

**GROUND LEASE**

**By and Between**

CITY OF RIO VISTA  
a municipal corporation of the State of California  
(**“Landlord”**)

**and**

MANUEL AND LUZ WENCE  
Individuals  
(**“Tenant”**)

**GROUND LEASE**

**BASIC LEASE INFORMATION:**

1. Tenant: Manuel and Luz Wence, Individuals  
95 Main Street  
Rio Vista, CA 94571  
Phone: (707) 374-3939
  
2. Landlord: City of Rio Vista, a municipal corporation of the State of California  
One Main Street  
Rio Vista, CA 94571  
Phone: (707) 374-6451  
Facsimile: (707) 374-6737  
Attention: City Manager
  
3. Premises: Tenant to lease approximately 400 square feet of an unpaved portion of the property (APN: 0049-167-060) located at the northwest end of 45 Main Street, Rio Vista, California 94571, as described on Exhibit B, and as depicted on Exhibit C (the "Premises"), attached hereto and incorporated herein.
  
4. Permitted Uses: The leased Property is to be used as parking for the expansion of Lucy's restaurant.
  
5. Initial Term: Ten (10) years commencing as of 1, 2012 ("Commencement Date").
  
6. Base Rent: The initial monthly rent shall be One Hundred and No/100 Dollars (\$100). Rent shall be increased as set forth in Section 3 of the Lease.

The Basic Lease Information set forth above, and the Exhibits attached hereto, are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease section pertaining to such information. In the event of any conflict between the Basic Lease Information and the provisions of the Lease, the latter shall control.

LANDLORD'S INITIALS \_\_\_\_\_

TENANT'S INITIALS \_\_\_\_\_

TENANT'S INITIALS \_\_\_\_\_

## STANDARD LEASE PROVISIONS

This Ground Lease (“Lease”) is made and entered into as of 1, 2012, (“Effective Date”) by and between the **City of Rio Vista**, a municipal corporation of the State of California (“Landlord”) and the **Tenant** identified in Item 1 of the Basic Lease Information (“Tenant”).

### **1. PREMISES.**

1.1 Premises. Landlord is the owner of the property located at 45 Main Street, Rio Vista, California 94571 as depicted on **Exhibit A**, attached hereto (“Property”). The defined term “Property” includes the Building, the Premises and the Improvements. The building itself is referred to herein as the “Building,” the land is referred to herein as the “Premises.” Landlord hereby leases to Tenant, and Tenant leases from Landlord, a portion of the Premises which is located on said ½ acre portion of the Property, as described in Item 3 of the Basic Lease Information. A legal description of the Premises is attached hereto as **Exhibit B**. A drawing depicting the general location leased is attached hereto and incorporated by reference as **Exhibit C**.

1.2 Rentable Area. The rentable area of the Premises are for all purposes under this Lease, stipulated to be as specified in the Basic Lease Information. Landlord shall not be liable to Tenant, nor shall Tenant have any claim against Landlord or defense to the enforcement of this Lease if it is determined that the actual rentable area of the Premises differs from that specified in the Basic Lease Information.

1.3 Public Use. Tenant shall at all times keep the property open to the public for parking. Tenant must obtain permission in writing from the Landlord if tenant proposes to fence or restrict access to the site at any time. Landlord shall not unreasonably withhold permission.

#### 1.4 Reserved Rights.

1.4.1 Landlord’s Right of Entry. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises and Building; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; (v) to maintain, inspect and repair the exterior of the Building facing the Premises to the extent required; (vi) to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; (vii) to repair the utility lines located on the Premises; and (viii) to perform any other right or duty of Landlord under this Lease. Landlord may exercise this right of entry without any abatement of rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

1.4.2 Additional Reserved Rights. In addition, Landlord reserves the right upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) to undertake the following: (i) grant easements encumbering the Property which do not unreasonably interfere with Tenant’s use of the portion of the Premises, and dedicate for public use portions thereof; (ii) record covenants, conditions and restrictions (“**CC&Rs**”)

affecting the Property which do not unreasonably interfere with Tenant's use of the Premises; and (iii) affix reasonable signs and displays. Landlord further reserves all the rights reserved to it or them by the provisions of this Lease, by the CC&Rs, or by operation of Law.

2. **TERM.** The "Term" of this Lease shall be as set forth in Item 5 of the Basic Lease Information, and shall commence on the Commencement Date.

