

## COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (the "**Lease**") is made and entered into by and between City of Milpitas ("**Landlord**") and Nibbi Brothers General Contractors ("**Tenant**"), under the following terms and conditions:

1. Introduction. Landlord owns the commercial property's located at 1700 Sango Court and 1831-1841 Tarob Court, located in the City of Milpitas, California, (the "**Property**"). The Property is improved with a 30,500 square foot industrial building and other improvements.

2. Description of the Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord a portion of the Property known as 1831-1841 Tarob Court consisting of approximately 25,000 square feet ("**Tarob Site**") for employee parking and 29,000 square feet on the Property known as 1700 Sango Court for construction laydown, storage and staging purposes ("**Sango Site**"). The Tarob Site and the Sango Site are referred to herein collectively as the "**Premises**" and shown on **Exhibit A**. Tenant's proportionate share of the Property is agreed to be 100% ("**Proportionate Share**"), which represents the rentable square footage of the Premises to the total rentable area of the Property.

3. Term, Occupancy, and Renewal.

a. Term. The term of this Lease shall commence on the date this Lease is executed by both Tenant and Landlord (the "**Commencement Date**"), and shall continue until May     , 2023.

b. Occupancy. Tenant may, upon execution of this Lease by Landlord and Tenant, occupy the Premises on the Commencement Date subject to all terms and conditions of this Lease, provided Tenant complies with Section 17 (Insurance) and delivers an insurance certificate to Landlord prior to entry. Upon delivery of the insurance certificate, first month's rent and any security deposit, Landlord shall deliver the keys and possession to Tenant.

c. Option to Renew. Provided Tenant is not in default under any terms of this Lease, and in the sole and absolute discretion of Landlord, Tenant is hereby granted three (3) options to renew this Lease, under the same terms and conditions as set forth in this Lease, for the further term of one (1) month each (each a "**Renewal Term**") by giving Landlord written notice of election of exercise option to at least 15 days prior to the expiration of the then unexpired term; provided, if Tenant fails to timely notify Landlord of election to extend for any option period, all succeeding option periods, if any, shall automatically expire and lapse and the Lease shall terminate at the end of the term then in effect.

4. Rent. The initial annual rent during the term of this Lease shall be \$7,000.00 per month, subject to increase as provided in Section 4(d) below ("**Base Rent**"). Tenant shall, commencing on the Commencement Date and continuing thereafter on the first day of each and every month during the term of this Lease, pay to Landlord in advance, such minimum monthly rent, without setoff, deduction or demand. If possession is taken on other than the first of the month, rent shall be prorated accordingly based on a 30-day month.

a. Late Charge. Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease. If any installment of rent due

from Tenant is not received by Landlord within five (5) days after it becomes due, Tenant shall pay to Landlord an additional sum of 5% of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord.

b. Interest on Unpaid Rent. Rent or other charges under this Lease not paid within five (5) days of the date due shall, in addition to any late charges under Section 4(a) above, bear interest at the lesser of the maximum legal rate or 10% per annum from the date due until paid.

c. Holdover. Tenant shall not hold over after the expiration or earlier termination of the term hereof without the express prior written consent of Landlord. Acceptance of rent is not Landlord's consent to holdover. Without Landlord's express consent Tenant shall become a tenant at sufferance only at a rental rate equal to 150% of the rent in effect upon the date of such expiration. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a holdover hereunder or result in a renewal. The foregoing provisions of this Section 4 are in addition to and do not affect Landlord's right of re-entry or any rights of Landlord hereunder or as otherwise provided by law. If Tenant fails to surrender the Premises upon the expiration of this Lease, Tenant shall indemnify, protect, defend and hold Landlord harmless from all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from such failure to surrender. Such indemnity shall survive the expiration of this Lease.

d. Annual Adjustment. Beginning on the commencement of the first Renewal Term, Base Rent shall increase by any increase in the Consumer Price Index ("CPI") as determined by the U.S. Bureau of Labor Statistics for all Urban Consumers for the San Francisco/Oakland/San Jose Metropolitan Area over the previous year. Should the CPI be discontinued, the index used for comparison shall be a comparable index as designated by the Bureau. It is recognized by both parties that the Index for any month is not published for approximately two months. Tenant shall, therefore, continue to pay the current rental paid by Tenant until such time as the new rental is calculated and, at that time, Tenant shall pay within ten (10) days of notice of the new Base Rent the new amount plus arrearages. In no event shall Base Rent ever decrease below the prior year's Base Rent even if the CPI is negative. In such event, the Base Rent shall remain the same.

e. Security Deposit. Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord the Security Deposit in the amount of \$14,000.00. The Security Deposit shall be held by Landlord as security for Tenant's performance of the terms of this Lease. Landlord may (but shall not be required to) use all or any part of the Security Deposit to cure any default of Tenant under the Lease (after any required notice and expiration of any applicable cure period) or to compensate Landlord for any loss or damage which Landlord may incur as a result of Tenant's default. Tenant shall not be entitled to interest on the Security Deposit and Landlord shall not be required to keep the Security Deposit separate from its general funds. Where there have been no defaults by Tenant or where all applicable deductions from Security Deposit have been made as hereinabove provided, Landlord shall refund the then existing balance of the Security Deposit to Tenant within thirty (30) days of expiration or termination of this Lease.

5. Place of Payment of Rent. Rent and all other sums which shall become due under this Lease, including but not limited to late charges and additional rent, shall be payable by hand delivery or mail at \_\_\_\_\_, or at such other

place as Landlord may designate from time to time in writing. Mailed payments must be received (not postmarked) by Landlord by the date due.

