B 10 (Official Form 10) (12/11)

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF TEXAS

PROOF OF CLAIM

Name of Debtor:	Case Number:
FIBERTOWER NETWORK SERVICES CORP.	12-44027-dml11

NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
SPF CHINA BASIN HOLDINGS, LLC

Name and address where notices should be sent:
SPF China Basin Holdings, LLC c/o Michael S. Greger, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, Fifth Floor
Irvine, CA 92614-7321

RECEIVED
DEC 07 2012
BMC GROUP

Telephone number: 949.553.1313 email: mgreger@allenmatkins.com

Name and address where payment should be sent (if different from above):

Telephone number: email:

FILED
DEC - 3 2012
TAWANA C. MARSHALL, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
COURT USE ONLY

☐ Check this box if this claim amends a previously filed claim.

Court Claim Number: _____ (*If known*)

Filed on: _____

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.

1. Amount of Claim as of Date Case Filed: $ See Attachment

If all or part of the claim is secured, complete item 4.

If all or part of the claim is entitled to priority, complete item 5.

☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: See Attachment to Proof of Claim
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor:	**3a. Debtor may have scheduled account as:**	**3b. Uniform Claim Identifier (optional):**
_____	_____ (See instruction #3a)	_____ (See instruction #3b)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by alien on property or a right of set off, attach required redacted documents, and provide the requested information.

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☒ Other
Describe: Security Deposit

Value of Property: $ _____

Annual Interest Rate _____% ☐ Fixed or ☐ Variable
(when case was filed)

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:
$ 43.73

Basis for perfection: Security Deposit

Amount of Secured Claim: $ 50,000.00

Amount Unsecured: $ 528,532.00

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.

☐ Domestic support obligations under 11 U.S.C. §507(a)(l)(A) or (a)(l)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

Amount entitled to priority:
$ _____

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a) (_).

FiberTower
00393

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

American LegalNet, Inc.
www.FormsWorkFlow.com

ORIGINAL

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

☒ I am the creditor. ☐ I am the creditor's authorized agent. (Attach copy of power of attorney, if any.) ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Stephen J. Campion
Title: Authorized Signatory
Company: SPF China Basin Holdings, LLC
Address and telephone number (if different from notice address above):
SPF China Basin Holdings, LLC c/o McCarthy
Cook & Co., Metro Center at South Coast
575 Anton Boulevard, Suite 590
Costa Mesa, CA 92626
Telephone number: (714) 427-1851 email: sjc@mccarthycook.com

(Signature) November 26, 2012 (Date)

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:
Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:
Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:
State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:
State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:
State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:
Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:
If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:
Check whether the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).
If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:
An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:
Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:
The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, attach a complete copy of any power of attorney, and provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

American LegalNet, Inc.
www.FormsWorkFlow.com

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS

ATTACHMENT TO PROOF OF CLAIM

Case No: 12-44027-dml11

Debtor: FiberTower Network Services Corp. (the "Debtor")

Claimant: SPF China Basin Holdings, LLC ("Claimant")

Claimant asserts the following claims against the Debtor's bankruptcy estate:

I. BACKGROUND

On or about June 30, 2004, Stockbridge/MCC-China Basin L.L.C., a Delaware limited liability company ("**Original Landlord**"), as original landlord, and the Debtor, formerly known as FiberTower Corporation, a Delaware corporation, as tenant, entered into that certain Office Lease (the "**Original Lease**"), covering approximately 15,699 rentable square feet of space located in Suites 4800 and 4811 on the fourth floor of that certain building known as the Wharfside Building located at 185 Berry Street, San Francisco, California 94107 (the "**Original Premises**").

The Original Lease was amended by that certain (i) First Amendment to Office Lease dated January 19, 2006 (the "**First Amendment**"), (ii) Second Amendment to Office Lease dated August 10, 2006, and the Second Amendment Correction Page dated December 4, 2006 (collectively, the "**Second Amendment**"), and (iii) Third Amendment to Office Lease dated May 22, 2009 (the "**Third Amendment**"). The Original Lease, as amended by the First Amendment, Second Amendment, and Third Amendment is referred to herein as the "**Lease.**" A true and correct copy of the Lease, as amended, is attached hereto and incorporated herein as Exhibit "1." As detailed in the Lease, the Original Premises were initially expanded but ultimately remained at 15,699 of rentable space (the "**Premises**").

On or about December 13, 2011, Original Landlord sold, transferred, assigned, and conveyed all right, title, and interest in the Lease to Claimant. As a result, Claimant is the owner of the claims asserted herein.

As of the date of the filing of this Proof of Claim, the Debtor has not obtained an order of the Bankruptcy Court approving either the assumption or rejection of the Lease, nor has the Lease been deemed rejected. Accordingly, Claimant expressly reserves its rights to amend this Proof of Claim consistent with the Debtor's ultimate assumption or rejection of the Lease.

II. TOTAL AMOUNT OF CLAIM

A. Accrued and Unpaid Rent

The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 17, 2012 (the "**Petition Date**"). Through the Petition Date, prepetition rent accrued under the Lease in the amount of **$43.73** (the "**Prepetition Accrued Rent**"). In the event the Debtor seeks to assume the Lease, the Debtor must cure all outstanding obligations upon assumption pursuant to Bankruptcy Code section 365(b).

B. Rejection Damages in the Event of Lease Rejection

In addition to the Prepetition Accrued Rent, in the event that the Debtor elects to reject the Lease, Claimant will be entitled to an unsecured claim for lease rejection damages pursuant to Bankruptcy Code sections 365(g) and 502(b)(6) in the amount of at least **$578,532.00** (the "**Lease Rejection Damages**"), which represents the rent and other charges reserved under the Lease for the one year period following the Petition Date.

C. Aggregate Claim if the Lease Is Rejected

The total amount of the Prepetition Accrued Rent and the Lease Rejection Damages is $578,575.73. Claimant is in possession of a security deposit in the amount of $50,000.00 (the "**Security Deposit**"). As a result, in the event the Debtor elects to reject the Lease, Claimant will hold a general unsecured claim in the amount of **$528,575.73** and a secured claim in the amount of the Security Deposit.

III. RESERVATION OF RIGHTS

Claimant reserves the right to amend, modify or supplement this Proof of Claim. Each and every document attached to this Proof of Claim is incorporated by and is a part of this Proof of Claim. By filing this Proof of Claim, Claimant intends to provide notice to the Debtor: (a) of any and all claims set forth in the exhibits attached hereto and the documents incorporated herein; (b) that Claimant asserts any and all of its rights and remedies it has at law or under the operative documents, including any and all cross or counter claims; and (c) that Claimant reserves its right to file an administrative claim.

All notices regarding this Proof of Claim should be sent to Allen Matkins Leck Gamble Mallory & Natsis LLP, 1900 Main Street, Fifth Floor, Irvine, CA 92614-7321, Attention Michael S. Greger, Esq.; Facsimile Number: (949) 553-8354.

EXHIBIT 1

EXHIBIT "1"

EXECUTED
ORIGINAL

OFFICE LEASE

CHINA BASIN LANDING

STOCKBRIDGE/MCC-CHINA BASIN L.L.C.,

a Delaware limited liability company,

as Landlord,

and

FIBERTOWER,

a Delaware corporation,

as Tenant.

TABLE OF CONTENTS

Page

ARTICLE 1 PREMISES, BUILDING, PROJECT, AND COMMON AREAS; 3
ARTICLE 2 INITIAL LEASE TERM; OPTION TERM.....3
ARTICLE 3 BASE RENT.....4
ARTICLE 4 ADDITIONAL RENT 4
ARTICLE 5 USE OF PREMISES.....8
ARTICLE 6 SERVICES AND UTILITIES 9
ARTICLE 7 REPAIRS 10
ARTICLE 8 ADDITIONS AND ALTERATIONS.....11
ARTICLE 9 COVENANT AGAINST LIENS.....12
ARTICLE 10 INSURANCE.....13
ARTICLE 11 DAMAGE AND DESTRUCTION.....15
ARTICLE 12 NONWAIVER.....16
ARTICLE 13 CONDEMNATION.....16
ARTICLE 14 ASSIGNMENT AND SUBLETTING.....17
ARTICLE 15 SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES.....20
ARTICLE 16 HOLDING OVER.....21
ARTICLE 17 ESTOPPEL CERTIFICATES 21
ARTICLE 18 SUBORDINATION.....21
ARTICLE 19 DEFAULTS; REMEDIES 22
ARTICLE 20 COVENANT OF QUIET ENJOYMENT.....24
ARTICLE 21 SECURITY DEPOSIT.....24
ARTICLE 22 INTENTIONALLY DELETED 24
ARTICLE 23 SIGNS 24
ARTICLE 24 COMPLIANCE WITH LAW 25
ARTICLE 25 LATE CHARGES.....25
ARTICLE 26 LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT.....26
ARTICLE 27 ENTRY BY LANDLORD.....26
ARTICLE 28 TENANT PARKING.....26
ARTICLE 29 MISCELLANEOUS PROVISIONS.....27

EXHIBITS

A OUTLINE OF PREMISES

B INTENTIONALLY DELETED

C FORM OF NOTICE OF LEASE

D RULES AND REGULATIONS

E FORM OF TENANT'S ESTOPPEL CERTIFICATE

INDEX

Page(s)

Additional Rent....4
Alterations....11
Base Building....11
Base Rent....4
Base Year....4
Brokers....30
Building....3
Building Common Areas....3
Building Hours....9
China Basin Landing....3
Claims....13
Common Areas....3
Control....20
Coordinator....31
Cost Pools....7
Designation Notice....11
Direct Expenses....4
Estimate....7
Estimate Statement....7
Estimated Excess....7
Excess....7
Expense Year....5
Force Majeure....29
Holidays....9
HVAC....9
Landlord....1
Landlord Parties....13
Landlord Repair Notice....15
Lease....1
Lease Commencement Date....4
Lease Expiration Date....4
Lease Term....4
Lease Year....4
Lines....31
Mail....29
Notices....29
Operating Expenses....5
Original Improvements....14
Other Improvements....32
Premises....3
Project....3
Project Common Areas....3
Proposition 13....6
Renovations....31
Rent....4
Security Deposit....24
Statement....7
Subject Space....17
Summary....1
Tax Expenses....6
Tenant....1
Tenant Parties....13
Tenant Personal Property....20
Tenant's Share....7
TMP....30
Transfer....19
Transfer Notice....17
Transfer Premium....18
Transferee....17

Page(s)

Transfers 17

CHINA BASIN LANDING

OFFICE LEASE

This Office Lease (the "**Lease**"), dated as of the date set forth in Section 1 of the Summary of Basic Lease Information (the "**Summary**"), below, is made by and between STOCKBRIDGE/MCC-CHINA BASIN L.L.C., a Delaware limited liability company ("**Landlord**"), and FIBERTOWER, a Delaware corporation ("**Tenant**").

SUMMARY OF BASIC LEASE INFORMATION

TERMS OF LEASE		DESCRIPTION
1.	Date:	June 30, 2004
2.	Premises (Article 1).	
2.1	Building:	Wharfside Building, China Basin Landing, 185 Berry Street, San Francisco, California 94107
2.2	Premises:	Approximately 15,699 rentable square feet of space located in Suites 4800 and 4811 on the fourth (4th) floor of the Building, as further set forth in **Exhibit A** to the Office Lease.
3.	Lease Term (Article 2).	
3.1	Length of Term:	Two (2) years.
3.2	Lease Commencement Date:	August 1, 2004.
3.3	Lease Expiration Date:	July 31, 2006.

4. Base Rent (Article 3):

Lease Year	Annual Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
1	$329,679.00	$27,473.25	$21.00
2	$361,077.00	$30,089.75	$23.00

5. Base Year (Article 4): Calendar year 2004.

6. Tenant's Share (Article 4): Approximately 2.15%.

7. Permitted Use (Article 5): General office use consistent with a first-class office building

8. Security Deposit (Article 21): $57,563.00.

9. Parking (Article 28): Five (5) unreserved parking passes.

10. Address of Tenant (Section 29.18):

FiberTower
185 Berry Street
Suite 4800
San Francisco, California 94107
Attention: Ms. Stacy King
(Prior to and After Lease Commencement Date)

11. Address of Landlord (Section 29.18):

McCarthy Cook & Co., LLC
China Basin Landing
185 Berry Street, Suite 140
San Francisco, California 94107
Attention: General Manager

with copies to:

McCarthy Cook & Co., LLC
5750 Wilshire Boulevard
Los Angeles, California 90036
Attention: Edward W. Cook III

and

Allen Matkins Leck Gamble & Mallory LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, California 90067
Attention: Anton N. Natsis, Esq.

12. Broker(s) (Section 29.24):

McCarthy Cook & Co., LLC
185 Berry Street, Suite 140
San Francisco, California 94107

Cornish & Carey Commercial
245 Lytton Avenue, Suite 150
Palo Alto, California 94310

ARTICLE 1

PREMISES, BUILDING, PROJECT, AND COMMON AREAS

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

1.1.1 **The Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises set forth in Section 2.2 of the Summary (the "**Premises**"). The outline of the Premises is set forth in **Exhibit A** attached hereto and each floor or floors of the Premises has the number of rentable square feet as set forth in Section 2.2 of the Summary. Landlord and Tenant hereby stipulate and agree that the rentable area of the Premises is as set forth in Section 2.2 of the Summary, and such square footage shall not be subject to remeasurement or modification. The parties hereto agree that the lease of the Premises is upon and subject to the terms, covenants and conditions herein set forth, and Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of such terms, covenants and conditions by it to be kept and performed and that this Lease is made upon the condition of such performance. The parties hereto hereby acknowledge that the purpose of **Exhibit A** is to show the approximate location of the Premises in the "Building," as that term is defined in Section 1.1.2, below, only, and such Exhibit is not meant to constitute an agreement, representation or warranty as to the construction of the Premises, the precise area thereof or the specific location of the "Common Areas," as that term is defined in Section 1.1.3, below, or the elements thereof or of the accessways to the Premises or the "Project," as that term is defined in Section 1.1.2, below. Except as specifically set forth in this Lease, Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Premises. Tenant also acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Premises, the Building or the Project or with respect to the suitability of any of the foregoing for the conduct of Tenant's business, except as specifically set forth in this Lease. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and the Building were at such time in good and sanitary order, condition and repair.

1.1.2 **The Building and The Project.** The Premises are a part of the building set forth in Section 2.1 of the Summary (the "**Building**"). The Building is part of an office project known as "**China Basin Landing**." The term "**Project**," as used in this Lease, shall mean (i) the Building and the Common Areas, (ii) the land (which is improved with landscaping, subterranean parking facilities and other improvements) upon which the Building and the Common Areas are located, (iii) the other office building located adjacent to the Building and the land upon which such adjacent office building is located, and (iv) at Landlord's discretion, any additional real property, areas, land, buildings or other improvements added thereto outside of the Project.

1.1.3 **Common Areas.** Tenant shall have the non-exclusive right to use in common with other tenants in the Project, and subject to the rules and regulations referred to in Article 5 of this Lease, those portions of the Project which are provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Project (such areas, together with such other portions of the Project designated by Landlord, in its discretion, including certain areas designated for the exclusive use of certain tenants, or to be shared by Landlord and certain tenants, are collectively referred to herein as the "**Common Areas**"). The Common Areas shall consist of the "Project Common Areas" and the "Building Common Areas." The term "**Project Common Areas**," as used in this Lease, shall mean the portion of the Project designated as such by Landlord. The term "**Building Common Areas**," as used in this Lease, shall mean the portions of the Common Areas located within the Building designated as such by Landlord. The manner in which the Common Areas are maintained and operated shall be at the reasonable discretion of Landlord and the use thereof shall be subject to such rules, regulations and restrictions as Landlord may make from time to time. Landlord reserves the right to close temporarily, make alterations or additions to, or change the location of elements of the Project and the Common Areas. Landlord shall use commercially reasonable efforts in connection with any closures, alterations and/or additions to minimize interference with Tenant's use of, and access to, the Premises.

ARTICLE 2

LEASE TERM

The terms and provisions of this Lease shall be effective as of the date of this Lease. The term of this Lease (the "**Lease Term**") shall be as set forth in Section 3.1 of the Summary, shall commence on the date set forth in Section 3.2 of the Summary (the "**Lease Commencement Date**"), and shall terminate on the date set forth in Section 3.3 of the Summary (the "**Lease Expiration Date**") unless this Lease is sooner terminated as hereinafter provided. For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Lease Term; provided, however, that the first Lease Year shall commence on the Lease Commencement Date and end on the last day of the eleventh month thereafter and the second and each succeeding Lease Year shall commence on the first day of the next calendar month; and further provided that the last Lease Year shall end on the Lease Expiration Date. At any time during the Lease Term, Landlord may deliver to Tenant a notice in the form as set forth in Exhibit C, attached hereto, as a confirmation only of the information set forth therein, which Tenant shall execute and return to Landlord within ten (10) days of receipt thereof.

ARTICLE 3

BASE RENT

Tenant shall pay, without prior notice or demand, to Landlord or Landlord's agent at the management office of the Project, or, at Landlord's option, at such other place as Landlord may from time to time designate in writing, by a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, base rent ("**Base Rent**") as set forth in Section 4 of the Summary, payable in equal monthly installments as set forth in Section 4 of the Summary in advance on or before the first day of each and every calendar month during the Lease Term, without any setoff or deduction whatsoever. The Base Rent for the first full month of the Lease Term shall be paid at the time of Tenant's execution of this Lease. If any Rent payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month or if any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to 1/365 of the applicable annual Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

ARTICLE 4

ADDITIONAL RENT

4.1 **General Terms**. In addition to paying the Base Rent specified in Article 3 of this Lease, Tenant shall pay, commencing after the expiration of the "Base Year", "Tenant's Share" of the annual "Direct Expenses," as those terms are defined in Sections 4.2.1, 4.2.6 and 4.2.2 of this Lease, respectively, which are in excess of the amount of Direct Expenses applicable to the Base Year; provided, however, that in no event shall any decrease in Direct Expenses for any "Expense Year," as that term is defined in Section 4.2.6 below, below Direct Expenses for the Base Year entitle Tenant to any decrease in Base Rent or any credit against sums due under this Lease. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease, are hereinafter collectively referred to as the "**Additional Rent**", and the Base Rent and the Additional Rent are herein collectively referred to as "**Rent**." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent. Without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay the Additional Rent provided for in this Article 4 shall survive the expiration of the Lease Term; provided, however, that other than "Tax Expenses," as that term is defined in Section 4.2.5.1, below, levied by a governmental authority, or utility charges, Tenant shall not be responsible for Tenant's Share of any Direct Expenses attributable to any "Expense Year" which are first billed to Tenant more than two (2) years after the Lease Expiration Date.

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

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

4.2.2 "**Direct Expenses**" shall mean "Operating Expenses" and "Tax Expenses."

4.2.3 "**Expense Year**" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires, provided that Landlord, upon notice to Tenant, may change the Expense Year from time to time to any other twelve (12) consecutive month period, and, in the event of any such change, Tenant's Share of Direct Expenses shall be equitably adjusted for any Expense Year involved in any such change.

