2xzVzJZaHVnYlpMZz09>

ID del seminario web: 811 5723 5724 Código de acceso: 491216

Número telefónico: (213) 338-8477

La próxima reunión de la Junta es el 24 de enero de 2024, de 6:00 a 7:30 p. m.

**Centro Regional Kern, 3200 N. Sillect Ave., Bakersfield CA 93308
Habitación Malibú**

Anexo 1



Centro Regional de Kern Reunión del Consejo de Administración 24 de octubre de 2023

Esta reunión se llevó a cabo como una reunión híbrida en el Centro Regional Kern, 3300 N. Sillect Ave., Bakersfield, California, en la Sala Malibú y mediante el uso de la tecnología de teleconferencia remota proporcionada por Zoom.

Meimbros de la Mesa Directiva presente:

Ana Alonso, miembro de la Mesa Directiva; Carlos Isidoro, miembro de la Mesa Directiva; Tracey Mensch, vicepresidenta; Tamerla Prince, Representante de Asesoría de Proveedores; Donald Tobias, miembro de la Mesa Directiva; Mark Tolentino, miembro de la Mesa Directiva; Martín Vásquez, Secretario; Simón Verdugo, miembro de la Mesa Directiva; y Ruth Watterson, miembro de la Mesa Directiva. Se estableció el quórum.

Miembros ausentes de la Mesa Directiva:

Oscar Axume, Tesorero; Kevin Gosselin, presidente; Ryan Jones, Miembro de la Mesa Directiva

Personal del Centro Regional de Kern presente:

Adriana Antonio, Especialista en Elección de Participantes; Lulu Calvillo, Subdirectora de Primera Infancia; Tomás Cubias, Director Adjunto de Acceso a Servicios y Equidad; Michi Gates, Directora Ejecutiva; Chloe Hayes, Especialista en Elección de Participantes; Kristine Khuu, Directora Adjunta de Servicios al Cliente; Yesenia Mackie, Subdirectora de Servicios al Cliente; Darlene Pankey, Asistente Ejecutiva; Celia Pinal, Directora de Atención al Cliente; Karina Proffer, Gerente de Programas; Enrique Román, Director de Servicios Comunitarios; José Santana, del Departamento de Informática; Tom Wolfgram, director financiero

Asistentes:

Cindy Cox, defensora de Donald Tobias; Adeyinka Glover, OCRA; Adriana Gutiérrez; Briseida Moreno; John Noriega, abogado de Simón Verdugo; Edwin Pineda, DDS; Samantha Pinto; Christina Rockwell; Mitzi Villalón.

Identificación de los asistentes por correo electrónico Nombre de usuario:

Samsung SM-S916U; Sammiegirl412

Intérpretes: Kimberly Diez, ASL; Nidya Madrigal-Navia, español; Kayelle Morgan, ASL

LLAMADO AL ORDEN: Tracey Mensch, Vicepresidenta, declaró abierta la reunión a las 6:02 p.m. y se hicieron presentaciones de los miembros de la Mesa Directiva.

APROBACIÓN DEL ORDEN DEL DÍA: La Vicepresidenta Mensch solicitó una moción para aprobar el orden del día.

Movido por Alonso y secundado por Isidoro a:

Aceptar el orden del día de la reunión del 24 de octubre de 2023.

APROBADOS: 9

APROBACIÓN DEL ACTA de la reunión del 26 de septiembre, 2023: La vicepresidenta Mensch solicitó una moción para aprobar el acta de la reunión de la mesa directiva celebrada el 26 de septiembre de 2023. Ana Alonso notó que el nombre de uno de los asistentes estaba mal escrito.

Movido por Verdugo y secundado por Alonso A.:

Aprobar el Acta de la Reunión de la Mesa Directiva del Centro Regional Kern del 26 de septiembre de 2023, con la corrección del apellido del asistente de Chocateco a Chocoteco.

3200 N. Sillect Avenue, Bakersfield CA 93308
661-327-8531 Fax 661-324-5060 TDD 661-327-1251
www.kernrc.org

APROBADOS: 9

PROGRAMA DE AUTODETERMINACIÓN: METAS, AVANCES, PROYECTOS, RESULTADOS

Chloe Hayes y Adriana Antonio, Especialistas en Elección de Participantes de KRC, presentaron a la Mesa Directiva una conferencia educativa, *Programa de Autodeterminación: Metas, Progreso, Resultados de Proyectos*. Tomás Cubias, Subdirector de Acceso a Servicios y Equidad, hizo una breve introducción al programa.

Se archivará una copia de la presentación de PowerPoint con el acta de esta reunión.

Se formularon preguntas sobre los facilitadores independientes que completaron la solicitud para contratar con KRC para el servicio de 099. Enrique Román, Director de Servicios Comunitarios de KRC, respondió que, actualmente, los facilitadores independientes de KRC no han completado el proceso; sin embargo, anticipa una resolución pronto. KRC continúa trabajando en los requisitos de seguro para completar el proceso de contratación. Este tema es un punto del orden del día previsto para la reunión de noviembre de la Mesa Directiva.

OPINIÓN PÚBLICA

Adeyinka Glover, Defensora de los Derechos de los Clientes y Abogada de Disability Rights California, anunció que OCRA está organizando un evento del Valle Central en Tulare, California, el 15 de noviembre, de 9:00 a.m. a 4:00 p.m. Este taller se centrará en la educación, la planificación de IPP y la discusión de temas comunicados por la comunidad de clientes. La Sra. Glover incluyó el enlace web y su número de contacto en el chat para aquellos que necesitaran más información. KRC también promoverá este evento en su sitio web y redes sociales.

Samantha Pinto pidió información sobre FMS. Enrique se refirió al sitio web de DDS que tiene una lista de las agencias de FMS proveedoras y las modalidades que cada una ofrece.

Ana Alonso anunció que Padres Unidos tendrá un evento el 11 de noviembre. Este evento cubrirá temas como el asma y los servicios de atención domiciliaria. Este evento se promocionará en el sitio web y las redes sociales de KRC.