3. **RENT.**

3.1 **Base Rent; Rent.** All Rent under this Lease shall commence upon the month following the completion of the Improvements. Exercising reasonable discretion, the City shall determine as part of its normal construction inspection process whether the Improvements are complete. Rent shall be paid as set forth in this Section 3. Tenant shall pay to Landlord, at Landlord's address designated in Item 2 of the Basic Lease Information, or at such other address as Landlord may from time-to-time designate in writing to Tenant for the payment of Rent, the Base Rent designated in Item 6 of the Basic Lease Information, without notice, demand, offset or deduction, in advance, on the first day of each calendar month. Upon execution of this Lease, Tenant shall pay to Landlord the total sum of: (a) the first month's Base Rent due, and (b) any prorated rent for a partial month if the Commencement Date falls on a date other than the first calendar day of a month. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be Additional Rent due on the same date as Base Rent unless otherwise specified hereunder or otherwise requested by Landlord, whether or not such sums are designated as Additional Rent. Notwithstanding the foregoing, late charges under Section 3.1.2 shall be due and payable immediately upon incurrence. The term "**Rent**" means the Base Rent and all Additional Rent payable hereunder. If Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a thirty (30) day month.

3.1.1 **Application of Payments.** All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

3.1.2 **Late Charge and Interest.** The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses, and increased debt service ("**Delinquency Costs**"). If Landlord has not received any installment of Rent within five (5) days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount immediately. The ten percent (10%) late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all such delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum ("**Applicable Interest Rate**") equal to the lesser of: (a) the maximum interest rate permitted by Law, or (b) five percent (5%) above the rate publicly announced by Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) ("**Bank**") at its "Reference Rate." If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time-to-time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge and

interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord's acceptance of late Rent, partial Rent and late charges does not equate with a waiver of Tenant's default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Lease and/or by operation of Law.

3.2 Additional Rent. In addition to paying the Base Rent specified in Item 6 of the Basic Lease Information and in Section 3.1, and pursuant to any Addendum or Amendment to this Lease that Landlord and Tenant may execute, Tenant shall pay as Additional Rent Tenant's share of Expenses. "**Expenses**" means Taxes, as described in Sections 5.1 through 5.4. In addition, Tenant shall pay for any utilities as described in Section 4, not directly paid by Tenant to the utility company, the cost of Improvements and any other amounts of any kind that become due or payable by Tenant to Landlord under the terms of this Lease. Unless Landlord elects otherwise pursuant to this Lease, all amounts due under this Lease as Additional Rent are payable for the same periods and in the same manner, time and place, as the Base Rent. Tenant's obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term.

3.3 Security Deposit. The cash sum in the amount of **\$0** shall be deposited with Landlord concurrently with Tenant's execution of this Lease ("**Security Deposit**"). Landlord shall hold the Security Deposit as security for the performance of Tenant's obligations under this Lease. Tenant is not entitled to any interest on the Security Deposit and Landlord shall not be liable therefor. If Tenant defaults on any provision of this Lease, Landlord may, at its election and without prejudice to any remedy it has under this Lease, or by operation of Law, apply all or part of the Security Deposit to: (i) Rent or other sum in default; (ii) any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under this Lease; (iii) unamortized costs of Tenant Improvements; (iv) unamortized costs of brokerage commissions; or (v) any expense, loss or damage that Landlord may suffer because of Tenant's default. Tenant waives the provisions of California Civil Code section 1950.7, and all other provisions of Law now in force or that become in force after the date of execution of this Lease, that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of Rent, to repair damage caused by Tenant, or to clean the portion of the Premises. Landlord and Tenant agree that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant, or of Tenant's officers, agents, employees, independent contractors, invitees, customers, visitors, licensees, assignees or subtenants (individually and collectively, "**Tenant's Parties**").

3.3.1 Restoration of Security Deposit; Return of Security Deposit. If Landlord applies any portion of the Security Deposit during the Term, Tenant shall, within thirty (30) days after demand by Landlord, deposit with Landlord an amount sufficient to restore the Security Deposit to its original amount. If Tenant performs every provision of this Lease to be performed by Tenant, the unused portion of the Security Deposit, if any, shall be returned to Tenant or the last assignee of Tenant's interest under this Lease within thirty (30) days following the expiration or termination of the Term.

3.3.2 Transfer of Security Deposit; Assignment or Encumbrance of Security Deposit. If Landlord disposes of its interest in the Premises, Landlord may deliver the remaining Security Deposit to Landlord's successor-in-interest in the Premises, and thereupon, be relieved of further responsibility with respect to the Security Deposit. Tenant may not assign or encumber the Security Deposit without the prior written consent of Landlord. Any attempt to do so shall be void and shall not be binding on Landlord.

3.3.3 Extended Term. Upon the expiration of the Term, Landlord and Tenant may mutually agree to extend the Lease for the Premises upon written approval by the City Council ("Extended Term").

3.3.4 Timing and Basis of Adjustment for each Extended Term. If Tenant and Landlord opt to renew the Lease for Extended Terms, the Premises Rent for each additional year lease shall be adjusted as set forth in Section 3.3.5.

