

RESOLUTION NO. 2005-123

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXECUTE A LEASE AND
OPTION TO PURCHASE AGREEMENT FOR THE REAL PROPERTY LOCATED AT
8401 LAGUNA SPRINGS DRIVE**

WHEREAS, the City of Elk Grove desires to lease with an option to purchase a 45,000 square foot office building located at 8401 Laguna Spring Drive. The office building is situated on a 3.09 acre parcel identified as Assessor Parcel Number 116-0860-048, within the City of Elk Grove, State of California; and

WHEREAS, the City of Elk Grove proposes the use of the 45,000 square foot office building for the expansion of City Hall; and

WHEREAS, California Environmental Quality Act Guidelines Class 27 exemption applies to the leasing of administrative offices in newly constructed offices space; and

WHEREAS, the use of the facility will be in conformance with existing General Plan for which an EIR or negative declaration has been prepared; and

WHEREAS, the use of the facility will be substantially the same as that originally proposed at the time the building permit was issued, and

WHEREAS, the use of the facility will not result in a traffic increase of greater than 10% of front access road capacity; and

WHEREAS, the use of the facility will include the provision of adequate employee and visitor parking facilities; and

WHEREAS, no adverse environmental effects were identified during staff review of the proposed acquisition; and

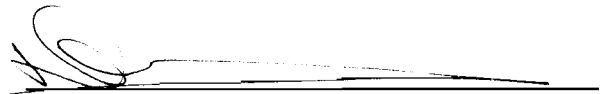
WHEREAS, No special circumstances exist that create a reasonable possibility that the activity may have a significant adverse impact on the environment.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby find:

The project qualifies for Categorical exemption in accordance with CEQA Guidelines Section 15327.

BE IT FURTHER RESOLVED that the City Manager or designee is hereby authorized to execute the Lease and Option to Purchase Agreement by and between Jackson II, LLC, a California limited liability company and the City of Elk Grove, a municipal corporation, copies of which is attached and incorporated into this resolution.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 11th day of May 2005.



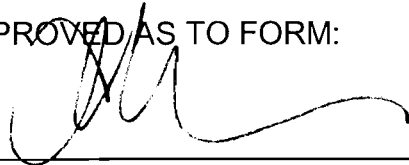
DANIEL BRIGGS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-123**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

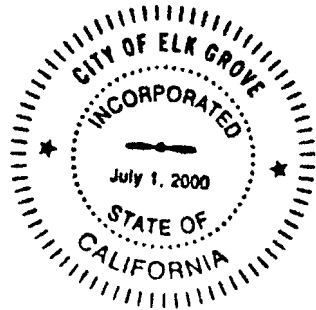
I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 11th day of May, 2005 by the following vote:


AYES 5: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary

NOES 0: COUNCILMEMBERS:

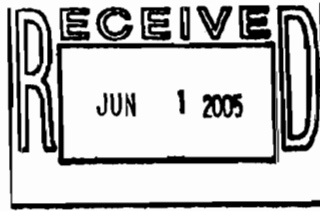
ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:





**Peggy E. Jackson, City Clerk
City of Elk Grove, California**



OFFICE BUILDING LEASE

This Lease between Jackson II, LLC, a California limited liability company (*Landlord*), the City of Elk Grove, a municipal corporation (*Tenant*), is dated for reference purposes only as of May 6, 2005.

1. LEASE OF PREMISES.

In consideration of the Rent (as defined at Section 5.4) and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord certain premises with an address of 8401 Laguna Palms Way, Elk Grove, California, as defined under Section 2.1 below and further described on Exhibit "A" attached hereto and made a part hereof.

2. DEFINITIONS

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

- a. *Base Rent (initial)*: See Section 38 for Base Rent Schedule.
- b. *Base Year*: The calendar year of 2006.
- c. *Broker(s)*
 - Landlord: N/A.
 - Tenants: N/A.
- d. *Scheduled Commencement Date*: January 2, 2006 (see Sections 4 and 39 below).
- e. *Common Areas*: [INTENTIONALLY OMITTED]
- f. *Expense Stop*:
- g. *Expiration Date*: February 1, 2016 (see Section 38 [regarding "free rent"] below)
- h. *Index (Section 5.2)*: [INTENTIONALLY OMITTED]
- i. *Landlord's Mailing Address*: JACKSON II, LLC. c/o Jackson Properties, 5665 Power Inn Road, Suite 140, Sacramento, CA 95824
Tenant's Mailing Address: 8380 Laguna Palms Way, Elk Grove, CA 95758, Attention: City Clerk
- j. *Monthly Installments of Base Rent (initial)*: (See Section 38 for Base Rent Schedule)
- k. *Parking*: Tenant shall be permitted to park in the designated parking spaces located on the Premises, which spaces are for the exclusive use of Tenant during the Term. Tenant shall abide by any and all parking regulations and rules established from time to time by Landlord or Landlord's parking operator.
- l. *Premises*: Approximately 43,035 square feet of Rentable Area (approximately 37,627 square feet of usable area) contained in a two-story concrete tilt-up building (the "Building"), plus the parking areas, landscaped areas and other improvements contained on that certain real property described on Exhibit "A".
- m. *Project*: [INTENTIONALLY OMITTED]
- n. *Rentable Area*: The measurement of the floor area of the Building in accordance with the Building Owners and Managers ("BOMA") standards for multi-tenant office buildings (ANSI Z65.1-1980, revised June 7, 1996).
- o. *Security Deposit (Section 7)*: \$[N/A]
- p. *State*: The State of California.
- q. *Tenant's First Adjustment Date*: (See Section 38 for Base Rent Adjustment Dates.)
- r. *Tenant's Proportionate Share*: 100%.
- s. *Tenant's Use Clause (Article 8)*: General office use and related uses not injurious to the Premises.

- t. *Term: One hundred twenty-one (121) months, commencing on the Commencement Date and expiring at midnight on the Expiration Date.*

3. **EXHIBITS AND ADDENDA.**

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

- a. Exhibit A – Premises.
- b. Exhibit B – Preliminary Floor Plan.
- c. Exhibit C – Rules and Regulations.
- d. Addenda – See Addendum, Sections 38 through 43

4. **DELIVERY OF POSSESSION.**

4.1 *Generally.* Landlord shall construct or install in the Premises the improvements as described in Section 39 of the Addendum. The “Commencement Date” shall be (a) the date on which Landlord has “Substantially Completed” Landlord’s construction obligations, if any, with respect to the improvements (the “Tenant Improvements”) to be constructed and installed in the Premises by Landlord (or, in the event of any Tenant Delay (as defined in Section 39 below), the date on which Landlord could have done so had there been no such Tenant Delay), all as provided in the Section 39 of the Addendum, and tendered possession of the Premises to Tenant; or (b) any earlier date upon which Tenant, with Landlord’s written permission, actually occupies and conducts business in any portion of the Premises. The parties anticipate that the Commencement Date will occur on or about the Scheduled Commencement Date set forth in Section 2.d above (the “Scheduled Commencement Date”). When the Commencement Date has been established, and within five (5) days after Landlord’s written request, Tenant shall confirm the Commencement Date and Expiration Date in writing, using a commercially reasonable form of commencement date letter (the “Commencement Date Letter”); provided, however, that the failure of Tenant to execute the Commencement Date Letter shall not affect any obligation of Tenant hereunder or Landlord’s determination of the Commencement Date. If Tenant fails to execute and deliver such acknowledgment in the form proposed by Landlord, Landlord and any prospective purchaser or encumbrancer may conclusively presume and rely upon the following facts: (x) that the Premises were in acceptable condition and were delivered in compliance with all of the requirements of this Lease, including Section 39 below, and (y) the Commencement Date is the date specified in the Commencement Date Letter.

4.2 *Effect of Late Delivery.*

- a. *Outside Date.* As used in this Section 4.2, the “Outside Date” shall mean the date that is forty-five (45) days after the Scheduled Commencement Date. The parties agree that the Outside Date shall be extended one (1) day for each day of delay attributable to (i) Tenant Delays, or (ii) Force Majeure Events (as defined in Section 34 below).
- b. *Rent Credit in the Event of Landlord Delays.* Notwithstanding Section 4.1 above, to the extent that the Commencement Date has not occurred by the Outside Date (as defined in Section 4.2.a. above), Tenant shall receive, as its sole remedy (with the exception of the termination right set forth in Section 4.2.c. below) and as of the Commencement Date, one (1) day of free Base Rent for each day of such delay to be credited against Tenant’s obligation to pay Base Rent accruing after the Commencement Date and the free rent period.
- c. *Termination.* Notwithstanding the foregoing, if the Commencement Date has not occurred or been deemed to have occurred by the date that is forty-five (45) days after the Outside Date (the “Upset Date”), Tenant, by written notice to Landlord given within ten (10) days after the Upset Date, may terminate the Lease without any liability to Landlord (which remedy, if exercised by Tenant, shall be Tenant’s sole remedy other than the remedy set forth in Section 4.2.b above).

5. **RENT.**

5.1 *Payment of Base Rent.* Tenant agrees to pay the Base Rent for the Premises. Monthly Installments of Base Rent shall be payable in advance on the first day of each calendar month of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis by the actual number of days contained in that month. Tenant shall pay Landlord the first Monthly Installment of Base Rent upon the Commencement Date.

5.2. *Adjusted Base Rent.* [INTENTIONALLY OMITTED]

5.3. *Premises Operating Costs.*

- a. In order that the Rent payable during the Term reflect any increase in Operating Costs (as defined in Section 5.3.b. below), Tenant agrees to pay to Landlord as Rent, Tenant’s Proportionate Share of all increases in Operating Costs, all as provided below.
- b. If, during any calendar year during the Term, Operating Costs exceed the Operating Costs for the Base Year, Tenant shall pay to Landlord, in addition to the Base Rent and all other payments due under this Lease,

an amount equal to Tenant's Proportionate Share of such excess Operating Costs in accordance with the provisions of this Section 5.3b.