4.2.4 "**Operating Expenses**" shall mean all expenses, costs and amounts of every kind and nature which Landlord pays or accrues during any Expense Year because of or in connection with the ownership, management, maintenance, security, repair, replacement, restoration or operation of the Project, or any portion thereof. Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, repairing, maintaining, and renovating the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which may affect Operating Expenses, and the costs incurred in connection with a transportation system management program or similar program; (iii) the cost of all insurance carried by Landlord in connection with the Project; (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Project, or any portion thereof; (v) costs incurred in connection with the parking areas servicing the Building; (vi) fees and other costs, including management fees, consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance and repair of the Project; (vii) payments under any equipment rental agreements and the fair rental value of any management office space; (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons engaged in the operation, maintenance and security of the Project; (ix) costs under any instrument pertaining to the sharing of costs by the Project; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Building; (xi) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in common areas, maintenance and replacement of curbs and walkways, exterior windows and walls, repair to roofs and re-roofing, waterproofing and sealing of garage, foundation and basement areas; (xii) amortization (including interest on the unamortized cost) of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Project, or any portion thereof; (xiii) the cost of capital improvements or other costs incurred in connection with the Project (A) which are intended to effect economies in the operation or maintenance of the Project, or any portion thereof, (B) that are required to comply with present or anticipated conservation programs, (C) which are replacements or modifications of nonstructural items located in the Common Areas required to keep the Common Areas in good order or condition, or (D) that are required under any governmental law or regulation; provided, however, that any capital expenditure shall be amortized with interest over its useful life as Landlord shall reasonably determine; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services which do not constitute "Tax Expenses" as that term is defined in Section 4.2.5, below; and (xv) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Building. If Landlord is not furnishing any particular work or service (the cost of which, if performed by Landlord, would be included in Operating Expenses) to a tenant who has undertaken to perform such work or service in lieu of the performance thereof by Landlord, Operating Expenses shall be deemed to be increased by an amount equal to the additional Operating Expenses which would reasonably have been incurred during such period by Landlord if it had at its own expense furnished such work or service to such tenant. If the Project is not at least ninety-five percent (95%) occupied during all or a portion of the Base Year or any Expense Year, Landlord may elect to make an appropriate adjustment to the components of Operating Expenses for such year to determine the amount of Operating Expenses that would have been incurred had the Project been ninety-five percent (95%) occupied; and the amount so determined shall be deemed to have been the amount of Operating Expenses for such year. Operating Expenses for the Base Year shall not include market-wide labor-rate increases due to extraordinary circumstances, including, but not limited to, boycotts and strikes, and utility rate increases due to extraordinary circumstances including, but not limited to, conservation surcharges, boycotts, embargoes or other shortages, or amortized costs relating to capital improvements. In no event shall the components of Direct Expenses for

any Expense Year related to utilities, security or insurance costs be less than the components of Direct Expenses related to utilities, security or insurance, costs, respectively, in the Base Year. Operating Expenses shall not include costs incurred to comply with laws relating to the removal of hazardous material (as defined under applicable law) which was in existence in the Building or on the Project prior to the Lease Commencement Date, and was of such a nature that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such hazardous material, in the state, and under the conditions that it then existed in the Building or on the Project, would have then required the removal of such hazardous material or other remedial or containment action with respect thereto; and costs incurred to remove, remedy, contain, or treat hazardous material, which hazardous material is brought into the Building or onto the Project after the date hereof by Landlord or any other tenant of the Project and is of such a nature, at that time, that a federal, State or municipal governmental authority, if it had then had knowledge of the presence of such hazardous material, in the state, and under the conditions, that it then exists in the Building or on the Project, would have then required the removal of such hazardous material or other remedial or containment action with respect thereto.

4.2.5 **Taxes**.

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

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

4.2.5.3 Any costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in attempting to protest, reduce or minimize Tax Expenses shall be included in Tax Expenses in the Expense Year such expenses are paid. Tax refunds shall be credited against Tax Expenses and refunded to Tenant regardless of when received, based on the Expense Year to which the refund is applicable, provided that in no event shall the amount to be refunded to Tenant for any such Expense Year exceed the total amount paid by Tenant as Additional Rent under this Article 4 for such Expense Year. If Tax Expenses for any period during the Lease Term or any extension thereof are increased after payment thereof for any reason, including, without limitation, error or reassessment by applicable governmental or municipal authorities, Tenant shall pay Landlord upon demand Tenant's Share of any such increased Tax Expenses included by Landlord as Building Tax Expenses pursuant to the terms of

this Lease. Notwithstanding anything to the contrary contained in this Section 4.2.5 (except as set forth in Section 4.2.5.1, above), there shall be excluded from Tax Expenses (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal and state income taxes, and other taxes to the extent applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Project), (ii) any items included as Operating Expenses, and (iii) any items paid by Tenant under Section 4.5 of this Lease.

4.2.5.4 The amount of Tax Expenses for the Base Year attributable to the valuation of the Project, inclusive of tenant improvements, shall be known as "Base Taxes". If in any comparison year subsequent to the Base Year, the amount of Tax Expenses decreases below the amount of Base Taxes, then for purposes of all subsequent comparison years, including the comparison year in which such decrease in Tax Expenses occurred, the Base Taxes, and therefore the Base Year, shall be decreased by an amount equal to the decrease in Tax Expenses.

4.2.6 "**Tenant's Share**" shall mean the percentage set forth in Section 6 of the Summary, and is based on the ratio of the square footage of the Premises to the total square footage of the Project.

4.3 **Allocation of Direct Expenses**.

4.3.1 **Method of Allocation**. The parties acknowledge that the Building is a part of a multi-building project and that the costs and expenses incurred in connection with the Project (i.e. the Direct Expenses) are an aggregate of the Building and the other buildings in the Project.

4.3.2 **Cost Pools**. Landlord shall have the right, from time to time, to equitably allocate some or all of the Direct Expenses for the Project among different portions or occupants of the Project (the "**Cost Pools**"), in Landlord's discretion. Such Cost Pools may include, but shall not be limited to, the office space tenants of a building of the Project or of the Project, and the retail space tenants of a building of the Project or of the Project. The Direct Expenses within each such Cost Pool shall be allocated and charged to the tenants as determined by Landlord in accordance with sound real estate management principles.

4.4 **Calculation and Payment of Additional Rent**. If for any Expense Year ending or commencing within the Lease Term, Tenant's Share of Direct Expenses for such Expense Year exceeds Tenant's Share of Direct Expenses applicable to the Base Year, then Tenant shall pay to Landlord, in the manner set forth in Section 4.4.1, below, and as Additional Rent, an amount equal to the excess (the "**Excess**").

4.4.1 **Statement of Actual Direct Expenses and Payment by Tenant**. Landlord shall endeavor to give to Tenant following the end of each Expense Year, a statement (the "**Statement**") which shall state the Direct Expenses incurred or accrued for such preceding Expense Year, and which shall indicate the amount of the Excess. Upon receipt of the Statement for each Expense Year commencing or ending during the Lease Term, if an Excess is present, Tenant shall pay, with its next installment of Base Rent due, the full amount of the Excess for such Expense Year, less the amounts, if any, paid during such Expense Year as "Estimated Excess," as that term is defined in Section 4.4.2, below. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Direct Expenses for the Expense Year in which this Lease terminates, if an Excess if present, Tenant shall immediately pay to Landlord such amount. The provisions of this Section 4.4.1 shall survive the expiration or earlier termination of the Lease Term.

4.4.2 **Statement of Estimated Direct Expenses**. In addition, Landlord shall endeavor to give Tenant a yearly expense estimate statement (the "**Estimate Statement**") which shall set forth Landlord's reasonable estimate (the "**Estimate**") of what the total amount of Direct Expenses for the then-current Expense Year shall be and the estimated excess (the "**Estimated Excess**") as calculated by comparing the Direct Expenses for such Expense Year, which shall be based upon the Estimate, to the amount of Direct Expenses for the Base Year. The failure of Landlord to timely furnish the Estimate Statement for any Expense Year shall not preclude Landlord from enforcing its rights to collect any Estimated Excess under this Article 4, nor shall

Landlord be prohibited from revising any Estimate Statement or Estimated Excess theretofore delivered to the extent necessary. Thereafter, Tenant shall pay, with its next installment of Base Rent due, a fraction of the Estimated Excess for the then-current Expense Year (reduced by any amounts paid pursuant to the next to last sentence of this Section 4.4.2). Such fraction shall have as its numerator the number of months which have elapsed in such current Expense Year, including the month of such payment, and twelve (12) as its denominator. Until a new Estimate Statement is furnished (which Landlord shall have the right to deliver to Tenant at any time), Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Excess set forth in the previous Estimate Statement delivered by Landlord to Tenant.

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

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

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

4.5.3 Notwithstanding any contrary provision herein, Tenant shall pay prior to delinquency any (i) rent tax or sales tax, service tax, transfer tax or value added tax, or any other applicable tax on the rent or services herein or otherwise respecting this Lease, (ii) taxes assessed upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion of the Project, including the Project parking facility; or (iii) taxes assessed upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises.

ARTICLE 5

USE OF PREMISES

5.1 **Permitted Use.** Tenant shall use the Premises solely for the Permitted Use set forth in Section 7 of the Summary and Tenant shall not use or permit the Premises or the Project to be used for any other purpose or purposes whatsoever without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion.

5.2 **Prohibited Uses.** The uses prohibited under this Lease shall include, without limitation, use of the Premises or a portion thereof for (i) offices of any agency or bureau of the United States or any state or political subdivision thereof; (ii) offices or agencies of any foreign governmental or political subdivision thereof; (iii) offices of any health care professionals or service organization; (iv) schools or other training facilities which are not ancillary to corporate, executive or professional office use; or (v) retail or restaurant uses. Tenant shall not allow occupancy density of use of the Premises which is greater than one person for each 150 square feet of the Premises. Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any use or purpose contrary to the provisions of the Rules and Regulations set forth in **Exhibit D**, attached hereto, or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Project) including, without limitation, any such laws, ordinances, regulations or requirements relating to hazardous materials or substances, as

those terms are defined by applicable laws now or hereafter in effect. Tenant shall not do or permit anything to be done in or about the Premises which will in any way damage the reputation of the Project or obstruct or interfere with the rights of other tenants or occupants of the Building, or injure or annoy them or use or allow the Premises to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Project.

ARTICLE 6

SERVICES AND UTILITIES

6.1 **Standard Tenant Services.** Landlord shall provide the following services on all days (unless otherwise stated below) during the Lease Term.

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

6.1.2 Landlord shall provide adequate electrical wiring and facilities for connection to Building standard ceiling mounted lighting fixtures and incidental use equipment, provided that Tenant's consumption of electricity does not exceed 1 kilowatt/hour per usable square foot of the Premises per month, which electrical usage shall be subject to applicable laws and regulations, including Title 24. Tenant will design Tenant's electrical system serving any equipment producing nonlinear electrical loads to accommodate such nonlinear electrical loads, including, but not limited to, oversizing neutral conductors, derating transformers and/or providing power-line filters. Engineering plans shall include a calculation of Tenant's fully connected electrical design load with and without demand factors and shall indicate the number of watts of unmetered and submetered loads. Tenant shall bear the cost of replacement of lamps, starters and ballasts for non-Building standard lighting fixtures within the Premises.

6.1.3 Landlord shall provide city water from the regular Building outlets for drinking, lavatory and toilet purposes in the Building Common Areas.

6.1.4 Landlord shall provide janitorial services to the Premises, except the date of observation of the Holidays, in and about the Premises and window washing services in a manner consistent with other comparable buildings in the vicinity of the Building.

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

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

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

6.2 **Overstandard Tenant Use.** Tenant shall not, without Landlord's prior written consent, use heat-generating machines, machines other than normal fractional horsepower office machines, or equipment or lighting other than Building standard lights in the Premises, which may affect the temperature otherwise maintained by the air conditioning system or increase the water normally furnished for the Premises by Landlord pursuant to the terms of Section 6.1 of this Lease. If such consent is given, Landlord shall have the right to install supplementary air conditioning units or other facilities in the Premises, including supplementary or additional metering devices, and the cost thereof, including the cost of installation, operation and maintenance, increased wear and tear on existing equipment and other similar charges, shall be paid by Tenant to Landlord upon billing by Landlord. If Tenant uses water, electricity, heat or

air conditioning in excess of that supplied by Landlord pursuant to Section 6.1 of this Lease, Tenant shall pay to Landlord, upon billing, the cost of such excess consumption, the cost of the installation, operation, and maintenance of equipment which is installed in order to supply such excess consumption, and the cost of the increased wear and tear on existing equipment caused by such excess consumption; and Landlord may install devices to separately meter any increased use and in such event Tenant shall pay the increased cost directly to Landlord, on demand, at the rates charged by the public utility company furnishing the same, including the cost of such additional metering devices. Tenant's use of electricity shall never exceed the capacity of the feeders to the Project or the risers or wiring installation. If Tenant desires to use heat, ventilation or air conditioning during hours other than those for which Landlord is obligated to supply such utilities pursuant to the terms of Section 6.1 of this Lease, Tenant shall give Landlord such prior notice, if any, as Landlord shall from time to time establish as appropriate, to the extent such additional utilities can be made available, and Landlord shall supply such utilities to Tenant at such hourly cost to Tenant (which shall be treated as Additional Rent and which may include an administrative fee) as Landlord shall from time to time establish.

6.3 **Interruption of Use.** Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof, when such failure or delay or diminution is occasioned, in whole or in part, by breakage, repairs, replacements, or improvements, by any strike, lockout or other labor trouble, by inability to secure electricity, gas, water, or other fuel at the Building or Project after reasonable effort to do so, by any riot or other dangerous condition, emergency, accident or casualty whatsoever, by act or default of Tenant or other parties, or by any other cause; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities as set forth in this Article 6. Landlord may comply with voluntary controls or guidelines promulgated by any governmental entity relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions without creating any liability of Landlord to Tenant under this Lease, provided that the Premises are not thereby rendered untenantable.

ARTICLE 7

REPAIRS

Tenant shall, at Tenant's own expense, pursuant to the terms of this Lease, including without limitation Article 8 hereof, keep the Premises, including all improvements, fixtures and furnishings therein, and the floor or floors of the Building on which the Premises are located, in good order, repair and condition (reasonable wear and tear excepted) at all times during the Lease Term. In addition, Tenant shall, at Tenant's own expense, but under the supervision and subject to the prior approval of Landlord, and within any reasonable period of time specified by Landlord, pursuant to the terms of this Lease, including without limitation Article 8 hereof, promptly and adequately repair all damage to the Premises and replace or repair all damaged, broken, or worn fixtures and appurtenances, except for damage caused by ordinary wear and tear or beyond the reasonable control of Tenant; provided however, that if Tenant fails to make such repairs, Landlord may, but need not, make such repairs and replacements, and Tenant shall pay Landlord the cost thereof, including a percentage of the cost thereof (to be uniformly established for the Building and/or the Project) sufficient to reimburse Landlord for all overhead, general conditions, fees and other costs or expenses arising from Landlord's involvement with such repairs and replacements forthwith upon being billed for same. Landlord may, but shall not be required to, enter the Premises at all reasonable times to make such repairs, alterations, improvements or additions to the Premises or to the Project or to any equipment located in the Project as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and Sections 1941 and 1942 of the California Civil Code or under any similar law, statute, or ordinance now or hereafter in effect.

ARTICLE 8

ADDITIONS AND ALTERATIONS

8.1 **Landlord's Consent to Alterations.** Tenant may not make any improvements, alterations, additions or changes to the Premises or any mechanical, plumbing or HVAC facilities or systems pertaining to the Premises (collectively, the "**Alterations**") without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than thirty (30) days prior to the commencement thereof, and which consent may be withheld in Landlord's sole discretion. Notwithstanding the foregoing, Tenant shall be permitted, without Landlord's consent but upon five (5) business days prior notice to Landlord, to make strictly cosmetic, non-structural additions and alterations to the Premises that do not (i) involve the expenditure of more than $10,000.00 in each instance, (ii) affect the exterior appearance of the Premises or Building, or (iii) affect the Building's electrical, ventilation, plumbing, elevator, mechanical, air conditioning or other systems.

8.2 **Manner of Construction.** Landlord may impose, as a condition of its consent to any and all Alterations or repairs of the Premises or about the Premises, such requirements as Landlord in its reasonable discretion may deem desirable, including, but not limited to, the requirement that Tenant utilize for such purposes only contractors, subcontractors, materials, mechanics and materialmen selected by Tenant from a list provided and approved by Landlord, the requirement that upon Landlord's request, Tenant shall, at Tenant's expense, remove such Alterations upon the expiration or any early termination of the Lease Term; provided, however, in the event that in Tenant's request for approval of any Alteration or improvement, Tenant requests a determination by Landlord (the "**Designation Notice**") as to whether or not Tenant shall be required to remove the subject Alteration or improvement upon the expiration or earlier termination of this Lease, in accordance with the terms hereof, then Landlord shall include in its consent (if granted) notice as to whether the subject Alteration or improvement shall be required to be removed prior to the expiration or earlier termination of this Lease, and corresponding repairs made. If such Alterations will involve the use of or disturb hazardous materials or substances existing in the Premises, Tenant shall comply with Landlord's rules and regulations concerning such hazardous materials or substances. Tenant shall construct such Alterations and perform such repairs in a good and workmanlike manner, in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursuant to a valid building permit, issued by the City of San Francisco, all in conformance with Landlord's construction rules and regulations. In the event Tenant performs any Alterations in the Premises which require or give rise to governmentally required changes to the "Base Building," as that term is defined below, then Landlord shall, at Tenant's expense, make such changes to the Base Building. The "**Base Building**" shall include the structural portions of the Building, and the public restrooms and the systems and equipment located in the internal core of the Building on the floor or floors on which the Premises are located. In performing the work of any such Alterations, Tenant shall have the work performed in such manner so as not to obstruct access to the Project or any portion thereof, by any other tenant of the Project, and so as not to obstruct the business of Landlord or other tenants in the Project. Tenant shall not use (and upon notice from Landlord shall cease using) contractors, services, workmen, labor, materials or equipment that, in Landlord's reasonable judgment, would disturb labor harmony with the workforce or trades engaged in performing other work, labor or services in or about the Building or the Common Areas. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any Alterations, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of San Francisco in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and Tenant shall deliver to the Project management office a reproducible copy of the "as built" drawings of the Alterations as well as all permits, approvals and other documents issued by any governmental agency in connection with the Alterations.

8.3 **Payment for Improvements.** If payment is made directly to contractors, Tenant shall comply with Landlord's requirements for final lien releases and waivers in connection with Tenant's payment for work to contractors. If Tenant orders any work directly from Landlord, Tenant shall pay to Landlord a percentage of the cost of such work sufficient to compensate Landlord for all overhead, general conditions, fees and other costs and expenses arising from Landlord's involvement with such work. If Tenant does not order the work directly from Landlord, Tenant shall reimburse Landlord for Landlord's reasonable, actual, out-of-pocket costs and expenses actually incurred in connection with Landlord's review of such work.

8.4 **Construction Insurance.** In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any Alterations, prior to the commencement of such Alterations, Tenant shall provide Landlord with evidence that Tenant carries "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of such Alterations, and such other insurance as Landlord may require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof. In addition, Landlord may, in its discretion, require Tenant to obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such Alterations and naming Landlord as a co-obligee.

8.5 **Landlord's Property.** All Alterations, improvements, fixtures, equipment and/or appurtenances which may be installed or placed in or about the Premises, from time to time, shall be at the sole cost of Tenant and shall be and become the property of Landlord, except that Tenant may remove any Alterations, improvements, fixtures and/or equipment which Tenant can substantiate to Landlord have not been paid for with any Tenant improvement allowance funds provided to Tenant by Landlord, provided Tenant repairs any damage to the Premises and Building caused by such removal. Furthermore, subject to the terms of Section 8.2, above, Landlord may, by written notice to Tenant prior to the end of the Lease Term, or given following any earlier termination of this Lease, require Tenant, at Tenant's expense, to remove any Alterations or improvements in the Premises, and to repair any damage to the Premises and Building caused by such removal; provided, however, that Landlord may not request such removal if Tenant timely requested a Designation Notice and Landlord failed to indicate removal of such Alterations would be required in the Designation Notice. If Tenant fails to complete such removal and/or to repair any damage caused by the removal of any Alterations or improvements in the Premises, Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby protects, defends, indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any such Alterations, improvements, fixtures and/or equipment in, on or about the Premises, except to the extent arising from the gross negligence or willful misconduct of Landlord, which obligations of Tenant shall survive the expiration or earlier termination of this Lease.