INFORME DEL PRESIDENTE DE LA MESA DIRECTIVA

En la reunión de la junta directiva de noviembre, recibiremos nominaciones y votaremos por nuestros funcionarios de la Mesa Directiva de KRC 2024. Los nominados que tienen experiencia en finanzas son especialmente necesarios. En el chat se proporcionó información para cualquier persona que quisiera solicitar una solicitud para la Mesa Directiva de KRC.

INFORME DE LA DIRECTORA EJECUTIVA

La Dra. Michi Gates presentó el informe de la Directora Ejecutiva a la Mesa Directiva.

- KRC ha recibido la asignación presupuestaria E1 de DDS para 2023-24. La contratación continúa. El enfoque de KRC este año será utilizar los fondos adicionales que fueron asignados por la legislatura y aprobados por el gobernador para cumplir con la proporción de casos de 1:40 para niños de 0 a 5 años.
- KRC participa regularmente en eventos comunitarios; es decir, la Feria de Recursos en la Biblioteca Beale, la entrevista televisiva sobre el mes de concientización sobre el síndrome de Down, el almuerzo HIRE y el almuerzo VAC. KRC se esfuerza por mantener una buena presencia en nuestro sitio web y redes sociales. Se está planificando la creación de videos con algunas de las personas a las que servimos.
- Uno de los eventos a nivel estatal en el que participa la Dra. Gates es el grupo de trabajo de Necesidades Complejas del DDS. Este grupo de trabajo se dirige a personas cuyas necesidades complejas, es decir, diagnósticos duales, les dificultan permanecer en su comunidad en un entorno hogareño. De los tres subgrupos adicionales creados a partir de este grupo de trabajo, la Dra. Gates está participando en un

subgrupo sobre Apoyo Familiar Coordinado, que se centra en las personas que eligen permanecer en su hogar familiar en lugar de vivir en su propio apartamento u otro arreglo de vivienda. Culturalmente, esto es importante. El Apoyo Familiar Coordinado es un intento de llenar el vacío para aquellas culturas que prefieren que los hijos adultos permanezcan con la familia. KRC está trabajando en la identificación de clientes que pueden ser atendidos por el Apoyo Familiar Coordinado.

- KRC está trabajando con Kern Behavioral Health para actualizar su Memorando de Entendimiento (MOU, por sus siglas en inglés) para maximizar la colaboración y garantizar servicios de calidad.
- La Dra. Gates y Tracey Mensch asistieron a la reunión de la Mesa Directiva de ARCA en San Diego el 19 y 20 de octubre. Uno de los principales objetivos fue la normalización de las prácticas. Los temas discutidos fueron: 1) un formato estándar para todos los sitios web de los centros regionales; 2) estandarización de los procesos para la contratación para proveer servicios; 3) un proceso de admisión uniforme durante la transición de los clientes entre los centros regionales; 4) estandarización de las competencias del personal de los centros regionales y 5) una plantilla estandarizada para el IPP centrado en la persona.
- El Centro Regional de Kern cumplió con todas las medidas de desempeño, hasta ahora, para el Plan de Desempeño 2022-23. Los datos de la medida de empleo están pendientes.
- El Comité Senatorial de Servicios Humanos ha solicitado una sesión informativa sobre el autismo y los servicios de los centros regionales. Se le ha pedido a la Dra. Gates, junto con ARCA, que forme parte de esta sesión informativa.
- El 3 de noviembre se llevará a cabo la conferencia SDP de Disability Voices United, *Nuestro futuro, nuestra lucha: nuestro derecho a la autodeterminación*. KRC tiene cinco miembros del personal que asistirán y La Dra. Gates estará en un panel para el evento.
- Se ha programado una capacitación sobre prejuicios culturales e implícitos para todo el personal de KRC en noviembre.
- La auditoría de la exención de HCBS se llevará a cabo en noviembre.

INFORME FINANCIERO

Tom Wolfgram, Director Financiero, proporcionó el Informe Financiero para la Compra de Servicios y Operaciones al 31 de agosto de 2023.

Compra de Servicios

Total gastado para el mes que finalizó el 31 de agosto de 2023: \$19,648,273

Hasta la fecha: \$39,400,821

Se estima que se han gastado \$5 millones más este año que en esta época del año pasado, específicamente en las categorías de Centros de Cuidado Comunitario, Capacitación Diurna y Cuidado de Relevo.

Informe de Operaciones

Gastos totales para el mes que finaliza el 31 de agosto de 2023: \$2,803,640

YTD: \$5,513,061

Se gastaron 1.5 millones de dólares más en salarios y prestaciones. La asignación presupuestaria E-1 fue mayor que en el último año y para cumplir con la proporción de 1:40 es necesario agregar más personal.

Se adjunta a estas actas una copia del Informe de Compra de Servicios y del Informe de Operaciones correspondiente al mes finalizado el 31 de agosto de 2023.

COMITÉ ASESOR DE PROVEEDORES

El Almuerzo VAC se llevará a cabo el 3 de noviembre en el Hotel Doubletree.

Tracey Mensch, Vicepresidenta, concluyo la sesión a las 7:33 p.m.

La próxima reunión de la Mesa Directiva de KRC está programada para el martes 28 de noviembre de 2023 a las 6:00 p.m.

Darlene Pankey
Asistente Ejecutiva

DRAFT

Anexo 2

MEMORÁNDUM

PARA : MESA DIRECTIVA, CENTRO REGIONAL KERN

DE : ENRIQUE ROMÁN, DIRECTOR DE SERVICIOS COMUNITARIOS

ASUNTO : REQUISITOS DE SEGURO PARA LOS SERVICIOS DE TRANSICIÓN DE
SDP (099)

FECHA : 20 DE NOVIEMBRE DE 2023

Mesa Directiva,

Me presento ante ustedes esta noche como continuación de la discusión del mes pasado sobre los requisitos de seguro de KRC en lo que respecta a la finalización del proceso de solicitud de proveedor para el código de servicio 099, Servicios de Preinscripción de Autodeterminación.

Durante la reunión de la Mesa Directiva del mes pasado, unas de las partes interesadas/posibles proveedores de servicios de KRC expresaron su preocupación sobre su capacidad para cumplir con los requisitos de seguro de proveedores de KRC, específicamente el requisito de cobertura de abuso y acoso. Adjunto a este memorándum hay un contrato que se proporcionará a todas las posibles partes interesadas en convertirse en proveedores de KRC que deseen proporcionar servicios de preinscripción de autodeterminación. Este contrato detalla las expectativas de KRC sobre nuestros proveedores y su responsabilidad hacia KRC y nuestros consumidores.