6. Condition of, and Improvements to, Premises.

a. Improvements. Under this Lease, Landlord shall have no obligation or responsibility, actual or implied, to install, construct, accommodate, or make any improvements to the Premises prior to, or as a condition of, Tenant's occupation of the Premises.

b. As-Is Condition. Tenant warrants and agrees that Tenant has inspected the Premises. Tenant agrees to take possession of the Premises in an AS-IS condition (which exists on the date this Lease is signed) and Tenant further agrees that, if Tenant wishes to construct any improvement in the Premises, Tenant shall comply with all requirements in **Exhibit C** as well as Section 13 (Alterations and Liens) of this Lease. Landlord makes no representations regarding the condition, status, compliance with laws or suitability for a particular purpose for Tenant's use.

c. Condition Upon Surrender. Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in as good condition as when originally received, ordinary wear and tear and damage by fire, earthquake, flood or act of God excepted, and including any repairs or improvements made by Tenant. If Tenant fails to maintain the Premises in good order and repair, after thirty (30) days' prior written notice, Landlord may, at its option, make such repairs, and Tenant shall pay the reasonable cost thereof as additional rent hereunder within ten (10) days after receipt of a written statement therefor. In the event the giving of thirty (30) days' prior notice may result in additional damage to the Premises, Landlord may make such repairs, at Tenant's expense, without thirty days' prior written notice.

d. Inspection by Certified Access Specialist. Landlord discloses that the Premises have not undergone inspection by a Certified Access Specialist as referenced in California Civil Code Section 1938 subsection (e) which provides: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." Pursuant to the foregoing Section 1938(e), Tenant acknowledges and agrees that, if Tenant wishes to have the Premises inspected by a CASp: (i) Tenant must notify Landlord on or before the date when Tenant executes this Lease pursuant to the election below; (ii) the inspection will be at Tenant's sole cost and expense; (iii) the inspection must be scheduled through Landlord and in coordination with the Building's property manager; (iv) any repairs or modifications necessary to correct any violation of construction-related accessibility standards that is noted in the CASp report shall be Tenant's responsibility; and (v) Tenant must provide a copy of the CASp report to Landlord on completion. By initialing below, Tenant represents that:

Tenant wishes to have a CASp inspection of the Premises      Initials: \_\_\_\_\_

Tenant hereby waives its right to have a CASp inspection of the Premises      Initials: \_\_\_\_\_

7. Use. The Tarob Site shall be used for employee parking and for no other purpose and the Sango Site shall be used for construction laydown, storage and staging and for no other purpose (“**Permitted Use**”). Tenant shall not use any portion of the Premises for purposes other than those specified without first obtaining the written consent of Landlord. Tenant shall before and during the Term faithfully observe and comply with, and shall cause all occupants of the Premises to observe and comply with, the "**Rules and Regulations**" attached hereto as **Exhibit B**, and all reasonable non-discriminatory modifications and additions to them which Landlord may, from time to time, put into effect and furnish to Tenant. Landlord will try to enforce the Rules and Regulations, but will not be liable to Tenant for the violation or non-performance of the Rules and Regulations by any other tenant or occupant of the Property. Tenant shall maintain and conduct its said business insofar as the same relates to Tenant's use and occupancy of the Premises, in a lawful manner and in strict compliance with all governmental laws, rules, regulations and order. Tenant shall obtain all business licenses, clearances, and permits required to operate its business prior to opening, maintain such necessary licenses and permits in force during the Term, and shall provide copies of each permit or license within 30 days after the Commencement Date and at any time during the Lease Term upon Landlord's request. Tenant shall post all notices to the public in an accessible and visible place to the public. Such notices may include, but are not limited to, Health Department clearances, business licenses, or cosmetology or other licensure. Tenant shall promptly notify Landlord of any notice of violation, suspension or revocation of any such license or clearance. Without limiting in any way the restriction in this Lease that the Premises be used only for the Permitted Use specified in this paragraph, in no event shall the Premises be used for any exclusive use granted by Landlord to other tenants of the Property prior to or subsequent to the date of this Lease. Nothing in this Lease shall be construed to grant Tenant an exclusive right to such Permitted Use.

8. Uses Prohibited. In addition to uses prohibited pursuant to Paragraph 7, Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within the permitted use of the Premises which will in any way increase the existing rate of or affect any fire or other insurance upon the Property or any of its contents, or cause a cancellation of any insurance policy covering the Property or any part thereof or any of its contents. Tenant shall not use the Premises for any cannabis related uses, dispensary, manufacture, assembly, the sale of cannabis or accessories related to cannabis products. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or injure or annoy them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises. Under no circumstances shall the right herein granted to use the Tarob Site be deemed to include the right to sell or solicit in any manner or store any property, temporarily or permanently, at the Tarob Site. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Landlord shall have the right, without notice, in addition to any other rights and remedies that it may have, to remove the property and charge the cost to Tenant, which cost shall be payable as additional rent immediately upon demand by Landlord.

9. Compliance with Laws/Hazardous Materials.

a. Tenant, at Tenant's expense, shall comply with and cause all of Tenant's agents to comply with all applicable laws, ordinances, rules and regulations of governmental authorities

applicable to the Premises or the use or occupancy thereof, including, without limitation, the law commonly known as the Americans With Disabilities Act and California Code of Regulations Title 8, Sections 3281 through 3299 (collectively, "Laws").

b. Tenant shall not cause or permit any Hazardous Materials, as defined below, to be brought upon, kept, used, discharged, deposited or leaked in or about the Premises or the Property, including, without limitation stockpiling soil, by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees or contractors), except to the extent such Hazardous Materials are cleaning or office supplies used in accordance with all applicable laws. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of any Hazardous Material on the Premises or the Property caused or suffered or permitted by Tenant or any of Tenant's agents or by anyone in the Premises (other than Landlord or its agents, employees or contractors) results in contamination of the Premises or the Property, or if contamination of the Premises or the Property by any Hazardous Material otherwise occurs for which Tenant is legally liable, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, damages, costs, liabilities and expenses (including, without limitation, diminution in value or use of the Property, attorneys' fees, consultant fees and expert fees) which arise during or after the Term as a result of such contamination. This indemnification shall include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work on or under the Premises. "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local, state or federal governmental authority or by common law decisions, including without limitation (i) all chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls. Tenant's obligations under this Section shall survive expiration or earlier termination of this Lease.

c. **THE LAND DESCRIBED HEREIN CONTAINS HAZARDOUS MATERIALS IN SOILS AND IN THE GROUNDWATER AND SOIL VAPOR UNDER THE PROPERTY, AND IS SUBJECT TO A DEED RESTRICTION DATED AS OF \_\_\_\_\_, 2020, AND RECORDED ON \_\_\_\_\_, 2020, IN THE OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, AS DOCUMENT NO. \_\_\_\_, WHICH COVENANT AND RESTRICTION IMPOSES CERTAIN COVENANTS, CONDITIONS, AND RESTRICTIONS ON USAGE OF THE PROPERTY DESCRIBED HEREIN.**