8.6 **Improvement Allowance**. Tenant shall be entitled to an allowance for the design and construction of improvements which are permanently affixed to the Premises (collectively, the "**Tenant Improvements**") in an amount equal to Forty-Seven Thousand Ninety-Seven and No/100 Dollars ($47,097.00) (i.e. $3.00 per rentable square foot of the Remaining Premises) (the "**Improvement Allowance**"), which Improvement Allowance may be utilized by Tenant for the costs of the Improvements. Any costs incurred by Tenant in connection with Tenant's construction of the Tenant Improvements which are in excess of the Improvement Allowance shall be paid for by Tenant. The construction by Tenant of the Improvements shall be performed pursuant to plans approved by Landlord and otherwise in accordance with the terms of this Article 8. The Improvement Allowance shall be disbursed by Landlord pursuant to Landlord's reasonable disbursement process (which shall include, without limitation, the requirement that Tenant provide invoices and mechanics' lien releases acceptable to Landlord) for costs related to the construction of the Tenant Improvements. Any portion of the Improvement Allowance which remains unspent after the first (1st) anniversary of the Lease Commencement Date shall revert to Landlord and Tenant shall have no further rights thereto. Tenant shall be charged a supervision fee in connection with Tenant's construction of the Improvements in an amount equal to three percent (3%) of the total costs incurred in connection with Tenant's construction of the Tenant Improvements.

ARTICLE 9

COVENANT AGAINST LIENS

Tenant shall keep the Project and Premises free from any liens or encumbrances arising out of the work performed, materials furnished or obligations incurred by or on behalf of Tenant, and shall protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, judgments or costs (including, without limitation, reasonable attorneys' fees and costs) arising out of same or in connection therewith. Tenant shall give Landlord notice at least twenty (20) days prior to the commencement of any such work on the Premises (or such additional time as may be necessary under applicable laws) to afford Landlord the opportunity of posting and

recording appropriate notices of non-responsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within fifteen (15) days after notice by Landlord, and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Building or Premises to any liens or encumbrances whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Building or Premises arising in connection with any such work or respecting the Premises not performed by or at the request of Landlord shall be null and void, or at Landlord's option shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Project, Building and Premises.

ARTICLE 10

INSURANCE

10.1 **Indemnification and Waiver.** Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever and agrees that Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors (collectively, "**Landlord Parties**") shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, except to the extent arising from the gross negligence or willful misconduct of Landlord or the Landlord Parties, which damage is sustained by Tenant or by other persons claiming through Tenant. Tenant shall indemnify, defend, protect, and hold harmless the Landlord Parties from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) (collectively, "**Claims**") incurred in connection with or arising from any cause in, on or about the Premises, any acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, invitees, guests or licensees of Tenant or any such person, in, on or about the Project or any breach of the terms of this Lease, either prior to, during, or after the expiration of the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord. Landlord shall indemnify, defend, protect, and hold harmless Tenant, its partners, and their respective officers, agents, servants, employees, and independent contractors (collectively, "**Tenant Parties**") from any and all loss, cost, damage, expense and liability (including without limitation reasonable attorneys' fees) arising from the negligence or willful misconduct of Landlord in, on or about the Project, except to the extent caused by the negligence or willful misconduct of the Tenant Parties. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees. Further, Tenant's agreement to indemnify Landlord and Landlord's agreement to indemnify Tenant pursuant to this Section 10.1 is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by either party pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to each party's indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

10.2 **Tenant's Compliance With Landlord's Fire and Casualty Insurance.** Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

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

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

Bodily Injury and Property Damage Liability	$3,000,000 each occurrence $3,000,000 annual aggregate
Personal Injury Liability	$3,000,000 each occurrence $3,000,000 annual aggregate 0% Insured's participation

10.3.2 Physical Damage Insurance covering (i) all office furniture, business and trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant, (ii) the "Tenant Improvements," as that term is defined in Section 8.6 of this Lease, and any other improvements which exist in the Premises as of the Lease Commencement Date (excluding the Base Building) (the "**Original Improvements**"), and (iii) all other improvements, alterations and additions to the Premises. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage (except due to an earthquake), bursting or stoppage of pipes, and explosion, and providing business interruption coverage in an amount not less than $100,000.00.

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

10.4 **Form of Policies.** The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord, and any other party the Landlord so specifies, as an additional insured, including Landlord's managing agent, if any; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the State of California; (iv) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and is non-contributing with any insurance requirement of Tenant; (v) be in form and content reasonably acceptable to Landlord; and (vi) provide that said insurance shall not be canceled or coverage changed unless ten (10) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord. Tenant shall deliver said policy or policies or certificates (including endorsements) thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor.

10.5 **Subrogation.** Landlord and Tenant intend that their respective property loss risks shall be borne by reasonable insurance carriers to the extent above provided, and Landlord and Tenant hereby agree to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right of the insured to recover thereunder. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder, so long as no material additional premium is charged therefor.

10.6 **Additional Insurance Obligations.** Tenant shall carry and maintain during the entire Lease Term, as the same may be extended, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10 and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 **Repair of Damage to Premises by Landlord.** Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If the Premises or any Common Areas serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 11, restore the Base Building and such Common Areas. Such restoration shall be to substantially the same condition of the Base Building and the Common Areas prior to the casualty, except for modifications required by zoning and building codes and other laws or by the holder of a mortgage on the Building or Project or any other modifications to the Common Areas deemed desirable by Landlord, provided that access to the Premises and any common restrooms serving the Premises shall not be materially impaired. Upon the occurrence of any damage to the Premises, upon notice (the "**Landlord Repair Notice**") to Tenant from Landlord, Tenant shall assign to Landlord (or to any party designated by Landlord) all insurance proceeds payable to Tenant under Tenant's insurance required under Section 10.3.2 (ii) and (iii) of this Lease, and Landlord shall repair any injury or damage to the Tenant Improvements and the Original Improvements installed in the Premises and shall return such Tenant Improvements and Original Improvements to their original condition; provided that if the cost of such repair by Landlord exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, as assigned by Tenant, the cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repair of the damage, or as soon as such additional costs are known. In the event that Landlord does not deliver the Landlord Repair Notice within sixty (60) days following the date the casualty becomes known to Landlord, Tenant shall, at its sole cost and expense, repair any injury or damage to the Tenant Improvements and the Original Improvements installed in the Premises and shall return such Tenant Improvements and Original Improvements to their original condition. Whether or not Landlord delivers a Landlord Repair Notice, prior to the commencement of construction, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, and Landlord shall select the contractors to perform such improvement work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Common Areas necessary to Tenant's occupancy, Landlord shall allow Tenant a proportionate abatement of Rent to the extent Landlord is reimbursed from the proceeds of rental interruption insurance purchased by Landlord as part of Operating Expenses, during the time and to the extent the Premises are unfit for occupancy for the purposes permitted under this Lease, and not occupied by Tenant as a result thereof; provided, further, however, that if the damage or destruction is due to the negligence or wilful misconduct of Tenant or any of its agents, employees, contractors, invitees or guests, Tenant shall be responsible for any reasonable, applicable insurance deductible (which shall be payable to Landlord upon demand) and there shall be no rent abatement. In the event that Landlord shall not deliver the Landlord Repair Notice, Tenant's right to rent abatement pursuant to the preceding sentence shall terminate as of the date which is reasonably determined by Landlord to be the date Tenant should have completed repairs to the Premises assuming Tenant used reasonable due diligence in connection therewith.

11.2 **Landlord's Option to Repair.** Notwithstanding the terms of Section 11.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Project, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of damage, such notice to include a termination date giving Tenant sixty (60) days to vacate the Premises, but Landlord may so elect only if the Building or Project shall be damaged by fire or other casualty or cause, whether or not the Premises are affected, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within ninety (90) days after the date of discovery of the

damage (when such repairs are made without the payment of overtime or other premiums); (ii) the holder of any mortgage on the Building or Project or ground lessor with respect to the Building or Project shall require that the insurance proceeds or any portion thereof be used to retire the mortgage debt, or shall terminate the ground lease, as the case may be; (iii) the damage is not fully covered by Landlord's insurance policies; or (iv) Landlord decides to rebuild the Building or Common Areas so that they will be substantially different structurally or architecturally; (v) the damage occurs during the last eighteen (18) months of the Lease Term; or (vi) any owner of any other portion of the Project, other than Landlord, does not intend to repair the damage to such portion of the Project; provided, however, that if Landlord does not elect to terminate this Lease pursuant to Landlord's termination right as provided above, and the repairs cannot, in the reasonable opinion of Landlord, be completed within one hundred fifty (150) days after being commenced, or the damage occurs during the last nine (9) months of the Lease Term, Tenant may elect, no earlier than sixty (60) days after the date of the damage and not later than ninety (90) days after the date of such damage, to terminate this Lease by written notice to Landlord effective as of the date specified in the notice, which date shall not be less than thirty (30) days nor more than sixty (60) days after the date such notice is given by Tenant.

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

ARTICLE 12

NONWAIVER

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

ARTICLE 13

CONDEMNATION

If the whole or any part of the Premises, Building or Project shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if any adjacent property or street shall be so taken or condemned, or reconfigured or vacated by such authority in such manner as to require the use, reconstruction or remodeling of any part of the Premises, Building or Project, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. If more than fifteen percent (15%) of the rentable square feet of the Premises is

taken, or if access to the Premises is substantially impaired, in each case for a period in excess of ninety (90) days, Tenant shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority. Tenant shall not because of such taking assert any claim against Landlord or the authority for any compensation because of such taking and Landlord shall be entitled to the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Lease Term pursuant to the terms of this Lease, and for moving expenses, so long as such claims do not diminish the award available to Landlord, its ground lessor with respect to the Building or Project or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure. Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of ninety (90) days or less, then this Lease shall not terminate but the Base Rent and the Additional Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet of the Premises taken bears to the total rentable square feet of the Premises. Landlord shall be entitled to receive the entire award made in connection with any such temporary taking.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 **Transfers.** Tenant shall not, without the prior written consent of Landlord, assign, mortgage, pledge, hypothecate, encumber, or permit any lien to attach to, or otherwise transfer, this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or enter into any license or concession agreements or otherwise permit the occupancy or use of the Premises or any part thereof by any persons other than Tenant and its employees and contractors (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the terms of the proposed Transfer and the consideration therefor, including calculation of the "Transfer Premium", as that term is defined in Section 14.3 below, in connection with such Transfer, the name and address of the proposed Transferee, and a copy of all existing executed and/or proposed documentation pertaining to the proposed Transfer, including all existing operative documents to be executed to evidence such Transfer or the agreements incidental or related to such Transfer, provided that Landlord shall have the right to require Tenant to utilize Landlord's standard Transfer documents in connection with the documentation of such Transfer, (iv) current financial statements of the proposed Transferee certified by an officer, partner or owner thereof, business credit and personal references and history of the proposed Transferee and any other information required by Landlord which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and (v) an executed estoppel certificate from Tenant in the form attached hereto as Exhibit E. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's review and processing fees, as well as any reasonable professional fees (including, without limitation, attorneys', accountants', architects', engineers' and consultants' fees) incurred by Landlord, within thirty (30) days after written request by Landlord.

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

for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee is of a character or reputation or engaged in a business which is not consistent with the quality of the Building or the Project;

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

14.2.3 The Transferee is either a governmental agency or instrumentality thereof;

14.2.4 The Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities to be undertaken in connection with the Transfer on the date consent is requested;

14.2.5 The proposed Transfer would cause a violation of another lease for space in the Project, or would give an occupant of the Project a right to cancel its lease;

14.2.6 The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right); or

14.2.7 Either the proposed Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the proposed Transferee, (i) occupies space in the Project at the time of the request for consent, or (ii) is negotiating or has negotiated with Landlord to lease space in the Project.

14.2.8 The Transferee does not intend to occupy the entire Premises and conduct its business therefrom for a substantial portion of the term of the Transfer.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2 (and does not exercise any recapture rights Landlord may have under Section 14.4 of this Lease), Tenant may within six (6) months after Landlord's consent, but not later than the expiration of said six-month period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease. Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under Section 14.2 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a suit for contract damages (other than damages for injury to, or interference with, Tenant's business including, without limitation, loss of profits, however occurring) and a declaratory judgment and an injunction for the relief sought, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee. Tenant shall indemnify, defend and hold harmless Landlord from any and all liability, losses, claims, damages, costs, expenses, causes of action and proceedings involving any third party or parties (including without limitation Tenant's proposed subtenant or assignee) who claim they were damaged by Landlord's wrongful withholding or conditioning of Landlord's consent.

14.3 **Transfer Premium.** If Landlord consents to a Transfer, as a condition thereto which the parties hereby agree is reasonable, Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium," as that term is defined in this Section 14.3, received by Tenant from such Transferee, after deducting the reasonable expenses incurred by Tenant for (i) any changes, alterations and improvements to the Premises in connection with the Transfer, and (ii) any commercially reasonable brokerage commissions in connection with the Transfer. "**Transfer Premium**" shall mean all rent, additional rent or other consideration payable by such Transferee in connection with the Transfer in excess of the Rent and Additional Rent payable by Tenant under this Lease during the term of the Transfer on a per rentable square foot basis if less than all of the Premises is transferred. "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by Transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment, or furniture transferred by Tenant to Transferee in connection with such Transfer. In the calculations of the Rent (as it

relates to the Transfer Premium calculated under this Section 14.3), the Rent paid during each annual period for the Subject Space, shall be computed after adjusting such rent to the actual effective rent to be paid, taking into consideration any and all leasehold concessions granted in connection therewith, including, but not limited to, any rent credit and tenant improvement allowance. For purposes of calculating any such effective rent all such concessions shall be amortized on a straight-line basis over the relevant term.

14.4 **Landlord's Option as to Subject Space.** Notwithstanding anything to the contrary contained in this Article 14, except with respect to a transfer made in accordance with the terms of either Section 14.6 or Section 14.8 of this Lease, Landlord shall have the option, by giving written notice to Tenant within ten (10) business days after receipt of any Transfer Notice, to recapture the Subject Space. Such recapture notice shall cancel and terminate this Lease with respect to the Subject Space as of the date stated in the Transfer Notice as the effective date of the proposed Transfer until the last day of the term of the Transfer as set forth in the Transfer Notice (or at Landlord's option, shall cause the Transfer to be made to Landlord or its agent, in which case the parties shall execute the Transfer documentation promptly thereafter). In the event of a recapture by Landlord, if this Lease shall be canceled with respect to less than the entire Premises, the Rent reserved herein shall be prorated on the basis of the number of rentable square feet retained by Tenant in proportion to the number of rentable square feet contained in the Premises, and this Lease as so amended shall continue thereafter in full force and effect, and upon request of either party, the parties shall execute written confirmation of the same. If Landlord declines, or fails to elect in a timely manner to recapture the Subject Space under this Section 14.4, then, provided Landlord has consented to the proposed Transfer, Tenant shall be entitled to proceed to transfer the Subject Space to the proposed Transferee, subject to provisions of this Article 14.

14.5 **Effect of Transfer.** If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, (iii) Tenant shall deliver to Landlord, promptly after execution, an original executed copy of all documentation pertaining to the Transfer in form reasonably acceptable to Landlord, (iv) Tenant shall furnish upon Landlord's request a complete statement, certified by an independent certified public accountant, or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium Tenant has derived and shall derive from such Transfer, and (v) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant or any guarantor of the Lease from any liability under this Lease, including, without limitation, in connection with the Subject Space. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books, records and papers of Tenant relating to any Transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any Transfer shall be found understated, Tenant shall, within thirty (30) days after demand, pay the deficiency, and if understated by more than two percent (2%), Tenant shall pay Landlord's costs of such audit.

14.6 **Additional Transfers.** For purposes of this Lease, the term "**Transfer**" shall also include (i) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the partners, or transfer of fifty percent (50%) or more of partnership interests, within a twelve (12)-month period, or the dissolution of the partnership without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (*i.e.*, whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant or (B) the sale or other transfer of an aggregate of fifty percent (50%) or more of the voting shares of Tenant (other than to immediate family members by reason of gift or death), within a twelve (12)-month period, or (C) the sale, mortgage, hypothecation or pledge of an aggregate of fifty percent (50%) or more of the value of the unencumbered assets of Tenant within a twelve (12)-month period.

14.7 **Occurrence of Default.** Any Transfer hereunder shall be subordinate and subject to the provisions of this Lease, and if this Lease shall be terminated during the term of any Transfer, Landlord shall have the right to: (i) treat such Transfer as cancelled and repossess the Subject Space by any lawful means, or (ii) require that such Transferee attorn to and recognize Landlord as its landlord under any such Transfer. If Tenant shall be in default under this Lease, Landlord is hereby irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any Transferee to make all payments under or in connection with the Transfer directly to Landlord

(which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured. Such Transferee shall rely on any representation by Landlord that Tenant is in default hereunder, without any need for confirmation thereof by Tenant. Upon any assignment, the assignee shall assume in writing all obligations and covenants of Tenant thereafter to be performed or observed under this Lease. No collection or acceptance of rent by Landlord from any Transferee shall be deemed a waiver of any provision of this Article 14 or the approval of any Transferee or a release of Tenant from any obligation under this Lease, whether theretofore or thereafter accruing. In no event shall Landlord's enforcement of any provision of this Lease against any Transferee be deemed a waiver of Landlord's right to enforce any term of this Lease against Tenant or any other person. If Tenant's obligations hereunder have been guaranteed, Landlord's consent to any Transfer shall not be effective unless the guarantor also consents to such Transfer.

14.8 **Non-Transfers.** Notwithstanding anything to the contrary contained in this Article 14, an assignment or subletting of all or a portion of the Premises to an affiliate of Tenant (an entity which is controlled by, controls, or is under common control with, Tenant), shall not be deemed a Transfer under this Article 14, and shall not require Landlord's prior written consent or approval, provided that Tenant notifies Landlord of any such assignment or sublease and promptly supplies Landlord with any documents or information requested by Landlord regarding such assignment or sublease to such affiliate, and further provided that such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease. "**Control,**" as used in this Section 14.8, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.

ARTICLE 15

SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

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

15.2 **Removal of Tenant Property by Tenant.** Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, damage by casualty (which shall be governed by the terms of Article 11 of this Lease) reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitions and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises (the "**Tenant Personal Property**"), and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal. Landlord shall have the right, at Tenant's sole cost and expense, to dispose of any Tenant Personal Property remaining in the Premises after Tenant's vacation of the same in any manner Landlord sees fit.

ARTICLE 16

HOLDING OVER

If Tenant holds over after the expiration of the Lease Term or earlier termination thereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Rent shall be payable at a monthly rate equal to the product of (i) the Rent applicable during the last rental period of the Lease Term under this Lease, and (ii) a percentage equal to the sum of (A) 150% and (B) the percentage by which Rent was increased at the time of the last increase of Rent during the Lease Term. Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

ARTICLE 17

ESTOPPEL CERTIFICATES

Within ten (10) days following a request in writing by Landlord, Tenant shall execute, acknowledge and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of **Exhibit E**, attached hereto (or such other form as may be required by any prospective mortgagee or purchaser of the Project, or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. Any such certificate may be relied upon by any prospective mortgagee or purchaser of all or any portion of the Project. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. At any time during the Lease Term, Landlord may require Tenant to provide Landlord with a current financial statement and financial statements of the two (2) years prior to the current financial statement year. Such statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant. Failure of Tenant to timely execute, acknowledge and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises and an acknowledgment by Tenant that statements included in the estoppel certificate are true and correct, without exception.