En este momento, KRC busca la aprobación de la Junta Directiva para permitir que KRC incluya una disposición en este contrato que eximirá del requisito de cobertura de abuso y abuso sexual para este servicio en particular, siempre y cuando los posibles proveedores de servicios acuerden brindar solo Apoyos SDP y otros servicios a los Consumidores de forma remota (como a través de Zoom o Microsoft Teams) y no realicen reuniones en persona con los Consumidores.

Tenga en cuenta que este acuerdo solo aplica a KRC. Si un proveedor de servicios desea comercializar con otros centros regionales, KRC compartirá la información del proveedor, cuando se le solicite; El proveedor de servicios debe cumplir con los requisitos de seguro del otro centro regional.

Respetuosamente,

Enrique Román

Enrique Román
Director de Servicios Comunitarios

ACUERDO DE APOYOS AUTODIRIGIDOS PARA EL PROGRAMA DE AUTODETERMINACIÓN

Este Acuerdo de Apoyos Autodirigidos para el Programa de Autodeterminación (este "**Acuerdo**"), con fecha de referencia a partir de la **Fecha**, se celebra entre el Centro Regional Kern, una corporación sin fines de lucro de California ("**KRC**") y el **Nombre del Proveedor Insertado** y el Estado de Formación ("**Proveedor de Servicios**") **de conformidad con los siguientes hechos:**

A. KRC es una corporación sin fines de lucro que, de conformidad con un contrato con el Departamento de Servicios de Desarrollo ("**DDS**") del Estado de California, brinda servicios a personas con discapacidades del desarrollo ("**Consumidores**") en los condados de Kern, Inyo y Mono.

B. El DDS ha implementado un Programa de Autodeterminación en todo el estado (el "**SDP**") bajo el Código de Bienestar e Instituciones de California §4685.8 para proporcionar a los Consumidores y sus familias una mayor flexibilidad y elección, y un mayor control sobre las decisiones, los recursos y los servicios y apoyos necesarios y deseados, para implementar sus respectivos Planes de Programas Individuales.

C. El Proveedor de Servicios desea proporcionar apoyos de transición previos a la inscripción bajo el SDP ("**Apoyos Autodirigidos**", también conocidos como "**Apoyos SD**") a los Consumidores y sus familias que han completado una orientación del SDP y que están haciendo la transición a la inscripción en el SDP (colectivamente, los "**Participantes**"). Los Apoyos SD pueden ser (i) Apoyos Autodirigidos Generales ("**SD General**") o (ii) Apoyos Autodirigidos de Servicios de Gestión Financiera ("**FMS SD**").

AHORA POR LO TANTO, en consideración a los siguientes pactos mutuos, las partes acuerdan lo siguiente:

1. **DURACIÓN DEL ACUERDO.** La vigencia de este Acuerdo comenzará en la Fecha y finalizará en la **Fecha**, sujeto a las disposiciones de terminación anticipada que se indican a continuación. Al final del plazo establecido de este Acuerdo, si el Proveedor de Servicios continúa brindando servicios a los Consumidores de KRC con el consentimiento de KRC, este Acuerdo continuará mes a mes, sujeto a la rescisión por cualquiera de las partes en cualquier momento con treinta (30) días de anticipación y notificación por escrito a la otra.

2. **SERVICIOS A PRESTAR; CONTRATO DE SERVICIO.**

2.1 Como parte de su contratación, el Proveedor de Servicios ha firmado, o firmará simultáneamente con este Acuerdo, un "Formulario de Calificaciones y Acuerdo" en el formulario publicado por DDS (el "**Acuerdo de Servicio**"), que describe los tipos de Servicios de SD que proporcionará el Proveedor de Servicios. DDS publica un formulario de Acuerdo de Servicio para SD General y otro formulario de Acuerdo de Servicio para SD de FMS; el Acuerdo de Servicio en particular firmado por el Proveedor de Servicios se incorpora al presente documento como referencia. Si existen inconsistencias entre el Acuerdo de servicio y este

Acuerdo, prevalecerán los términos de este Acuerdo.

2.2 El Proveedor de Servicios puede proporcionar Apoyos de SD solo después de la orientación de SDP de un Participante y antes de que el Participante se inscriba en el SDP. El SD general es para cualquier asistencia, entrenamiento y/o apoyo de capacitación que necesite un Participante para inscribirse con éxito en SDP. Sin embargo, solo las agencias de FMS que atienden a los Participantes pueden proporcionar FMS SD.

2.3 KRC puede establecer un límite en el número de Participantes atendidos simultáneamente por el Proveedor de Servicios si KRC cree que dicho límite es necesario para mantener la calidad de los Apoyos SD en beneficio de los Participantes.

3. FACTURACIÓN, TARIFAS Y PAGOS

3.1 De conformidad con la Directiva DDS de fecha 28 de julio de 2022, los Apoyos de SD se facturarán según el Código de Servicio 099 y podrán dividirse entre SD General y FMS SD. Por la presente, KRC autoriza hasta [40] [número menor] de horas totales de Apoyos SD para cada Participante Consumidor; sin embargo, KRC puede autorizar horas adicionales caso por caso.

3.2 Las tarifas para los Apoyos de SD son establecidas por DDS. DDS puede cambiar periódicamente las tarifas. Los cambios en las tarifas no requieren la firma del Proveedor de Servicios y entrarán en vigencia en la fecha determinada por DDS. Cada cambio en la tarifa de los Apoyos de SD se incorpora a este Acuerdo mediante esta referencia.

3.3 El Proveedor de Servicios enviará todas las facturas a KRC utilizando el sistema de facturación electrónica de KRC. El reembolso seguirá el ciclo de pago regular de KRC. KRC reembolsará al proveedor de servicios en mora el pago de los servicios prestados. Como condición para el pago, el Proveedor de Servicios se compromete a presentar otros documentos justificativos si así lo requiere o según lo solicite KRC.