3.3.5 Method of Adjustment for each Extended Term. The Consumer Price Index [All Items] for San Francisco-Oakland-San Jose CMSA published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is published most immediately preceding the beginning of the Extended Term ("Adjustment Index") shall be compared with the Index published from the same time in the preceding year ("Beginning Index"). If the Adjustment Index has increased over the Beginning Index, the Premises Rent payable shall be respectively set by multiplying the Premises Rent due under this Lease by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no case shall the new Premises Rent be less than the Rent in effect under this Lease. As soon as the adjusted Premises Rent is set, Landlord shall give Tenant notice of the amount of the adjusted Rents.

3.4 Holding Over. In the event Tenant remains in possession of the Premises after the expiration of this Lease without execution of a new lease, Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month at the time of expiration of the Term. In the event that Tenant remains in possession of property, Tenant hereby agrees to pay to Landlord as Rent, one hundred twenty-five percent (125%) of the Rent in effect at the expiration of the Term, and to continue payment of the other monetary sums (such as taxes, insurance, etc.) which are Tenant's obligation under this Lease.

#### **4. UTILITIES.**

4.1 Utilities and Services. Tenant shall have no access to utilities on the Premises.

4.2 Tenant Utility Costs. Tenant shall pay Tenant's Share of utility costs associated with the Premises, if costs are shared by various parties.

4.3 Exculpation of Liability. Landlord shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord's failure to furnish any of the services, or furnishing reduced service; no such failure or reduction shall constitute or be construed as a constructive or other eviction of Tenant, nor shall Landlord be liable for loss of business or injury to property however occurring, through or in connection with or incidental to such failure to furnish, or reduction of any of the services. Should Landlord elect to provide a security patrol

or system, Landlord shall not be responsible for any damage or injury to Tenant, Tenant's Parties, or the Premises or Property due to failure, action or inaction of such patrol or system. Landlord reserves the right to stop services when necessary, by reason of accident or emergency or for inspection, repairs, alterations, decorations, additions or improvements, which in the judgment of Landlord, are desirable or necessary to be made, until same shall have been completed, and shall further have no responsibility or liability for failure to supply any services in such instance. Landlord shall use reasonable efforts to minimize the inconvenience to Tenant from such disruptions or interruptions of services and shall provide Tenant with reasonable notice of such disruptions or interruptions to the extent that Landlord is aware of or has been provided with advance notice of the disruptions or interruptions. The exculpation of liability under this Section 4.3 shall not apply to the extent claims are caused by Landlord's sole or active negligence or willful misconduct.

4.4 No Representation. Landlord makes no representation with respect to the adequacy or fitness of the Premises on the Property and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

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

## 5. TAXES.

5.1 Taxes. As used in this Lease "**Taxes**" means Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

5.2 Statement Regarding Possessory Interest Tax. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest. Such Taxes are referred to herein as "**Possessory Interest Taxes.**"

5.3 Personal Taxes. Tenant shall pay directly to the taxing authority all Taxes and assessments levied upon the trade fixtures, alterations, additions, improvements, equipment, inventories and other personal property located and/or installed on the Premises by Tenant, and any Improvements (individually and collectively, "**Tenant's Property**"). Such Taxes are referred to herein as "**Personal Taxes.**"

5.4 Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such Taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill together with a statement of Tenant's share of Taxes. Tenant shall pay the amount reasonably allocated to Tenant no later than ten (10) business days prior to the date on which such Taxes are due. Taxes attributable to any

Tenant Property situated within the [REDACTED] shall be charged to Tenant as a specific expense. Should Tenant fail to pay their Taxes, Landlord may elect to do so on Tenant's behalf. Tenant will, thereafter, be required to pay their Taxes and interest at the Applicable Interest Rate, from the date Landlord tendered payment, until the date Tenant fully reimburses Landlord.

## 6. INSURANCE.

6.1 Landlord. Landlord may elect to maintain insurance or an insurance equivalent (including, but not limited to, e.g., that offered to a municipality through and by a joint powers authority, a self insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar, collectively) insuring the Building (excluding Improvements) on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) similar in type and coverage limits to that carried by Landlord on its other properties. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. All such insurance or insurance equivalent maintained by Landlord pursuant to this Section 6.1 is referred to in this Lease as "**Landlord's Insurance.**" Landlord's Insurance shall not, under any circumstances, include Tenant's Property, or other items required to be covered by Tenant's Insurance.

6.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following "**Tenant's Insurance,**" and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith:

6.2.1 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 and One Million Dollars (\$1,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal injury, death and advertising injury coverage, with deletion of: (a) the exclusion for operations within fifty (50) feet of a railroad property (railroad protective liability), if applicable, and (b) the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit.

6.2.2 Automobile Liability Insurance. Comprehensive 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 the ownership, maintenance, or use of any owned, hired or non-owned automobiles.