ARTICLE 18

SUBORDINATION

This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Building or Project and to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Building or Project or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof (or if any ground lease is terminated), to attorn, without any deductions or set-offs whatsoever, to the lienholder or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof (or to the ground lessor), if so requested to do so by such purchaser or lienholder or ground lessor, and to recognize such purchaser or lienholder or ground lessor as the lessor under this Lease, provided such lienholder or purchaser or ground lessor shall agree to accept this Lease and not disturb Tenant's occupancy, so long as

Tenant timely pays the rent and observes and performs the terms, covenants and conditions of this Lease to be observed and performed by Tenant. Landlord's interest herein may be assigned as security at any time to any lienholder. Tenant shall, within ten (10) written days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of the Tenant hereunder in the event of any foreclosure proceeding or sale. Tenant shall, within ten (10) days of written request by Landlord from time to time, (i) execute a Nondisturbance and Attornment Agreement in the form reasonably approved by Landlord's mortgagee in favor of any mortgagee of the Building or Project, and (ii) execute any other form of nondisturbance and attornment agreement (or subordination, nondisturbance and attornment agreement, or subordination of the applicable mortgagee's lien) reasonably required by any mortgagee of the Building or Project which provides comparable nondisturbance protection to Tenant in the event of a foreclosure.

ARTICLE 19

DEFAULTS; REMEDIES

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

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, when due unless such failure is cured within five (5) days after receipt of written notice; or

19.1.2 Except where a specific time period is otherwise set forth for Tenant's performance in this Lease, in which event the failure to perform by Tenant within such time period shall be a default by Tenant under this Section 19.1.2, any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided that if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure such default, but in no event exceeding a period of time in excess of ninety (90) days after written notice thereof from Landlord to Tenant; or

19.1.3 To the extent permitted by law, a general assignment by Tenant or any guarantor of the Lease for the benefit of creditors, or the taking of any corporate action in furtherance of bankruptcy or dissolution whether or not there exists any proceeding under an insolvency or bankruptcy law, or the filing by or against Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days; or

19.1.4 Abandonment of all or a substantial portion of the Premises by Tenant, for a period in excess of ninety (90) consecutive days; or

19.1.5 The failure by Tenant to observe or perform according to the provisions of Articles 5, 14, 17 or 18 of this Lease where such failure continues for more than two (2) business days after written notice from Landlord; or

19.1.6 Tenant's failure to occupy the Premises within ten (10) business days after the Lease Commencement Date.

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

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

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

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

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

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

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

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

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

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

19.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 19.2.1 and 19.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

19.3 **Subleases of Tenant**. Whether or not Landlord elects to terminate this Lease on account of any default by Tenant, as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises within ten (10) days of notice from Landlord, or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases,

licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

19.4 **Form of Payment After Default.** Following the occurrence of two (2) events of monetary default by Tenant, Landlord shall have the right to require that any or all subsequent amounts paid by Tenant to Landlord hereunder, whether to cure the default in question or otherwise, be paid in the form of money order, cashier's or certified check drawn on an institution acceptable to Landlord, or by other means reasonably approved by Landlord, notwithstanding any prior practice of accepting payments in any different form.

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

ARTICLE 20

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord. The foregoing covenant is in lieu of any other covenant express or implied.

ARTICLE 21

SECURITY DEPOSIT

Concurrent with Tenant's execution of this Lease, Tenant shall deposit with Landlord a security deposit (the "**Security Deposit**") in the amount set forth in Section 8 of the Summary, as security for the faithful performance by Tenant of all of its obligations under this Lease. If Tenant defaults with respect to any provisions of this Lease, including, but not limited to, the provisions relating to the payment of Rent, the removal of property and the repair of resultant damage, Landlord may, with notice to Tenant, but shall not be required to apply all or any part of the Security Deposit for the payment of any Rent or any other sum in default and Tenant shall, upon demand therefor, restore the Security Deposit to its original amount. Any unapplied portion of the Security Deposit shall be returned to Tenant, or, at Landlord's option, to the last assignee of Tenant's interest hereunder, within thirty (30) days following the expiration of the Lease Term. Tenant shall not be entitled to any interest on the Security Deposit. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any successor statute.

ARTICLE 22

INTENTIONALLY DELETED

ARTICLE 23

SIGNS

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

Building.

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

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

23.4 **Building Directory**. Tenant shall be provided one (1) line to display Tenant's name and location in the Building, and the names of Tenant's principal employees and subtenants.

ARTICLE 24

COMPLIANCE WITH LAW

Tenant shall not do anything or suffer anything to be done in or about the Premises or the Project which will in any way conflict with any law, statute, ordinance or other governmental rule, regulation or requirement now in force or which may hereafter be enacted or promulgated (collectively, "**Applicable Laws**"). At its sole cost and expense, Tenant shall promptly comply with all such Applicable Laws which relate to (i) Tenant's use of the Premises, (ii) any Alterations made by Tenant to the Premises, and any tenant improvements in the Premises, or (iii) the Base Building, but as to the Base Building, only to the extent such obligations are triggered by Alterations made by Tenant to the Premises, or the tenant improvements, or use of the Premises for non-typical general office use. Should any standard or regulation now or hereafter be imposed on Landlord or Tenant by a state, federal or local governmental body charged with the establishment, regulation and enforcement of occupational, health or safety standards for employers, employees, landlords or tenants, then Tenant agrees, at its sole cost and expense, to comply promptly with such standards or regulations. Tenant shall be responsible, at its sole cost and expense, to make all alterations to the Premises as are required to comply with the governmental rules, regulations, requirements or standards described in this Article 24. The judgment of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of said governmental measures, shall be conclusive of that fact as between Landlord and Tenant. Landlord shall comply with all Applicable Laws relating to the Base Building, provided that compliance with such Applicable Laws is not the responsibility of Tenant under this Lease, and provided further that Landlord's failure to comply therewith would prohibit Tenant from obtaining or maintaining a certificate of occupancy (or its equivalent) for the Premises, or would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees. Landlord shall be permitted to include in Operating Expenses any costs or expenses incurred by Landlord under this Article 24 to the extent consistent with the terms of Section 4.2.4 above.

ARTICLE 25

LATE CHARGES

If any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after said amount is due, then Tenant shall pay to Landlord a late charge equal to ten percent (10%) of the overdue amount plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within fifteen (15) days after the date they are due shall bear

interest from the date when due until paid at a rate per annum equal to the highest rate permitted by applicable law.

ARTICLE 26

LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

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

26.2 **Tenant's Reimbursement.** Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, upon delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 26.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease; and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law, including, without limitation, all legal fees and other amounts so expended. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

ARTICLE 27

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon reasonable notice to Tenant (except in the case of an emergency) to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, mortgagees or tenants, or to current or prospective mortgagees, ground or underlying lessors or insurers; (iii) post notices of nonresponsibility; or (iv) alter, improve or repair the Premises, the premises of other tenants in the Building, or the Building, or for structural alterations, repairs, additions, or improvements to the Building or the Building's systems and equipment. Notwithstanding anything to the contrary contained in this Article 27, Landlord may enter the Premises at any time to (A) perform services required of Landlord, including janitorial service; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant which Tenant fails to perform. Landlord may make any such entries without the abatement of Rent and may take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises. No provision of this Lease shall be construed as obligating Landlord to perform any repairs, alterations or decorations except as otherwise expressly agreed to be performed by Landlord herein.

ARTICLE 28

TENANT PARKING

Tenant shall rent from Landlord, commencing on the Lease Commencement Date, the amount of parking passes set forth in Section 9 of the Summary, on a monthly basis throughout the Lease Term, which parking passes shall pertain to the Project parking facility. Tenant shall pay to Landlord for automobile parking passes on a monthly basis the prevailing rate charged

from time to time at the location of such parking passes. In addition, Tenant shall be responsible for the full amount of any taxes imposed by any governmental authority in connection with the renting of such parking passes by Tenant or the use of the parking facility by Tenant. Tenant's continued right to use the parking passes is conditioned upon Tenant abiding by all rules and regulations which are prescribed from time to time for the orderly operation and use of the parking facility where the parking passes are located, including any sticker or other identification system established by Landlord, Tenant's cooperation in seeing that Tenant's employees and visitors also comply with such rules and regulations and Tenant not being in default under this Lease. Landlord specifically reserves the right to change the location, size, configuration, design, layout and all other aspects of the Project parking facility at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close-off or restrict access to the Project parking facility for purposes of permitting or facilitating any such construction, alteration or improvements or cease providing the parking passes if space is no longer available. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. The parking passes rented by Tenant pursuant to this Article 28 are provided to Tenant solely for use by Tenant's own personnel and such passes may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior approval. Tenant may validate visitor parking by such method or methods as the Landlord may establish, at the validation rate from time to time generally applicable to visitor parking.

ARTICLE 29

MISCELLANEOUS PROVISIONS

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

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

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

29.4 **Modification of Lease.** Should any current or prospective mortgagee or ground lessor for the Building or Project require a modification of this Lease, which modification will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) days following a request therefor. At the request of Landlord or any mortgagee or ground lessor, Tenant agrees to execute a short form of Lease and deliver the same to Landlord within ten (10) days following the request therefor.

29.5 **Transfer of Landlord's Interest.** Tenant acknowledges that Landlord has the right to transfer all or any portion of its interest in the Project or Building and in this Lease, and Tenant agrees that in the event of any such transfer, Landlord shall automatically be released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of Landlord's obligations hereunder after the date of transfer and such transferee shall be deemed to have fully assumed and be liable for all obligations of this Lease to be performed by Landlord, including the return of any Security Deposit, and Tenant shall attorn to

such transferee. Tenant further acknowledges that Landlord may assign its interest in this Lease to a mortgage lender as additional security and agrees that such an assignment shall not release Landlord from its obligations hereunder and that Tenant shall continue to look to Landlord for the performance of its obligations hereunder.

29.6 **Prohibition Against Recording.** Except as provided in Section 29.4 of this Lease, neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant.

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

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

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

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

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

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

29.13 **Landlord Exculpation.** The liability of Landlord or the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Project or the Premises shall be limited solely and exclusively to an amount which is equal to the lesser of (a) the interest of Landlord in the Building or (b) the equity interest Landlord would have in the Building if the Building were encumbered by third-party debt in an amount equal to eighty percent (80%) of the value of the Building (as such value is determined by Landlord). Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Section 29.13 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision of this Lease, neither Landlord nor Tenant shall be liable to the other party for any consequential damages for a breach or default under this Lease, provided that this sentence shall not be applicable to any consequential damages which may be incurred by Landlord relating to, or in connection with any holdover by Tenant after the expiration of the Lease Term subject to and in accordance with the provisions of Article 16 hereof.

29.14 **Entire Agreement.** It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease constitutes the parties'

entire agreement with respect to the leasing of the Premises and supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

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

29.16 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease and except as to Tenant's obligations under Articles 5 and 24 of this Lease (collectively, a "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

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

29.18 **Notices.** All notices, demands, statements, designations, approvals or other communications (collectively, "**Notices**") given or required to be given by either party to the other hereunder or by law shall be in writing, shall be (A) sent by United States certified or registered mail, postage prepaid, return receipt requested ("**Mail**"), (B) transmitted by telecopy, if such telecopy is promptly followed by a Notice sent by Mail, (C) delivered by a nationally recognized overnight courier, or (D) delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to Tenant or Landlord at the appropriate address set forth in Section 10 or 11 of the Summary, as appropriate, or to such other place as either party may from time to time designate in a Notice to the other. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) the date the telecopy is transmitted, (iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made or attempted to be made. If Tenant is notified of the identity and address of Landlord's mortgagee or ground or underlying lessor, Tenant shall give to such mortgagee or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee or ground or underlying lessor shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant.

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

29.20 **Authority.** If Tenant is a corporation, trust or partnership, each individual executing this Lease on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Lease and that each person signing on behalf of Tenant is authorized to do so. In such event, Tenant shall, within ten (10) days after execution of this Lease, deliver to Landlord satisfactory evidence of such authority and, if a corporation, upon demand by Landlord, also deliver to Landlord satisfactory evidence of (i) good standing in Tenant's state of incorporation and (ii) qualification to do business in California.

29.21 **Attorneys' Fees.** In the event that either Landlord or Tenant should bring suit for the possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provision of this Lease or for any other relief against the other, then all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party therein shall

be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

29.22 **Governing Law; WAIVER OF TRIAL BY JURY.** This Lease shall be construed and enforced in accordance with the laws of the State of California. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF CALIFORNIA, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NONPAYMENT OF BASE RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

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

29.24 **Brokers.** Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only the real estate brokers or agents specified in Section 12 of the Summary (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party.

29.25 **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord.

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

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

29.28 **Confidentiality.** Tenant acknowledges that the content of this Lease and any related documents are confidential information. Tenant shall keep such confidential information strictly confidential and shall not disclose such confidential information to any person or entity other than Tenant's financial, legal, and space planning consultants.

29.29 **Transportation Management.** Landlord has entered into an agreement with the Department of City Planning to implement a Transportation Management Program ("**TMP**") for

tenants and their employees, and to participate in a program designed to coordinate commute alternatives, marketing, and brokerage for greater downtown employees. During the term of the TMP, Landlord agrees to provide transportation brokerage and commute assistance services to Tenant, and to assist Tenant in meeting the transportation needs of its employees. Tenant agrees to cooperate with and assist Landlord's TMP Coordinator ("**Coordinator**"), through designation of a responsible employee, to distribute to Tenant's employees written materials encouraging the use of public transit and ridesharing, and to distribute and return to the Coordinator transportation survey questionnaire forms.

29.30 **Building Renovations**. It is specifically understood and agreed that Landlord has made no representation or warranty to Tenant and has no obligation and has made no promises to alter, remodel, improve, renovate, repair or decorate the Premises, Building, or any part thereof and that no representations respecting the condition of the Project, Premises or the Building, or the areas in the vicinity of the Project have been made by Landlord to Tenant except as specifically set forth herein. However, Tenant hereby acknowledges that Landlord is currently renovating or may during the Lease Term renovate, improve, alter, or modify (collectively, the "**Renovations**") the Project, the Building and/or the Premises including without limitation the parking structure, common areas, systems and equipment, roof, and structural portions of the same, which Renovations may include, without limitation, (i) installing sprinklers in the Building common areas and tenant spaces, (ii) modifying the common areas and tenant spaces to comply with applicable laws and regulations, including regulations relating to the physically disabled, seismic conditions, and building safety and security, (iii) installing new floor covering, lighting, and wall coverings in the Building common areas, and (iv) creating additional parking areas or occupied space within the Project, and in connection with any Renovations, Landlord may, among other things, erect scaffolding or other necessary structures in the Building, limit or eliminate access to portions of the Project, including portions of the common areas, or perform work in the Building, which work may create noise, dust or leave debris in the Building. Similarly, other properties in the vicinity of the Project may undergo substantial construction or renovation during the Lease Term (the "Area Renovations"), which may cause substantial disturbance to traffic and parking, and may cause dust, noise and vibrations which may affect the Project. Tenant hereby agrees that such Renovations or Area Renovations and Landlord's actions in connection with such Renovations or Area Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of Rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the Renovations or Area Renovations, nor shall Tenant be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises or of Tenant's personal property or improvements resulting from the Renovations or Area Renovations or Landlord's actions in connection with such Renovations or Area Renovations, or for any inconvenience or annoyance occasioned by such Renovations or Area Renovations or Landlord's actions.

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

29.32 **Communications and Computer Lines**. Tenant may install, maintain, replace, remove or use any communications or computer wires and cables (collectively, the "**Lines**") at the Project in or serving the Premises, provided that (i) Tenant shall obtain Landlord's prior written consent, use an experienced and qualified contractor approved in writing by Landlord, and comply with all of the other provisions of Articles 7 and 8 of this Lease, (ii) an acceptable number of spare Lines and space for additional Lines shall be maintained for existing and future occupants of the Project, as determined in Landlord's reasonable opinion, (iii) the Lines therefor (including riser cables) shall be appropriately insulated to prevent excessive electromagnetic fields or radiation, and shall be surrounded by a protective conduit reasonably acceptable to Landlord, (iv) any new or existing Lines servicing the Premises shall comply with all applicable governmental laws and regulations, (v) as a condition to permitting the installation of new Lines, Landlord may require that Tenant remove existing Lines located in or serving the Premises and repair any damage in connection with such removal, and (vi) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require that Tenant remove any Lines located in or serving the Premises which are installed in violation of these provisions, or which

are at any time in violation of any laws or represent a dangerous or potentially dangerous condition. Landlord makes no representation or assurances with regard to the suitability, available or capacity of the Building's telephone and communication distribution network or risers within or service to the Building for Tenant's communication needs.

29.33 **Development of the Project.**

29.33.1 **Subdivision.** Landlord reserves the right to further subdivide all or a portion of the Project. Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents needed to conform this Lease to the circumstances resulting from such subdivision.

29.33.2 **The Other Improvements.** If portions of the Project or property adjacent to the Project (collectively, the "**Other Improvements**") are owned by an entity other than Landlord, Landlord, at its option, may enter into an agreement with the owner or owners of any or all of the Other Improvements to provide (i) for reciprocal rights of access and/or use of the Project and the Other Improvements, (ii) for the common management, operation, maintenance, improvement and/or repair of all or any portion of the Project and the Other Improvements, (iii) for the allocation of a portion of the Direct Expenses to the Other Improvements and the operating expenses and taxes for the Other Improvements to the Project, and (iv) for the use or improvement of the Other Improvements and/or the Project in connection with the improvement, construction, and/or excavation of the Other Improvements and/or the Project. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to convey all or any portion of the Project or any other of Landlord's rights described in this Lease.

29.33.3 **Construction of Project and Other Improvements.** Tenant acknowledges that portions of the Project and/or the Other Improvements may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, obstruction of access, etc. which are in excess of that present in a fully constructed project. Tenant hereby waives any and all rent offsets or claims of constructive eviction which may arise in connection with such construction.