3.4 El Proveedor de Servicios debe ser proveedor de KRC en todo momento durante la vigencia de este Acuerdo, lo cual es una condición para la validez de este Acuerdo.

4. LEYES Y REGLAMENTOS APLICABLES

4.1 Cumplimiento de las leyes aplicables. El Proveedor de Servicios cumplirá en todo momento con todos los estatutos y reglamentos federales y estatales aplicables en relación con la prestación de los Apoyos de SD en virtud de este Acuerdo. El Proveedor de Servicios declara y garantiza que ha revisado y está familiarizado con todos los estatutos y reglamentos federales y estatales aplicables, incluidas, entre otras, todas las disposiciones aplicables en (1) WIC §§4500 et seq. (la Ley de Servicios para Discapacidades del Desarrollo de Lanterman) y (2) las regulaciones promulgadas en virtud de la misma (por ejemplo, la División 2 del Título 17 [titulada, "Agencia de Salud y Bienestar - Regulaciones del Departamento de Servicios de Desarrollo"], §50201 y siguientes, y las disposiciones aplicables en el Título 22 del Código de Regulaciones de California). Además, el Proveedor de Servicios declara que está en posesión de una copia de dichos estatutos y reglamentos. Los términos de este Acuerdo no se

interpretarán como excusa para el cumplimiento por parte del Proveedor de Servicios de los estatutos y reglamentos existentes aplicables.

4.2 Modificaciones por Ley. Cualquier disposición de este Acuerdo que entre en conflicto con estatutos, reglamentos o directivas se modifica por la presente para ajustarse a las disposiciones de dichos estatutos, reglamentos y directivas. Dicha enmienda será vinculante para las partes, aunque no se haya reducido a escrito ni haya sido formalmente acordada y ejecutada por las partes. KRC se esforzará de buena fe por notificar al Proveedor de servicios al recibir notificación de cualquier enmienda o nueva ley que afecte materialmente a este Acuerdo.

5. **TERMINACIÓN ANTICIPADA.** Sin perjuicio de cualquier disposición en contrario en este Acuerdo, cualquiera de las partes de este Acuerdo puede rescindir este Acuerdo en cualquier momento sin causa previa notificación por escrito a la otra parte con treinta (30) días calendario de anticipación.

6. **CONTRATISTA INDEPENDIENTE.** Este Acuerdo no crea ninguna relación entre empleador y empleado. El Proveedor de Servicios, y sus agentes y empleados, actuarán en virtud del presente como contratistas independientes, y no como funcionarios, empleados o representantes de KRC o del Estado de California.

7. **RESPONSABILIDAD CIVIL GENERAL Y DAÑOS A LA PROPIEDAD**

7.1 Seguro de Compensación para Trabajadores. Dado que el Proveedor de Servicios no es un empleado de KRC, el Proveedor de Servicios no tiene derecho a recibir compensación laboral por cualquier lesión o muerte que surja de los servicios que prestará el Proveedor de Servicios en virtud de este Acuerdo. El Proveedor de Servicios mantendrá un seguro de Compensación para Trabajadores para sus empleados en todo momento durante la vigencia de este Acuerdo en la cantidad máxima legal.

7.2 Seguro de responsabilidad civil. El Proveedor de Servicios se compromete a adquirir y mantener en pleno vigor y efecto durante la vigencia de este Acuerdo una póliza o pólizas de seguro que protejan a KRC y al Proveedor de Servicios contra cualquier pérdida, responsabilidad o gasto debido a lesiones personales, muerte o daños a la propiedad, que surjan o estén relacionados de alguna manera con los servicios que prestará el Proveedor de Servicios o su personal. La responsabilidad mínima bajo cada una de estas pólizas será de \$1,000,000 por incidente. El Proveedor de Servicios también deberá obtener un endoso de propiedad (incluida la responsabilidad contractual) de forma amplia para su póliza de seguro de responsabilidad civil en beneficio de KRC.

7.3 Seguro de responsabilidad civil para automóviles no propios y contratados; Seguro de auto. Si el Proveedor de Servicios utiliza vehículos para transportar a cualquier Participante o en relación con sus Apoyos de SD, el Proveedor de Servicios adquirirá y mantendrá en pleno vigor y efecto durante la vigencia de este Acuerdo un Seguro de Responsabilidad Civil para Automóviles No Propios y Contratados de al menos \$1,000,000 de límite de responsabilidad por accidente.

7.4 Otros seguros. El Proveedor de Servicios también obtendrá cobertura de

Responsabilidad Civil Profesional (si corresponde) y cobertura de Abuso y Acoso en todo momento durante la vigencia de este Acuerdo. La responsabilidad mínima bajo cada una de estas pólizas será de \$1,000,000 por incidente. Sin perjuicio de lo anterior, KRC acepta renunciar a la obligación del Proveedor de Servicios de tener cobertura de Abuso y Acoso siempre y cuando el Proveedor de Servicios solo brinde Apoyos de SD y otros servicios a los Consumidores de forma remota (como a través de Zoom o Microsoft Teams), y no realice reuniones en persona con los Consumidores.

7.5 Licencias y habilitaciones. Todas las compañías de seguros del Proveedor de Servicios deberán tener licencia en todo momento para realizar transacciones comerciales de seguros en el Estado de California, deberán tener una calificación de A-:IX o superior en la edición más reciente de la Guía de Seguros de Best, y serán aceptables para KRC.

7.6 Notificación a KRC. Todas las pólizas o certificados de seguro del Proveedor de Servicios incluirán sustancialmente la siguiente cláusula: *"Esta póliza no se cancelará, reducirá en los límites de responsabilidad requeridos ni se modificará en cuanto a la cobertura hasta que se haya notificado por escrito a Kern Regional Center de dicha cancelación o reducción. La fecha de cancelación o reducción no podrá ser inferior a 20 días después de que se haya dado dicha notificación."* Si el seguro del Proveedor de Servicios se modifica o cancela, el Proveedor de Servicios notificará a KRC por escrito de tal hecho, dentro de los cinco días posteriores a la recepción por parte del Proveedor de Servicios de la primera notificación de modificación o cancelación de la compañía de seguros.