6.2.3 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by Law, which complies with all applicable state statutes and regulatory requirements, and, if Tenant hires any employees, employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000).

6.2.4 Property Insurance. "All risk" property insurance, including boiler and machinery comprehensive form, if applicable, covering damage to or loss of Tenant's Property (and coverage for the full replacement cost thereof, including business interruption of



Tenant), together with, if the property of Tenant's invitees is to be kept in the Premises, warehouse's legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located in the Premises.

### 6.3 General.

6.3.1 Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in the state in which the Premises is located and having a "General Policyholders Rating" of at least A VIII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide."

6.3.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds as required in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to the parties named as additional insureds). If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

6.3.3 Additional Insureds. Landlord shall be named as an additional insured on the policy as required by Section 6.2.1. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

6.3.4 Primary Coverage. Tenant's Insurance shall, except for workers' compensation and employer's liability insurance, be primary, without right of contribution from Landlord's Insurance.

6.3.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy (which shall be in "following form") shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under this Lease.

6.3.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant's Property to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. This provision is intended to waive fully, and for the benefit of Landlord, any rights and/or claims which might give rise to a right of subrogation in favor of Tenant's insurance carrier(s). The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

6.3.7 Notification of Incidents. Tenant shall notify Landlord within twenty-four (24) hours after the occurrence of any accident or incident on or about the Property, or any portion thereof, which could give rise to a claim against Landlord, Landlord's Insurance, Tenant or Tenant's Insurance, except that Tenant shall not be obligated to give Landlord notice of any accident or incident which could give rise to a claim under Tenant's workers' compensation

insurance. Tenant's notice shall be accompanied by a copy of any report relating to the accident or incident.

6.3.8 Compliance With Insurance Requirements, Warranties. Tenant shall not do anything in the Premises, or bring or keep anything therein, or subject the Property or any portion thereof, to any use which would damage the same or increase the risk of loss or fire, or violate Landlord's Insurance, or Tenant's Insurance, or which shall conflict with the regulations of the fire department or the Laws, or with any insurance policy on the Premises or any part thereof, or with any rules or regulations established by any administrative body or official having jurisdiction. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Tenant shall not take any action which would abrogate any warranties.

## 7. INDEMNITY; LIABILITY EXEMPTION.

7.1 Indemnity. Except to the extent claims are caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with: (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (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 in or about the Building, the Premises, the Improvements, or other portions of the Property; (iii) any act, error or omission of Tenant or of any invitee, licensee or guest of Tenant, in or about the Building, the Premises, the Improvements, or other portions of the Property; (iv) loss of, injury, or damage to or destruction of property (including loss of use resulting from that loss, injury, damage or destruction); (v) all resulting economic losses, consequential and/or exemplary damages; and (vi) any subleases, assignments and related activities (collectively, the "**Indemnification**"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section 7.1 shall survive the termination of this Lease with respect to any claims or liability arising prior to such termination.

7.2 Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's Property, or injury to or death of persons in, upon or about the Building, the Premises, the Improvements, or other portions of the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active 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 death of Tenant, Tenant's Parties or any other person in or about the Building, the Premises, the Improvements, or other portions of the Property, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances,

plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Building, the Premises, the Improvements, or other portions of the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Building, the Premises, the Improvements, or other portions of the Property, or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

## **8. REPAIRS AND MAINTENANCE.**

### **8.1 Landlord's Obligations.**

8.1.1 At Landlord's Election on Tenant's Behalf. Landlord shall not be required to make or bear the costs of any repair of the Premises except as provided under Sections 12 and 13 of this Lease. If Landlord elects to undertake any repairs or maintenance, then Tenant shall pay as Additional Rent, Landlord's actual costs paid or incurred in connection therewith. Landlord shall have no obligation to make any repairs until a reasonable time after receipt of written notice from Tenant of the need for such repairs.

8.1.2 Tenant's Waiver. Notwithstanding anything to the contrary, whether stated or implied in this Lease, Tenant waives and releases their rights, including their right to make repairs at Landlord's expense or deduct such expenses from Rent, under California Civil Code sections 1932(1), 1941 and 1942, or any similar Laws.

8.2 Tenant's Obligations. Tenant, at Tenant's expense, shall maintain all components of the Premises in good order, condition and repair. In the event Tenant fails, in the reasonable judgment of Landlord, to maintain the Premises in good order, condition and repair, Landlord shall, upon five (5) days' written notice to Tenant, have the right to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within that five (5)-day period. If Landlord elects to undertake any such repairs or maintenance as provided above, then Tenant shall pay as Additional Rent, Landlord's actual costs paid or incurred in connection therewith.