**INCORPORATED INTO THE DEED RESTRICTION AS EXHIBIT D IS A RISK MANAGEMENT PLAN (RMP). THE RMP SETS FORTH HEALTH AND SAFETY PROCEDURES AND RESIDUAL CONTAMINATION MANAGEMENT PROTOCOLS TO BE FOLLOWED DURING SUBSURFACE EXCAVATION WORK, INCLUDING CONSTRUCTION, SITE MAINTENANCE, UTILITY INSTALLATION AND REPAIR, AND CHANGES IN LAND USE. COPIES OF THE DEED RESTRICTION AND RMP, INCLUDING ANY UPDATES OR AMENDMENTS MAY BE FOUND ON THE GEOTRACKER WEBSITE: [HTTPS://GEOTRACKER.WATERBOARDS.CA.GOV](https://geotracker.waterboards.ca.gov). REFERENCE CASE NUMBER T1000008880. THIS STATEMENT IS NOT A DECLARATION THAT A HAZARD EXISTS.**

10. Waste; Nuisance; Quiet Enjoyment. Tenant shall not suffer or commit any waste or nuisance on the Premises, nor shall Tenant interfere with or obstruct the rights of or disturb the quiet enjoyment of any other tenant or occupant of the Property or injure or annoy them. Tenant

shall not use or allow the Premises to be used for any improper, immoral, or objectionable purposes, to be determined Landlord's sole and absolute judgment.

11. Repair and Maintenance.

a. Tenant shall, at Tenant's sole cost and expense, maintain the Premises in good condition and repair. Said maintenance shall include all fixtures and equipment, including without limitation, heating and ventilation systems, electrical wiring, plumbing fixtures, plumbing drains (from the Premises to the point of connection of Tenant's drainage system with the sanitary sewer system owned, managed, and/or maintained by the local municipality). Tenant hereby waives California Civil Code Sections 1932(1), 1941 and 1942 and any other applicable existing or future law, ordinance or governmental regulation permitting Tenant to make repairs at Landlord's expense.

b. Tenant shall be responsible, at Tenant's sole expense, for providing security for the Premises, including, without limitation, providing security fencing, and security devices and systems for the Premises.

12. Additional Rent. In addition to the Base Rent required to be paid hereunder, Tenant shall pay as additional rent as provided in this Paragraph 12, an amount equal to (i) Operating Expenses assessed, billed, or charged separately against the Premises, plus (ii) Tenant's Proportionate Share of Property Operating Expenses not so separately assessed, billed, or charged in the manner set forth below (Tenant's "**Operating Expense**").

a. Landlord shall reasonably allocate to Tenant portions of Operating Expenses not assessed, billed or charged separately against the Premises between the Premises and the other occupied building area in the Property. The portion of an Operating Expense so allocated by Landlord to the Premises shall be Tenant's share of such Operating Expense. Tenant's share of all real property taxes and assessments resulting from leasehold improvements by Tenant shall be 100% allocated to Tenant. Additional Rent shall be invoiced on a monthly basis after Operating Expenses have been incurred by Landlord, and shall be due on the first (1st) day of the month following invoice.

b. Operating Expenses shall include all costs to operate, repair, restore, maintain and manage the Property parking lots, sidewalks, and driveways; all costs to supervise and administer said parking lots, sidewalks, driveways, including such fees as may be paid to a third party in connection with same; and all parking charges, utility charges and surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the Premises or the parking facilities serving the Premises. Operating Expenses include the following costs by way of illustration, but shall not be limited to: general and special real property taxes and assessments (including any tax imposed by changes in laws or which is imposed as a result of this transaction or any transfers hereof), rent taxes; gross receipt taxes (whether assessed against Landlord or assessed against Tenant and collected by Landlord, or both); water and sewer charges; insurance premiums on property and liability insurance maintained by Landlord; any deductible portion of an insured loss; utilities; refuse disposal; lighting; fire detection systems; clean-up; labor; reasonable costs incurred in the management of the Property; air-conditioning and heating; supplies, materials, equipment and tools, including maintenance and repair costs and service contracts; costs of licenses, permits and inspections; maintenance, repair

and restoration of the Property, including repair/installation of asphalt overlay, resurfacing, restriping and cleaning of parking areas (all of which parking area expenses shall be non-capital improvements); landscaping and gardening; cost of utilities not separately metered; rental value of manager's office; wages, salaries and benefits; and other services to be provided by Landlord that are stated elsewhere in this Lease to be Operating Expenses. Operating Expenses shall not include depreciation on the Property buildings, loan payments, executive salaries or real estate brokers' commissions.

c. Trade Fixtures And Equipment. Tenant at its own expense shall provide and maintain a construction office trailer and all trade fixtures and equipment reasonably required to enable it to conduct its business in the Premises in a business-like manner. Tenant shall keep all trade fixtures and equipment clean and in good repair. Landlord may inspect the Premises annually to ensure good maintenance practices and review the current condition of the Premises pursuant to Section 15. Such construction office trailer and fixtures and equipment shall remain the property of Tenant, and Tenant may remove or if required to do so by Landlord, shall remove the same or any part thereof upon the termination of this Lease. Prior to lease expiration or earlier termination, Tenant shall repair at its own expense any damage to the Premises caused by its removal of said fixtures or equipment. All trade fixtures and equipment installed by Tenant pursuant thereto shall not be subject to, and shall be free of any lien for payment of rent by Tenant or for the performance of any other obligation of Tenant. Tenant shall keep Tenant's fixtures and equipment insured for full replacement value.

d. To the extent separately assessed, billed or charged, Tenant shall pay, during the term hereof, all electric, water, gas, telephone, trash pickup, and other public utility charges in connection with its occupancy and use of the Premises, including all costs of operating and maintaining all equipment therein, and all business taxes and all taxes upon the property and fixtures of the Tenant. To the extent not separately assessed, billed or charged, such charges shall be subject to this Section 12 (Additional Rent). Landlord shall not be responsible for any interruptions or disturbance of service regardless of whether Tenant is paying directly for such services or if such services are being contracted for by Landlord, nor shall there be any abatement of rent resulting from any cessation or interruption of utility service or other service contemplated by this section. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future law, ordinance or governmental regulation permitting the termination of this Lease due to the interruption of failure of any services to be provided under this Lease.

e. Revenue & Taxation Code Section 107.6 Possessory Interest Tax. Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxes and that, if a possessory interest is created, Tenant shall, in accordance with this Section 12(e) hereof, be responsible for payment of property taxes levied against such possessory interest.