7.7 KRC nombrado como asegurado adicional; Certificados de seguro. El seguro de responsabilidad civil del Proveedor de Servicios, incluidos, entre otros, el Seguro de Automóvil Propio, No Propio y Contratado (y, si está disponible comercialmente, también las otras pólizas de seguro del Proveedor de Servicios) contendrá un Endoso de Asegurado Designado que nombre a Kern Regional Center como asegurado adicional. Además, cada certificado de seguro deberá incluir a KRC como asegurado adicional, deberá indicar el alcance del seguro, las ubicaciones y operaciones a las que se aplica el seguro y la fecha de vencimiento del seguro. El Proveedor de Servicios deberá proporcionar en todo momento a KRC copias actualizadas de los certificados de seguro del Proveedor de Servicios.

7.8 Renuncia a la subrogación. Las pólizas de seguro del Proveedor de Servicios deberán contener una cláusula de renuncia a la subrogación en beneficio de KRC.

7.9 Sin compensación mientras no esté asegurado o tenga un seguro insuficiente: recursos disponibles para KRC. Si en cualquier momento durante la vigencia de este Acuerdo el seguro requerido de conformidad con esta Sección se cancela, reduce o modifica, o no está en vigor de otra manera, (1) el Proveedor de Servicios no tendrá derecho al pago de ningún servicio prestado durante dicho período de tiempo y (2) KRC tendrá la opción (pero no la obligación) de pagar cualquier prima necesaria para restablecer dicho seguro a la cantidad y cobertura requeridas en virtud de este Acuerdo, en el que incluso KRC deducirá dichos costes de las siguientes sumas adeudadas al Proveedor de Servicios.

8. INDEMNIZACIÓN.

8.1 Indemnización del Proveedor de Servicios. El Proveedor de Servicios indemnizará, defenderá y eximirá de responsabilidad a KRC y sus representantes, funcionarios, directores, agentes y empleados y sus respectivos herederos, albaceas, administradores, sucesores y cesionarios, incluidos, entre otros, el Estado de California y sus agentes y empleados (denominados colectivamente como los "**Indemnizados de Kern**"), de todas y cada una de las pérdidas, costos, gastos (incluidos, entre otros, los honorarios razonables de abogados), responsabilidades, reclamaciones, costos judiciales, demandas, deudas, causas de acción, multas, sentencias y sanciones que surjan o se relacionen con (a) muerte o lesiones a personas o daños a la propiedad en relación con los actos negligentes o intencionales, errores u omisiones del Proveedor de servicios o sus empleados, agentes, consultores o cualquier persona empleada por ellos para actuar en su nombre, (b) reclamaciones en virtud de las leyes de compensación para trabajadores u otras leyes de beneficios para empleados por parte de los agentes o empleados del Proveedor de Servicios, (c) el incumplimiento por parte del Proveedor de Servicios de sus obligaciones en virtud de este Acuerdo en estricta conformidad con sus términos, incluido el incumplimiento por parte del Proveedor de Servicios de cualquier declaración o convenio otorgado en este Acuerdo o (d) la violación de cualquier ley, reglamento o código estatal o federal por parte del Proveedor de Servicios o por cualquiera de los empleados, agentes o consultores del Proveedor de Servicios en relación con la realización de sus actividades y Servicios realizados en relación con este Acuerdo. Las obligaciones de indemnización del Proveedor de Servicios en este párrafo se aplicarán incluso en la circunstancia en que los Indemnizados de Kern o cualquiera de ellos sean activamente negligentes; siempre que, sin embargo, el Proveedor de Servicios no tenga ninguna obligación de indemnización cuando el daño o lesión sea causado por la negligencia exclusiva o la mala conducta intencional de los Indemnizados de Kern o de cualquiera de ellos. Indemnizaciones de KRC no están obligados a pagar primero ninguna suma para ser indemnizado.

8.2 Asunción de la defensa. El Proveedor de Servicios asumirá la defensa, a su exclusivo cargo, y con un asesor legal aceptable para KRC, de cualquier reclamo o litigio en virtud del cual tenga una obligación de indemnización en virtud del presente; KRC cooperará con el Proveedor de Servicios y sus abogados en la defensa de dichas reclamaciones, siempre que, sin embargo, el Proveedor de Servicios reembolse cualquier costo o gasto asociado con dicha cooperación. Si el Proveedor de Servicios no asume la defensa de cualquier reclamo o litigio en relación con el cual tiene o se determina que ha tenido la obligación de indemnizar, los Indemnizados de Kern tendrán derecho a asumir su propia defensa, y el Proveedor de Servicios estará obligado a reembolsar a los Indemnizados de Kern todos y cada uno de los gastos razonables (incluidos, pero no limitado a los honorarios de abogados) incurridos en defensa de dichas reclamaciones o litigios, además de otras obligaciones de indemnización del Proveedor de Servicios en virtud de los mismos. El Proveedor de Servicios controlará la defensa y la resolución de cualquier reclamación; siempre que, sin embargo, si el Proveedor de Servicios no asume la defensa de cualquier reclamación o litigio en relación con el cual tenga o se determine que ha tenido la obligación de indemnizar, KRC tendrá dicho control.

8.3 Supervivencia de las provisiones. La indemnización establecida en esta Sección se aplicará durante la vigencia de este Acuerdo y también sobrevivirá a la expiración o terminación de este Acuerdo, hasta el momento en que la acción contra los Indemnizados de Kern a causa de cualquier asunto cubierto por dicha indemnización esté prohibida por el estatuto

de limitaciones aplicable.

9. REQUISITOS DE AUDITORÍA INDEPENDIENTE

9.1 Esta Sección solo se aplicará si todos los pagos que el Proveedor de Servicios recibe acumulativamente de KRC y otros centros regionales durante cada año fiscal estatal igualan o superan el monto umbral indicado en la Sección 4652.5 del Código de Bienestar e Instituciones (que actualmente es de \$500,000). En tal caso, el Proveedor de Servicios deberá, a expensas del Proveedor de Servicios, hacer que una firma de contabilidad independiente proporcione anualmente un informe de revisión o auditoría independiente (el "**Informe**") de los estados financieros del Proveedor de Servicios, según lo dispuesto en dicho estatuto.