## **9. ALTERATIONS.**

9.1 Condition of Premises. The Premises are being leased to Tenant in return for installation of necessary Improvements to the Premises as described in **Exhibit E**. Any Improvements or alterations constructed by Landlord or Tenant, or on Tenant's behalf therein (whether under this or the prior Lease), are referred to in this Lease as "Improvements." Tenant is familiar with the existing condition of the Property, Premises and any Improvements, and acknowledges that Landlord has made no representation or warranty regarding the condition of the Improvements, Premises, Property or any portion thereof, except as specifically stated in this Lease.

9.2 Trade Fixtures; Alterations. Subject to the conditions and requirements of this Section 9, Tenant shall install necessary Improvements to assure ADA compliance. Tenant shall

not construct, or allow to be constructed, any alterations or physical additions in, about or to the Premises, including any structural, electrical or plumbing work in connection with the Property without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion.

9.3 Standard of Work. All work to be performed by or on behalf of Tenant pursuant hereto shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all Laws applicable to the Premises and insurance carriers. Landlord shall have the right, but not the obligation, to inspect periodically any work on the Premises and Landlord may require changes in the method or quality of the work. In no event shall such work materially obstruct access to the Property or any portion thereof.

9.4 Damage; Removal. Tenant shall repair all damage to the Premises, Building and all portions thereof, caused by the installation or removal of Tenant's Improvements and alterations. Upon the termination of this Lease, Tenant may remove any or all alterations, additions, Improvements and partitions made or installed by Tenant, and restore the Premises to their condition existing prior to the construction of any such items and perform any closure work, investigation and environmental remedial work required by any Hazardous Materials Laws (as hereinafter defined) or by any other Laws; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration of the Term, any such items (except trade fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Building, the Premises, the Improvements or the Property whatsoever, and in strict accordance with all applicable Laws.

9.5 Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished, and services rendered at the request of Tenant and shall keep the Property, the Building, the Premises and all portions thereof, free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises, and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it (unless Tenant has commenced an action to contest, dispute or defend the claims of lienholders and has provided Landlord with written notice of the pendency of the action), and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

9.6 Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to: (i) installation in or about the Premises or any portion thereof, equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "**Transmission Devices**"), or (ii) any assignment or subletting which permits or contemplates installation of such Transmission Devices.

## 10. USE.

10.1 Usage. The Premises shall be used only for the permitted uses set forth in Item 4 of the Basic Lease Information and for no other without the prior written consent of Landlord. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, the Improvements, the Building, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually and collectively, "Law(s)"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining any permit or business license required by any governmental agency permitting Tenant's use of the Premises. Landlord makes no representation concerning the availability of any permits or approvals required or permitted under this Lease. Tenant shall comply with the rules and regulations, including observance of prohibited uses ("Rules"), attached hereto as **Exhibit D** and incorporated by reference, together with such reasonable additional Rules and regulations as Landlord may from time-to-time prescribe. Tenant shall not commit waste; overload the floors or structure of the Building; permit any unreasonable odors, smoke, dust, gas, substances, noise, or vibrations to emanate from the Premises that are offensive or objectionable to Landlord or other tenants or occupants of the Property; take any action which would constitute a nuisance or would disturb, obstruct, or endanger Landlord or other tenants or occupants of the Property; take any action which would abrogate any warranties; or use or allow the Premises to be used for any unlawful purpose; and shall cooperate with Landlord and Landlord's agents to prevent those actions. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the Rules or any other terms or provisions of such tenant's or occupant's lease.

10.2 Quiet Enjoyment. Tenant, upon paying Rent and performing all of their obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease, and to any mortgage, deed of trust, lease, or other agreement to which this Lease may be subordinate.

## 11. ENVIRONMENTAL MATTERS.

11.1 Environmental Compliance. Tenant shall, at their sole cost and expense, comply with all federal, state or local Laws from time-to-time in effect ("**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes ("**Hazardous Materials**"). Except for materials normally and customarily used in offices, such as cleaning supplies, kept in small quantities and safely stored, neither Tenant nor their agents, employees, contractors, sublessees, assignees or invitees shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the Property, or any portion thereof. Tenant shall cause any and all Hazardous Materials brought onto, used,

generated, stored or discharged in the Premises to be removed from the Premises and transported for disposal in accordance with applicable Hazardous Materials Laws.

11.1.1 Landlord shall have the right to enter the Premises from time-to-time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with their obligations concerning Hazardous Materials and Hazardous Materials Laws. Tenant shall immediately notify Landlord in writing of any voluntary clean-up or removal action instituted or proposed by Tenant, any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or any claim made or threatened by any person against Tenant, the Premises, the Building, the Property, or any portion thereof, relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof, and concerning Hazardous Materials or Hazardous Materials Laws.