13. Alterations and Liens. Tenant shall not make or cause to be made any alterations, additions, or improvements to or of the Premises or any part thereof without the prior written consent of Landlord. If any alterations require additional changes to comply with Laws which are triggered by Tenant's alterations, all such resulting requirements to comply with Laws shall be at Tenant's expense and any Landlord consent to such alterations shall be conditioned on Tenant's payment for same. Any alterations, additions, or improvements affixed to the Premises, except furnishings, equipment, and trade fixtures, shall, at Landlord's option, become part of the real property and belong to Landlord on expiration or termination of the term and any extension thereof. If Landlord

consents to the making of any alteration, additions, or improvements to the Premises, they shall be made at Tenant's sole cost and expense. Tenant shall comply with the provisions of **Exhibit C** with regard to all Alterations and Improvements. Tenant shall keep the Premises free and clear of any liens or encumbrances which may arise from such work. At Landlord's option, Tenant shall, at its sole cost and expense, remove all such additions, alterations, and improvements from the Premises at the end of the term hereof and repair any damage to the Premises occasioned by such removal. If Tenant shall fail to complete such removal and repair such damage within ten (10) days after such termination, Landlord may do so and Tenant shall pay the reasonable cost thereof as additional rent within ten (10) days after Landlord shall render to Tenant a written statement therefor. In the event Tenant makes any alterations to the Premises that trigger or give rise to a requirement that the Premises come into compliance with any governmental laws, ordinances, statutes, order and or regulations (such as ADA requirements), Tenant shall be fully responsible for complying, at its sole cost and expense with same. Tenant shall file a Notice of Completion after completion of any alteration or improvement and provide Landlord with a copy thereof. Tenant shall provide Landlord with a copy of a set of "as built" drawings of any such work.

14. Assignment and Subletting. Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the said Premises, or any portion thereof, without first obtaining the written consent of Landlord which shall not be unreasonably withheld. If an assignment or subletting involves a use other than that permitted in Paragraph 7 above, Tenant must comply with said Paragraph 7. Consent to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Landlord, constitute a default under the terms of this Lease. No sublease or assignment shall release Tenant from continuing liability hereunder. In the event that Landlord shall consent to a sublease or assignment hereunder, Tenant shall pay Landlord reasonable attorney fees and costs incurred in connection with the processing of documents necessary to giving of such consent. Any excess consideration above the rental rate provided in this Lease Tenant is entitled to as a result of any assignment or sublease shall be divided and paid 50% to Tenant and 50% to Landlord; provided, however, that if Tenant is in default under this Lease, Landlord shall be entitled to all such excess consideration

a. Procedures. Should Tenant desire to assign, transfer, sublet, mortgage, pledge, hypothecate or encumber this Lease or any interest therein (a "**Transfer**"), Tenant shall request, in writing, Landlord's consent to the proposed Transfer at least 60 days before the intended effective date of the proposed Transfer (which request shall be accompanied by a payment of Five Hundred Dollars (\$500.00) to reimburse Landlord for costs incurred in connection with reviewing such proposed Assignment), which request shall include any information reasonably requested by Landlord to evaluate the proposed Transfer. Within 30 days after receipt of Tenant's request for consent to the proposed Transfer together with all of the above-required information, Landlord shall respond and shall have the right to: (a) consent to the proposed Transfer; (b) refuse to consent to the proposed Transfer; or (c) terminate this Lease, such termination to be effective 30 days after Tenant's receipt of Landlord's notice electing to so terminate. If Landlord shall exercise its termination right hereunder, Landlord shall have the right to enter into a lease or other occupancy agreement directly with the proposed transferee, and Tenant shall have no right to any of the rents



or other consideration payable by such proposed transferee under such other lease or occupancy agreement. A consent to one Transfer by Landlord shall not be deemed to be a consent to any subsequent Transfer to any other party.

b. Standard for Consent. Tenant agrees that Landlord may refuse its consent to the proposed transfer on any reasonable grounds, and (by way of example and without limitation) Tenant agrees that it shall be reasonable for Landlord to withhold its consent if any of the following situations exist or may exist: (a) the proposed assignee, subtenant or transferee (each a "**Transferee**") proposes to change the use of the Premises from the permitted use pursuant to Section 7; (b) the proposed Transferee's financial condition, net worth or liquidity is inadequate, based upon Landlord's reasonable business judgment consistent with generally accepted industry standards necessary to support all of the financial and other obligations of Tenant under this Lease; (c) the business reputation or character of the proposed Transferee is not reasonably acceptable to Landlord; (d) the proposed Transferee is not likely to conduct on the Premises a business of a quality substantially equal to that conducted by Tenant, including Landlord's ability to obtain Percentage Rent; or (e) Tenant is in default under the Lease, or has defaulted hereunder on more than three (3) occasions during the twelve (12) months preceding the request by Tenant; and/or (f) the proposed Transferee does not, in Landlord's reasonable judgment, have sufficient business experience.

15. Entry by Landlord. Except for emergencies such as fire, water intrusion and the like which may be at any time, Landlord and its agents shall have the right to enter the Premises at reasonable times to inspect and examine the same and to make such repairs to the Premises as the Landlord shall deem advisable, and to show the Premises to prospective tenants, buyers or lenders.