9.2 El Proveedor de Servicios comenzará la auditoría o revisión independiente dentro de los 120 días posteriores al final del año fiscal del Proveedor de Servicios. El Proveedor de Servicios completará la auditoría o revisión dentro de los 210 días posteriores al final del año fiscal del Proveedor de Servicios. De acuerdo con la Sección 4652.5(b) de WIC, el Proveedor de Servicios proporcionará copias del Informe a KRC dentro de los 30 días posteriores a la finalización de la auditoría o revisión.

9.3 Si KRC cree que cualquier problema identificado en el Informe tiene un impacto en los servicios que el Proveedor de Servicios proporciona a los Consumidores de KRC, KRC notificará al Proveedor de Servicios y proporcionará al Proveedor de Servicios 30 días para resolver dichos problemas. El hecho de que el Proveedor de Servicios no resuelva dichos problemas a satisfacción razonable de KRC dentro de dicho período de 30 días constituirá un incumplimiento material de este Acuerdo.

9.4 Si KRC no encuentra ningún problema en el Informe del año anterior del Proveedor de Servicios, el Proveedor de Servicios puede solicitar, por escrito, a KRC una exención de dos años, en la medida en que lo permita la ley aplicable.

10. **LIBROS, REGISTROS Y CONTABILIDAD.** El Proveedor de Servicios presentará informes mensuales de progreso y fiscales a solicitud en un método prescrito por KRC como se describe en la regulación. El Proveedor de Servicios da fe de que dicha documentación fiscal y relacionada con el programa está completa, es precisa según el leal saber y entender del Proveedor de Servicios, está respaldada por registros y documentación, se prepara de acuerdo con las regulaciones del DDS y está sujeta a auditoría. El Proveedor de Servicios también se compromete a mantener y preservar hasta cinco años después de que se haya prestado el servicio, y a permitir que KRC, el Estado de California y cualquiera de sus representantes debidamente autorizados tengan acceso y examinen y auditen cualquier libro, documento, papel y registro pertinente relacionado con este Acuerdo. En caso de que KRC o el Estado de California, de acuerdo con la ley aplicable, determinen que los fondos pagados por KRC en virtud del presente documento no se gastaron de acuerdo con los términos de este Acuerdo, el Proveedor de servicios reembolsará dichos fondos a KRC dentro de los treinta (30) días posteriores a la solicitud.

11. **CONTRAPRESTACIÓN ÚNICA.** La contraprestación que se pagará al Proveedor de Servicios, según lo dispuesto en el presente documento, será la única compensación por los gastos incurridos por el Proveedor de Servicios en la ejecución del presente, a menos que KRC autorice lo contrario por escrito.

12. **PROHIBIDA LA CESIÓN Y SUBCONTRATACIÓN.** De conformidad con las secciones 50607(g) y (j) del Título 17 del CCR, el Proveedor de servicios no podrá ceder, transferir ni subcontratar ninguno de sus deberes, cargas u obligaciones en virtud de este Acuerdo.

13. **NO DISCRIMINACIÓN**

13.1 Durante la ejecución de este Acuerdo, el Proveedor de Servicios no negará ilegalmente los beneficios del Acuerdo a ninguna persona por motivos de raza, credo religioso, color, origen nacional, ascendencia, discapacidad física, discapacidad mental, condición médica, información genética, estado civil, sexo, género, identidad de género, expresión de género, edad, orientación sexual o estado militar y veterano, ni discriminará ilegalmente a ningún empleado o solicitante de empleo porque de raza, credo religioso, color, origen nacional, ascendencia, discapacidad física, discapacidad mental, toma de decisiones de salud reproductiva, condición médica, información genética, estado civil, sexo, género, identidad de género, expresión de género, edad, orientación sexual o estado militar y veterano. El Proveedor de Servicios se asegurará de que la evaluación y el tratamiento de los empleados y solicitantes de empleo estén libres de dicha discriminación.

12.2 El Proveedor de Servicios deberá cumplir con la disposición de la Ley de Empleo y Vivienda Justos (Código de Gobierno, Sección 12900 y siguientes), las regulaciones promulgadas en virtud de la misma (Código de Regulaciones de California, Título 2, Sección 7285.0 y siguientes), la disposición del Artículo 9.5, Capítulo 1, Parte 1, División 3, Título 2 del Código de Gobierno (Código de Gobierno, Secciones 11135-11139.5), y los reglamentos o normas adoptados por el organismo estatal adjudicador para aplicar dicho artículo.

12.3 El Proveedor de Servicios permitirá el acceso de representantes del Departamento de Empleo y Vivienda Justos y de la agencia estatal adjudicadora, previo aviso razonable, en cualquier momento durante el horario comercial normal, pero en ningún caso con menos de 24 horas de anticipación, a sus libros, registros, cuentas, otras fuentes de información y sus instalaciones que dicho Departamento o agencia requiera para determinar el cumplimiento de esta sección.

12.4 El Proveedor de Servicios notificará por escrito sus obligaciones en virtud de esta sección a las organizaciones laborales con las que tenga un convenio colectivo u otro acuerdo.

14. **GASTOS LEGALES.** Si se inicia cualquier acción o procedimiento legal para hacer cumplir cualquier disposición o derecho en virtud de este Acuerdo, la parte perdedora de dicha acción o procedimiento, según lo determine el tribunal, pagará a la parte vencedora todos los costos, gastos y honorarios razonables de abogados incurridos por dicha parte (incluidos,

entre otros, los costos, gastos y honorarios en cualquier apelación), que se incluirán como parte de la sentencia.

15. **NO RENUNCIA.** Ninguna renuncia a un incumplimiento de cualquier disposición de este Acuerdo constituirá una renuncia a cualquier otro incumplimiento de dicha disposición. El hecho de que KRC no haga cumplir en cualquier momento, o de vez en cuando, cualquier disposición de este Acuerdo, no se interpretará como una renuncia al mismo. Los recursos aquí reservados serán acumulativos y adicionales a cualquier otro recurso en derecho o equidad.

16. **LUGAR DE TRABAJO LIBRE DE DROGAS.** Los empleados del Proveedor de Servicios deberán cumplir con la política de su respectiva agencia de mantener un lugar de trabajo libre de drogas. Ni el Proveedor de Servicios ni los empleados del Proveedor de Servicios fabricarán, distribuirán, dispensarán, poseerán o usarán ilegalmente sustancias controladas, según se define en la Sección 812 del Código 21 de EE. UU., en ninguna instalación o lugar de trabajo del Proveedor de servicios. La violación de esta disposición constituirá un incumplimiento sustancial de este Acuerdo.