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

"Landlord":

STOCKBRIDGE/MCC-CHINA BASIN L.L.C.,
a Delaware limited liability company

By: _____
Its: Authorized Representative

"Tenant":

FIBERTOWER,
a Delaware corporation

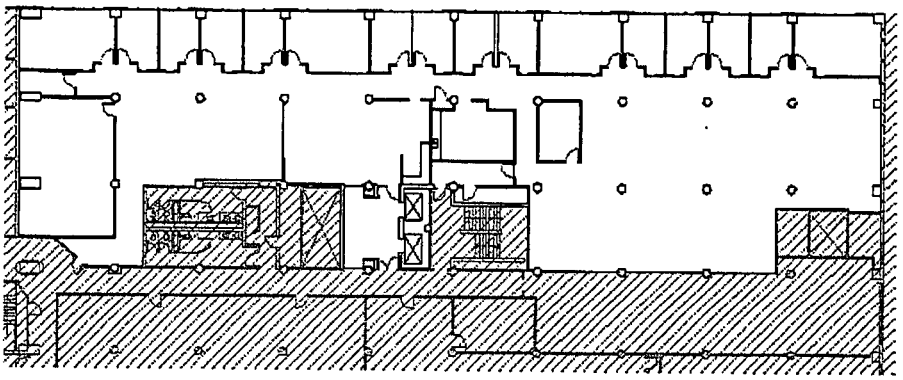
By: _____
Its: CEO

By: _____
Its: _____

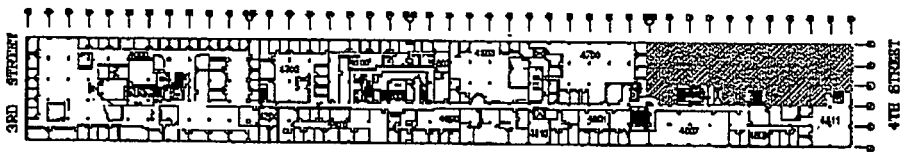
EXHIBIT A

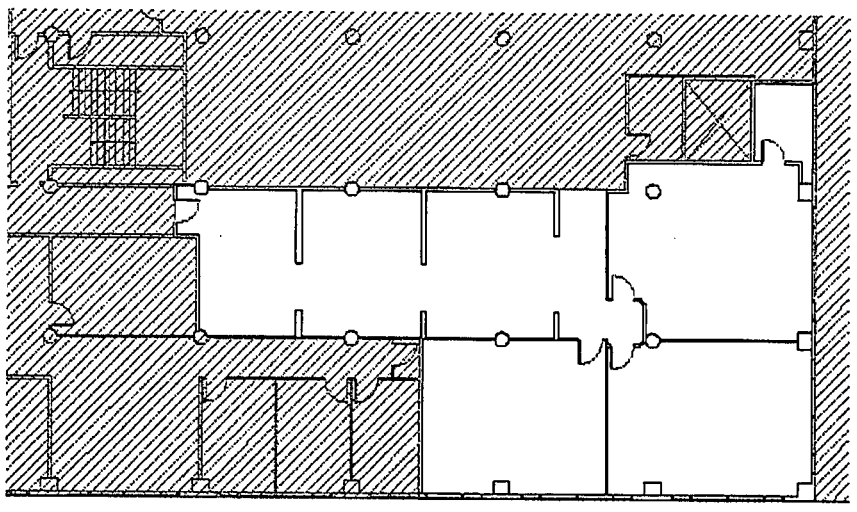
CHINA BASIN LANDING

OUTLINE OF PREMISES



SUITE 4800 – EXISTING CONDITIONS – 12,188 R.S.F.





SUITE 4811 – EXISTING CONDITIONS – 3,513 R.S.F.

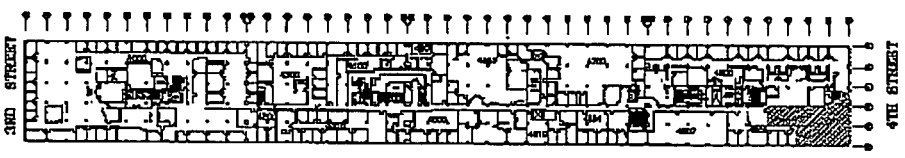


EXHIBIT B

CHINA BASIN LANDING

INTENTIONALLY DELETED

EXHIBIT C

CHINA BASIN LANDING

NOTICE OF LEASE TERM DATES

To: _____
_____
_____
_____

Re: Office Lease dated _____, 20__ between _____, a _____ ("Landlord"), and _____, a _____ ("Tenant") concerning Suite _____ on floor(s) _____ of the office building located at _____, San Francisco, California.

Gentlemen:

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

1. The Lease Term shall commence on or has commenced on _____ for a term of _____ ending on _____.

2. Rent commenced to accrue on _____, in the amount of _____.

3. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.

4. Your rent checks should be made payable to _____ at _____.

5. The exact number of rentable/usable square feet within the Premises is _____square feet.

6. Tenant's Share as adjusted based upon the exact number of usable square feet within the Premises is _____%.

"Landlord":

_____,
a _____

By: _____
Its: _____

Agreed to and Accepted
as of _____, 20___.

"Tenant":

_____
a _____

By: _____
Its: _____

EXHIBIT D

CHINA BASIN LANDING

RULES AND REGULATIONS

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

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys will be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord. Upon the termination of this Lease, Tenant shall restore to Landlord all keys of stores, offices, and toilet rooms, either furnished to, or otherwise procured by, Tenant and in the event of the loss of keys so furnished, Tenant shall pay to Landlord the cost of replacing same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such changes.

2. Landlord reserves the right to close and keep locked all entrance and exit doors of the Building during such hours as are customary for comparable buildings in the vicinity of the Building. Tenant, its employees and agents must be sure that the doors to the Building are securely closed and locked when leaving the Premises if it is after the normal hours of business for the Building. Any tenant, its employees, agents or any other persons entering or leaving the Building at any time when it is so locked, or any time when it is considered to be after normal business hours for the Building, may be required to sign the Building register. Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged pass for access to the Building. Landlord will furnish passes to persons for whom Tenant requests same in writing. Tenant shall be responsible for all persons for whom Tenant requests passes and shall be liable to Landlord for all acts of such persons. The Landlord and his agents shall in no case be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to prevent access to the Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

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

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

5. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the tenant who, or whose servants, employees, agents, visitors or licensees shall have caused same.

6. Tenant shall not overload the floor of the Premises, nor mark, drive nails or screws, or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's prior written consent. Tenant shall not purchase spring water, ice, towel, linen, maintenance or other like services from any person or persons not approved by Landlord.

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

8. Tenant shall not use or keep in or on the Premises, the Building, or the Project any kerosene, gasoline, explosive material, corrosive material, material capable of emitting toxic fumes, or other inflammable or combustible fluid chemical, substitute or material. Tenant shall provide material safety data sheets for any Hazardous Material used or kept on the Premises.

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

10. Tenant shall not bring into or keep within the Project, the Building or the Premises any animals, birds, aquariums, or, except in areas designated by Landlord, bicycles or other vehicles.

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

12. The Premises shall not be used for manufacturing or for the storage of merchandise except as such storage may be incidental to the use of the Premises provided for in the Summary. Tenant shall not occupy or permit any portion of the Premises to be occupied as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of liquor, narcotics, or tobacco in any form, or as a medical office, or as a barber or manicure shop, or as an employment bureau without the express prior written consent of Landlord. Tenant shall not engage or pay any employees on the Premises except those actually working for such tenant on the Premises nor advertise for laborers giving an address at the Premises.

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

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

15. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to ensure the most effective operation of the Building's heating and air conditioning system, and shall refrain from attempting to adjust any controls. Tenant shall participate in recycling programs undertaken by Landlord

16. Tenant shall store all its trash and garbage within the interior of the Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in San Francisco, California without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and

elevators provided for such purposes at such times as Landlord shall designate. If the Premises is or becomes infested with vermin as a result of the use or any misuse or neglect of the Premises by Tenant, its agents, servants, employees, contractors, visitors or licensees, Tenant shall forthwith, at Tenant's expense, cause the Premises to be exterminated from time to time to the satisfaction of Landlord and shall employ such licensed exterminators as shall be approved in writing in advance by Landlord.

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

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

19. Tenant hereby acknowledges that Landlord shall have no obligation to provide guard service or other security measures for the benefit of the Premises, the Building or the Project. Tenant hereby assumes all responsibility for the protection of Tenant and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the Premises closed, whether or not Landlord, at its option, elects to provide security protection for the Project or any portion thereof. Tenant further assumes the risk that any safety and security devices, services and programs which Landlord elects, in its sole discretion, to provide may not be effective, or may malfunction or be circumvented by an unauthorized third party, and Tenant shall, in addition to its other insurance obligations under this Lease, obtain its own insurance coverage to the extent Tenant desires protection against losses related to such occurrences. Tenant shall cooperate in any reasonable safety or security program developed by Landlord or required by law.

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

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

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

EXHIBIT E

CHINA BASIN LANDING

FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned as Tenant under that certain Office Lease (the "Lease") made and entered into as of _____, 200_ by and between _____ as Landlord, and the undersigned as Tenant, for Premises on the _____ floor(s) of the office building located at _____, San Francisco, California _____, certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Premises and the project of which the Premises are a part.

2. The undersigned currently occupies the Premises described in the Lease, the Lease Term commenced on _____, and the Lease Term expires on _____, and the undersigned has no option to terminate or cancel the Lease or to purchase all or any part of the Premises, the Building and/or the Project.

3. Base Rent became payable on _____.

4. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A.

5. Tenant has not transferred, assigned, or sublet any portion of the Premises nor entered into any license or concession agreements with respect thereto except as follows:

6. Tenant shall not modify the documents contained in Exhibit A without the prior written consent of Landlord's mortgagee.

7. All monthly installments of Base Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through _____. The current monthly installment of Base Rent is $_____.

8. All conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and Landlord is not in default thereunder. In addition, the undersigned has not delivered any notice to Landlord regarding a default by Landlord thereunder.

9. No rental has been paid more than thirty (30) days in advance and no security has been deposited with Landlord except as provided in the Lease.

10. As of the date hereof, there are no existing defenses or offsets, to the undersigned's knowledge, claims or any basis for a claim, that the undersigned has against Landlord.

11. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

12. There are no actions pending against the undersigned or any guarantor of the Lease under the bankruptcy or similar laws of the United States or any state.

13. Other than in compliance with all applicable laws and incidental to the ordinary course of the use of the Premises, the undersigned has not used or stored any hazardous substances in the Premises.

14. To the undersigned's knowledge, all tenant improvement work to be performed by Landlord under the Lease has been completed in accordance with the Lease and has been accepted by the undersigned and all reimbursements and allowances due to the undersigned under the Lease in connection with any tenant improvement work have been paid in full.

The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee or prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making such loan or acquiring such property.

Executed at _____ on the ____ day of _____, 20_.

"Tenant":

_____,
a _____

By: _____
Its: _____

By: _____
Its: _____

EXECUTED COPY

FIRST AMENDMENT TO OFFICE LEASE

This FIRST AMENDMENT TO OFFICE LEASE (this "**First Amendment**") is made and entered into as of the 19th day of January 2006, by and between CHINA BASIN/SAN FRANCISCO, L.L.C., a Delaware limited liability company ("**Landlord**"), and FIBERTOWER CORPORATION, a Delaware corporation ("**Tenant**").

RECITALS:

A. Stockbridge/MCC-China Basin L.L.C, a Delaware limited liability company (the "**Prior Landlord**"), predecessor-in-interest to Landlord, and Tenant entered into that certain Office Lease dated June 30, 2004 (the "**Office Lease**"), whereby Prior Landlord leased to Tenant and Tenant leased from Prior Landlord approximately 15,699 rentable square feet of space located in Suites 4800 and 4811 (collectively, the "**Existing Premises**") on the fourth (4th) floor of the building located at 185 Berry Street, San Francisco, California 94107 (the "**Building**"), commonly known as the Wharfside Building, in the project commonly known as China Basin Landing,

B. Tenant desires to (i) expand the Existing Premises to include that certain space consisting of approximately 6,416 rentable square feet of space commonly known as Suite 4700 and located on the fourth (4th) floor of the Building (the "**Expansion Premises**"), as delineated on **Exhibit A** attached hereto and made a part hereof, (ii) extend the Lease Term, and (iii) make other modifications to the Lease, and in connection therewith, Landlord and Tenant desire to amend the Lease as hereinafter provided.

AGREEMENT:

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

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this First Amendment.

2. **Modification of Premises**. Effective as of February 1, 2006 (the "**Expansion Commencement Date**"), Tenant shall lease from Landlord and Landlord shall lease to Tenant the Expansion Premises. Consequently, effective upon the Expansion Commencement Date, the Existing Premises shall be increased to include the Expansion Premises. Landlord and Tenant hereby acknowledge that such addition of the Expansion Premises to the Existing Premises shall, effective as of the Expansion Commencement Date; increase the size of the Premises to approximately 22,115 rentable square feet. The Existing Premises and the Expansion Premises may hereinafter collectively be referred to as the "**Premises.**"

3. **Lease Term**.

3.1. **Existing Premises**. Landlord and Tenant acknowledge that Tenant's lease of the Existing Premises is scheduled to expire on July 31, 2006, pursuant to the terms of the Lease. Landlord and Tenant hereby agree to extend the Lease Term for a period of three (3) years, from August 1, 2006, through July 31, 2009 (the "**Extended Term**"), on the terms and conditions set forth in this First Amendment, unless sooner terminated as provided in the Lease, as hereby amended.

3.2. **Expansion Term**. The term of Tenant's lease of the Expansion Premises (the "**Expansion Term**") shall commence on the Expansion Commencement Date and shall expire coterminously with Tenant's lease of the Existing Premises July 31, 2009, unless sooner terminated as provided in the Lease, as hereby amended.

4. **Base Rent**.

4.1. **Expansion Premises**. Commencing on the Expansion Commencement Date and continuing throughout July 31, 2006, Tenant shall pay to Landlord monthly installments of Base Rent for the Expansion Premises as follows:

Period During Expansion Term	Annualized Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
February 1, 2006 – July 31, 2006	$176,440.00	$14,703.33	$27.50

Concurrently with Tenant's execution of this First Amendment, Tenant shall pay to Landlord the Base Rent payable for the Expansion Premises for the first full month of the Expansion Term.

4.2. **Existing Premises**. Notwithstanding anything to the contrary in the Lease as hereby amended, prior to August 1, 2006, Tenant shall continue to pay Base Rent for the Existing Premises in accordance with the terms of Article 3 of the Lease.

4.3. **Entire Premises**. Commencing on August 1, 2006, and continuing throughout the Extended Term, Tenant shall pay to Landlord monthly installments of Base Rent for the entire Premises (*i.e.*, both the Expansion Premises and the Existing Premises) as follows:

Period During Extension Term	Annualized Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
August 1, 2006 – July 31, 2007	$608,162.50	$50,680.21	$27.50
August 1, 2007 – July 31, 2008	$630,277.50	$52,523.13	$28.50
August 1, 2008 – July 31, 2009	$652,392.50	$54,366.04	$29.50

4.4. **Abated Base Rent**. Provided that Tenant is not then in default of the Lease (as hereby amended), then (i) with respect to the Expansion Premises, during the period commencing on February 1, 2006, and ending on March 31, 2006, Tenant shall not be obligated to pay any Base Rent otherwise attributable to the Expansion Premises during such period, and (ii) with respect to the Existing Premises, during the period commencing on August 1, 2006, and ending on September 30, 2006, Tenant shall not be obligated to pay any Base Rent otherwise attributable to the Existing Premises during such period. Such abatement of Base Rent shall be referred to herein as the "**Rent Abatement**." Landlord and Tenant acknowledge that the amount of the Rent Abatement equals $29,406.66 with respect to the Expansion Premises and $71,953.76 with respect to the Expansion Premises.

4.5. **Tenant's Share of Building Direct Expenses**. Notwithstanding anything in the Lease, as hereby amended, to the contrary, prior to February 1, 2006, Tenant shall continue to pay Tenant's Share of the annual Direct Expenses in connection with the Existing Premises in accordance with the terms of the Lease. Commencing on February 1, 2006, with respect to Direct Expenses arising on or after February 1, 2006, for purposes of calculating the amount of Tenant's Share of the annual Direct Expenses which Tenant shall pay thereafter in connection with the entire Premises (*i.e.*, both the Expansion Premises and the Existing Premises), the following shall apply:

4.5.1 Tenant's Share shall equal 3.03%; and

4.5.2 the Base Year shall be the calendar year 2006.

5. **Expansion Improvements**. Except as specifically set forth in **Exhibit B** attached hereto, (i) Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Existing Premises or the Expansion Premises,

(ii) Tenant shall continue to accept the Existing Premises in its presently existing, "as-is" condition, and (iii) Tenant shall accept the Expansion Premises in its presently existing, "as-is" condition.

6. **Expansion Premises Furniture**. Landlord and Tenant hereby acknowledge that, in connection with Tenant's lease of the Expansion Premises, Tenant shall have the right to use, throughout the Expansion Term and at no additional cost, that certain furniture currently located in the Expansion Premises, all of which is listed on **Exhibit C**, attached hereto (collectively, the "**Licensed Furniture**"). Landlord hereby makes no representations or warranties regarding the condition of such Licensed Furniture, and Tenant shall accept such Licensed Furniture in its currently existing, "as-is" condition. Landlord shall have no obligation to maintain or repair such Licensed Furniture. Tenant hereby agrees that Tenant shall maintain and repair such Licensed Furniture in its current "as-is" condition (reasonable wear and tear excepted) and repair throughout the Expansion Term and at Tenant's sole cost and expense to its current "as-is" condition (reasonable wear and tear excepted). Landlord shall have the right, at any time during the Expansion Term, upon reasonable prior notice to Tenant, to inspect the Licensed Furniture to ensure Tenant's compliance with the terms of this Section 6. In the event Tenant fails to maintain and repair the Licensed Furniture in accordance with this Section 6, Landlord shall have the right (but not the obligation) to repair such Licensed Furniture, at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for the cost of such maintenance and repair within ten (10) days following Landlord's request therefor. In the event of irreparable damage to any item of the Licensed Furniture, the Tenant shall replace such damaged item with a reasonably similar item in substantially the same "as-is" condition as of the Expansion Commencement Date, at Tenant's sole cost and expense, prior to the expiration or earlier termination of the Expansion Term. With respect to the insurance which Tenant is obligated to maintain on its personal property during the term of the Lease pursuant to the terms and conditions of Section 10.3.2 of the Lease, Tenant shall cause such insurance to also cover the Licensed Furniture. Tenant shall not (i) remove any of the Licensed Furniture from the Premises, (iii) sell any of the Licensed Furniture, or (iv) give any third party a security interest or any other interest in such Licensed Furniture. Upon the expiration or earlier termination of the Lease, as hereby amended, Tenant shall promptly surrender such Licensed Furniture to Landlord at the Expansion Premises.

7. **Notices**. Notwithstanding anything to the contrary set forth in the Lease, effective as of the date of this First Amendment, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

c/o RREEF America L.L.C.
655 Commercial Street
San Francisco, California 94111
Attention: Ms. Lisa Vogel,
Vice President-District Manager

and

McCarthy Cook & Co.
185 Berry Street, Suite 140
San Francisco, California 94107
Attention: General Manager

and

Allen Matkins Leck Gamble & Mallory LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, California 90067
Attention: Anton N. Natsis, Esq.

8. **Broker**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this First Amendment other than McCarthy Cook & Co. and Cornish & Carey Commercial (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this First Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims,

demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party. The terms of this Section 8 shall survive the expiration or earlier termination of this First Amendment.

9. **Parking**. Effective as of the Expansion Commencement Date and continuing throughout the Expansion Term, Tenant shall be entitled to rent one (1) additional unreserved parking pass in connection with Tenant's lease of the Expansion Premises (the "**Expansion Parking Pass**"). Tenant shall lease such Expansion Parking Pass in accordance with the provisions of Article 28 of the Lease.

10. **Security Deposit**. Notwithstanding anything in the Lease to the contrary, the Security Deposit held by Landlord pursuant to the Lease, as amended hereby, shall equal $87,886.24. Landlord and Tenant acknowledge that, in accordance with Article 21 of the Lease, Tenant has previously delivered the sum of $57,563.00 (the "**Existing Security Deposit**") to Landlord as security for the faithful performance by Tenant of the terms, covenants and conditions of the Lease. Concurrently with Tenant's execution of this First Amendment, Tenant shall deposit with Landlord an amount equal to $30,323.24 to be held by Landlord as a part of the Security Deposit. To the extent that the total amount held by Landlord at any time as security for the Lease, as hereby amended, is less than $87,886.24, Tenant shall pay the difference to Landlord within ten (10) days following Tenant's receipt of notice thereof from Landlord.

11. **No Further Modification**. Except as set forth in this First Amendment, all of the terms and provisions of the Lease shall apply with respect to the Expansion Premises and shall remain unmodified and in full force and effect.