11.1.2 Prior to Tenant taking possession of the Premises, Landlord shall retain a qualified consultant (the "**Environmental Consultant**") to conduct an environmental assessment of the Premises, including a "Phase I" assessment, and if necessary, additional testing and environmental assessment to determine the existence and extent of any Hazardous Materials on the Premises. The Environmental Consultant shall submit to the Landlord and Tenant a report outlining whether and to what degree any Hazardous Materials exist on the Premises as of the commencement of this Lease (the "**Baseline Environmental Report**"). Upon expiration or termination of this Lease pursuant to the terms herein, Tenant shall retain the Environmental Consultant, or such other qualified consultant approved by Landlord if the Environmental Consultant is not available within a reasonable period of time to conduct an environmental assessment of the Premises, including a "Phase I" assessment, and if necessary, additional testing and environmental assessment to determine the existence and extent of any Hazardous Materials on the Premises. The Environmental Consultant shall submit to the Landlord and Tenant a report identifying any Hazardous Materials that exist on the Premises that were not identified in the Baseline Environmental Report (the "**Second Environmental Report**"). In the event that the Second Environmental Report identifies Hazardous Materials not enumerated in the Baseline Environmental Report, Tenant shall undertake clean-up or removal action to remove the newly identified Hazardous Materials and comply with the terms of this section at their sole cost and expense and shall indemnify, defend and hold Landlord harmless in accordance with Section 11.2 of this Lease.

11.2 Tenant's Indemnification. Except to the extent caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in or about the Premises, including, without limitation, any bodily injury, death, property damage, decrease in value of the Premises or Building, caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials in violation of Tenant's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against Landlord with respect to bodily injury, death

or property damage sustained by third parties caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials.

## **12. DAMAGE AND DESTRUCTION.**

12.1 Casualty. If, during the Term, the Building and other Improvements that are part of the Premises are totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable (“**Casualty**”), then Landlord shall have the right at Landlord’s option to give written notice to Tenant within ninety (90) days after the date of the occurrence of such damage of Landlord’s intention to either: (i) repair such damage as soon as reasonably possible at Landlord’s expense, or (ii) terminate this Lease as of the date of the occurrence of such damage. If Landlord elects to repair the damage, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Tenant’s Insurance pursuant to Section 6 above, on account of such damage, and if the restoration can be made under then existing Laws and can be completed within ninety (90) working days after obtaining all necessary permits therefor, then Landlord shall restore the Building and Improvements to substantially the same condition as they were in immediately before destruction. If the restoration cannot be so made, then within fifteen (15) days after the parties determine that the restoration cannot be made as stated in this Section 12.1, Tenant can terminate this Lease immediately by giving written notice to Landlord. If the existing Laws do not permit the restoration, either party can terminate this Lease by giving ninety (90) days prior written notice to the other party. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, or the date of termination if the Lease is terminated, based on the extent to which the destruction actually interferes with Tenant’s use of the Premises.

12.2 Tenant’s Fault; Repair Limitation. If the Premises, the Building, the Property or any portion thereof, are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant’s Parties, Rent shall not be reduced during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair caused thereby, to the extent such cost is not covered by insurance proceeds. Notwithstanding anything in this Lease to the contrary, and except to the extent caused by Landlord’s sole or active negligence or willful misconduct, Landlord shall not be required to repair any injury or damage, by fire or other cause, to Tenant’s Property, or to rebuild, repair or replace any decorations, alterations, partitions, fixtures, trade fixtures, additions or other Improvements installed on the Premises by or for Tenant, unless Landlord has received insurance proceeds from Tenant’s Insurance as provided in Section 6 above, and neither Tenant nor Landlord have opted to terminate this Lease as provided in Section 12.1.

12.3 Waiver. The provisions of this Lease contain an express agreement between Landlord and Tenant that applies in the event of any Casualty. Tenant fully waives the provisions of any statute or regulation, including California Civil Code sections 1932(2) and 1933(4) (as amended from time-to-time, and successor statutes thereto) for any rights or obligations concerning a Casualty.

**13. EMINENT DOMAIN.** If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if 25% or more of the total number of square feet in the Premises is taken or if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use of the Premises. If Tenant elects to terminate this Lease, Tenant must exercise their right to terminate by giving written notice to Landlord within thirty (30) days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of their election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the thirty (30)-day period, this Lease shall continue in full force and effect, except that the Base Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action.