(1) The term "Operating Costs" shall include all of the following items:

- (a) All taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Premises or its operation, including without limitation, (i) real property taxes or assessments levied or assessed against the Premises, (ii) assessments or charges levied or assessed against the Premises by any redevelopment agency, (iii) any tax measured by gross rentals received from the leasing of the Premises, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided that if at any time during the Term any governmental entity levies, assesses or imposes on Landlord any (1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this Lease, or (2) any license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rent, or (3) any transfer, transaction, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease, or (4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Operating Costs.
- (b) Any tax that has been converted into installment payments, relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time prior to the commencement or after the end of the Term, will, whether or not such Tax or installments are assessed, levied, confirmed, imposed upon or in respect of, or become a lien upon the Premises, or become payable, during the term, be adjusted between Landlord and Tenant as of the commencement or end of the Term, so that Tenant will pay the portion of the Tax or installment that the part of the fiscal period included in the Term bears to the entire fiscal period, and Landlord will pay the remainder.
- (c) Tenant will not be obligated to pay local, state, or federal net income taxes assessed against Landlord; local, state, or federal capital levy of Landlord; or sales, excise, franchise, gift, estate, succession, inheritance, or transfer taxes of Landlord.
- (d) Special Tax Provisions.
 - (i) Lessee's Tax Exempt Status. Lessee is exempt from real estate taxes and certain assessments pursuant to the California Constitution. On the Commencement Date of the Lease, Lessee, on the behalf of Lessor, shall apply to the Assessor for an exemption from all taxes and assessments which are then a lien against the Premises. All ad valorem real property taxes on the Premises shall be apportioned and paid on the Commencement Date as provided in California Revenue and Taxation Code section 5086. If Lessor has prepaid any of the ad valorem real property taxes, which are cancelled pursuant to Section 5086, Lessor shall seek and retain any refunds to which it is entitled from such taxing agencies. Lessee shall be responsible for any non-exempt taxes or assessments.
 - (ii) Lessee's Right to Contest Property Taxes. Lessee shall have the right to contest the validity or amount of any property taxes and/or any assessed valuation upon which such property taxes are or will be based. Lessor shall not be required to join in any proceeding or contest brought by Lessee unless the provisions of any law require that the proceeding or contest be brought by or in the name of Lessor, in which case Lessor shall join in the proceeding or contest or permit it to be brought in Lessor's name, and all costs and expenses thereof, including, without limitation, Lessor's attorneys' fees, shall be borne by Lessee.
 - (iii) Special Assessment Districts. If during the term of this Lease, any governmental subdivision or agency shall undertake to create an improvement or special assessment district, the proposed boundaries of which shall include the Premises, Lessee may support or oppose the creation of such district or the inclusion of the Premises therein or both, and/or appear in any proceeding relating thereto. Lessee shall defend and hold Lessor harmless from and against all costs and expenses that Lessor may incur related to Lessee's support or opposition of the creation of an improvement or special assessment district.
- (e) Operating costs incurred by Landlord in maintaining, repairing, replacing and operating the Premises, including without limitation the following: costs of (1) utilities (excluding any utilities paid directly by Tenant to utility providers); (2) supplies; (3) insurance (including public liability, property damage, earthquake, and fire and extended coverage insurance) for the full replacement cost of the Building as required by Landlord or its lenders for the Premises; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance, repair or overhaul of the Premises, and equipment, improvements and facilities located within the Premises, including without limitation engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners; (6) management of the Premises, whether managed by Landlord or an independent contractor but not to exceed 5% of Landlord's gross revenue for the Premises (i.e., the gross revenue

received from all occupants of the Building for rent and reimbursement of all operating expenses, but not including revenue received through casualty or condemnation claims); (7) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Premises; (8) costs, expenditures or charges incurred by Landlord for any capital improvements or structural repairs to the Premises required by any change in laws, ordinances, rules, regulations or otherwise that were not in effect on the date Landlord obtained its building permit to construct the Building and that are required by any governmental or quasi-governmental authority having jurisdiction over the Premises, which costs will be amortized over the useful life of the capital improvement or structural repair as reasonably determined by Landlord; (9) amortization of capital expenses (including financing costs) (i) required by a governmental entity for energy conservation or life safety purposes, or (ii) made by Landlord to reduce Operating Costs.

(f) Notwithstanding anything in the definition of Operating Costs to the contrary, Operating Costs will not include:

(i) Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles ("Capital Items"); except for those Capital Items specifically permitted above;

(ii) Rentals for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased, rather than rented, would constitute a Capital Item that is specifically excluded in (ii) (excluding, however, equipment not affixed to the Premises that is used in providing janitorial or similar services);

(iii) Costs incurred by Landlord for the repair of damage to the Premises, to the extent that Landlord is reimbursed by insurance proceeds, and costs of all capital repairs, regardless of whether such repairs are covered by insurance;

(iv) Depreciation, amortization and interest payments, except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with generally accepted accounting principles, consistently applied, and when depreciation or amortization is permitted or required, the item will be amortized over its reasonably anticipated useful life;

(v) Overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and services in or to the Premises to the extent the same exceeds the costs of such goods and services rendered by unaffiliated third parties on a competitive basis;

(vi) Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Premises (except in connection with the amortization of capital expenses as permitted in subsection (e)(9) above)

(vii) Landlord's general corporate overhead and general and administrative expenses;

(viii) Advertising and promotional expenditures, and costs of signs in or on the Premises identifying the owner of the Premises;

(ix) Costs incurred in connection with upgrading the Premises to comply with life, fire and safety codes, ordinances, statutes or other laws in effect prior to the Commencement Date including, without limitation, the ADA, including penalties or damages incurred due to non-compliance (except to the extent triggered by Tenant's use of the Premises for other than commercial office use);

(x) Tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments or to file any tax or informational returns when due;

(xi) Costs for which Landlord has been compensated by a management fee, and any management fees in excess of those management fees that are normally and customarily charged by landlords of comparable buildings;

(xii) Costs arising from the negligence or fault of Landlord or its agents, or any vendors, contractors, or providers of materials or services selected, hired or engaged by Landlord or its agents including, without limitation, the selection of building materials;

(xiii) Notwithstanding any contrary provision of the Lease including without limitation, any provision relating to Capital Items, any and all costs arising from the presence, response to or remediation of hazardous materials or substances (as defined by applicable laws in effect on the date this Lease is executed) in or about the Premises including, without limitation, hazardous substances or the ground water or soil, not placed in or on the Premises by Tenant, or its employees, agents or contractors, except

to the extent such removal, cleaning, abatement or remediation is related to the general and routine (as distinguished from an extraordinary expenditure) repair and maintenance of the Premises;

- (xiv) Costs arising from Landlord's charitable or political contributions;
 - (xv) Costs arising from latent defects in the base, shell or core of the Building or improvements installed by Landlord or repair to them;
 - (xvi) Costs for sculpture, paintings or other objects of art;
 - (xvii) Costs (including all attorneys' fees and costs of settlement judgments and payments) arising from claims, disputes or potential disputes in connection with potential or actual claims litigation or arbitrations pertaining to Landlord;
 - (xviii) Costs associated with the operation of the business of the partnership or entity that constitutes Landlord as the same are distinguished from the costs of operation of the Premises, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Premises, costs of any disputes between Landlord and its employee (if any) not engaged in Premises operation, or disputes of Landlord with Premises management;
 - (xix) Cost of any "tap fees" or any sewer or water connection fees;
 - (xx) Any entertainment, dining or travel expenses for any purpose;
 - (xxi) Any flowers, balloons, or other gifts provided to any entity including, but not limited to, Tenant, employees, vendors, contractors, prospective tenants and agents;
 - (xxii) Any "finders fees," brokerage commissions, job placement costs or job advertisement cost, other than with respect to a receptionist or secretary in the Building office, once per year;
 - (xxiii) The cost of any magazine, newspaper, trade or other subscriptions;
 - (xxiv) The cost of any training or incentive programs, other than for tenant life safety information services;
 - (xxv) "In-house" legal and accounting fees; and
 - (xxvi) Any other expenses that, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Operating Costs by landlords of comparable buildings.
- (g) Operating Costs will be reduced by all cash discounts, trade discounts, or quantity discounts received by Landlord or Landlord's managing agent in the purchase of any goods, utilities, or services in connection with the operation of the Premises. Landlord will make payments for goods, utilities, or services in a timely manner in order to obtain the maximum possible discount. If capital items that are customarily purchased by landlords of comparable buildings are leased by Landlord, rather than purchased, the decision by Landlord to lease the item in question will not serve to increase Operating Costs payable by Tenant beyond that which would have applied if the item in question been purchased. Any repair or maintenance costs that are covered by a warranty or service contract in the first Comparison Year, then subsequently incurred without coverage by a warranty or service contract in subsequent Comparison Years during the Term will be "imputed" into the first Comparison Year for the purposes of calculating Excess Expenses (as defined in Section 5.3.b.(2) below) in the subsequent Comparison Years.

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

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

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

then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Comparison Year.

(c) On or before April 1 of each Comparison Year after the first Comparison Year (or as soon thereafter as is practical but in no event beyond July 1 of any Comparison Year, provided, however, that Landlord may estimate taxes for any Comparison Year and collect the actual tax amount due subsequent to the Comparison Year within a reasonable period of receiving such actual tax amount from the applicable taxing authority), Landlord shall deliver to Tenant a statement setting forth Tenant's Proportionate Share of the Excess Expenses for the preceding Comparison Year. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within thirty (30) days of the receipt of verifiable documentation substantiating such charges. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installments of additional rent in an amount equal to the difference until the credit is exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit in cash within twenty (20) days after the Expiration Date. The obligations of Tenant and Landlord to make payments required under this Section 5.3 shall survive the Expiration Date.

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

(e) Tenant and its agents will have the right to examine and copy Landlord's books and records relating to Operating Costs during normal business hours at Landlord's principal place of business according to this section so long as (a) there is no Event of Default under the Lease at the time that Tenant examines Landlord's books and records; (b) Tenant has fully and promptly paid its Rent and its proportionate share of Operating Costs; (c) Tenant, its agents and contractors agree that they will not divulge the contents of Landlord's books and records, or the result of their examination; and (d) Tenant requests the examination of Landlord's books and records within one (1) year after receipt of the statement of Operating Costs with regard to which Tenant wishes to examine Landlord's books and records. If Tenant's examination reveals that it has overpaid its proportionate share of Operating Costs, then the overpayment will be applied to the next accruing Rent under the Lease. If the overpayment exceeds the amount that should have been charged by more than 5%, then Landlord will pay Tenant's reasonable out-of-pocket costs incurred in connection with the examination.

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

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

5.6. *Taxes Payable by Tenant.* In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall pay any and all taxes upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in or on the Premises, or the cost or value of any leasehold improvements made in, on or to the Premises by or for Tenant, other than the "Building Standard Work" made by Landlord (i.e., the Tenant Improvements attributable to Tenant's build out that exceed \$35 per useable square foot), regardless of whether title to such improvements is held by Tenant or Landlord; or (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder.