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

"LANDLORD"
CHINA BASIN/SAN FRANCISCO, LLC,
a Delaware limited liability company

By: CHINA BASIN LANDING, LLC,
a Delaware limited liability company,
its Manager

By: CALSMART L.L.C.,
a Delaware limited liability company,
its Member/Manager

By: RREEF AMERICA L.L.C.,
a Delaware limited liability company,
its Manager

By: Lisa Vogel
Lisa Vogel,
Vice President-District Manager

Date: 2-3-06

"TENANT"

FIBERTOWER CORPORATION,
a Delaware corporation

By: Scott Brady

Title: CEO

Date:

By:

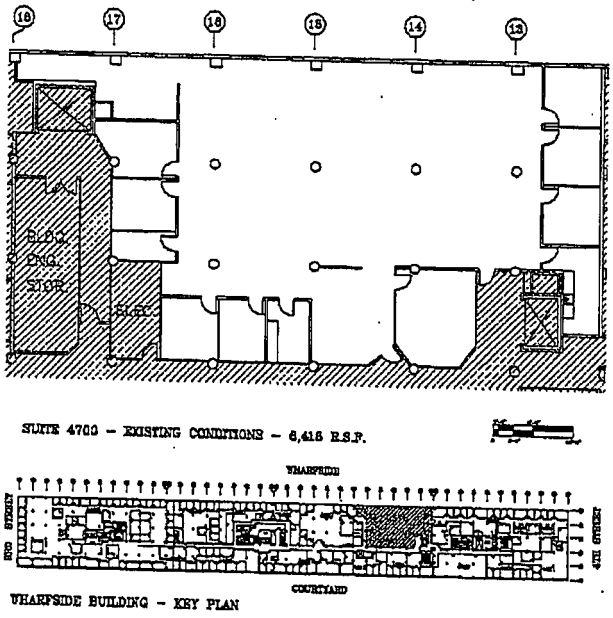
Title: VP Finance

Date: 1/26/06

EXHIBIT A

CHINA BASIN LANDING

OUTLINE OF EXPANSION PREMISES



OUTLINE OF EXISTING PREMISES

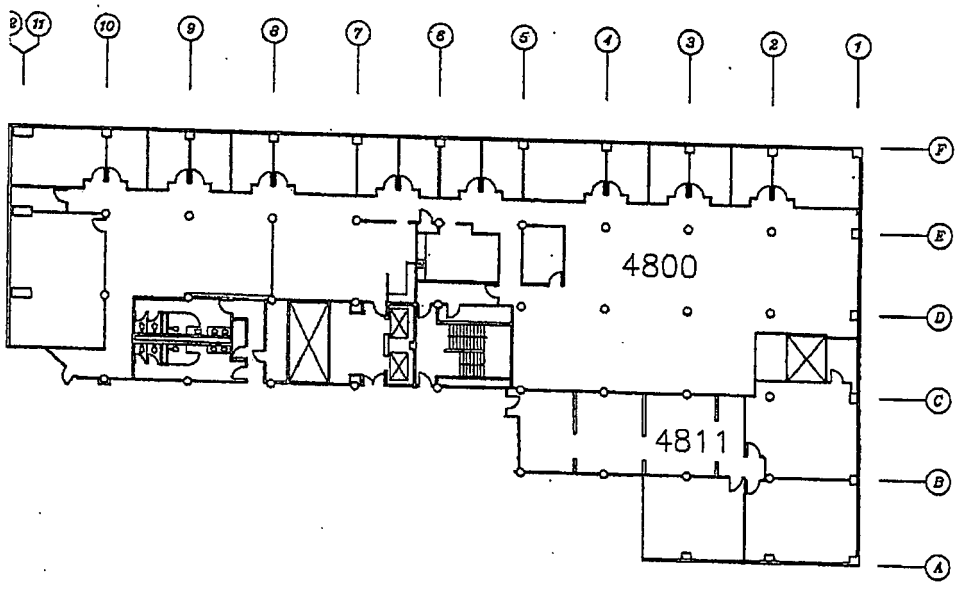


EXHIBIT B

CHINA BASIN LANDING

TENANT WORK LETTER

Except as specifically set forth herein, Landlord shall not be obligated to construct or install any improvements or facilities of any kind in the Expansion Premises, and Tenant shall accept the Expansion Premises in its currently-existing, "as-is" condition. Notwithstanding the foregoing, prior to Landlord's delivery of the Expansion Premises to Tenant, Landlord shall cause, at Landlord's sole cost, (i) the existing mechanical and electrical systems in the Expansion Premises to be in good working order and condition, and (ii) the exiting carpet within the Expansion Premises to be shampooed. Provided that Tenant and its agents do not interfere with Landlord's (or any of the Landlord Parties') work in the Building and/or the Expansion Premises, Landlord shall allow Tenant access to the Expansion Premises prior to the Expansion Commencement Date for the purpose of Tenant installing equipment or fixtures (including Tenant's data and telephone equipment) in the Expansion Premises. Prior to Tenant's entry into the Expansion Premises as permitted by the terms of this provision, Tenant shall submit a schedule to Landlord, for its reasonable approval, which schedule shall detail the timing and purpose of Tenant's entry. Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Building or Premises and against injury to any persons caused by Tenant's actions pursuant to this provision.

Landlord and Tenant acknowledge that Tenant has been occupying the Existing Premises pursuant to the Lease and that except as specifically set forth herein, Landlord shall not be obligated to construct or install any improvements or facilities of any kind in the Existing Premises, and Tenant shall continue to accept the Existing Premises in its currently-existing, "as-is" condition.

Notwithstanding the foregoing, Tenant shall be entitled to a one-time tenant improvement allowance (the "**Tenant Alteration Allowance**") equal to Thirty-Three Thousand One Hundred Seventy-Two and 50/100 Dollars ($33,172.50) (*i.e.*, approximately $1.50 for each of the 22,115 rentable square feet of the Premises) for the costs relating to construction of Alterations in the Premises and the refurbishment and alteration of Tenant's existing improvements which are permanently affixed to the Premises (collectively, the "**Tenant Alterations**"). The Tenant Alteration Allowance will be disbursed in accordance with Landlord's standard disbursement procedures, including, without limitation, following Landlord's receipt of (i) evidence (i.e., invoices or other documentation reasonably satisfactory to Landlord) of payment for the Tenant Alterations, and (ii) fully executed, unconditional lien releases from all contractors, subcontractors, laborers, materialmen, and suppliers used by Tenant in connection with the Tenant Alterations. The Tenant Alterations shall be constructed in accordance with the terms and conditions of Article 8 of the Lease. In no event shall Landlord be obligated to disburse any portion of the Tenant Alteration Allowance subsequent to January 31, 2007, nor shall Landlord be obligated to disburse any amount in excess of the Tenant Alteration Allowance in connection with the construction of the Tenant Alterations. No portion of the Tenant Alteration Allowance, if any, remaining after the construction of the Tenant Alterations shall be available for use by Tenant.

EXHIBIT C

FURNITURE

Reception Area
(1) Free Standing Laminate Reception Desk/Work-Surface
(1) Plastic Laminate Cube

File Cabinets Open Area
(2) Grey Hon Four-Drawer Lateral File
(1) Grey Two-Drawer Steel Case Lateral File
(17) Grey Three-Drawer Steel Case Lateral File
(1) Brown Two-Drawer Pedestal File
(2) Black Metal Three Shelve Bookcase

Chairs Open Area
(12 Burgundy Non-Rolling Side Chairs
(4) Black Non-Rolling Side Chairs
(4) Non-Rolling Side Chairs
(4) Burgundy Rolling Desk Chairs
(1) Black Rolling Desk Chair

Sever Room
(3) One Door Sever Racks
(1) Wall Mounted Entry Access System
(1) Above Ceiling 11/2 Ton AC Unit non-functioning
Kitchen
(1) Two-Door Refrigerator

Workstations
(23) Complete Haworth Workstations And Surfaces
(52) Black Under Counter Three Drawer Pedestal File
(4) Work-surfaces not within a Cubical Configuration
(1) Brown Under Counter Three-Drawer Pedestal File
(1) Grey Under Counter Three-Drawer Pedestal File

EXECUTED COPY

SECOND AMENDMENT TO OFFICE LEASE

This SECOND AMENDMENT TO OFFICE LEASE (this "**Second Amendment**") is made and entered into as of the 10th day of August 2006, by and between CHINA BASIN/SAN FRANCISCO, L.L.C., a Delaware limited liability company ("**Landlord**"), and FIBERTOWER CORPORATION, a Delaware corporation ("**Tenant**").

RECITALS:

A. Stockbridge/MCC-China Basin L.L.C, a Delaware limited liability company (the "**Prior Landlord**"), predecessor-in-interest to Landlord, and Tenant entered into that certain Office Lease dated June 30, 2004 (the "**Office Lease**"), whereby Landlord leases to Tenant and Tenant leases from Landlord approximately 15,699 rentable square feet of space located in Suites 4800 and 4811 (collectively, the "**Original Premises**") on the fourth (4th) floor of the building located at 185 Berry Street, San Francisco, California 94107 (the "**Building**"), commonly known as the Wharfside Building, in the project commonly known as China Basin Landing.

B. The Office Lease was subsequently amended by the terms of that certain First Amendment to Office Lease dated as of January 19, 2006 (the "**First Amendment**"), whereby Landlord and Tenant agreed to expand the Original Premises to include that certain space consisting of approximately 6,416 rentable square feet of space commonly known as Suite 4700 and located on the fourth (4th) floor of the Building (as used herein, the "**1st Amendment Expansion Premises**"). The Office Lease and the First Amendment are, collectively, the "**Lease**," and the Original Premises and the 1st Amendment Expansion Premises are, collectively, the "**Existing Premises**."

B. Tenant desires to further expand the Existing Premises to include that certain space consisting of approximately 2,335 rentable square feet of space commonly known as Suite 4809 and located on the fourth (4th) floor of the Building (the "**2nd Amendment Expansion Premises**"), as delineated on **Exhibit A** attached hereto and made a part hereof, (ii) extend the Lease Term, and (iii) make other modifications to the Lease, and in connection therewith, Landlord and Tenant desire to amend the Lease as hereinafter provided.

AGREEMENT:

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

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same meaning as is given such terms in the Lease unless expressly superseded by the terms of this Second Amendment.

2. **Modification of Premises**. Effective as of September 1, 2006 (the "**2nd Amendment Expansion Commencement Date**"), Tenant shall lease from Landlord and Landlord shall lease to Tenant the 2nd Amendment Expansion Premises. Consequently, effective upon the 2nd Amendment Expansion Commencement Date, the Existing Premises shall be increased to include the 2nd Amendment Expansion Premises. Landlord and Tenant hereby acknowledge that such addition of the 2nd Amendment Expansion Premises to the Existing Premises shall, effective as of the 2nd Amendment Expansion Commencement Date, increase the size of the Premises to approximately 24,450 rentable square feet. The Existing Premises and the 2nd Amendment Expansion Premises may hereinafter be collectively referred to as the "**Premises**."

3. **2nd Expansion Premises Term**. The term of Tenant's lease of the 2nd Amendment Expansion Premises (the "**2nd Expansion Premises Term**") shall commence on the 2nd Expansion Commencement Date and shall expire coterminously with Tenant's lease of the

Existing Premises July 31, 2009, unless sooner terminated as provided in the Lease, as hereby amended.

4. **Base Rent**.

4.1. **2nd Amendment Expansion Premises**. Commencing on the 2nd Amendment Expansion Commencement Date and continuing throughout the 2nd Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the 2nd Amendment Expansion Premises as follows:

Period During 2nd Expansion Premises Term	Annualized Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
September 1, 2006 – July 31, 2007	$73,552.50	$6,129.38	$31.50
August 1, 2007 – July 31, 2008	$75,887.50	$6,323.96	$32.50
August 1, 2008 – July 31, 2009	$78,222.50	$6,518.54	$33.50

Concurrently with Tenant's execution of this Second Amendment, Tenant shall pay to Landlord the Base Rent payable for the 2nd Amendment Expansion Premises for the first full month of the 2nd Expansion Premises Term.

4.2. **Existing Premises**. Notwithstanding anything to the contrary in the Lease as hereby amended, Tenant shall continue to pay Base Rent for the Existing Premises in accordance with the terms of Article 3 of the Lease as amended by the terms of Section 4 of the First Amendment.

4.3. **Tenant's Share of Building Direct Expenses**. Notwithstanding anything in the Lease, as hereby amended, to the contrary, prior to September 1, 2006, Tenant shall continue to pay Tenant's Share of the annual Direct Expenses in connection with the Existing Premises in accordance with the terms of the Lease. Commencing on September 1, 2006, with respect to Direct Expenses arising on or after September 1, 2006, for purposes of calculating the amount of Tenant's Share of the annual Direct Expenses which Tenant shall pay thereafter in connection with the entire Premises (*i.e.*, both the 2nd Amendment Expansion Premises and the Existing Premises), Tenant's Share shall equal 3.35%, and the Base Year shall be calendar year 2006.

5. **Improvements**. Except as specifically set forth in **Exhibit B** attached hereto, (i) Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Existing Premises or the 2nd Amendment Expansion Premises, (ii) Tenant shall continue to accept the Existing Premises in its presently existing, "as-is" condition, and (iii) Tenant shall accept the 2nd Amendment Expansion Premises in its presently existing, "as-is" condition.

6. **Notices**. Notwithstanding anything to the contrary set forth in the Lease, effective as of the date of this Second Amendment, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

c/o RREEF America L.L.C.
575 Market Street, Suite 350
San Francisco, CA 94105
Attention: Ms. Lisa Vogel;
Vice President-District Manager

and

McCarthy Cook & Co.
185 Berry Street, Suite 140
San Francisco, California 94107

Existing Premises July 31, 2009, unless sooner terminated as provided in the Lease, as hereby amended.

4. **Base Rent**.

4.1. **2nd Amendment Expansion Premises**. Commencing on the 2nd Amendment Expansion Commencement Date and continuing throughout the 2nd Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the 2nd Amendment Expansion Premises as follows:

Period During 2nd Expansion Premises Term	Annualized Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
September 1, 2006 – July 31, 2007	$73,552.50	$6,129.38	$31.50
September 1, 2007 – July 31, 2008	$75,887.50	$6,323.96	$32.50
September 1, 2008 – July 31, 2009	$78,222.50	$6,518.54	$33.50

Concurrently with Tenant's execution of this Second Amendment, Tenant shall pay to Landlord the Base Rent payable for the 2nd Amendment Expansion Premises for the first full month of the 2nd Expansion Premises Term.

4.2. **Existing Premises**. Notwithstanding anything to the contrary in the Lease as hereby amended, Tenant shall continue to pay Base Rent for the Existing Premises in accordance with the terms of Article 3 of the Lease as amended by the terms of Section 4 of the First Amendment.

4.3. **Tenant's Share of Building Direct Expenses**. Notwithstanding anything in the Lease, as hereby amended, to the contrary, prior to September 1, 2006, Tenant shall continue to pay Tenant's Share of the annual Direct Expenses in connection with the Existing Premises in accordance with the terms of the Lease. Commencing on September 1, 2006, with respect to Direct Expenses arising on or after September 1, 2006, for purposes of calculating the amount of Tenant's Share of the annual Direct Expenses which Tenant shall pay thereafter in connection with the entire Premises (*i.e.*, both the 2nd Amendment Expansion Premises and the Existing Premises), Tenant's Share shall equal 3.35%, and the Base Year shall be calendar year 2006.

5. **Improvements**. Except as specifically set forth in **Exhibit B** attached hereto, (i) Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Existing Premises or the 2nd Amendment Expansion Premises, (ii) Tenant shall continue to accept the Existing Premises in its presently existing, "as-is" condition, and (iii) Tenant shall accept the 2nd Amendment Expansion Premises in its presently existing, "as-is" condition.

6. **Notices**. Notwithstanding anything to the contrary set forth in the Lease, effective as of the date of this Second Amendment, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

c/o RREEF America L.L.C.
575 Market Street, Suite 350
San Francisco, CA 94105
Attention: Ms. Lisa Vogel,
Vice President-District Manager

and

McCarthy Cook & Co.
185 Berry Street, Suite 140
San Francisco, California 94107

Attention: General Manager

and

Allen Matkins Leck Gamble Mallory & Natsis LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, California 90067
Attention: Anton N. Natsis, Esq.

7. **Broker**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Second Amendment other than McCarthy Cook & Co. and Cornish & Carey Commercial (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Second Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including, without limitation, reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party. The terms of this Section 7 shall survive the expiration or earlier termination of this Second Amendment.

8. **Parking**. Effective as of the 2nd Amendment Expansion Commencement Date and continuing throughout the 2nd Expansion Premises Term, Tenant shall be entitled to rent one (1) additional unreserved parking pass in connection with Tenant's lease of the 2nd Amendment Expansion Premises (the "**Expansion Parking Pass**"). Tenant shall lease such Expansion Parking Pass in accordance with the provisions of Article 28 of the Lease.

9. **Security Deposit**. Notwithstanding anything in the Lease to the contrary, the Security Deposit held by Landlord pursuant to the Lease, as amended hereby, shall equal $94,404.78. Landlord and Tenant acknowledge that, in accordance with Article 21 of the Office Lease and Section 9 of the First Amendment, Tenant has previously delivered the sum of $87,886.24 (the "**Existing Security Deposit**") to Landlord as security for the faithful performance by Tenant of the terms, covenants and conditions of the Lease. Concurrently with Tenant's execution of this Second Amendment, Tenant shall deposit with Landlord an amount equal to $6,518.54 to be held by Landlord as a part of the Security Deposit. To the extent that the total amount held by Landlord at any time as security for the Lease, as hereby amended, is less than $94,404.78, Tenant shall pay the difference to Landlord within ten (10) days following Tenant's receipt of notice thereof from Landlord.

10. **No Further Modification**. Except as set forth in this Second Amendment, all of the terms and provisions of the Lease shall apply with respect to the 2nd Amendment Expansion Premises and shall remain unmodified and in full force and effect.