17. **CUMPLIMIENTO DE HIPAA.** En virtud de este Acuerdo, "HIPAA" se refiere a la Ley Federal de Portabilidad y Responsabilidad de Seguros Médicos (Pub. L. No. 104-191), las regulaciones de HIPAA según lo establecido en 45 C.F.R. Partes 160 y 164 (también conocida como la Regla de Privacidad de HIPAA) y las regulaciones sobre Estándares para la Privacidad de la Información de Salud Identificable Individualmente. Ambas partes cumplirán en todo momento con las disposiciones obligatorias de la HIPAA, incluida, entre otras, la Regla de privacidad de la HIPAA. En el desempeño de sus funciones en virtud de este Acuerdo, el Proveedor de Servicios puede tener acceso a "información de salud protegida", incluida, entre otras, "información de salud de identificación individual" y, por lo tanto, es un "Socio comercial" según se definen esos términos en HIPAA. Como tal, simultáneamente con la ejecución de este Acuerdo, el Proveedor de Servicios ejecutará el Acuerdo de Socio Comercial de KRC; sin embargo, si el Proveedor de Servicios ha celebrado previamente un Acuerdo de Socio Comercial con KRC, dicho acuerdo seguirá vigente. Dentro de los cinco días posteriores a la terminación de este Acuerdo por cualquier motivo, el Proveedor de Servicios deberá (i) devolver a KRC, o destruir, toda la información médica protegida relacionada con los Participantes en posesión o control del Proveedor de Servicios y (ii) entregar a KRC un Certificado de Devolución o Destrucción de PHI (el "**Certificado**"). KRC proporcionará un formulario del Certificado al Proveedor de Servicios que lo solicite.

18. **POLÍTICA DE TOLERANCIA CERO.** El Proveedor de Servicios deberá cumplir con la Política de Tolerancia Cero de KRC en todo momento; dicha Política se publica en el sitio web de KRC (<https://kernrc.org/>) y se incorpora aquí como referencia.

19. **CONTINGENCIA DE FINANCIAMIENTO.** Sin perjuicio de cualquier disposición en contrario en este Acuerdo, la validez de este Acuerdo (incluida la obligación de KRC de remitir los pagos al Proveedor de servicios) está condicionada a que KRC reciba fondos adecuados de DDS para pagar los servicios descritos en este Acuerdo (la "**Contingencia de Financiamiento**"). KRC tendrá el derecho y la opción de rescindir este Acuerdo sin

responsabilidad, y dicha terminación se considerará un incumplimiento de la Contingencia de Financiamiento, si (1) DDS por cualquier motivo no entrega fondos a KRC durante cualquier período cubierto por este Acuerdo o (2) KRC recibe fondos de DDS durante un período cubierto por este Acuerdo, pero KRC determina que dichos fondos son inadecuados para pagar todos los servicios del Proveedor de Servicios y otros gastos en los que KRC espera incurrir en dicho año fiscal y, por lo tanto, opta por financiar otros servicios en lugar de los servicios identificados en este Acuerdo.

20. **RESCISIÓN EN CASO DE INCUMPLIMIENTO.** El Proveedor de Servicios incurrirá en incumplimiento sustancial de este Acuerdo si, en la opinión razonable de KRC, el Proveedor de Servicios no cumple con cualquiera de sus obligaciones descritas en este documento y, dentro de los 30 días posteriores a que KRC notifique al Proveedor de Servicios el incumplimiento del Proveedor de Servicios, el Proveedor de Servicios no subsana dicho asunto. KRC pagará al Proveedor de Servicios toda la compensación por los servicios autorizados prestados de conformidad con y hasta la fecha de rescisión de este Acuerdo, menos las compensaciones a las que KRC tenga derecho.

21. **ENLACE AL SITIO WEB AL PROCESO DE QUEJAS DEL CONSUMIDOR DE DDS.** Esta sección es aplicable si el Proveedor de Servicios tiene un sitio web. De acuerdo con WIC, sección 4704.6, el Proveedor de Servicios publicará de manera visible en su sitio web de Internet un hipervínculo a la página del sitio web de Internet de [DDS en https://www.dds.ca.gov/general/appeals-complaints-comments/](https://www.dds.ca.gov/general/appeals-complaints-comments/) y la información de contacto de DDS en <https://www.dds.ca.gov/general/contact-us/>.

22. **AVISOS.** Todas las notificaciones, solicitudes, demandas y otras comunicaciones relacionadas con este Acuerdo se harán por escrito y se considerarán debidamente entregadas (i) en el momento de la entrega personal, (ii) el siguiente día hábil si se entregan por transportista nocturno, o (iii) tres días después de que dicha notificación se deposite en el correo, con franqueo prepago, registrado o certificado con acuse de recibo, a las siguientes direcciones:

Si a "KRC":

Centro Regional de Kern
Atención:
3200 N. Sillect Ave
Bakersfield, CA 93308

Si es al "Proveedor de servicios":

Insertar el nombre del proveedor
Atención: Nombre
Dirección
Dirección

23. **ACUERDO COMPLETO.** Este Acuerdo constituye el acuerdo completo de las partes en relación con el tema contenido en este documento y reemplaza todos los acuerdos, representaciones y entendimientos anteriores de las partes, ya sean orales o escritos. Ningún suplemento, modificación o enmienda de este Acuerdo será vinculante a menos que sea ejecutado por escrito por todas las partes. La ejecución de cualquier enmienda o modificación a este Acuerdo cumplirá con los requisitos de los estatutos y reglamentos aplicables.

24. **REPRESENTANTES AUTORIZADOS: CONTRAPARTES; ENTREGA.** Cada una de las partes declara y garantiza que la persona que firma a continuación en nombre de

dicha parte es un representante autorizado de dicha parte y tiene la autoridad para vincular a dicha parte a este Acuerdo. El presente Acuerdo podrá ser ejecutado en contrapartes, cada una de las cuales se considerará original y ambas se considerarán un solo instrumento. Las copias de este Acuerdo firmadas electrónicamente (por ejemplo, a través de DocuSign) y/o entregadas electrónicamente (por ejemplo, a través de un archivo adjunto en PDF a un correo electrónico) se considerarán iguales a los originales.