**14. DEFAULT.**

14.1 Events of Default. Where "**default**" is used in this Lease with reference to Tenant, default refers to any breach of Tenant's obligations under this Lease, however brief. Where Tenant's default continues for the period specified below, it shall, at Landlord's option, constitute an Event of Default giving rise to the remedies set forth in Sections 14.2 and 14.3 of this Lease. The occurrence of any of the following events shall, at Landlord's option, constitute an "**Event of Default:**"

14.1.1 Failure to comply with Assignment and Subletting provisions as set forth in Section 15;

14.1.2 Abandonment of or vacating the Premises for a period of thirty (30) consecutive days;

14.1.3 Failure to pay Rent on the date when due and the failure continuing for a period of ten (10) days after such payment is due;

14.1.4 Failure to perform Tenant's covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;

14.1.5 The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any Laws relating to bankruptcy, insolvency or other relief of debtors, and in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold; Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets; Tenant taking any action toward the dissolution or winding up of Tenant's affairs; the cessation or suspension of



Tenant's use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold;

14.1.6 The making of any material misrepresentation or omission by Tenant or any successor-in-interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

## 14.2 Remedies.

14.2.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant, and on the date specified in such notice (which date shall be at least two (2) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease, and all costs and expenses incurred by or on behalf of Landlord hereunder, shall have been paid by Tenant, and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

(a) Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may: (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom, and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or re-let the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

(b) Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (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 the loss of Rent that Tenant proves could have been reasonably avoided, and (d) any other amount and court costs necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (a) and (b) above, shall be computed at the Applicable Interest Rate, and as used in (c) above, 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%).

14.2.2 Continuation. Landlord shall have the remedy described in California Civil Code section 1951.4 (as amended from time-to-time, and successor statutes thereto) and Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due. In the event and for so long as Landlord elects this remedy, Tenant shall have the right to sublet their Premises, assign their interest in the Lease, or both, subject to Landlord's prior written consent, which shall not be unreasonably withheld. In addition, even though an Event of Default may have occurred, this Lease shall continue in effect for so long as

Landlord does not terminate Tenant's right to possession, and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due. Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and re-let the same, or any portion thereof, to third-parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in re-letting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises and like costs. Re-letting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to re-let the Premises, the rent that Landlord receives from re-letting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including maintenance, incurred by Landlord in re-letting; and, third, Base Rent and Additional Rent. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from re-letting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the re-letting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including maintenance, which Landlord incurred in re-letting the Premises that remain after applying the rent received from re-letting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases, and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

14.3 Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at Law, in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

## **15. ASSIGNMENT AND SUBLETTING**

15.1 Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which may be granted or withheld in Landlord's sole discretion. Any sublease or assignment or other transfer agreements shall be subject to Landlord's prior written approval. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublettings. The parties agree that it shall be reasonable for Landlord to withhold its consent to a

proposed assignment or subletting if the proposed assignee or sublessee or the nature of its business would require Landlord to incur additional expense in construction work or other work to the Premises that would not otherwise be required if Tenant remained, for example, if the proposed assignee or sublessee is subject to compliance with additional requirements of the Americans with Disabilities Act (42 U.S.C § 12101, et seq.) (including related regulations) beyond those requirements which are applicable to the tenant desiring to assign or sublease, if the proposed assignee's or sublessee's activities in, on or about the Premises or the Property involve the use, analysis, handling, storage, transport, discharge, release, generation or disposal of any Hazardous Materials, or if the proposed assignment or subletting would violate any section of this Lease.

15.2 Notice. If Tenant desires to assign this Lease or sublet any or all of the Premises, Tenant shall give Landlord written notice thereof (“**Tenant’s Transfer Request**”) with copies of all related documents and agreements associated with the assignment or sublease, including without limitation, a description of the space Tenant proposes to assign or sublet, the anticipated effective date of the assignment or sublease, the financial statements of any proposed assignee or sublessee, at least forty-five (45) days prior to the anticipated effective date of the assignment or sublease. A condition to Landlord’s consent to any transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer or hypothecation, in form and substance reasonably satisfactory to Landlord. Landlord shall have a period of thirty (30) days following receipt of Tenant’s Transfer Request and all related documents and agreements to notify Tenant in writing of Landlord’s election to disapprove the sublease or assignment. In any event, if Landlord fails to notify Tenant in writing of Landlord’s election, Landlord shall be deemed to have disapproved such assignment or subletting, nor shall failure by Landlord to approve a proposed tenant cause a termination of this Lease. This Lease may not be assigned by operation of Law. Any purported assignment or subletting contrary to the provisions hereof shall be void at Landlord’s election and shall constitute an Event of Default hereunder.

15.3 Subject to Lease. Any assignments or sublets must be subject to and in accordance with the terms and conditions of this Lease, and must be consistent with the use requirements provided in Section 10 of this Lease. In no event may any sublessee encumber this Lease. Tenant shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

15.4 Indemnification. Tenant shall ensure that any sublessees or assigns through their subleases or assignment agreements shall indemnify, protect, defend, and hold harmless Landlord and its partners, directors, officers, officials, employees, volunteers, shareholders, lenders, agents, contractors and each of their successors and assigns to the same extent that Tenant shall so indemnify Landlord as set forth in this Lease.