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

"LANDLORD"
CHINA BASIN/SAN FRANCISCO, LLC,
a Delaware limited liability company

By: CHINA BASIN LANDING, LLC,
a Delaware limited liability company,
its Manager

By: CALSMART L.L.C.,
a Delaware limited liability company,
its Member/Manager

By: RREEF AMERICA L.L.C.,
a Delaware limited liability company,
its Manager

By: _____
Lisa Vogel,
Vice President-District Manager

Date: 8-23-06

"TENANT"

FIBERTOWER CORPORATION,
a Delaware corporation

By: _____

Title: CEO

Date: 8/18/06

By: _____

Title: _____

Date: _____

EXHIBIT A

CHINA BASIN LANDING

OUTLINE OF 2ND AMENDMENT EXPANSION PREMISES

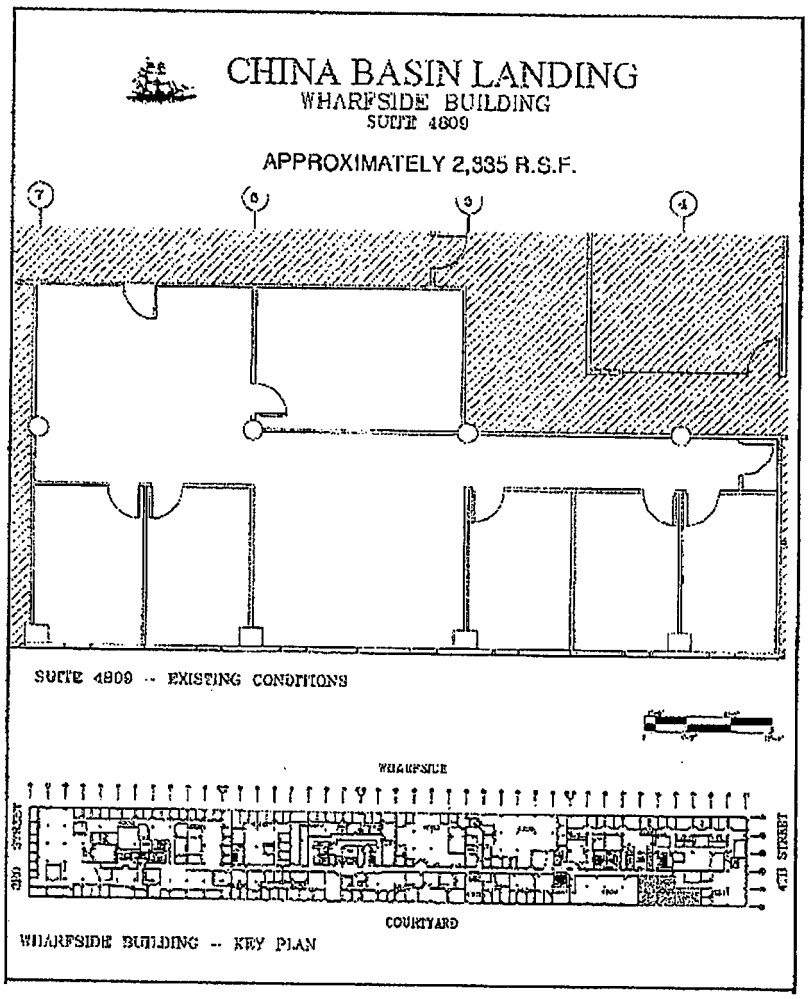


EXHIBIT B

CHINA BASIN LANDING

TENANT WORK LETTER

Except as specifically set forth herein, Landlord shall not be obligated to construct or install any improvements or facilities of any kind in the 2nd Amendment Expansion Premises, and Tenant shall accept the 2nd Amendment Expansion Premises in its currently-existing, "as-is" condition. Notwithstanding the foregoing, prior to Landlord's delivery of the 2nd Amendment Expansion Premises to Tenant, Landlord shall cause, at Landlord's sole cost, (i) the existing electrical outlets and switches, lighting and mechanical systems in the 2nd Amendment Expansion Premises to be in good working order and condition. Provided that Tenant and its agents do not interfere with Landlord's (or any of the Landlord Parties') work in the Building and/or the 2nd Amendment Expansion Premises, Landlord shall allow Tenant access to the 2nd Amendment Expansion Premises upon the full execution and delivery of this Second Amendment and Landlord's receipt of the Base Rent and Security Deposit amounts due upon Tenant's execution of this Second Amendment as set forth herein, for the purpose of Tenant constructing its Tenant Alterations (defined below) in the 2nd Amendment Expansion Premises. Tenant shall hold Landlord harmless from and indemnify, protect and defend Landlord against any loss or damage to the Building or Premises and against injury to any persons caused by Tenant's actions pursuant to this provision.

Landlord and Tenant acknowledge that Tenant has been occupying the Existing Premises pursuant to the Lease and that Landlord shall not be obligated to construct or install any improvements or facilities of any kind in the Existing Premises, and Tenant shall continue to accept the Existing Premises in its currently-existing, "as-is" condition.

Tenant shall be entitled to a one-time tenant improvement allowance (the "**Tenant Alteration Allowance**") equal to Seventeen Thousand Five Hundred Twelve and 50/100 Dollars ($17,512.50) (*i.e.*, approximately $7.50 for each of the 2,335 rentable square feet of the 2nd Amendment Expansion Premises) towards the costs relating to construction of Alterations in the 2nd Amendment Expansion Premises (the "**Tenant Alterations**"). The Tenant Alterations shall be constructed in accordance with the terms and conditions of Article 8 of the Office Lease; provided, however, Tenant shall pay a supervision fee to Landlord in an amount equal to $875.63 in connection with such Tenant Alterations. The Tenant Alteration Allowance will be disbursed in accordance with Landlord's standard disbursement procedures, including, without limitation, following Landlord's receipt of (i) evidence (i.e., invoices or other documentation reasonably satisfactory to Landlord) of payment for the Tenant Alterations, and (ii) fully executed, unconditional lien releases from all contractors, subcontractors, laborers, materialmen, and suppliers used by Tenant in connection with the Tenant Alterations. In no event shall Landlord be obligated to disburse any portion of the Tenant Alteration Allowance subsequent to August 31, 2007, nor shall Landlord be obligated to disburse any amount in excess of the Tenant Alteration Allowance in connection with the construction of the Tenant Alterations. No portion of the Tenant Alteration Allowance, if any, remaining after the construction of the Tenant Alterations shall be available for use by Tenant.

McCARTHY • COOK

McCARTHY COOK & Co.
CHINA BASIN LANDING
185 BERRY STREET, SUITE 140
SAN FRANCISCO, CALIFORNIA 94107
TEL: (415) 543-3521
FAX: (415) 543-1623
www.mccarthycook.com

December 4, 2006

Diana Sutliffe
FiberTower
185 Berry Street, 4th Floor
San Francisco, CA 94107

RE: ~~Third~~ Second Amendment Correction Page

Dear Diana:

As we were correcting our lease abstract it had come to our attention that not only was the expiration date inadvertently been entered as August 31, 2009 rather than July 31, 2009 but also year 2 of the terms was incorrectly entered as September 1, 2007 rather than August 1, 2007.

Please initial all 5 of replacement pages (page 2) where indicated, keep one for your files and return the other 4 pages at your earliest convenience.

Thank you in advance for your attention to this matter.

Sincerely,

Edward Calzada
Assistant Manger Leasing

cc: Garth Phillips
Kristoff Lodge

Existing Premises July 31, 2009, unless sooner terminated as provided in the Lease, as hereby amended.

4. **Base Rent**.

4.1. **2nd Amendment Expansion Premises**. Commencing on the 2nd Amendment Expansion Commencement Date and continuing throughout the 2nd Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the 2nd Amendment Expansion Premises as follows:

Period During 2nd Expansion Premises Term	Annualized Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
September 1, 2006 – July 31, 2007	$73,552.50	$6,129.38	$31.50
August 1, 2007 – July 31, 2008	$75,887.50	$6,323.96	$32.50
August 1, 2008 – July 31, 2009	$78,222.50	$6,518.54	$33.50

Concurrently with Tenant's execution of this Second Amendment, Tenant shall pay to Landlord the Base Rent payable for the 2nd Amendment Expansion Premises for the first full month of the 2nd Expansion Premises Term.

4.2. **Existing Premises**. Notwithstanding anything to the contrary in the Lease as hereby amended, Tenant shall continue to pay Base Rent for the Existing Premises in accordance with the terms of Article 3 of the Lease as amended by the terms of Section 4 of the First Amendment.

4.3. **Tenant's Share of Building Direct Expenses**. Notwithstanding anything in the Lease, as hereby amended, to the contrary, prior to September 1, 2006, Tenant shall continue to pay Tenant's Share of the annual Direct Expenses in connection with the Existing Premises in accordance with the terms of the Lease. Commencing on September 1, 2006, with respect to Direct Expenses arising on or after September 1, 2006, for purposes of calculating the amount of Tenant's Share of the annual Direct Expenses which Tenant shall pay thereafter in connection with the entire Premises (*i.e.*, both the 2nd Amendment Expansion Premises and the Existing Premises), Tenant's Share shall equal 3.35%, and the Base Year shall be calendar year 2006.

5. **Improvements**. Except as specifically set forth in **Exhibit B** attached hereto, (i) Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Existing Premises or the 2nd Amendment Expansion Premises, (ii) Tenant shall continue to accept the Existing Premises in its presently existing, "as-is" condition, and (iii) Tenant shall accept the 2nd Amendment Expansion Premises in its presently existing, "as-is" condition.

6. **Notices**. Notwithstanding anything to the contrary set forth in the Lease, effective as of the date of this Second Amendment, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

c/o RREEF America L.L.C.
575 Market Street, Suite 350
San Francisco, CA 94105
Attention: Ms. Lisa Vogel,
Vice President-District Manager

and

McCarthy Cook & Co.
185 Berry Street, Suite 140
San Francisco, California 94107

Existing Premises July 31, 2009, unless sooner terminated as provided in the Lease, as hereby amended.

4. **Base Rent**.

4.1. **2nd Amendment Expansion Premises**. Commencing on the 2nd Amendment Expansion Commencement Date and continuing throughout the 2nd Expansion Term, Tenant shall pay to Landlord monthly installments of Base Rent for the 2nd Amendment Expansion Premises as follows:

Period During 2nd Expansion Premises Term	Annualized Base Rent	Monthly Installment of Base Rent	Annual Rental Rate per Rentable Square Foot
September 1, 2006 – July 31, 2007	$73,552.50	$6,129.38	$31.50
August 1, 2007 – July 31, 2008	$75,887.50	$6,323.96	$32.50
August 1, 2008 – July 31, 2009	$78,222.50	$6,518.54	$33.50

Concurrently with Tenant's execution of this Second Amendment, Tenant shall pay to Landlord the Base Rent payable for the 2nd Amendment Expansion Premises for the first full month of the 2nd Expansion Premises Term.

4.2. **Existing Premises**. Notwithstanding anything to the contrary in the Lease as hereby amended, Tenant shall continue to pay Base Rent for the Existing Premises in accordance with the terms of Article 3 of the Lease as amended by the terms of Section 4 of the First Amendment.

4.3. **Tenant's Share of Building Direct Expenses**. Notwithstanding anything in the Lease, as hereby amended, to the contrary, prior to September 1, 2006, Tenant shall continue to pay Tenant's Share of the annual Direct Expenses in connection with the Existing Premises in accordance with the terms of the Lease. Commencing on September 1, 2006, with respect to Direct Expenses arising on or after September 1, 2006, for purposes of calculating the amount of Tenant's Share of the annual Direct Expenses which Tenant shall pay thereafter in connection with the entire Premises (*i.e.*, both the 2nd Amendment Expansion Premises and the Existing Premises), Tenant's Share shall equal 3.35%, and the Base Year shall be calendar year 2006.

5. **Improvements**. Except as specifically set forth in **Exhibit B** attached hereto, (i) Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Existing Premises or the 2nd Amendment Expansion Premises, (ii) Tenant shall continue to accept the Existing Premises in its presently existing, "as-is" condition, and (iii) Tenant shall accept the 2nd Amendment Expansion Premises in its presently existing, "as-is" condition.

6. **Notices**. Notwithstanding anything to the contrary set forth in the Lease, effective as of the date of this Second Amendment, any Notices to Landlord must be sent, transmitted, or delivered, as the case may be, to the following addresses:

c/o RREEF America L.L.C.
575 Market Street, Suite 350
San Francisco, CA 94105
Attention: Ms. Lisa Vogel,
Vice President-District Manager

and

McCarthy Cook & Co.
185 Berry Street, Suite 140
San Francisco, California 94107

THIRD AMENDMENT TO OFFICE LEASE

This THIRD AMENDMENT TO OFFICE LEASE ("**Third Amendment**") is made and entered into as of the 22nd day of May 2009, by and between CHINA BASIN/SAN FRANCISCO, L.L.C., a Delaware limited liability company ("**Landlord**"), and FIBERTOWER NETWORK SERVICES CORP., a Delaware corporation (formerly known as FiberTower Corporation, a Delaware corporation) ("**Tenant**").

RECITALS:

A. Stockbridge/MCC-China Basin L.L.C, a Delaware limited liability company (the "**Prior Landlord**"), predecessor-in-interest to Landlord, and Tenant entered into that certain Office Lease dated June 30, 2004 (the "**Office Lease**"), as amended by that certain First Amendment to Office Lease dated as of January 19, 2006 (the "**First Amendment**"), that certain Second Amendment to Office Lease dated as of August 10, 2006 (the "**Second Amendment**"), whereby Landlord leases to Tenant and Tenant leases from Landlord space commonly known as Suites 4800, 4811, 4700 and 4809 and located on the fourth (4th) floor of that certain building (collectively, the "**Existing Premises**") known as the "Wharfside Building" and located at 185 Berry Street, San Francisco, California 94107 (the "**Building**"). The Premises is identified in the Lease as containing a total of approximately 24,450 rentable square feet of space.

B. Landlord and Tenant desire to amend the Lease (i) to allow the Lease Term with respect to the Suite 4700 and Suite 4809 portion of the Existing Premises (consisting of a total of approximately 8,751 rentable square feet of space, and as used herein, collectively, the "**Expiration Space**") to expire on the currently scheduled expiration date of July 31, 2009, (ii) to extend the Lease Term with respect to a portion of the Existing Premises comprising Suites 4800 and 4811 (which shall be collectively referred to hereinafter as the "**Remaining Premises**," and which together are identified in the Lease as containing approximately 15,699 rentable square feet of space), and (iii) to make certain other modifications to the Lease, and in connection therewith, Landlord and Tenant desire to amend the Lease on the terms and conditions set forth in this Third Amendment. Each of the Expiration Space and the Remaining Premises are identified on **Exhibit A** attached hereto.

AGREEMENT:

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

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same respective meanings as are given such terms in the Lease, unless expressly provided otherwise in this Third Amendment.

2. **Surrender of Expiration Space**. Landlord and Tenant hereby acknowledge and agree that Tenant's lease with respect to the Expiration Space shall expire on July 31, 2009 (the "**2009 Expiration Date**"), and Tenant shall then quit and surrender and deliver exclusive possession thereof to Landlord in accordance with the terms of the Lease. Effective as of the 2009 Expiration Date, Landlord and Tenant shall be relieved of their respective obligations under the Lease with respect to the Expiration Space, except those obligations under the Lease which specifically survive the expiration or earlier termination of the Lease, including, without limitation, the payment of all amounts owed by Tenant with respect to the Expiration Space up to and including the 2009 Expiration Date. Further to the foregoing, effective as of the date immediately following the 2009 Expiration Date (the "**Effective Date**"), (i) the Expiration Space shall no longer constitute a part of the Premises, and (ii) the "**Premises**" (as that term is used in the Lease) shall thereupon and thereafter solely consist of the Remaining Premises. In the event Tenant does not timely vacate the Expiration Space in accordance with the terms hereof, then, notwithstanding any contrary provision of the Lease, Tenant shall be deemed to be in holdover with respect to the Expiration Space, and the terms and conditions of Article 16 of the Office Lease shall apply with respect thereto. Notwithstanding anything to the contrary contained in this Section 2, at any time prior to the 2009 Expiration Date, with verbal notice to Tenant, Landlord and any third parties designated by Landlord

shall have the right to enter the Expiration Space for any purpose, including, without limitation, to inspect the same, to show the same to prospective tenants, and to alter, improve or repair the Expiration Space or the Building in preparation for the leasing of the Expiration Space to prospective tenants.

3. **Remaining Premises**.

3.1 **Remeasurement of Project**. Notwithstanding any provision to the contrary set forth in the Lease, Landlord and Tenant acknowledge and agree that Landlord has remeasured the Project and that according to such remeasurement, the rentable area of the Project is approximately 916,061 rentable square feet. Landlord and Tenant further acknowledge and agree that the square footage of the Remaining Premises is now 15,636 rentable square feet and has been determined in accordance with such remeasurement.

3.2 **Condition of the Remaining Premises**. Tenant acknowledges that Tenant has been and is in occupancy of the Remaining Premises pursuant to the Lease, and is fully aware of the condition of the Remaining Premises. Tenant also acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty regarding the condition of the Remaining Premises or the Building or with respect to the suitability of the same for the conduct of Tenant's business. Therefore, as of the date hereof and through the end of the Third Amendment Extended Term, except as otherwise provided in the Work Letter attached hereto as **Exhibit B** (the "**Tenant Work Letter**"), Tenant shall continue to accept the Remaining Premises in its then existing, "as is" condition, and Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Remaining Premises, subject only to the terms of the Work Letter.

4. **Lease Term**.

4.1 **Extension of Lease Term**. Landlord and Tenant acknowledge that the Lease is scheduled to expire on July 31, 2009. Notwithstanding the foregoing, the Lease Term is hereby extended with respect to the Remaining Premises (which thereafter shall be known as the Premises, as defined in Section 2.1 above) for a period of five (5) years and four (4) months, commencing August 1, 2009 (the "**Third Amendment Extended Term Commencement Date**"), and ending on November 30, 2014, on the terms and conditions set forth in this Third Amendment. The period of time commencing on August 1, 2009 and ending on November 30, 2014, shall be referred to herein as the "**Third Amendment Extended Term.**"

4.2 **Expiration of Lease Term with respect to the Expiration Space**. The parties hereto acknowledge that notwithstanding the extension of the Lease Term with respect to the Remaining Premises as set forth above, the Lease Term with respect to the Expiration Space shall expire on July 31, 2009.

4.3 **Tenant Termination Right**. Notwithstanding any provision to the contrary contained in the Lease, as amended, Tenant shall have the one-time option to terminate and cancel the Lease, as amended, effective as of 11:59 P.M. (Pacific) on November 30, 2012 (the "**Termination Date**"), upon Tenant's delivery of written notice to Landlord (the "**Termination Notice**") delivered no later than May 31, 2012, and concurrently with the delivery of such Termination Notice, Tenant shall deliver to Landlord a fee in the amount of the sum of (i) the unamortized amount of the "Base Rent Abatement" (as that term is defined in Section 5.3 below) as of the Termination Date (amortized on a straight-line basis with an interest rate of eight percent (8%) over the Third Amendment Extended Term), (ii) the unamortized cost as of the Termination Date (amortized on a straight-line basis with an interest rate of eight percent (8%) over the Third Amendment Extended Term) of the commissions payable to the "Brokers," as that term is defined in Section 9 below, in connection with this Third Amendment, (iii) the unamortized amount of the "Tenant Alteration Allowance" (as that term is defined in the Tenant Work Letter) as of the Termination Date (which Tenant Improvement Allowance shall be amortized on a straight-line basis with an interest rate of eight percent (8%) over the Third Amendment Extended Term), and (iv) Ninety-Six Thousand Four Hundred Twenty-Two and 00/100 Dollars ($96,422.00) (*i.e.,* Two (2) months of Base Rent at $48,211.00 per month) (the dollar amounts contemplated by the foregoing items (i), (ii), (iii) and (iv) shall collectively be referred to as the "**Termination Fee**"). Subject to Landlord's timely receipt of the Termination Notice and Termination Fee, the Lease, as amended, shall automatically terminate and be of no further force or effect, and Landlord and Tenant shall be relieved of their respective obligations under the Lease, as amended, as of the Termination Date,

except with respect to those obligations set forth in the Lease, as amended, which specifically survive the expiration or earlier termination of the Lease, as amended, including, without limitation, the payment by Tenant of all amounts owed by Tenant under the Lease, as amended. The termination right granted to Tenant under this Section 4.2 shall automatically terminate and be of no further force or effect in the event (x) Tenant fails to properly exercise the termination right as set forth in this Section 4.2, (y) Tenant assigns, subleases or otherwise permits the occupancy of the Premises or any portion thereof by other entities or persons in violation of the provisions set forth in Article 14 of the Office Lease, or (z) Tenant is in default under the Lease, as amended, as of the date of Tenant's delivery of the Termination Notice to Landlord or, at Landlord's election, as of the Termination Date.

4.4 **Option Right**.

4.4.1 **In General**. Landlord hereby grants the Tenant originally named herein (the "**Original Tenant**"), one (1) option to extend the Third Amendment Extended Term for a period of five (5) years (the "**Option Term**"), which option shall be exercisable only by written notice delivered by Tenant to Landlord as provided below, provided that, as of the date of delivery of such notice, Tenant is not in default under the Lease, as amended, and Tenant has not previously been in default under the Lease, as amended, more than once during the immediately preceding twelve (12) month period. Upon the proper exercise of such option to extend, and provided that, as of the end of the Third Amendment Extended Term, Tenant is not in default under the Lease, as amended, and Tenant has not previously been in default under the Lease, as amended, more than once during the immediately preceding twelve (12) month period, the Third Amendment Extended Term, as it applies to the Premises, shall be extended for a period of five (5) years. The rights contained in this Section 4.3 shall be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any other assignee, or any sublessee or other transferee of the Original Tenant's interest in the Lease, as hereby amended) if the Original Tenant occupies the entire Premises.