6. INTEREST AND LATE CHARGES.

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

7. SECURITY DEPOSIT.

[INTENTIONALLY OMITTED]

8. TENANT'S USE OF THE PREMISES.

8.1 *Generally.* Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not use or occupy the Premises in violation of law or any applicable covenant, condition or restriction affecting the Premises or the certificate of occupancy issued for the Premises, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation, including any repairs, alterations or improvements triggered by Tenant's particular use of the Premises or any alterations, improvements or additions made by or on behalf of Tenant. A judgment of any court of competent jurisdiction that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Premises, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Article. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

8.2 *Suitability of Premises.* Tenant acknowledges that except as set forth herein, neither Landlord nor any of Landlord's representatives has made any representation or warranty with respect to the Premises with respect to the suitability or fitness of the same for the conduct of Tenant's business or for any other purpose, or with respect to the lawfulness of the use of the Premises for any specific purpose.

8.3 *Hazardous Materials.*

(a) The operations of Tenant at the Premises shall comply in all respects with all applicable Hazardous Substances Laws (as defined in this Section 8.3). Any violation by Tenant of any Hazardous Substances Laws shall constitute a default under this Lease after expiration of applicable notice and cure periods.

(b) With respect to the Premises, Landlord represents and warrants to Tenant that: (i) Landlord has no actual knowledge (as that term is defined in this Section) and has received no notice of any pollution, health, safety, fire, environmental, sewerage or building code violation, asbestos, PCBs, PCB articles, PCB containers, PCB article containers, PCB equipment, PCB transformers or PCB-contaminated electrical equipment, as those terms are defined in any Hazardous Substance Laws (as that term is defined in this Section); (ii) to Landlord's actual knowledge, neither the Premises nor the ground under or about the Premises is contaminated with or contains any hazardous materials (as that term is defined in this Section), or contains any underground storage tank; (iii) to Landlord's actual knowledge, the Premises has never been, nor is it currently used, for the generation, transportation, treatment, storage, or disposal of hazardous materials; (iv) to Landlord's actual knowledge, the Premises does not contain any conditions that could result in recovery by any governmental or private party of remedial or removal costs, natural resource damages, property damages, damages for personal injuries, or other costs, expenses, or damages or could result in injunctive relief of any kind arising from any alleged injury or threat of injury; and (v) the Premises is not subject to investigation, nor is it currently in administrative or judicial litigation regarding any environmental condition, such as alleged noncompliance or alleged contamination.

(c) Landlord has provided a copy of the executive summary of the Phase I Report (as defined in Section 8.3(h) below) to Tenant, and to Landlord's actual knowledge, no other reports, assessments or evaluations regarding the previous ownership and uses of the Premises exist.

(d) Landlord will indemnify and hold harmless Tenant, its directors, officers, employees, and agents, and any assignees, subtenants, or successors to Tenant's interest in the Premises, their directors, officers, employees, and agents, from and against any and all losses, claims, damages, penalties, and liability, including all out-of-pocket litigation costs and the reasonable fees and expenses of counsel, including without limitation all consequential damages, directly or indirectly arising out of the use, generation, storage, release, or disposal of hazardous materials on, in or about the Premises by Landlord, its agents, employees or contractors prior to execution of this Lease or at any time after execution, or by any prior owner or operator of the Premises; and from and against the cost of any required repair, cleanup, or detoxification, closure or other required plans to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on, under, or in the Premises prior to execution of this Lease.

(e) Tenant will indemnify and hold harmless Landlord, its directors, officers, employees, and agents, and any assignees, subtenants, or successors to Landlord's interest in the Premises, their directors, officers, employees, and agents, from and against any and all losses, claims, damages, penalties, and

liability, including all out-of-pocket litigation costs and the reasonable fees and expenses of counsel, including without limitation all consequential damages, directly or indirectly arising out of the use, generation, storage, release, or disposal of hazardous materials on, in or about the Premises by Tenant, its agents, employees or contractors at any time after execution of this Lease.

(f) The provisions of this Lease relating to hazardous materials will survive the expiration or termination of this Lease.

(g) If any cleanup, repair, detoxification, or other similar action is required by any governmental or quasi-governmental agency as a result of the storage, release, or disposal of hazardous materials by Landlord, its agents, or contractors, at any time, or by any prior owner, possessor, or operator of any part of the Premises, and such action requires that Tenant be closed for business or access be denied for greater than a 72-hour period, then the Rent will be abated entirely during the period beyond 72 hours. If the closure or denial of access persists in excess of 30 days then, at Tenant's election by prior written notice to Landlord delivered at least five (5) days prior to the end of such 30-day period, this Lease will end as of the end of such 30-day period.

(h) In this Section, "hazardous materials" includes but is not limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. '9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C '1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. '6901, *et seq.*; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "Hazardous Substance Laws"). In this Section, the "actual knowledge of Landlord" means the actual and present knowledge (as of the date of Landlord's execution of this Lease) of Gregg Mason, excluding constructive knowledge or duty of inquiry, and the information contained in that certain Environmental Assessment for Parcel 48, Laguna South Business Park prepared by Lush Geosciences, Inc., dated July 14, 2004 (the "Phase I Report").

9. SERVICES AND UTILITIES.

9.1 Tenant shall cause all electricity and natural gas usage to the Premises (including usage attributable to HVAC, overhead lighting, and office equipment) to be separately metered, and Tenant shall pay the cost thereof, including any related fees, taxes or assessments (but excluding any hook-up or connection fee for natural gas or electricity, which fees shall be borne by Landlord) directly to the utility company prior to delinquency. Tenant shall be solely responsible for the furnishing and direct payment of all other utilities which are separately metered or separately charged (including, without limitation, telephone, cable television and any other special utility requirements of Tenant if available), if any, to the Premises or to Tenant and shall make such payments to the respective utility companies prior to delinquency. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the Rent be abated by reason of (i) the installation, use or interruption of use of any equipment in connection with the furnishing of any of the foregoing services, (ii) failure to furnish or delay in furnishing any such services where such failure or delay is caused by accident or any condition or event beyond the reasonable control of Landlord, or by the making of necessary repairs or improvements to the Premises, or (iii) the limitation, curtailment or rationing of, or restrictions on, use of water, electricity, gas or any other form of energy serving the Premises (each, a "Service Failure"). Landlord shall not be liable under any circumstances for a loss of or injury to property or business, however occurring, through or in connection with or incidental to failure to furnish any such services.

9.2 Service Interruption.

a. Notwithstanding the foregoing provisions of Section 9.1 to the contrary, if any Service Failure is caused by Landlord or its employees, agents or contractors prevents Tenant from reasonably using a material portion of the Premises, and if such Service Failure is not remedied within thirty (30) days following the occurrence of the Service Failure and Tenant in fact does not use such portion of the Premises for an uninterrupted period of thirty (30) days or more by reason of such Service Failure, the abatement of Rent shall commence no later than the thirty-first (31st) day following the occurrence of the Service Failure and continue for the balance of the period during which Tenant is so prevented from using such portion of the Premises.

b. If a Service Failure is caused by Tenant or its employees, agents or contractors, Landlord shall nonetheless remedy the Service Failure, at the expense of Tenant, pursuant to Landlord's maintenance and repair obligations under Section 11.1 - "Landlord's Obligations," but Tenant shall not be entitled to an abatement of Rent or to terminate this Lease as a result of any such Service Failure. In no event, however, will Landlord have any obligation to pay any bill for any service or utility that is the Tenant's obligation to pay under this Lease.

c. Notwithstanding anything to this Section 9.2 to the contrary, Landlord shall have no liability whatsoever (other than its ordinary maintenance and repair obligations under Section 11.1 and Section 19 - "Destruction or Damage") for any Service Failure that is within the control of a public utility or other public or quasi-public entity outside Landlord's control, or is due to a Force Majeure event.

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

9.4 Nothing contained in this Article shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises. In the event utilities are separately metered, Tenant shall pay promptly upon demand for all utilities consumed at utility rates charged by the local public utility.

9.5 Subject to the reimbursement provisions of Section 5.3 above, Landlord shall furnish sewer service, water service, HVAC service, elevator service and monitoring, fire safety system monitoring, lighting replacement for building standard lights, restroom supplies, exterior window washing and janitor services in a manner that such services are customarily furnished to comparable office buildings in the area. (See Section 40 for frequency of janitorial services.)

10. CONDITION OF THE PREMISES.

Tenant's taking possession of the Premises shall be deemed conclusive evidence that as of the date of taking possession the Premises are in good order and satisfactory condition, except for such matters as to which Tenant gave Landlord notice on or before the Commencement Date or those matters set forth in the punch list provided to Landlord by Tenant. No promise of Landlord to alter, remodel, repair or improve the Premises and no representation, express or implied, respecting any matter or thing relating to the Premises or this Lease (including, without limitation, the condition of the Premises) have been made to Tenant by Landlord or its Broker or Sales Agent, other than as may be contained herein or in a separate exhibit or addendum signed by Landlord and Tenant. Notwithstanding the foregoing to the contrary, Landlord represents and warrants to Tenant that on the date of delivery of possession of the Premises to Tenant the Base Building (as defined in Section 39 of the Addendum) will be in compliance with all laws, ordinances, orders, rules, regulations, and other governmental requirements relating to the use, condition, and occupancy of the Premises for the purposes allowed by this Lease including, without limitation, the certificate of occupancy for the Premises, the laws described in Section 8.3 regarding hazardous materials, and the Americans with Disabilities Act of 1990, and all rules, orders, regulations, and requirements of the board of fire underwriters or insurance service office, or any similar body having jurisdiction over the Premises, and that on that date there are no conditions that after discovery or notice or the passage of time would not be in compliance with all laws, ordinances, orders, rules, regulations and requirements. In addition, Landlord represents and warrants to Tenant that on the date of delivery of possession of the Premises to Tenant the Improvements (as defined in Section 39.2) shall be have been constructed in substantial compliance with both the Construction Documents (as defined in Section 39.3) and any and all building permits required by the governing municipalities.

11. CONSTRUCTION, REPAIRS AND MAINTENANCE.

11.1. *Landlord's Obligations.* Landlord shall maintain in good order, condition and repair all portions of the Premises not the obligation of Tenant under Section 11.2 below, comprised of the following areas: the exterior areas of the Premises (e.g., the landscaping, sidewalks, driveways and parking areas), the exterior of the Building (including exterior windows), all mechanical systems, plumbing and electrical equipment serving the Premises, and the roof and structure of the Building. In addition, Landlord shall provide services to the Premises as specified under Section 9.5 above.