Ejecutado en Bakersfield, California, en la fecha indicada anteriormente.

"KRC":

Centro Regional de Kern,
una corporación sin fines de lucro de
California

Por: _____
Nombre: _____
Título: _____

"Proveedor de servicios":

Inserte el nombre del proveedor de servicios
y Estado de Formación

Por: _____
Nombre: _____
Título: _____

Anexo 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.

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

Anexo 4



Para: Mesa Directiva, Centro Regional de Kern
De: Tom Wolfgram, Director Financiero
Asunto: Contrato de arrendamiento de más de \$250,000.00
Fecha: 20 de noviembre de 2023

Presento la copia finalizada adjunta del contrato de arrendamiento para el espacio de expansión de Bakersfield, ubicado en 5001 E. Commercenter Drive, Suite 170, Bakersfield, CA 93309 a la Mesa Directiva para su revisión. Solicito la aprobación del contrato de arrendamiento si la junta está de acuerdo.

El contrato de arrendamiento es por un plazo de 7 años con una opción de renovación de 5 años. Hay 12,722 pies cuadrados de espacio de oficinas, lo que nos da 75 espacios de trabajo.

El alquiler base para el primer año es de \$22,263.50 mensuales o \$1.75 por pie cuadrado. El Centro Regional de Kern también será responsable de los servicios públicos utilizados por el espacio alquilado.

El abogado del Centro Regional de Kern ha revisado y enmendado el contrato de arrendamiento. Ambas partes están de acuerdo. El DDS también aprovo el pedido para la expencion.

TW

Archivo adjunto

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 Tingley 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 Tingley 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 ~~invitee~~^{third-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, defend and hold harmless 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 (iii) 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 35 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 1030 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 1030 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 100115% 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 ~~105~~ 105% 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 COMMERCIALY 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.: _____

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

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: 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

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Anexo 5

KERN REGIONAL CENTER
PURCHASE OF SERVICE
Año fiscal 2023-2024
A PARTIR DEL 30 DE SEPTIEMBRE DE 2023

COMPRA DE SERVICIOS	Julio 2023	Agosto 2023	Septiembre 2023	2023-2024	Total
FUERA DE CASA					
Centro de atención comunitaria	5,660,941	5,621,839	5,614,929		16,897,709
Instalación ICF/SNF	249,354	259,831	248,322		757,507
TOTAL FUERA DE CASA	5,910,295	5,881,670	5,863,251		17,655,216
PROGRAMAS DE DÍA					
Guardería infantil	35,966	44,016	43,267		123,249
Entrenamiento diurno	3,396,110	3,800,786	3,435,407		10,632,303
Apoyos para el empleo	327,147	359,151	331,739		1,018,037
Programa de Actividades Laborales					-
SUBTOTAL DE PROGRAMAS I	3,759,223	4,203,953	3,810,413		11,773,589
OTROS SERVICIOS					
Servicios no médicos profesion	353,876	351,453	306,120		1,011,449
Programa de Servicios No Médi	1,627,980	1,791,826	1,751,586		5,171,392
Programa de Servicios de Atenc	19,689	21,146	13,452		54,287
Transportacion	441,124	503,732	423,193		1,368,049
Contratos de transportacion	590,138	602,948	560,920		1,754,006
Servicios de Prevención	761,211	855,731	755,699		2,372,641
Otros servicios autorizados	3,718,403	3,887,898	3,795,359		11,401,660
Gastos de P&I	9,943	9,943	9,943		29,829
Atención hospitalaria					-
Equipo médico	7,915	5,115	4,630		17,660
Servicios medicos profesionales	219,777	231,833	197,058		648,668
Servicios Médicos Prog	38,092	36,840	28,826		103,758
Cuidado de relevo - En el hogar	2,535,489	2,585,118	1,601,038		6,721,645
Cuidado de relevo - Fuera del h	24,759	20,114	11,962		56,835
					-
					-
TOTAL OTROS SERVICIOS	10,348,396	10,903,697	9,459,786		30,711,879
COMPRA TOTAL DE SERVICIOS	20,017,914	20,989,320	19,133,450		60,140,684
PLAN DE COLOCACIÓN COMUNITARIA					
Centro de atención comunitaria	96,759	96,759	96,759		290,277
Instalación ICF/SNF					-
Entrenamiento diurno					-
Servicios no médicos					-
Programas de servicios no méd	4,724	5,348	8,270		18,342
Transportacion					-
Otros servicios autorizados					-
Otros servicios	349				349
Atención médica - Prof.					-
Centro de atención comunitaria					-
TOTAL PLAN DE COLOCACIÓN	101,832	102,107	105,029		308,968
TOTAL COMPRA DE SERVICIO	20,119,746	21,091,427	19,238,479		60,449,652

Anexo 6

CENTRO REGIONAL KERN
OPERACIONES
Año fiscal 2023/2024
A PARTIR DEL 30 DE SEPTIEMBRE DE 2023

	GASTOS PROPUESTOS	PRESUPUESTO DEL AÑO HASTA LA FECHA	07/31/23	08/31/23	09/30/23	TOTAL	(MÁS)/MENOS
OPERACIONES							
Salarios y beneficios	27,164,701	7,313,573	1,889,926	2,581,320	1,934,030	6,405,277	908,296
Gastos operativos	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)
PLAN DE COLOCACION COMUNITARIA							
Salarios y beneficios		-				-	-
Gastos operativos		-				-	-
SUBTOTAL CPP	-	-	-	-	-	-	-
PROGRAMA DE ABUELOS ADOPTIVOS							
Salarios y beneficios	95,176	25,624	6,461	8,385	6,974	21,821	3,803
Gastos operativos	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
Programa de acompañantes para personas mayores							
Salarios y beneficios	71,800	19,331	4,308	6,890	5,261	16,459	2,872
Gastos operativos	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 OPERACIONES	33,585,275	8,123,322	2,709,421	2,803,640	2,749,450	8,262,510	(139,188)