4.4.2 **Market Rent**. The rent payable by Tenant during the Option Term (the "**Option Rent**") shall be equal to the "Market Rent" for the Premises (defined below). "**Market Rent**" shall mean the rent (including additional rent and considering any "base year" or "expense stop" applicable thereto), including all escalations, at which tenants, as of the commencement of the Option Term, are leasing non-sublease, non-encumbered, non-equity, non-renewal, non-expansion space comparable in size, location and quality to the Premises for a comparable term, which comparable space is located in the Project ("**Comparable Transactions**"), taking into consideration the following concessions: (a) rental abatement concessions, if any, being granted such tenants in connection with such comparable spaces and (b) tenant improvements or allowances provided or to be provided for such comparable space, taking into account, and deducting the value of, the existing improvements in the Premises, such value to be based upon the age, quality and layout of the improvements and the extent to which the same could be utilized by Tenant based upon the fact that the precise tenant improvements existing in the Premises suitable for use by a general office user; provided, however, that in calculating the Market Rent, no consideration shall be given to (i) the fact that Landlord is or is not required to pay a real estate brokerage commission in connection with Tenant's exercise of its right to lease the Premises during the Option Term, and (ii) any period of rental abatement, if any, granted to tenants in comparable transactions in connection with the design, permitting and construction of tenant improvements in such comparable spaces. The Market Rent shall additionally include a determination as to whether, and if so to what extent, Tenant must provide Landlord with financial security, such as a letter of credit or guaranty, for Tenant's Rent obligations during the Option Term. Such determination shall be made by reviewing the extent of financial security then generally being imposed in Comparable Transactions from tenants of comparable financial condition and credit history to the then existing financial condition and credit history of Tenant (with appropriate adjustments to account for differences in the then-existing financial condition of Tenant and such other tenants).

4.4.3 **Exercise of Option**. The option contained in this Section 4.3 shall be exercised by Tenant, if at all, only in the following manner: (i) Tenant shall deliver written notice to Landlord not more than twelve (12) months nor less than nine (9) months prior to the expiration of the Third Amendment Extended Term, stating that Tenant is interested in exercising its option (the "**Interest Notice**"); (ii) Landlord, after receipt of Tenant's notice, shall deliver notice (the "**Option Rent Notice**") to Tenant not less than eight (8) months prior to the expiration of the Third Amendment Extended Term, setting forth the Option Rent; and (iii) if Tenant wishes to exercise such option, Tenant shall, on or before the earlier of (A) the date occurring seven (7) months prior to

the expiration of the Third Amendment Extended Term, and (B) the date occurring thirty (30) days after Tenant's receipt of the Option Rent Notice, exercise the option by delivering written notice thereof (the "**Exercise Notice**") to Landlord.

5. **Rent**.

5.1 **Base Rent**. Commencing on August 1, 2009, and continuing throughout the Third Amendment Extended Term, Tenant shall pay to Landlord monthly installments of Base Rent for the Remaining Premises (which payment shall otherwise be in accordance with the terms of Article 4 of the Office Lease) as follows:

Period During Third Amendment Extended Term	Annual Base Rent	Monthly Installment of Base Rent	Approximate Annual Rental Rate per Rentable Square Foot
August 1, 2009 – July 31, 2010	$531,624.00*	$44,302.00*	$34.00
August 1, 2010 – July 31, 2011	$547,260.00	$45,605.00	$35.00
August 1, 2011 – July 31, 2012	$562,896.00	$46,908.00	$36.00
August 1, 2012 – July 31, 2013	$578,532.00	$48,211.00	$37.00
August 1, 2013 – July 31, 2014	$594,168.00	$49,514.00	$38.00
August 1, 2014 – November 30, 2014	$609,804.00	$50,817.00	$39.00

* Subject to the express terms of Section 5.3 of this Third Amendment, Tenant shall have no obligation to pay the monthly installments of Base Rent attributable to the "Base Rent Abatement Period" (defined in Section 5.3 below).

5.2 **Tenant's Share of Direct Expenses**. Tenant shall continue to pay Tenant's Share of the annual Direct Expenses for the Existing Premises arising or accruing prior to August 1, 2009, in accordance with the terms of Article 4 of the Office Lease (as amended), based on a Base Year of calendar year 2006. During the Third Amendment Extended Term (subject to the express terms of Section 5.3 of this Third Amendment), Tenant shall pay Tenant's Share of the annual Direct Expenses for the Remaining Premises arising or accruing on or after August 1, 2009 in accordance with the terms of Article 4 of the Office Lease (as amended), provided that effective as of August 1, 2009:

5.2.1 Tenant's Share of Direct Expenses shall equal 1.710%; and

5.2.2 the Base Year shall be the calendar year 2010.

5.3 **Abated Rent**. Provided that Tenant is not then in default of the Lease (as hereby amended, and beyond any applicable notice and cure periods), then during the period commencing on the Third Amendment Extended Term Commencement Date (*i.e.*, August 1, 2009) and ending November 30, 2009 (the "**Rent Abatement Period**"), Tenant shall not be obligated to pay any Base Rent or Tenant's Share of the annual Direct Expenses otherwise attributable to the Remaining Premises (but Tenant shall nevertheless continue to be obligated to pay any other Additional Rent due under the Lease, as hereby amended) during such Rent Abatement Period (the "**Rent Abatement**"). Landlord and Tenant acknowledge that the aggregate amount of the Base Rent component of the Rent Abatement equals One Hundred Seventy-Seven Thousand Two Hundred Eight and 00/100 Dollars ($177,208.00) (*i.e.*, $44,302.00 per month). Tenant acknowledges and agrees that the foregoing Rent Abatement has been granted to Tenant as additional consideration for entering into this Third Amendment. If Tenant shall be in default under the Lease (as hereby

amended) and shall fail to cure such default within any applicable notice and cure period permitted for cure pursuant to the Lease (as hereby amended), then Landlord may at its option, by notice to Tenant, elect, in addition to any other remedies Landlord may have under the Lease (as hereby amended), that the dollar amount of the unapplied portion of the Rent Abatement as of such default shall be converted to a credit to be applied to the Rent applicable at the end of the Third Amendment Extended Term and Tenant shall immediately be obligated to begin paying Rent for the Remaining Premises in full.

6. **Parking**. Notwithstanding any parking rights or allocations to the contrary set forth in the Lease, commencing on the Third Amendment Extended Term Commencement Date and continuing throughout the Third Amendment Extended Term, Tenant shall be entitled to rent up to three (3) unreserved parking passes on a monthly basis (the "**Third Amendment Parking Passes**"), in accordance with the terms and conditions set forth in this Section 6 and Article 28 of the Office Lease.

7. **Security Deposit**. Pursuant to the terms of Article 21 of the Office Lease, Section 9 of the First Amendment and Section 9 of the Second Amendment, Landlord currently holds a Security Deposit in an amount equal to Ninety-Four Thousand Four Hundred Four and 78/100 Dollars ($94,404.78), which Tenant has deposited with Landlord as security for its faithful performance of all of its obligations under the Lease (the "**Current Security Deposit**"). Landlord and Tenant acknowledge and agree that Landlord shall, pursuant to the terms of Article 21 of the Office Lease, continue to retain such Current Security Deposit throughout the Third Amendment Extended Term as security for Tenant's faithful performance of all of its obligations under the Lease, as amended. Notwithstanding the foregoing, to the extent Tenant is not then in default of the Lease, as amended, as of August 1, 2012, the Current Security Deposit shall be reduced by Forty-Four Thousand Four Hundred Four and 78/100 Dollars ($44,404.78) (the "**Security Deposit Reduction Amount**"), to the amount of Fifty Thousand and 00/100 Dollars ($50,000.00). The Security Deposit Reduction Amount shall be credited against Base Rent then next due and owing under the Lease (as amended).

8. **Assignment and Subleasing**. During the Third Amendment Extended Term, Tenant shall continue to have the right to assign this Lease or sublease all or a portion of the Premises in accordance with the terms and conditions set forth more particularly in Article 14 of the Office Lease.

9. **Accounting and Professional Fees**. Where Tenant may be required to pay Landlord for professional fees, such as attorney's or consultant's fees, upon request from Tenant, Landlord shall provide Tenant with a reasonably detailed accounting, prepared in accordance with Landlord's standard procedures, for such expenses

10. **Notices**. Notwithstanding anything to the contrary contained in the Lease, as of the date of this Third Amendment, any notices to Landlord or Tenant, as the case may be, must be sent, transmitted, or delivered, as the case may be, to the following addresses:

If to Landlord:

c/o RREEF America L.L.C.
655 Commercial Street
San Francisco, California 94111
Attention: Ms. Patricia A. Ashton,
Vice President-District Manager

and

McCarthy Cook & Co.
185 Berry Street, Suite 140
San Francisco, California 94107
Attention: General Manager

and

Allen Matkins Leck Gamble Mallory & Natsis LLP
1901 Avenue of the Stars, Suite 1800
Los Angeles, California 90067
Attention: Anton N. Natsis, Esq.

If to Tenant:

FiberTower Network Services Corp.
185 Berry Street, Suite 4800
San Francisco, CA 94107
Attn: Chief Financial Officer

and

FiberTower Network Services Corp.
720 Avenue F, Suite 109
Plano, Texas 75074
Attention: National Real Estate

11. **Brokers**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Third Amendment other than McCarthy Cook & Co. and Mohr Partners (the "**Brokers**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Third Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Brokers, occurring by, through, or under the indemnifying party. The terms of this Section 11 shall survive the expiration or earlier termination of the term of the Lease, as hereby amended.

12. **No Further Modification**. Except as specifically set forth in this Third Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect. In the event of any conflict between the terms and conditions of the Lease, as amended, and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall prevail.

[Signatures follow on next page]

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

"LANDLORD"

CHINA BASIN/SAN FRANCISCO, LLC,
a Delaware limited liability company

By: CHINA BASIN LANDING, LLC,
a Delaware limited liability company,
its Manager

By: CALSMART L.L.C.,
a Delaware limited liability company,
its Member/Manager

By: RREEF AMERICA L.L.C.,
a Delaware limited liability company,
its Manager

By: _____
Patricia A. Ashton,
Vice President-District Manager

Date: 6/22/2009

"TENANT"

FIBERTOWER NETWORK SERVICES CORP.,
a Delaware corporation

By: _____
Name: Kurt J. Van Wagenen
Its: Chief Executive Officer
Date: 5/26/09

By: _____
Name: Thomas A. Scott
Its: Chief Financial Officer
Date: 5/27/09

EXHIBIT A

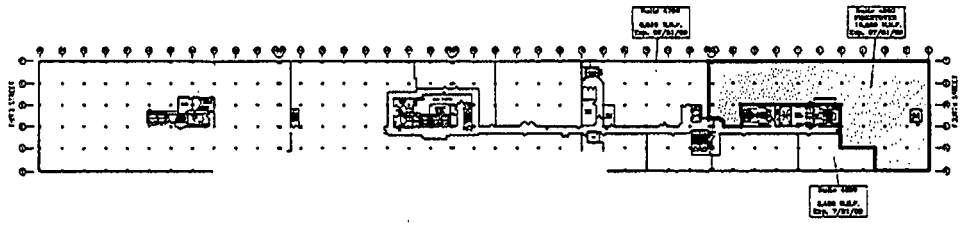
CHINA BASIN

OUTLINE OF THE REMAINING PREMISES

This **Exhibit A** is referenced in Recital B of that certain THIRD AMENDMENT TO OFFICE LEASE made and entered into as of the 22nd day of May 2009, by and between CHINA BASIN/SAN FRANCISCO, LLC, a Delaware limited liability company ("**Landlord**"), and FIBERTOWER NETWORK SERVICES CORP., a Delaware corporation ("**Tenant**").

REMAINING PREMISES:

REACTS® Report | CHINA BASIN, WHARFSIDE BUILDING
SAN FRANCISCO, CA 94105



Suite	Tenant Name	Usable Area	Total Rentable Area
4000			
4001			
4002			
4003			
4010			
4700			
4800	FIBERTOWER	12,704	15,636
4801			
4803			
4807			
4809			
54901			

Building Name: China Basin Wharfside Building

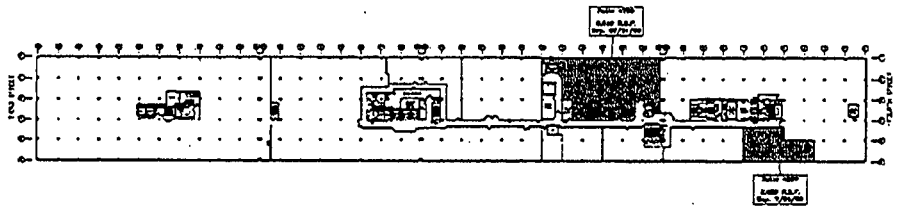
Floor:	FOURTH
Interior Cross Area:	82,439
Vertical Penetration/ Non-Rentable Area:	1,851
Floor Common Area:	0
Site Common Area:	9,408
Total Floor Usable Area:	71,190
Total Load Factor:	1.223086
Total Rentable Area:	87,071
Lease RSF:	87,178

Date: December 8, 2008
Revision Date:

Landlord's initials _____ Tenant's initials KW _____

EXPIRATION PREMISES:

REACTS® Report | CHINA BASIN, WHARFSIDE BUILDING
SAN FRANCISCO, CA 94105



Suite	Tenant Name	Usable Area	Total Rentable Area
4600			
4601			
4602			
4603			
4610			
4700			
4800			
4801			
4803			
4807			
4899		1,962	2,408
5494			

Building Name: China Basin Wharfside Building

Floor:	FOURTH
Interior Gross Area:	82,459
Vertical Penetration/ Non-Rentable Area:	1,861
Floor Common Area:	0
Site Common Area:	9,408
Total Floor Usable Area:	71,190
Total Load Factor:	1.2220A4
Total Rentable Area:	87,071
Lease RSF:	87,178

Date: December 8, 2008
Revision Date:

Landlord's initials _____ Tenant's initials _____

EXHIBIT B

CHINA BASIN

TENANT WORK LETTER

This **Exhibit B** is referenced in Section 3.2 of that certain THIRD AMENDMENT TO OFFICE LEASE made and entered into as of the 22nd day of May 2009, by and between CHINA BASIN/SAN FRANCISCO, LLC, a Delaware limited liability company ("**Landlord**"), and FIBERTOWER NETWORK SERVICES CORP., a Delaware corporation ("**Tenant**").

1. **Tenant Alterations**. Landlord and Tenant acknowledge that Tenant has been occupying the Remaining Premises (referred to herein as the "**Premises**") pursuant to the Lease and that Landlord shall not be obligated to construct or install any improvements or facilities of any kind in the Remaining Premises, and Tenant shall continue to accept the Remaining Premises in its currently-existing, "as-is" condition.

Tenant shall be entitled to a one-time tenant improvement allowance (the "**Tenant Alteration Allowance**") equal to One Hundred Seventeen Thousand Two Hundred Seventy and 00/100 Dollars ($117,270.00) (*i.e.*, approximately $7.50 for each of the 15,636 rentable square feet of the Premises) towards costs relating to (i) Tenant's construction of permanently affixed Alterations in the Premises, (ii) the moving of Tenant's furniture, fixtures and equipment, and (iii) Tenant's installation of voice or data cabling (collectively, the "**Tenant Alterations**"). The Tenant Alterations shall be constructed in accordance with the terms and conditions of Article 8 of the Office Lease (and Section 29.32 of the Office Lease with respect to voice or data cabling. The Tenant Alteration Allowance will be disbursed in accordance with Landlord's standard disbursement procedures, including, without limitation, following Landlord's receipt of (a) evidence (*i.e.*, invoices or other documentation reasonably satisfactory to Landlord) of payment for the Tenant Alterations, and (b) fully executed, unconditional lien releases from all contractors, subcontractors, laborers, materialmen, and suppliers used by Tenant in connection with the Tenant Alterations. Alternatively, notwithstanding any provision to the contrary contained herein, Tenant may elect, upon not less than thirty (30) days' written notice to Landlord, to cause Landlord to credit the amount of the Tenant Alteration Allowance, or portion thereof, against the installment(s) of Base Rent next due and owing under the Lease (as amended) (the "**Tenant Alteration Base Rent Credit**"). In the event that as of July 31, 2010, there remains any unused portion of the Tenant Improvement Allowance, such unused portion shall automatically be provided to Tenant as Tenant Alteration Base Rent Credit.

2. **Dedicated Air Conditioning Unit**. Tenant shall have the right, pursuant to the terms and conditions of Article 8 of the Office Lease (other than (i) the Landlord consent language contained in Section 8.1 and (ii) Section 8.6 thereof), and with Landlord's prior written approval (not to be unreasonably withheld, conditioned or delayed) to install a dedicated ventilation and air conditioning unit in the server room located within the Premises (the "**Dedicated VAC Unit**"). Further, Landlord agrees that where Section 8.4 of the Office Lease requires Tenant to maintain "Builder's All Risk" Insurance, Landlord shall instead accept such Builder's All Risk insurance from Tenant's contractor. Tenant shall have no right to utilize any space outside the Premises for the Dedicated VAC Unit. Tenant shall coordinate the installation and operation of Dedicated VAC Unit with Landlord to ensure that Dedicated VAC Unit is compatible with the systems and equipment of the Building, and to the extent that Dedicated VAC Unit is not compatible with the systems and equipment of the Building, Tenant shall not be entitled to install or operate the same. Tenant shall be solely responsible, at Tenant's sole cost and expense, for the monitoring, operation, replacement and repair of Dedicated VAC Unit. In connection with such Dedicated VAC Unit, Tenant shall pay to Landlord, upon billing, the cost of any excess electricity consumption, together with the cost of the installing, operating, and maintaining equipment which is installed in order to supply such excess consumption. In addition, Landlord may install devices to submeter any increased use and in such event Tenant shall pay the increased cost directly to Landlord, on demand, at the rates charged by the public utility company furnishing the same, including the cost of such additional metering devices. At the time Landlord provides its consent to the Dedicated VAC unit (to the extent such consent is given as provided herein), Landlord shall also notify Tenant whether Landlord will require Tenant to remove the Dedicated VAC Unit prior to the expiration or earlier termination of this Lease, and repair any damage to the Building caused by such removal and restore the portion of the Building

Landlord's initials _____ Tenant's initials _____

and Premises affected by such removal to the condition existing prior to the installation of such Dedicated VAC Unit, or leave same in the Premises, in which event the same shall become a part of the realty and belong to Landlord and shall be surrendered with the Premises upon the expiration or earlier termination of this Lease. If Landlord provides its consent, Tenant shall have no obligation to proceed with installation such Dedicated VAC Unit.

Landlord's initials _____ Tenant's initials KWJ/

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and am not a party to this action. My business address is 1900 Main Street, Fifth Floor, Irvine, California 92614-7321.

On November 30, 2012, I served the within document(s) described as:

PROOF OF CLAIM

on the interested parties in this action as stated below:

Jason S. Brookner, Esq.
Andrews Kurth LLP
1717 Main Street
Suite 3700
Dallas, TX 75201

Attorneys for Debtor
Served via Federal Express

☒ **BY OVERNIGHT DELIVERY:** I deposited in a box or other facility regularly maintained by FedEx, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document(s) in sealed envelopes or packages designated by the express service carrier, addressed as indicated above on the above-mentioned date, with fees for overnight delivery paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 30, 2012, at Irvine, California.

Kim Rodriguez
(Type or print name)

Kim Rodriguez
(Signature of Declarant)