11.2. *Tenant's Obligations.*

- a. Tenant at Tenant's sole expense shall, except for services furnished by Landlord pursuant to Section 9.5 above and Landlord's obligations under Section 11.1 above, maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows of the Building, and all furnishings, special items and equipment installed by or at the expense of Tenant.
- b. Tenant shall be responsible for all repairs and alterations in and to the interior of the Building, the need for which arises out of (i) Tenant's use or occupancy of the Premises, (ii) the installation, removal, use or operation of Tenant's Property (as defined in Article 13) in the Premises, and (iii) the moving of Tenant's Property into or out of the Premises. Tenant also shall be responsible for all repairs and alterations in and to any portion of the Premises, the need for which arises out of the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.
- c. Tenant's obligation to repair will not extend to: (i) damage and repairs caused by Landlord in connection with the Premises; (ii) damage caused by any defects in the design, construction, or

materials of the Building and improvements made by Landlord in connection with the Premises; (iii) damage caused in whole or in part by the negligence or willful misconduct of Landlord or Landlord's agents, employees, invitees, or licensees; (iv) repairs whose cost is included in Operating Costs; (v) reasonable wear and tear; (vi) damage due to fire, earthquake, acts of God, the elements, or other casualties to the extent not required to be insured by Tenant; (vii) damage to the interior of the Premises resulting from causes outside the Premises not required to be insured by Tenant; (viii) damage arising from Landlord's failure to comply with the provisions of this Lease; and (ix) the components of the Base Building, except to the extent due to Tenant's acts, omission, misuse or negligence.

- d. If Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to commence such work within thirty (30) days after Tenant's receipt of the Landlord's written notice (or such earlier time as may be reasonably required due to the urgency of the need for the repair), and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at the prime commercial rate then being charged by Bank of America NT & SA plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum rate then allowed by law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.

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

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

11.5. *Load and Equipment Limits.* Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer and provided to Tenant in writing.

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

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

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

12. ALTERATIONS AND ADDITIONS.

12.1 Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. At the time Landlord gives its consent, Landlord may require that Tenant remove any such additions, alterations or improvements upon the expiration of the Term and restoring the Premises to the same condition as on the date Tenant took possession reasonable wear and tear and casualty loss excepted. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), and such work shall be diligently prosecuted to completion.

12.2 Tenant shall pay the costs of any work done on the Premises pursuant to Section 12.1, and shall keep the Premises free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

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

of Landlord's interest in the Premises, and Landlord shall have the right to enter the Premises and post such notices at any reasonable time.

12.4 Landlord may require, at Landlord's sole option, that Tenant provide to Landlord, at Tenant's expense, a lien and completion bond in an amount equal to at least one and one-half (1 ½) times the total estimated cost of any additions, alterations or improvements to be made in or to the Premises, to protect Landlord against any liability for mechanic's and materialmen's liens and to insure the timely completion of the work. Nothing contained in this Section 12.4 shall relieve Tenant of its obligation under Section 12.3 to keep the Premises free of all liens.

12.5 Unless their removal is required by Landlord as provided in Section 12.1, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13.2.

13. LEASEHOLD IMPROVEMENTS; TENANT'S PROPERTY.

13.1 All fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 13.2.

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

14. RULES AND REGULATIONS.

Tenant agrees to comply with (and cause its agents, contractors, employees and invitees to comply with) the rules and regulations attached hereto as Exhibit "C", and with such reasonable modifications thereof and additions thereto as Landlord may from time to time make upon reasonable prior written notice to Tenant.

15. CERTAIN RIGHTS RESERVED BY LANDLORD.

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

- a. To change the street address of the Premises;
- b. To install and maintain all signs on the exterior and interior of the Building (provided such exterior signage allows for identification of Tenant on the exterior of the Building, subject to the provisions of Article 36 below);
- c. To have pass keys to the Premises and all doors within the Premises, excluding Tenant's vaults and safes;
- d. At any time during the Term, and on at least twenty-four (24) hours prior written notice to Tenant, so long as Landlord is accompanied by a Tenant representative, to show the Premises to any prospective purchaser or mortgagee of the Premises, or to any assignee of any mortgage on the Premises, or to others having an interest in the Premises or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and
- e. Upon at least twenty-hour (24) hours prior written notice to Tenant (except in the case of an emergency, in which case no prior notice shall be required), so long as Landlord is accompanied by a Tenant representative, to enter the Premises for the purpose of making inspections and repairs to the Premises (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or Landlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Premises or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use its best efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

16. ASSIGNMENT AND SUBLETTING.

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

16.2 Tenant shall not, without the prior written consent of Landlord which consent shall not be unreasonably withheld, conditioned or delayed, assign or hypothecate this Lease or any interest herein or

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

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

- (a) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord;
- (b) No assignment or sublease shall be valid and no assignee or sublessee shall take possession of the Premises until an executed counterpart of such assignment or sublease has been delivered to Landlord;
- (c) No assignee or sublessee shall have a further right to assign or sublet except on the terms herein contained; and
- (d) Fifty percent (50%) of any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) any real estate brokerage commissions or fees payable in connection with such assignment or subletting, shall be paid to Landlord as additional rent under this Lease without affecting or reducing any other obligations of Tenant hereunder.

16.4 Notwithstanding the provisions of Sections 16.2 and 16.3 above, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent to any corporation which controls, is controlled by or is under common control with Tenant, or to any corporation resulting from a merger or consolidation with Tenant, provided that (i) the assignee or sublessee assumes, in full, the obligations of Tenant under this Lease, (ii) Tenant remains fully liable under this Lease, and (iii) the use of the Premises under Article 8 remains unchanged.

16.5 No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor.

16.6 If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting, then Tenant shall, upon demand, pay Landlord an administrative fee of One Hundred Fifty and No/100ths Dollars (\$150.00) plus any attorneys' fees reasonably incurred by Landlord in connection with such act or request; provided, however, in no event shall Tenant's obligation to reimburse Landlord for attorneys' fees exceed \$2,500.00 for any one request.

17. HOLDING OVER.

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

18. SURRENDER OF PREMISES.

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

18.2 If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, Tenant shall remove from the Premises all Tenant's Property, and repair any damage caused by such removal. If such removal is not completed before the expiration or termination of the Term, Landlord shall have the

right (but no obligation) to remove the same, and Tenant shall pay Landlord on demand for all reasonable costs of removal and storage thereof and for the rental value of the Premises for the period from the end of the Term through the end of the time reasonably required for such removal. Landlord shall also have the right to retain or dispose of all or any portion of such property if Tenant does not pay all such costs and retrieve the property within ten (10) days after notice from Landlord (in which event title to all such property described in Landlord's notice shall be transferred to and vest in Landlord). Tenant waives all claims against Landlord for any damage or loss to Tenant resulting from Landlord's removal, storage, retention, or disposition of any such property. On the Expiration Date Tenant shall surrender all keys to the Premises.

19. DESTRUCTION OR DAMAGE.

19.1 If the Premises is damaged by fire, earthquake, act of God, the elements of other casualty, Landlord shall, subject to the provisions of this Article, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within (90) ninety days after the Notice Date, as hereinafter defined. If Landlord reasonably determines that repairs can be completed within ninety (90) days, Landlord will promptly begin to repair the damage after the Notice Date and will diligently pursue the completion of such repair, this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees, contractors, licensees or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs required of Landlord under Section 19.3.

19.2 If in Landlord's reasonable opinion, such repairs to the Premises cannot be completed within ninety (90) days after the Notice Date, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty (the "Notice Date"), to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be abated as provided in Section 19.1. If Landlord does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

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

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

20. EMINENT DOMAIN.

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

20.2 In the event of any taking, partial or whole, all of the proceeds of any award, judgment or settlement payable by the condemning authority shall be the exclusive property of Landlord. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property.

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

21. INDEMNIFICATION.

21.1 Except as waived and released herein, Tenant shall indemnify and hold Landlord harmless against and from liability and claims of any kind for loss or damage to property of Tenant or any other person, or for any injury to or death of any person, except that caused by the negligence or willful misconduct of Landlord, its agents, employees or contractors, arising out of (1) Tenant's use and occupancy of the Premises, or any work, activity or other things allowed by Tenant to be done in, on or about the Premises; (2) any breach or

default by Tenant of any of Tenant's obligations under this Lease; or (3) any negligent or otherwise tortious act or omission of Tenant, its agents, employees, invitees or contractors. Tenant shall at Tenant's expense, and by counsel reasonably satisfactory to Landlord, defend Landlord in any action or proceeding arising from any such claim and shall indemnify Landlord against all costs, attorneys' fees, expert witness fees and any other expenses incurred in such action or proceeding. As a material part of the consideration for Landlord's execution of this Lease, Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Premises from any cause.

21.2 Except as waived and released herein; Landlord will indemnify Tenant, its officers, directors, members, shareholders, partners, lenders, agents, and employees against, and hold them harmless from, any and all demands, claims, causes of action, fines, penalties, damages (including without limitation consequential damages), losses, liabilities, judgments, and expenses (including without limitation attorneys' fees and court costs) arising from the gross negligence or willful misconduct of Landlord or Landlord's employees, agents or contractors. If any action or proceeding is brought against Tenant, its shareholders, partners, lenders, employees, or agents, by reason of any such claim, Landlord, upon notice from Tenant, will defend the claim at Landlord's expense with counsel reasonably satisfactory to Tenant.

21.3 The indemnifications given in this Article 21 are in addition to the indemnifications set forth in Section 8.3, and will survive the expiration or termination of this Lease.

22. LANDLORD'S AND TENANT'S INSURANCE.

22.1 *Landlord's Insurance.* Throughout the Term, Landlord will maintain as an Operating Cost: (i) commercial general liability insurance with a combined single limit for bodily injury and property damage of not less than Two Million Dollars (\$2,000,000.00) for each occurrence resulting from the operations of the Landlord or its employees in the Building; and (ii) special form property insurance covering the Premises, building standard tenant improvements, and all equipment owned by Landlord and used in connection with the Premises in an amount not less than their full replacement value.