16. Indemnification.

a. Waiver of Claims. To the extent permitted by law, Tenant waives all claims against Landlord for damage to person or property arising for any reason. Tenant assumes all such risks for Tenant and any employees, licensees, invitees, agents, or contractors.

b. General Indemnity. Tenant shall indemnify, protect, defend (at Tenant's sole cost and with legal counsel acceptable to Landlord) and hold harmless, Landlord and Landlord's affiliated entities, and each of their respective members, managers, partners, officers, employees, volunteers, council members, board members, lenders, agents, contractors, successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all court costs and attorney fees, arising at any time during or after the Term, as a result (directly or indirectly) of or in connection with (i) default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or (ii) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant or Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees or subtenants (individually, a "**Tenant Party**" and collectively "**Tenant Parties**") in or about the Premises, the Property, the Common Area or other portions of the Premises except as provided by law or for claims caused solely by Landlord's gross negligence or willful misconduct. Tenant's indemnity is not intended to nor shall it relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease to the extent such policies cover the results of negligent acts or omissions of Landlord, its employees, agents, volunteers, contractors, council members, board members and officers or

the failure of Landlord to perform any of its obligations under this Lease. The obligations of Tenant under this Section 16(b) shall survive the termination or earlier expiration of this Lease.

c. Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to the Premises and its property including, but not limited to, Tenant's fixtures, equipment, furniture and alterations, or illness or injury to persons in, upon or about the Premises, arising from any cause, and Tenant hereby expressly releases Landlord and waives all claims in respect thereof against Landlord, except only such claims as are caused solely by Landlord's gross negligence or willful misconduct. Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or illness or death of Tenant or any Tenant Party or any other person in or about the Premises, whether such damage, illness or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, ventilation, plumbing, air conditioning or lighting fixtures, or from any other cause, and whether said damage, illness or injury results from conditions arising upon the Premises, upon other portions of the Property or from other sources or places, and regardless of whether the cause of such damage, illness or injury or the means of repairing the same is inaccessible to Tenant, except only damage, illness or injury caused solely by Landlord's gross negligence or willful misconduct.

17. Insurance. Tenant shall obtain and maintain at all times during the Term of this Lease insurance against claims for injuries to personal or damages to property which may arise from or in connection with the Lease by the Tenant, its agents, representatives, employees, invitees, or subcontractors. Tenant shall obtain and furnish proof of coverage as to each type of insurance required.

a. Property Insurance. During the Lease Term, Tenant shall, at Tenant's expense, maintain, or cause to be maintained, "All risk" property insurance including machinery comprehensive form, if applicable, covering damage to or loss of any of Tenant's personal property, fixtures, equipment and alterations, including electronic data processing equipment (collectively, "**Tenant's Property**") (and coverage for the full replacement cost thereof including business interruption of Tenant);

b. Liability Insurance. Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) in aggregate, providing coverage for, among other things, blanket contractual liability, Premises, products/completed operations with an "Additional Insured-Managers or Lessors of Premises Endorsement" and containing the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire, and personal and advertising injury coverage, with deletion of (a) the exclusion for operations within fifty (50) feet of a railroad track (railroad protective liability), if applicable, and (b) the exclusion for explosion, collapse or underground hazard, if applicable. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, and shall include coverage for liability assumed under this Lease as an "**Insured Contract**" for the performance of Tenant's indemnity obligations under this Lease;

c. Automobile Liability Insurance. Business automobile liability insurance having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and

insuring Tenant against liability for claims arising out of ownership, maintenance, or use of any owned, hired or non-owned automobiles;

d. Worker's Compensation . Workers' compensation insurance having limits not less than those required by state statute and federal statute, if applicable, and covering all persons employed by Tenant in the conduct of its operations on the Premises including coverage for all states and, if applicable, voluntary compensation, together with employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000);

e. Other Insurance. Any other form or forms of insurance as Landlord or mortgagees of Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would protect itself;

f. Business Interruption. Loss of income and extra expense insurance in amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all peril commonly insured against by prudent Tenants in the business of Tenant or to prevention of access to the Premises as a result of such perils;

g. Umbrella/Excess Liability Insurance. Umbrella or excess liability insurance may be used to satisfy the limits required in Section 17(a) and (b) above. The umbrella liability or excess liability policy shall be written on an "occurrence" form with a self-insured retention no greater than Ten Thousand Dollars (\$10,000). Such policies shall name Landlord as an additional insured and shall be primary to any insurance maintained by Landlord.

h. Waiver of Subrogation. The parties release each other, and their respective authorized representatives, from any claims (for damage to any person or to the Premises and/or the building in which the Premises are located, and to the fixtures, personal property, Tenant's improvements, and alterations of either Landlord or Tenant in or on the Premises and/or the building in which the Premises are located) that are caused by or result from risks which are insured against under any insurance policies carried by the parties and in force at the time of any such damage and to the full extent of any proceeds paid under said policies.

i. Ratings, Certificates. All policies shall be taken out with insurers licensed to do business in California with a current Best Rating of (A, XIII) and in form satisfactory from time to time to Landlord. Certificates of insurance evidencing all such insurance and acceptable to the Landlord shall be filed with Landlord prior to occupancy of the Premises and at least ten (10) days prior to the expiration of the term of each policy thereafter. Such certificates of insurance must specifically show all the special policy conditions required in this Paragraph 9, including "additional insured," "waiver of subrogation," "notice of cancellation," and "primary insurance" wording applicable to each policy. Alternatively, a certified, true and complete copy of each properly endorsed policy may be submitted. All policies shall contain an undertaking by the insurers to notify Landlord and the mortgagees of Landlord in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation, or other termination thereof. Tenant shall furnish Landlord with proof of renewal or binders for new insurance at least thirty (30) days before the expiration date of each policy. With respect to CGL Insurance, Tenant shall name Landlord, its employees, elected officials, board members, officers, agents and volunteers as additional insureds with respect to Tenant's negligence for any claims arising out of Tenant's operations in or upon the Premises. In addition, the CGL Insurance: (i) must be endorsed to be primary and non-contributory, rather than excess, with respect to each party's additional insured

status; (ii) endorsed to provide cross-liability coverage if they do not contain a standard ISO separation of insureds provision; (iii) shall not contain any endorsement or provision that states the limits of the policy will not stack, pyramid or be addition to any other limits provided by that insurer, and (iv) have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by an additional insured under the policy against another insured under the policy. All insurance policies required by this Section 17 (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary and umbrella policies. The insurance provisions set forth in this Section 17 set forth the minimum amounts and scopes of coverage to be maintained by Landlord and Tenant and are not to be construed in any way as a limitation on each party's liability under this Lease. Landlord, as a public entity, may satisfy any of its insurance requirements by use of self-insurance, deductible, captive insurance company or risk pool. The responsibility to fund any financial obligation for self-insurance, the election not to insure, and/or deductibles shall be assumed by, for the account of, and at the sole risk of each party. The application of coverage within this self-insurance, election not to insure, and/or deductible shall be deemed covered in accordance with the policy forms set forth in this Section 17.