22.2 *Tenant's Insurance.* All insurance required to be carried by Tenant hereunder shall be issued by insurance companies having a rating classifications of "A" or better and financial size category ratings of "VII" or better (according to the latest edition of the A.M. Best Key Rating Guide) or through Self Insurance Programs established pursuant to California Government Code section 6599.01 *et seq.* Each policy shall name Landlord, and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appear. Each policy shall contain (i) a cross-liability endorsement, (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance, and (iii) a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives. A certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty (30) days after any demand by Landlord therefor. No such policy shall be cancelable except after twenty (20) days written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with a handling charge equal to ten percent (10%) of the premium, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies afford coverage to the Premises, Landlord, Landlord's mortgagee and Tenant as required by this Lease.

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

22.4 Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect workers' compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation or condition of the Premises and the operations of Tenant in, on or about the Premises, providing personal injury and broad form property damage coverage for not less than Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury, death and property damage liability.

22.5 Not less than every three (3) years during the Term, Landlord and Tenant shall mutually agree to increases in all of Tenant's insurance policy limits for all insurance to be carried by Tenant as set forth in this Article, which increases shall be based upon increases in the insurance policies for similar tenants in buildings similar in size to the Building in the greater Sacramento area.

23. WAIVER OF SUBROGATION AND WAIVER OF CLAIMS.

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

23.2 *Waiver of Claims.* Landlord and Tenant intend for their insurers to be solely responsible for their respective property losses. Accordingly, Landlord and Tenant waive and release all claims against the other, their shareholders, partners, members, employees, and agents with respect to all matters for which the other has disclaimed liability pursuant to the provisions of this Lease. In addition, they agree that neither of them or their shareholders, partners, members, agents, and employees will be liable to the other for any loss, injury, death, or damage (including consequential damages) to property, or business occasioned by any cause, including without limitation, theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling objects, steam, electricity, gas, water, leak or flow of water (including water from the elevator system), rain or snow from the Premises or into the Premises or from the roof, street, subsurface or from any other place, or by dampness or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Premises, or from construction, repair, or alteration of the Premises or from any acts or omissions of any other visitor of the Premises.

24. SUBORDINATION AND ATTORNMENT.

24.1 Upon written request of Landlord, or any first mortgagee or first deed of trust beneficiary of Landlord, or ground lessor of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust, or to the interest of any lease in which Landlord is lessee, and to all advances made or hereafter to be made thereunder, by means of a subordination agreement (the "Subordination Agreement"). However, Tenant shall have the right to require that such Subordination Agreement provide that the lender or lessor or landlord (hereinafter referred to as the "Mortgagee") requesting such subordination, agree that, as long as Tenant is not in default hereunder beyond any applicable notice and cure periods, this Lease shall remain in effect for the full Term and any extension thereof. The Mortgagee may, upon written notice to Tenant, elect to have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest. Tenant acknowledges that such Subordination Agreement may provide, among other things, that (i) such Mortgagee shall be entitled to receive notice of any Landlord default under this Lease plus a reasonable opportunity to cure such default; (ii) such Mortgagee shall not be bound by any obligation under this Lease to perform or pay for any improvements to the Premises; and (iii) such Mortgagee or any successor Landlord shall not: (a) be liable for any act or omission of any prior landlord or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which tenant might have against any prior landlord; or (c) be bound by prepayment of more than one month's rent.

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

25. TENANT ESTOPPEL CERTIFICATES.

Within ten (10) days after written request from Landlord, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default hereunder or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease.

26. TRANSFER OF LANDLORD'S INTEREST.

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

upon such transfer, Landlord shall be relieved of any and all further liability with respect thereto.

27. DEFAULT.

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

- a. If Tenant abandons or vacates the Premises and fails to pay rent; or
- b. If Tenant fails to pay any Rent or any other charges within five (5) days after receipt of written notice from Landlord; or
- c. If Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, if the nature of the default is such that more than thirty (30) days is required for its cure, Tenant shall not be deemed to be in default so long as Tenant commences cure within thirty (30) days and diligently prosecutes such cure to completion; or
- d. If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or
- e. If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or
- f. If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days; or
- g. If in any proceeding or action in which Tenant is a party, a trustee, receiver, agent or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or
- h. If Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in subparagraphs d through g above.

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

- a. Terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises and take possession thereof after obtaining a judgment for possession in an unlawful detainer action, and Tenant shall have no further claim to the Premises or under this Lease; or
- b. Continue this Lease in effect, reenter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or
- c. Reenter the Premises under the provisions of subparagraph b, and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

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

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

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

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

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

27.3 Landlord's Default. If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within that thirty (30) day period or fails to diligently prosecute such cure to completion, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such judgment. If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord) fails to cure the default as provided herein, then Tenant shall have the right to cure that default at Landlord's expense. All amounts paid by Tenant in connection with doing so (together with interest at 2% over the prime rate charged by Bank of America in San Francisco, California, per annum from the date of Tenant's payment of the amount or incurring of each cost or expense until the date of full repayment by Landlord) will be payable by Landlord to Tenant on demand. If Landlord fails to make the repayment, in addition to any other rights it may have, Tenant will have the right to offset the amount of the repayment against rent and other charges under this Lease. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of Rent or any other charges due and payable under this Lease except as otherwise specifically provided herein.

28. BROKERAGE FEES.

Landlord and Tenant warrant and represent that neither party has dealt with any real estate broker or agent in connection with this Lease or its negotiation except those noted in Section 2.c. Landlord and Tenant shall indemnify and hold the other harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Landlord or Tenant, as the case may be.

29. NOTICES.

All notices, approvals and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given upon receipt or refusal if personally delivered, sent by certified or registered U.S. mail, postage prepaid, or sent by any nationally recognized overnight courier that routinely issues receipts and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address; and (b) if to Tenant, to Tenant's Mailing Address. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

30. GOVERNMENT ENERGY OR UTILITY CONTROLS.

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

31. RELOCATION OF PREMISES.

[INTENTIONALLY OMITTED]

32. QUIET ENJOYMENT.

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

33. OBSERVANCE OF LAW.

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

34. FORCE MAJEURE.

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, unusual or unanticipated delays in manufacturing and/or delivery of materials and/or equipment or reasonable substitutes therefor, acts of God, governmental restrictions or regulations or controls, severe weather, acts of war, delays in receiving the required permits for construction of the Improvements beyond four (4) weeks after initial submission of same (provided Landlord uses its good faith efforts to ensure that such initial submission is complete, using a standard of care typical of commercial builders and real estate developers in the City of Elk Grove, based upon publicly-available information from the building department for the City of Elk Grove), judicial orders, enemy or hostile government actions, acts of terrorism by foreign or domestic terrorists, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a period equal to the duration of that prevention, delay or stoppage. Nothing in this Article 34 shall excuse or delay Tenant's obligation to pay Rent or other charges under this Lease.

35. CURING TENANT'S DEFAULTS.

If Tenant defaults in the performance of any of its obligations under this Lease beyond any notice and cure period, Landlord may (but shall not be obligated to) without waiving such default, perform the same for the account at the reasonable expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly within thirty (30) days after receipt of a reasonably verifiable documentation substantiating such charges therefor.

36. SIGN CONTROL.

Tenant shall not affix, paint, erect or inscribe any sign, projection, awning, signal or advertisement of any kind to the exterior of the Premises or that is visible from the exterior of the Premises, including, without limitation, the inside or outside of windows or doors, without the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord hereby consents to Tenant's placing signage in and about the Premises identifying the Premises as the City of Elk Grove administrative offices, subject to Landlord's prior written consent (not to be unreasonably withheld, conditioned or delayed) as to design, materials and location thereof. Any signage installed by or on behalf of Tenant shall be considered Tenant's Property and therefore subject to the requirements of Article 13 above. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the reasonable cost of removal to Tenant as additional rent hereunder, payable within thirty (30) days after Tenant's receipt of a written demand by Landlord.

37. MISCELLANEOUS.

37.1 *Accord and Satisfaction; Allocation of Payments.* No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or

payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.

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

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

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

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

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

37.7 *Consent.* Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, etc. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

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

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

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

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

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

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

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

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

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

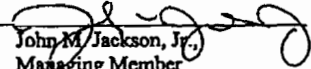
37.17 *Waiver.* No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default or any other provisions of this Lease.

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

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the dates set forth below.

LANDLORD:

Jackson II, LLC,
a California limited liability company

By: 
John M. Jackson, Jr.,
Managing Member
Date: 5/6/05

TENANT:

City of Elk Grove, a municipal corporation

By: _____
Its: _____
Date: _____

RECOMMENDED FOR APPROVAL:

By: _____
Real Property Manager
Date: _____

APPROVED AS TO FORM:

By _____
Anthony Manzanetti, City Attorney
Date: _____

ATTEST:

By: _____
City Clerk
Date: _____

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

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

ADDENDUM

The following constitutes an Addendum to the Office Building Lease dated May 6, 2005, by and between **Jackson II, LLC.**, (a California limited liability company), as Landlord, and the **City of Elk Grove**, a California municipal corporation, as Tenant (the "Lease"), covering the Premises located at 8401 Laguna Palms Way, Elk Grove, California, as shown on Exhibit "A-2" attached. The terms used in this Addendum shall have the same definitions as set forth in the Lease. The provisions of this Addendum shall prevail over any inconsistent or conflicting provisions of the Lease.

38. Base Rent Schedule

Tenant shall pay as Base Rent for the Premises, monthly payments as follows:

<u>Months of Term</u>	<u>Monthly Base Rent</u>
01	\$0.00
02-13	\$90,374.00
14-25	\$93,085.00
26-37	\$95,877.00
38-49	\$98,754.00
50-61	\$101,716.00
62-73	\$104,767.00
74-85	\$107,910.00
86-97	\$111,147.00
97-109	\$114,481.00
110-121	\$117,915.00

39. Construction of Improvements

39.1 Landlord shall, at Landlord's expense, install the improvements described on Schedule 1 and Schedule 2 to this Addendum (the "Base Building. All other improvements to the Premises shall be performed by Landlord at Tenant's expense (subject, however, to Landlord's obligation to pay the Allowance referenced below). If the date of any action or approval by either party falls on a Saturday, Sunday or legally-recognized holiday, the action or approval shall be due on the next business day.

39.2 Landlord shall provide Tenant an allowance not to exceed \$1,316,945.00 (i.e., \$35.00 per usable square foot of the Premises) (the "Allowance") to be applied to all costs associated with providing the improvements for Tenant in the Premises as depicted in Exhibit B (Preliminary Floor Plan) (collectively referred to as the "Improvements"). Said costs shall include, but not be limited to, (i) architectural and engineering design fees and the cost of documents and materials supplied by Landlord and Landlord's consultants in connection with the preparation and review of the plans and specifications for the Improvements (the "Construction Documents"), (ii) plan check, permits and license fees payable to the applicable governmental agency for all permits necessary to allow construction and completion of the Improvements by Landlord's contractor, and (iii) the cost of construction of the Improvements, including, without limitation, testing and inspection costs, hoisting and trash removal costs, sales and use taxes, and contractors' fees and general conditions. Landlord's contractor, Jackson Construction, shall act as general contractor (the "Contractor").

39.3 Tenant, at Tenant's cost, shall cause Tenant's architect, engineers and other construction consultants, to provide Landlord with: (i) not later than the date that is twenty-one (21) days after the full execution and delivery of this Lease, a space plan and design criteria depicting the Tenant Improvements (once such space plan and criteria have been modified to include the changes, if any, requested by Landlord, they are hereinafter collectively referred to as the "Final Space Plan"); and (ii) not later than sixty (60) days after the date that the parties have reached agreement on the Final Space Plan, proposed plans and specifications for the Tenant Improvements that are consistent with the Final Space Plan (once such plans and specifications have been modified to include the changes, if any, requested by Landlord, and agreed upon by Tenant, they are collectively hereinafter referred to as the "Construction Documents"). Landlord's review of the Construction Documents shall be for its sole purpose and shall not imply Landlord's approval of the same, or obligate Landlord to review the same, for quality, design, code compliance or other like matters. Accordingly, notwithstanding that the Construction Documents are reviewed by Landlord or its space planner, architect, engineers and consultants, and notwithstanding any advice or assistance which may be rendered to Tenant by Landlord or Landlord's space planner, architect, engineers, and consultants, Landlord shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings.

39.4 Within three (3) weeks of mutual approval of the Construction Documents by Landlord and Tenant, Landlord will, through its Contractor, submit to Tenant a cost proposal (the "Cost Proposal"), in accordance with the approved Construction Documents for Tenant's review and written approval (which approval shall not be unreasonably withheld, conditioned or delayed; in any event, Tenant shall respond to such request for approval within ten (10) days). The Cost Proposal shall include, as nearly as possible,

the cost of all items to be incurred in connection with the construction of the Improvements, including the costs of permits and fees already incurred by Landlord (which costs shall not be subject to rejection by Tenant), and Contractor overhead and profit not to exceed ten percent (10%) of all hard costs. Should the Allowance be insufficient to cover the cost of constructing the Tenant Improvements, Tenant shall deliver to Landlord, written notice stating its agreement to pay the amount by which the Cost Proposal exceeds the Allowance, or agreeing to have the Final Space Plan revised by Tenant's architect in order to assure that the Cost Proposal is either (i) no more than the Allowance, or (ii) exceeds the Allowance by an amount that Tenant agrees to pay (the "Over-Allowance Amount"). Tenant shall pay the Over-Allowance amount upon its approval of the Cost Proposal. Tenant shall be entitled to apply any unused portion of the Allowance as a credit or against Rent.

39.5 Following approval of the Construction Drawings, Landlord shall promptly cause application to be made to the appropriate governmental authorities for necessary approvals and building permits. Upon receipt of the necessary approvals and permits, mutual approval of the Cost Proposal and Tenant's payment of the Over-Allowance Amount (if any), Landlord shall begin construction of the Tenant Improvements and shall diligently prosecute such construction until completion.

39.6 The Premises shall be deemed to be "Substantially Complete" when (i) they have been completed in accordance with the Construction Documents except for finishing details, minor omissions, decorations and mechanical adjustments of the type normally found on an architectural "punch list," and (ii) a temporary certificate of occupancy (or its equivalent) has been issued, such that the Tenant can lawfully occupy the Premises (provided, however, that if the issuance of such certificate is dependent on the performance of work that is not the express responsibility of Landlord under this Lease, Tenant's failure to complete such work shall not delay the Commencement Date). (The definition of Substantially Completed shall also define the terms "Substantial Completion" and "Substantially Complete.")

39.7 Following Substantial Completion of the Tenant Improvements, Tenant will conduct a walk-through inspection of the Premises with Landlord and prepare a punch list of items needing additional work by Landlord. Other than the items specified in the punch list, and latent defects (as defined below), by taking possession of the Premises, Tenant will be deemed to have accepted the Premises in their condition on the date of delivery of possession and to have acknowledged that Landlord has installed the Improvements as required by this Addendum and that there are no items needing additional work or repair. If Tenant fails to submit a punch list to Landlord within thirty (30) days after Substantial Completion, it will be deemed that there are no items needing additional work or repair. Landlord's contractor will complete all reasonable punch list items within thirty (30) days after the walk-through inspection or as soon as practicable after such walk-through. A "latent defect" is a defect in the condition of the Premises, caused by Landlord's failure to construct the Improvements in a good and workmanlike manner and in accordance with the Construction Documents, that would not ordinarily be observed during a walk-through inspection. If the Tenant notifies Landlord of a latent defect within one year following the Commencement Date, then Landlord, at its expense, will repair the latent defect as soon as practicable.

39.8 Provided that Tenant and its agents do not materially interfere with Contractor's work in the Premises, Contractor shall allow Tenant access to the Premises prior to the Substantial Completion of the Premises for the purpose of Tenant installing overstandard equipment or fixtures (including Tenant's data and telephone equipment) in the Premises. Prior to Tenant's entry into the Premises as permitted by the terms of this Section 39, Tenant shall provide seventy-two (72) hours prior written notice to Landlord and Contractor, and Tenant shall provide evidence reasonably satisfactory to Landlord that Tenant's insurance, as described in Section 22 of this Lease, shall be in effect as of the time of such entry. Such permission may be revoked at any time upon twenty-four (24) hours' notice if Tenant's or its agents' acts would constitute a Tenant Delay under Section 39.10 below. Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Premises and against injury to any persons caused by Tenant's actions pursuant to this Section 39, except to the extent caused by the negligence or intentional misconduct of Landlord, Contractor, or their respective agents, employees or subcontractors.

39.9 Tenant may authorize changes in the work during construction, only by written instructions to Landlord. All such changes will be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to commencing any change, Landlord will prepare and deliver to Tenant, for Tenant's approval, a change order (the "Change Order") setting forth the total cost of such change, which will include associated architectural, engineering and construction contractor's fees, and the cost of Landlord's overhead. If Tenant fails to approve such Change Order within seven (7) days after delivery by Landlord, Tenant will be deemed to have withdrawn the proposed change and Landlord will not proceed to perform the change. Tenant shall pay the total cost of Tenant's Change Order within 30 days after Tenant's approval thereof, unless the cost of the Change Order exceeds the amount of the Allowance and the Over-Allowance which has not been spent on the Improvements at the time of the request for the Change Order, in which case, the total cost of Tenant's Change Order will be paid to Landlord upon Tenant's approval thereof. Upon Landlord's receipt of both Tenant's approval of the Change Order and payment of the total cost therefor, Landlord will proceed to perform the change.

39.10 Regardless of whether the Improvements are Substantially Complete, Tenant acknowledges and agrees that the Commencement Date (and, therefore, the date for Rent payments to commence) shall be the date that the Improvements would have been Substantially Complete (as defined in Section 39.6 above), but for: (i) Tenant's failure to timely approve any matter requiring Tenant's approval; (ii) Tenant's failure to timely produce either the Final Space Plan or the Construction Drawings; (iii) a material breach by Tenant of the terms of this Lease; (iv) Tenant's request for changes in the Construction Documents after they have been approved by Landlord (including, but not limited to, Change Orders as defined in Section 39.9 above), to the extent such changes actually delay the date of Substantial Completion; (v) Tenant's requirement for materials, components, finishes or improvements which are not available in a commercially reasonable time given the Scheduled Commencement Date of the Lease; or (vi) any other acts or omissions of Tenant, or its agents, or employees that materially interfere with Substantial Completion (each of the foregoing events is referred to as a "Tenant Delay"). If this Section 39 contemplates that Tenant will approve or otherwise respond to documents or materials prepared by Landlord or Landlord's representatives and no specific deadline for responding is stated, Tenant shall provide such response (in writing) not later than three (3) business days after Tenant's receipt of such documents or materials.

40. Services and Utilities (ref. Section 9)

Janitorial services will be provided five (5) nights per week, in conformance with the attached Schedule 3.

41. Access Control Systems

41.1 Landlord, at its sole cost and expense shall provide an access control system. Alternatively, Tenant may choose its own access control system, and Landlord shall deduct from the Allowance the cost difference for the system chosen by Tenant. Landlord may contract with the company of its choice for operation of access control and the cost of access control shall be reimbursed to Landlord as an Operating Cost under Section 5.3 of the Lease, unless Tenant chooses its own access control system, in which case Tenant shall enter into a direct contract for the monitoring, maintenance and operation of such system at Tenant's sole cost and expense. Although Landlord agrees to provide an access control system for the Premises, if Tenant chooses to use Landlord's system, then notwithstanding anything to the contrary contained in this Lease, neither Landlord, nor Landlord's partners, officers, directors, members, employees or managing agents (the "Landlord Parties"), shall be liable for, and Landlord and the Landlord Parties are hereby released from any responsibility for, any damage either to person or property (specifically including any damage or injury resulting from a criminal or terrorist attack) sustained by Tenant incurred in connection with or arising from any failure or malfunction of such access control system.

41.2 In order to maintain the appearance and operation of the Building, no portion of the alarm system shall be installed where it is visible from the exterior of the Building. Alarm systems installed without Landlord's prior written approval (which approval shall not be unreasonably withheld, conditioned or delayed) and/or installed in a manner or location objectionable to Landlord will be removed at Tenant's expense. Said expense will include the cost of restoring the Premises to its original condition. Landlord shall not be liable for damages to Tenant as a result of said alarm removal.

42. Declaration of Restrictions

42.1 Tenant acknowledges receipt of the recorded Declaration of Covenants, Conditions and Restrictions of Laguna East Business Park dated as of May 5, 2004, for the Premises ("Declaration") which establishes conditions, covenants, restrictions and easements affecting certain property of which the Premises are a part. Tenant hereby agrees to be bound by and promptly comply with all provisions of the Declaration, now in effect or which may hereafter come in to effect, as it relates to Tenant's use and occupancy of the Premises; provided, however, in no event shall Tenant be directly obligated to pay any monetary assessment levied through the Declaration; any such assessment shall be an Operating Cost hereof.