18. Waiver of Civil Code Sections. Tenant waives the provisions of California Civil Code Section 1932(2) and California Civil Code Section 1933(4) with respect to any destruction of the Premises.

19. Default and Landlord's Remedies.

a. Default. The occurrence of any of the following shall constitute a default by Tenant:

(1) Tenant shall fail to pay when due any rent or any other monetary sum payable under this Lease.

(2) Tenant shall fail to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease if such default continues for a period of ten (10) days after written notice by Landlord specifying the nature of the default with reasonable particularity, unless the nature of the default is such that more than ten (10) days is required to cure it and Tenant commences to cure it within such ten (10) -day period and thereafter diligently pursues it to completion.

(3) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or take or have taken against Tenant any proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event any such proceedings are involuntary, Tenant is not discharged from the same within thirty (30) days thereafter.

(4) A receiver is appointed for a substantial part of the assets of Tenant, and such receivership is not released within thirty (30) days.

(5) The abandonment of the Premises by Tenant, or the vacation (hereby defined to be thirty (30) or more consecutive days of continual absence from the Premises) of the Premises by Tenant.

(6) This Lease or any estate of Tenant hereunder shall be levied upon by any attachment or execution and such levy is not released within thirty (30) days.

Notices given under this Section shall specify the alleged default and the applicable Lease provisions, and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises.

b. Landlord's Remedies. If any default by Tenant shall occur, and following notice of default as required by this Lease (for the period applicable to the default under the applicable provision of this Lease), Landlord shall have the following remedies in addition to all other rights and remedies provided by law or equity, to which Landlord may resort cumulatively or in the alternative.

(1) Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such intention to terminate. In the event that Landlord shall so elect to terminate this Lease, then Landlord may recover from Tenant:

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

(b) 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 Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) 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; and

(e) 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.

As used in Subparagraphs (a) and (b) above of this Section, the "worth at the time of award" is computed by allowing interest at the maximum rate an individual is permitted by law to charge. As used in subparagraph (c) above, the "worth at the time of award" is 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%).

(2) In the event of the vacation or abandonment of the Premises by Tenant, or in the event that Landlord shall elect to reenter as provided herein or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, then Landlord shall have the remedy specified by Civil Code Section 1951.4, in which Landlord may from time to time recover all rental as it becomes due or relet the Premises or any part thereof for the account of Tenant on such term or terms and at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. In the event that Landlord shall elect so to relet, then rentals received by Landlord from such reletting shall be applied first, to the payment of any indebtedness, other

than rent due hereunder, owed by Tenant to Landlord; second, to the payment of any cost (including commissions) of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Tenant hereunder, then Tenant shall pay such deficiency to Landlord upon demand. Tenant shall also pay to Landlord, as soon as ascertained, any and all costs and expenses incurred by Landlord in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

(3) No reentry or taking possession of the Premises by Landlord pursuant to this Section shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

20. Signs. All signs and graphics of every kind visible in or from public view or corridors, or the exterior of the Premises, whether inside or outside the Premises, shall be subject to Landlord's prior written approval and shall be subject to compliance with any applicable Laws, including local sign ordinances and Historic Preservation laws. Landlord may provide, at its option, a building directory sign, for which Tenant shall pay its Proportionate Share.

21. Parking. Tenant shall have the use of the Tarob Site for employee parking purposes.

22. Estoppel Certificate. Tenant shall execute and deliver to Landlord within ten (10) days of request a commercially reasonable estoppel statement. Landlord and Tenant intend that any estoppel statement delivered pursuant to this Section may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the building or any interest therein and failure to execute and return such estoppel shall be a material breach of the Lease.

23. Eminent Domain. In case the whole of the Premises, or such part thereof that substantially interferes with the reasonable use of the Premises for storage and parking purposes, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, either party shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant. In the event the amount of property or the type of estate taken shall not substantially interfere with the reasonable use of the Premises for storage and parking purposes, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant. If there is no substantial interference or if there is substantial interference, but neither party elects to terminate, Landlord shall promptly proceed to restore the Premises to substantially the same condition as the Premises existed prior to such partial taking, to the extent possible by application of the condemnation proceeds only, and a proportionate allowance shall be made to Tenant for the rent corresponding to the time during which, and to the part of the Premises of which Tenant shall be so deprived on account of such taking and restoration. Nothing contained in this Section shall be deemed to give Landlord any interest in any award made to Tenant for the taking of personal property and fixtures belonging to Tenant. Each party waives the provisions of California Code

of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taking of the premises.

24. Brokers. The parties represent that there are no brokers involved in the negotiation of this Lease or otherwise entitled to a commission or fee in connection with the transactions contemplated in this Lease. Each party hereby indemnifies, defends and holds the other party harmless from all loss, cost and expense (including reasonable attorneys' fees) arising out of a breach of its representation set forth in this Section 24. The provisions of this Section 24 shall survive the termination of the Lease. This Section 24 is for the benefit of Landlord and Tenant only and is not intended to give any third person, including Broker, any right of subrogation or action over or against any party to this Lease.

25. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

26. Notices. Any notice required or permitted to be given hereunder may be given by personal delivery or by United States certified mail, postage prepaid, addressed to Tenant at the Premises and to Landlord at 455 E Calaveras Blvd, Milpitas, CA 95035 (Attention: Office of Economic Development), or at such other address as the Landlord shall designate in writing.

27. Waiver; Accord and Satisfaction. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent shall not constitute a waiver of any other default; it shall constitute only a waiver of timely payment for the particular rent payment involved. No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease.

28. Time is of the Essence. Time is of the essence of this Lease as to the performance of all terms, covenants, and conditions stated herein.

29. Successors and Assigns. Except as otherwise provided herein, all of the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. In the event of any transfer, assignment or other conveyance or transfers of any such title or tenant, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

30. Titles and Definitions. The titles of paragraphs herein are for identification only. They shall not be considered to be a part of this Lease and shall have no effect upon the construction or interpretation thereof. The words "Landlord" and "Tenant" as used in this Lease shall include both singular, plural, masculine, feminine, and neuter as the context shall require.