42.2 In the event of Tenant's default in the performance of any obligations required of Tenant under the Declaration, Landlord shall provide Tenant with written notice stating the nature and extent of such default. If at the end of thirty (30) days after receipt of said written notice Tenant has failed to cure such default, then Landlord shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation under Declaration on behalf of Tenant and be reimbursed by Tenant the cost thereof within thirty (30) days after written demand.

43. Prevailing Wages

Tenant has determined that the construction of the Tenant Improvements is a "public work" within the meaning of Labor Code Section 1720 and that Labor Code Section 1771 applies to the work. Accordingly, Landlord shall cause the construction and demolition to be performed as a "public work." Prior to the commencement of any work related to the construction of the Tenant Improvements, Landlord shall provide, or cause to be provided any payment security required by California law.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the dates set forth below.

LANDLORD:

Jackson II, LLC,
a California limited liability company

By: 
John M. Jackson, Jr.,
Managing Member

Date: 5/6/05

TENANT:

City of Elk Grove, a municipal corporation

By: _____
Its: _____
Date: _____

RECOMMENDED FOR APPROVAL:

By: _____
Real Property Manager
Date: _____

APPROVED AS TO FORM:

By _____
Anthony Manzanetti, City Attorney
Date: _____

ATTEST:

By: _____
City Clerk
Date: _____

**SCHEDULE 1 TO
ADDENDUM TO LEASE AGREEMENT**

Dated May 5, 2005, by and between Jackson II, LLC, a California limited liability company, as Landlord, and the City of Elk Grove, a California municipal corporation, as Tenant

Base Building Shell Specifications

Site Work

Grading

- Site area has been rough and finish graded in accordance with civil engineering design and geotechnical engineer recommendations. The paved area has been lime treated to 12" with 4% quick-lime.

Asphalt

- Asphalt pavement sections for driveways are 3" AC over 3" AB over 12" of lime treated sub grade; parking stalls are 2.5" AC over 3" AB over 12" of lime treated sub grade. The sections are in accordance with the soils report dated 10-30-03 prepared by Raney Geotechnical, Inc.

Sidewalks

- Onsite sidewalks are broom finished, placed with 3,000 psi concrete over 4" crushed rock.

Curbs

- Onsite curbs are Type 3 full depth vertical curbs and Type 2 curb and gutter.

Striping

- Striping for onsite parking stalls has meet City of Elk Grove parking requirements, including handicapped stalls meeting ADA requirements.

Storm Drain

- An onsite storm drain system, tying into the existing offsite storm system is provided per civil engineering design. Included is a CDS PMSU 20_15 Storm Water Treatment Unit.

Sewer

- An onsite sewer line is provided to within 5' of the building, and tied to the existing offsite sewer line for a complete operating system per civil engineering design.

Site Utilities

Electrical

- An underground electrical service extending from the SMUD vault to the Transformer to the building is provided.

Telephone/CATV

- A 4" underground telephone service extending from the Phone Vault to the building is provided to a phone board in the Electrical Room. A 2" conduit for CATV is provided to Electrical Room.

Gas

- A 1" medium pressure (2PSI) underground natural gas line has been extended to a single meter manifold located on the exterior of the building.

Water

- A 2" domestic water service with backflow prevention and meter per City of Elk Grove standards is provided from the point of connection to the building.
- A 6" fire line is provided to the building. The fire line includes a DDCV (Double Detector Check Valve) and fire department assembly as required by the City of Elk Grove.
- A separate 1 1/2" irrigation stub with separate meter is provided for landscape irrigation north of the building. This service irrigates the islands on Office Park Circle as well.

Landscape And Irrigation

- A water conserving landscape utilizing a mixture of trees, shrubs, ground cover and turf is provided.

- The irrigation system is controlled by a multi-program automatic controller located in the Electrical Room.
- The irrigation system utilizes water conserving drip irrigation emitters at all trees, shrubs and ground cover.
- The landscaping is designed to provide shading of parked vehicles as required by the City of Elk Grove.

Building Shell

Footings

- Point load footings support all tilt-up walls and piers under all structural bearing walls and columns are provided per the structural engineer's recommendations. All footings, walls, piers, etc., are continuously reinforced with rebar per structural engineer's design.

Slab

- Slab is 6" thick +/-, 3,000 psi concrete with #4 re-bar reinforcement 24" o.c. each way over 2" of clean sand over 10 mil visqueen vapor barrier over 4" of crushed rock. Control joints are provided at ±15' o.c.

Walls

- Walls are concrete tilt-up at 10" and 7.25" except at entry which are metal stud with three coat plaster over exterior gyp. sheathing.
- Entry wall areas finished with double layer of building paper, lath, scratch and brown coat and color coated acrylic finish coat. 7.25" walls are covered with Thin Brick and 10" walls are finished with a plaster acrylic color coated finish coat.

Insulation

- R-19 batt insulation is installed at the underside of the roof deck throughout the building.
- R-13 kraft faced batt insulation is installed at all exterior building walls and at the electrical room walls from the floor to the roof structure.

Roof

- The roof structure is a steel ridge beam/open web joist purlin/panelized plywood deck system as designed by the structural engineer with a built-up roof cover consisting of one (1) layer of glass fiber base sheet, two (2) layers of glass fiber ply felts and a mineral surface cap sheet. Included is 10 year NDL manufactures warranty.

Fire Sprinklers

- A complete fire sprinkler system per NFPA 13, local and state codes is provided throughout the building. A fire alarm monitoring system is installed to monitor the fire sprinkler system as required by code.
- Fire sprinklers are a wet pipe system designed for ordinary hazard and installed based upon standard density for two story office use.

Aluminum Storefront and Glazing

- 1 3/4" x 4 1/2" center glazed aluminum storefront, is provided (includes 2 ea. 3'0" x 9'0" and 2 ea. 6'-0" x 9'-0" medium stile entrance doors). Aluminum finish is Medium Bronze AB-4 by Arcadia. Glazing is 1" insulated, dual glazed, blue/green reflective glass. Tempered glass is provided where required. Entrance doors include electronically controlled panic devices, closure devices and weather stripping.

Exterior Lighting

- Lighting consists of single and dual headed pole fixtures in parking areas. Lighted bollards light up pedestrian pathways. Wall mounted sconces will highlight and light up the East and West entries and recessed light fixtures will light up the North and South entries.

Building Address Numbers

- Building address numbers are mounted on building wall visible from Laguna Palms Way as required. Address is 8401 Laguna Palms Way.

Elevator

- The elevator is a single car, 3500 lb. capacity, 9'-0" cab, fully ADA accessible, twin jack hole less hydraulic (piston less), battery lowering, with center parting doors and non-proprietary controls.

Plumbing

- A under slab 4" diameter sewer trunk line is provided under the width of the building. Additional 4" sewer laterals extend from the 4" main to approximately quarter points of the building. Eight each 4" sewer risers and vent stacks extend from the first floor up to the second floor (4 in each half of the building.)
- A 2" water service with a pressure booster pump is stubbed into the building and run to the underside of the roof deck. The water service distributes water the length of the first floor. Eight each 1" water risers extend up from the first floor to the second floor (four in each half of the building.) Internal roof drains and overflow piping are a part of the shell. The roof drains are sized in accordance with the UPC.

HVAC System

- The HVAC system is comprised of rooftop mounted variable air volume (VAV) air conditioning units (128 tons in the tenant lease areas), a separate 15-ton rooftop air conditioning unit for the lobby, and a gas operated rooftop-mounted boiler for heating (760,000 btu output). The system is designed in accordance with California Title 24 requirements.
- Overhead, insulated, ducted supply air main trunk lines extending from the lobby core to within 20' of the end walls are provided at the first and second floors. Overhead, insulated, ducted return air main trunk lines are provided at the second floor. The first floor is designed for a plenum return above the tenant ceilings.
- Overhead, insulated, main hot water piping loops are provided at the second floor extending from the lobby core to within 30' of the end walls. The first floor is supplied with six hot water piping drops from the second floor loop into the attic space of the first floor.
- A central, DDC (computerized) temperature control system is provided for the entire building. Individual VAV distribution boxes, VAV box controls and wiring are not a part of the Base Building Shell and all connections to the HVAC system shall be part of the tenant improvement.

Building Electrical

- The building main electrical service consists of a 277/480 volt, 3 phase service panel, with a capacity of 1,600 amps, single metered. A 400 AMP high voltage panel, a 200 AMP low voltage house distribution panel, a 75 KVA transformer, a shell lighting control panel, air conditioning circuits and an elevator circuit is provided. Tenant distribution of electrical and telecommunications facilities are not provided in the Base Building Shell. The main electrical service, distribution panels, and telephone terminal board are housed in the first floor electrical room located at the east end of the building. A second electrical room is centrally located near the lobby. Two second floor electrical rooms are provided in the second floor lobby core across from the elevator and at the remote stairwell.

Building Lobby

- A central building lobby is provided off of the main building entries on the first and at the landing of the central staircase and elevator on the second floor.

Restrooms

- Men's and Women's restrooms are provided off of the first and second floor lobbies. A single shower and locker facilities are provided in each first floor restroom. A drinking fountain is located off of the lobby at both floors.

Central Corridors/Stairwells

- Central corridors connecting the lobbies to the side exits and/or stairwells shall not be provided, but, at Tenant's option, may be included in the Improvements (subject to the limitations of Section 39 of the Lease). A stairwell is located at the East end of the building for building access and exiting.