31. Entire Agreement/Amendment. This Lease contains the entire agreement of the parties and supersedes all prior negotiations, drafts, and other understandings which the parties may have concerning the subject matter hereof. This Lease may not be modified except by written instrument duly executed by the parties hereto or their successors in interest.

32. Choice of Laws; Interpretation. This Lease shall be governed by and construed pursuant to the laws of the State of California. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party.

33. Authority/Consents & Approvals. Each of the persons executing this Lease on behalf of Tenant warrants and represents that Tenant is a duly organized and validly existing entity, that Tenant has full right and authority to enter into this Lease and that the persons signing on behalf of Tenant are authorized to do so and have the power to bind Tenant to this Lease. Tenant shall provide Landlord upon request with evidence reasonably satisfactory to Landlord confirming the foregoing representations. The approval of Landlord, wherever required in this Lease, shall mean the approval of the **City Manager**.

34. No Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, operate as an assignment to it of any or all subleases or subtenancies.

35. Recordation. Tenant shall not record this Lease or a short form memorandum hereof without Landlord's prior written approval.

36. No Third Party Benefit. This Lease is a contract between Landlord and Tenant and nothing herein is intended to create any third party benefit.

37. Severability. If, for any reason whatsoever, any of the provisions hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the day and year set forth below.

**LANDLORD**

Dated: \_\_\_\_\_

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

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

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

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

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



**TENANT:**

Dated: \_\_\_\_\_

**EXHIBIT A**  
**MAP OF PREMISES**

**EXHIBIT B**  
**RULES AND REGULATIONS**

**[To be Attached]**

## EXHIBIT C

### REQUIREMENTS FOR ALTERATIONS AND IMPROVEMENTS BY TENANT

If Landlord shall permit Tenant to construct any initial tenant improvements in the Premises or to have any work performed in the Premises at any time prior to or during the Lease term by a contractor retained by Tenant ("**Tenants Work**"), then Tenant shall comply with the requirements set forth herein. If Tenant's Work has been properly authorized, Tenant will receive written approval and consent for alterations to the Premises. All alterations to the Premises, excepting movable furniture and trade fixtures, shall, at Landlord's option, become a part of the realty and belong to Landlord.

1. SUBMITTAL OF PLANS Prior to commencing any work in the Premises, Tenant shall submit to Landlord for approval its proposed plans for the work. Without limiting the foregoing, Tenant shall provide:

(a) A separate scale drawing denoting all proposed construction and/or demolition if necessary;

(b) A separate drawing for each trade proposing structural, electrical, mechanical, civil or landscaping modifications;

(c) Specify all dimensions and complete references to all work to be performed in the affected areas;

(d) If adding extra electrical or mechanical equipment, -provide complete operating and maintenance specifications for each item;

2. CHECKLIST With respect to each project, Tenant with a checklist listing the items required to be furnished to Landlord in connection with the proposed work. Tenant shall furnish to Landlord prior to, during, or upon completion of Tenants Work, as applicable, each of the items specified in the checklist attached hereto as **Attachment I**.

3. CONTRACTORS PROVIDING TENANT IMPROVEMENT SERVICES.

(e) The contractor employed by Tenant and any subcontractors shall be (i) duly licensed in the state in which the Premises are located, and (ii) subject to Landlord's prior written approval, which approval shall not be unreasonably withheld. If more than one trade is employed on a single job, state law requires the services of a general contractor in addition to contractors for specialty work being performed;

(f) Each contractor shall provide proof of licensing as a general or specialty contractor in accordance with state law. Additionally, each contractor shall furnish proof of licensing in the city or municipality in which the construction related activity is to take place;

(g) Tenant shall use Landlord's subcontractor for mechanical, electrical, plumbing, roofing and roofing consultant. Landlord retains the right to approve or disapprove outside contractors prior to commencement of any work;

(h) Tenant and Tenant's contractors shall comply with all Applicable Laws pertaining to the performance of Tenant's Work and the completed improvements and all applicable safety regulations established by Landlord or the general contractor.

(i) Prior to commencement of any Work in the Premises, Tenant and Tenant's contractors (and any subcontractors) shall obtain and provide Landlord with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies satisfactory to Landlord. Each general contractor (and any subcontractor) employed on the Premises shall provide Landlord with a current certificate of insurance in effect for that contractor with a thirty (30) day notice of cancellation or revocation clause. Insurance requirements are as follows:

(i) Comprehensive General Liability with a \$2,000,000 Combined Single Limit covering the liability of Landlord and contractor for bodily injury and property damage arising as a result of the construction of the improvements and the services performed thereunder. Landlord shall be named as an additional insured;

(ii) Comprehensive Automobile Liability with a \$2,000,000 Combined Single Limit covering Landlord and vehicles used by contractor (and any subcontractor) in connection with the construction of the improvements;

(iii) Workers' Compensation and Employer's Liability as required by law, for employees of the contractor (and any subcontractors) performing work on the Premises.

(j) The following requirements shall be incorporated as "**Special Conditions**" into the contract between Tenant and its contractors and a copy of the contract shall be furnished to Landlord prior to the commencement of Tenant's Work.

(i) Prior to start of Tenant's Work, Tenant's contractor shall provide Landlord with a construction schedule in "bar graph" form indicating the completion dates of all phases of Tenant's Work;

(ii) Tenant's contractor shall be responsible for the repair, replacement or clean-up of any damage done by it to other contractors' work which specifically includes access ways to the Premises which may be concurrently used by others;

(iii) Tenant's contractor shall accept the Premises prior to starting any trenching operations. Any rework of sub-base or compaction required after the contractor's initial acceptance of the Premises shall be done by Tenant's contractor, which shall include the removal from the Project of any excess dirt or debris;

(iv) Tenant's contractor shall contain its storage of materials and its operations "within the Premises and such other space as it may be assigned" by Landlord or Landlord's contractor. Should Tenant's contractor be assigned space outside the Premises, it shall move to such other space as Landlord or Landlord's contractor shall direct from time to time to avoid interference or delays with other work;

(v) Tenant's contractor shall clean up the construction area and surrounding exterior areas daily. All trash, demolition materials and surplus construction materials shall be stored within the Premises and promptly removed from the Premises and disposed of in an approved sanitation site;

(vi) Tenant's contractor shall provide temporary utilities, portable toilet facilities, and potable drinking water as required for its work within the Premises and shall pay to Landlord's contractor the cost of any temporary utilities and facilities provided by contractor at Tenant's contractor's request;

(vii) Tenant's contractor shall notify Landlord or Landlord's project manager of any planned work to be done on weekends or other than normal job hours;

(viii) Tenant's contractor or subcontractors shall not post signs on any part of the Premises;

(ix) Tenant shall and shall cause its contractors and subcontractors to: pay prevailing wages in the construction of Tenant's Work as those wages are determined pursuant to Labor Code Sections 1720 et seq.; employ apprentices as required by Labor Code Sections 1777.5 et seq.; and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the Department of Industrial Relations (the "DIR") for all such Labor Code sections.

4. COSTS Tenant shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Tenant's Work (including the costs of permits therefore) and shall furnish to Landlord evidence of such payment upon request.

#### 5. MECHANIC'S LIENS

(a) Tenant shall not suffer or permit to be enforced against the Premises or any part of the Project any mechanic's, materialman's, contractor's or subcontractor's lien arising out of any work of improvement, however, it may arise

(b) Tenant shall notify Landlord at least ten (10) days prior to the commencement of construction of any Tenant's work and Landlord shall have the right to post and record a notice of non-responsibility in conformity with applicable law. Within ten (10) days following completion of Tenant's Work, Tenant shall file a Notice of Completion' and deliver to Landlord an unconditional release and waiver of lien executed by each contractor, subcontractor and materialman involved in Tenant's Work.

(c) In the event any lien is filed against the Premises or any portion thereof or against Tenant's leasehold interest therein, Tenant shall obtain the release and/or discharge of said lien, within ten (10) days after the filing thereof. In the event Tenant fails to do so, Landlord may obtain the release and/or discharge of said lien and Tenant shall Indemnify Landlord for the costs thereof, including reasonable attorneys' fees, together with interest at the Applicable Interest Rate from the date of demand. Nothing herein shall prohibit Tenant from contesting the validity of any such asserted claim, provided Tenant has furnished to Landlord a lien release bond freeing the Premises from the effect of the lien claim.

6. INDEMNITY

(a) Tenant shall indemnify, defend (with counsel satisfactory to Landlord) and hold Landlord harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers' compensation, attorney's fees and costs) based on personal injury or property damage, or otherwise (including, without limitation, contract and breach of warranty claims) arising from the performance of Tenant's work Tenant shall repair or replace (or, at Landlord's election, reimburse Landlord for the cost of repairing or replacing) any portion of the Property or item of Landlord's equipment or any of Landlord's real or personal property damaged, lost or destroyed in the performance of Tenant's Work.

a. Tenant shall indemnify, hold harmless and defend (with counsel reasonably selected by the Landlord), to the extent permitted by applicable law, Landlord, its councilmembers, commissioners, officials, employees and agents, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant, or its contractors or subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the DIR in connection with Tenant's Work. The provisions of this Section shall survive termination of the Lease.

7. PROPERTY STANDARDS All work shall conform to Landlord's established Property standards and specifications Tenant is required to make these standards part of the construction documents.

8. ROOF PENETRATIONS If improvements penetrate the roof membrane, the penetrations will be sealed per Landlord/IRC roofing specifications and inspected by IRC to maintain roof warranty The cost of inspection and all corrective work shall be borne by Tenant. Tenant shall use Landlord's original roofing contractor.

9. PROPERTY MODIFICATIONS Work will only be approved within the confines of a given space Tenant will not be allowed to modify Property exterior or-mechanical and electrical service as provided to the Property.

10. ELECTRICAL WORK All electrical work shall be approved from the unit space electrical panel only Additional service requirements shall be secured only by direction of Landlord Tenant shall use Landlord's original electrical contractor.

11. SCHEDULE OF WORK Tenant may be required to provide a schedule of all work to be performed, subject to Landlord approval All costs to produce such schedule shall be borne solely by Tenant.

12. CLEAN UP AND DISPOSAL OF CONSTRUCTION DEBRIS Property trash containers are provided for office generated trash only and are not to be used for disposal of construction-related materials and debris Unapproved usage will result in a penalty assessment to the Tenant equal to the cost of an extra pick-up service as provided under the current rate schedule of regular trash removal service.

13. INSPECTION BY LANDLORD Landlord reserves the following rights (i) the right of inspection prior to, during and at completion of all construction and/or demolition, (ii) the right to post and record a notice of non-responsibility in conformity with California law, and (iii) the right to order a total stop to all improvements underway for non-compliance with any of the requirements hereof.

14. GENERAL PROVISIONS

(a) If Landlord has agreed to provide an allowance toward the cost of tenant improvements, Landlord shall retain from such funds an amount determined by Landlord until Tenant has fully complied with the requirements hereof.

(b) All materials, work, installations and decorations of any nature whatsoever brought on or installed in the Premises before the commencement of the Term or throughout the Term shall be at Tenant's risk, and neither Landlord nor any party acting on Landlord's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever.

(c) Nothing contained herein shall make or constitute Tenant as the agent of Landlord.



ATTACHMENT 1

ITEMS TO BE FURNISHED TO LANDLORD FOR EACH WORK OF IMPROVEMENT

1. Plans of Alterations for Landlord Approval
2. Contractor(s), Address, Telephone Number, Contact Person
3. Copy of Contractor's State and City Business License
4. Copy of Property Permit
5. Copy of Final Inspection and Signed Property Permit Cards
6. Copy of Certificate of Insurance naming City of \_\_\_\_\_ as Additional Insured; (Insurance to include Comprehensive General Liability, Comprehensive Auto, Workers' Compensation and Employer's Liability)
7. Signed Unconditional Lien Waiver in Favor of City of \_\_\_\_\_
8. Schedule of Work.
9. Copy of Completion of Payment Bond
10. Architect's License and Expiration
11. Tenant and Contractor Agreement
12. Copy of Permit Plans
13. Copy of As-Built
14. Copy of Recorded Notice of Completion
15. Certificate of Occupancy
16. Evidence on Insurance for All Risk/Builder's Risk Insurance to the Amount of Improvements