**SCHEDULE 2 TO
ADDENDUM TO LEASE AGREEMENT**

Dated May 5, 2005, by and between Jackson II, LLC, a California limited liability company, as Landlord and
the City of Elk Grove, a California municipal corporation, as Tenant

Commercial Shell Construction Drawings

Building Permit #204846 at 8401 Laguna Palms Way, Elk Grove

DRAWING INDEX:

AO.01 COVER SHEET

CIVIL

C-1 COVER SHEET
C-2 GENERAL NOTES
C-3 SECTION AND DETAILS
C-4 GRADING PLAN
C-5 EROSION CONTROL PLAN
C-6 UTILITY PLAN
C-7 WATER PLAN

LANDSCAPE

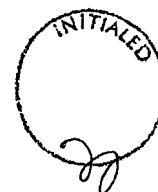
L1 LANDSCAPE COVER SHEET
L2 IRRIGATION PLAN
L3 PLANTING PLAN
L4 LANDSCAPE DETAILS
L5 LANDSCAPE SPECIFICATIONS
L6 LANDSCAPE SPECIFICATIONS

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A1.02 DETAILED SITE PLAN AREAS AND TRASH ENCLOSURE
A1.03 DETAILS
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A2.03 ROOF PLAN
A2.04 WINDOW SCHEDULE
A2.05 DOOR SCHEDULE
A2.06 FINISH SCHEDULE AND MATERIAL LEGEND
A2.07 ENLARGED FIRST AND SECOND FLOOR PATTERN PLAN
A3.01 EXTERIOR ELEVATIONS
A3.02 PANEL TYPE ELEVATIONS
A3.03 OVERALL BUILDING SECTIONS AND SECTION ELEVATIONS
A3.04 WALL SECTIONS
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S1.2 TYPICAL DETAILS
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S2.4 SECOND FLOOR FRAMING PLAN
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S5.2 DETAILS AND SECTIONS
S5.3 DETAILS AND SECTIONS
S5.4 DETAILS AND SECTIONS
S5.5 DETAILS AND SECTIONS
S5.6 DETAILS AND SECTIONS

MECHANICAL

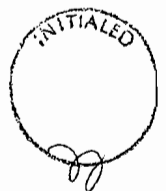
MO.1 SCHEDULES, GENERAL NOTES AND LEGEND
M1.1 MECHANICAL FIRST FLOOR PLAN
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E3 1ST FLOOR POWER MECHANICAL PLAN
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E5 PHOTOMETRICS



**SCHEDULE 3 TO
ADDENDUM TO LEASE AGREEMENT**

Dated May 5, 2005, by and between Jackson II, LLC, a California limited liability company, as Landlord, and
the City of Elk Grove, a California municipal corporation, as Tenant

Janitorial Scope of Services

The intent of the following scope is to assist the City in specifying the requirements for janitorial services.

Services will be performed Monday through Friday, excluding major holidays. Services are to be provided between the hours of 8:00 a.m. and 10 p.m. A check list is to be provided and filled out of daily work completed and kept in the janitor's closet for review by the City Facility Supervisor. On call services are to be provided for emergency clean up, on a not to exceed 2 hour response time.

Specific tasks include but are not limited to the following:

DAILY/NIGHTLY SERVICES –

- Remove all visible dirt, debris and staples in all areas
- Vacuum carpeted areas. Spot clean as necessary
- Wash all hard surface floors using a germicide/disinfectant cleaner
- Dust all window sills, ledges, horizontal surfaces under seven feet, furniture and filing cabinets. Cautiously dust desks, tables or counters if paperwork is on top.
- Sweep all resilient and composition hardwood floors. Spot clean composition floors for minor spills.
- Properly position furniture
- Empty all waste receptacles and return to proper positions
- Empty recyclables in recycle bin and trash in trash bin
- Break down any boxes for recycling and put in recycle bin
- Remove all finger marks and smudges from entrance glass doors and frames
- Sweep outside entrances and pick up trash
- Empty outside ashtrays and receptacles
- Empty and sanitize sanitary napkin disposal units
- Clean all entry glass – door and windows
- Restock all restrooms with supplies
- Polish all metal fixtures and mirrors
- Clean, sanitize, and disinfect sinks, countertops, toilet bowl, seats, and urinals
- Clean, polish, and refill all dispensers
- Spot clean all tile walls and appliances
- Replace burned out lights (provided by owner) as needed
- Keep janitor closet neat and orderly
- Secure building upon entering and exiting

WEEKLY SERVICES –

- Remove all finger marks and smudges from all vertical surfaces, including woodwork, walls, handrails, around light switches, windows and partitions (as needed)
- Clean thresholds and baseboards
- Mop all hard surface flooring
- Vacuum all office areas completely
- Empty leftover food in refrigerator every Friday
- Clean microwaves inside and out
- Perform high dusting for tops of doors, picture frames, tops of desk partitions, light fixtures and window blinds
- Brush down and vacuum wall and ceiling vents

MONTHLY SERVICES –

- Sweep and remove cob webs from outside light fixtures and walls
- Pour germicidal solution in drain traps

YEARLY –

- Scrub and reseal stone floors



EXHIBIT "A"

PREMISES

LEGAL DESCRIPTION

LOT MERGER
RESULTANT LOT 1

All that certain real property situate in the City of Elk Grove, County of Sacramento, State of California, described as follows:

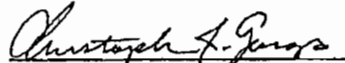
All of Parcel 5 as shown on that certain Parcel map entitled Laguna Palms Office Park No. 2 filed in Book 167 of Parcel Maps, Page 24, Official Records of Sacramento County.

Together with all of Parcel 6 as shown on that certain Parcel Map entitled Laguna Palms Office Park No. 2 filed in Book 167 of Parcel Maps, Page 24, Official Records of Sacramento County.

The Resultant Lot 1 contains 3.0912 acres of land, more or less.

End of Description

This legal description was prepared by me or under my direction pursuant to the requirements of the Professional Land Surveyors Act.


Christopher J. Gorges
License Expires 12/31/05

Date December 11, 2003



EXHIBIT "B"

PRELIMINARY FLOOR PLAN

TO BE INSERTED AT A LATER DATE UPON MUTUAL
APPROVAL



EXHIBIT "C"

RULES AND REGULATIONS

8401 Laguna Palms Way, Elk Grove, California

1. Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall, which may in Landlord's judgment appear unsightly from outside the Building.
2. The Building directory located in the Building lobby as provided by Landlord shall be available to Tenant solely to display names and locations in the Building. The display and the quantity of names to be listed shall be as directed by Landlord.
3. The sidewalks, halls, passages, exits, entrances, elevators and stairways shall not be obstructed by Tenant for any purposes other than for ingress to and egress from the Premises. The halls, passages, exits, entrances, elevators, stairways, balconies and roof are not for the use of the general public and the Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence in the judgment of Landlord, reasonably exercised, shall be prejudicial to the safety, character, reputation and interests of the Premises. Neither Tenant nor any employees or invitees of any tenant shall go upon the roof of the Building.
4. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purposes other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein, and to the extent caused by Tenant or its employees or invitees, the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant.
5. Tenant shall not cause any unnecessary janitorial labor or services by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness.
6. No cooking shall be done or permitted by Tenant on the Premises, nor shall the Premises be used for lodging.
7. Tenant shall not bring upon, use or keep in the Premises any kerosene, gasoline or flammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied by Landlord.
8. Landlord shall have sole power to direct electricians as to where and how telephone and other wires are to be introduced. No boring or cutting for wires is to be allowed without the consent of Landlord. The location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the approval of Landlord.
9. Upon the termination of the tenancy, Tenant shall deliver to the Landlord all keys and passes for offices, rooms, parking lot and toilet rooms which shall have been furnished by Tenant. In the event of the loss of any keys so furnished, Tenant shall pay the Landlord therefor. Tenant shall not make or cause to be made any such keys and shall order all such keys solely from Landlord and shall pay Landlord for any additional such keys over and above the two sets of keys furnished by Landlord.
10. Tenant shall not install linoleum, tile, carpet or other floor covering so that the same shall be affixed to the floor of the Premises in any manner except as approved by Landlord.
11. Tenant shall cause all doors to the Building to be closed and securely locked before leaving the Building at the end of the day.
12. Tenant shall cooperate fully with Landlord to assure the most effective operation of the Premises' heating and air conditioning, and shall refrain from attempting to adjust any controls. Tenant shall keep corridor doors closed.
13. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to Premises closed and secured.
14. Canvassing, soliciting or peddling in or in the Premises is prohibited and Tenant shall cooperate to prevent same. Peddlers, solicitors and beggars shall be reported to the office of the Building or as Landlord otherwise requests.
15. Tenant shall allow no animals or pets to be brought or to remain in or on the Premises or any part thereof. Notwithstanding the foregoing, assistance animals or any animal used in the course of conducting City of Elk Grove business may be brought on to the Premises.

16. Tenant, or the employees, agents, servants, visitors or licensees of Tenant, shall not, at any time or place, leave or discard rubbish, paper, articles or objects of any kind whatsoever outside the doors of the Premises or in the corridors or passageways of the Building.

17. Landlord shall have the right to determine and prescribe the weight and proper position of any unusually heavy equipment, including computers, safes, large files, etc., that are to be placed in the Building, and only those which in the exclusive judgment of the Landlord (a) will not do damage to the floors, structure and/or elevators (b) or whose operations will not be detrimental to the Building may be moved into the Building. Landlord shall provide Tenant with its determination in writing within ten (10) days after a request from Tenant. Any damage caused by installing, moving or removing such aforementioned articles in the Building shall be paid for by Tenant.

18. The requirements of Tenant will be attended to only upon application at the office of Landlord or its designated agent. Employees of Landlord and service contractors shall not perform any work for Tenant outside of their regular duties, unless under special instructions from the office of the Building.

19. Parking Regulations.

a. Restriction or Removal. Landlord may restrict access to the parking areas of the Premises or have removed from the parking areas, at the vehicle owner's expense, any vehicle which, in the sole opinion of Landlord: (i) presents a hazard to the health and welfare of the general public; (ii) is not in operable condition; (iii) contains explosive cargo (other than gasoline or fuel in the original equipment vehicle tanks); (iv) is leaking fluids of any kind; (v) contains illegal goods or contraband; or (vi) is not a standard passenger vehicle or commuter van. Vehicles shall be parked only in such areas or spaces as are authorized by Landlord and Landlord may remove any vehicle located and/or parked in areas not designated for parking or parked in an improper area. Tenant shall require its employees, invitees and licensees to comply with parking area designations for the handicapped.

b. Speed and Traffic Controls. Tenant and its employees, invitees and licensees shall observe all speed and traffic controls established by Landlord from time to time.

c. Violations of Regulations. Any vehicle violating any parking regulations may be removed from the parking facilities at the option of the Landlord and at the expense of the vehicle owner.

d. Parking Decal or Permit. Should parking decals or permits be used, no vehicle shall be permitted to park in any portion of the parking areas unless a currently validated parking decal is affixed to the vehicle in the manner prescribed by the Landlord or unless the vehicle driver is in possession of a temporary parking permit. Parking decals shall be issued only to Tenant and employees of Tenant and shall be valid only while Tenant is not in default under the Lease. Decals shall be validated only by Landlord or its agent.

20. Landlord reserves the right to modify, amend or rescind any of these Rules and Regulations and to make such other and further rules and regulations as in its judgment shall from time to time be needed for the safety, protection, care and cleanliness of the Premises and the preservation of good order therein, which Rules and Regulations when modified, amended or made and written notice thereof is given to Tenant, shall be binding upon Tenant in like manner as if originally herein prescribed.