15.5 Relocation Waiver. Each sublease or rental agreement shall contain a relocation waiver in substantially the following form: “Relocation Waiver. Sublessee fully releases and discharges the City of Rio Vista (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in Law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the

Project, Buildings, Premises, or the Subleased Premises, the full or partial termination of Sublessee's leasehold interest as permitted under this Sublease, or the relocation of Sublessee's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Subleased Premises, including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code sections 7260, et seq. ("Relocation Assistance Law"), notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under the Relocation Assistance Law or other state or federal Law. Sublessee acknowledges and agrees that the release and waiver set forth in this section is material consideration for Landlord's consent to the sublease by Sublandlord of the Subleased Premises to Sublessee on the terms set forth herein and that, but for this release and waiver, Landlord would not have consented to the sublease of the Subleased Premises by Sublandlord to Sublessee. It is hereby intended that the above release relates to both known and unknown claims that the Sublessee may have, or claim to have, against the Landlord or the City of Rio Vista with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, the Sublessee expressly waives any rights under California Civil Code section 1542, which provides:

'A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.'

15.6 Liability. Landlord may, without waiving any rights or remedies, collect rent from the assignee, sublessee or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. Tenant (and successor tenants) shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. In addition, Tenant shall make all legally required disclosures to the proposed assignee or sublessee. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to the Lease by assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining their consent; Landlord's consent shall not be construed as relieving Tenant or any successor tenant of any liability or obligation under the Lease. No transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant (and if applicable, successor tenants) for the payment of Rent pertaining to the Premises and for the performance of all the terms and provisions of this Lease relating thereto, arising on or after the date of the transfer. No transfer will release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. In the event of default by any transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed transfer or otherwise has breached its obligations under this

Section 15, Tenant's and such transferee's only remedy shall be to seek a declaratory judgment and/or injunctive relief, and Tenant, on behalf of themselves, and to the extent permitted by Law, such proposed transferee waives all other remedies against Landlord, including without limitation, the right to seek monetary damages or to terminate this Lease.

## **16. ESTOPPEL, ATTORNMENT AND SUBORDINATION.**

16.1 Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed and acknowledged to any proposed mortgagee, beneficiary, purchaser or Landlord in a commercially reasonable form substantially similar to that requested, and a statement certifying, without limitation, that: (i) the Date of Commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (iii) the date to which the Rental and other sums payable under this Lease have been paid; (iv) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; (v) no deposit of any nature has been made in connection with the Lease (other than deposits, the nature and amount of which are expressly described in the Lease); and (vi) such other matters requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Section 16 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Building or any interest therein. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that: (i) this Lease is in full force and effect, without modification except as may be represented by Landlord; (ii) there are no uncured defaults in Landlord's performance; (iii) not more than one (1) month's Rental has been paid in advance; and (iv) no deposit of any nature has been made in connection with the Lease except as represented by Landlord. Except to the extent caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify and hold Landlord harmless from and against any and all damages, penalties, fines, taxes, costs, liabilities, losses and expenses (including, without limitation, reasonable attorneys' fees and court costs) which Landlord may sustain or incur as a result of or in connection with Tenant's failure or delay in delivering such estoppel certificate.

16.2 Subordination. This Lease shall be subject and subordinate to all ground leases, CC&Rs, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this Section 16.2.

16.3 Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a ground lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for by operation of Law.

**17. RELOCATION.** Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in Law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the Property, the Building, or the Premises; the full or partial termination or expiration of Tenant's leasehold interest as permitted under this Lease; or the relocation of Tenant's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Premises including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code sections 7260, et seq. ("**Relocation Assistance Law**"), notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under the Relocation Assistance Law or other state or federal law. Tenant acknowledges and agrees that the release and waiver set forth in this Section 17 is material consideration for Landlord's lease of the Premises to Tenant on the terms set forth herein, and that, but for this release and waiver, Landlord would not have leased the Premises to Tenant. It is hereby intended that the above release relates to both known and unknown claims that the Tenant may have, or claim to have, against the Landlord with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, the Tenant expressly waives any rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

**18. MISCELLANEOUS.**

18.1 General.

18.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property, the Premises, the Building and there are no agreements either oral or written other than as set forth herein.

18.1.2 Time of Essence. Time is of the essence of this Lease.

18.1.3 Attorneys' Fees. In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

18.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

18.1.5 Law. This Lease shall be construed and enforced in accordance with the Laws of the state of California, without reference to its choice of Law provisions.

18.1.6 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

18.1.7 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord, and subject to compliance with the terms of Section 15, the successors and assigns of Tenant.

18.1.8 Third-Party Beneficiaries. Nothing herein is intended to create any third-party benefit.

18.1.9 Memorandum of Lease; Title. Landlord may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises, Building, and/or Property, as required, in recordable form, designating Landlord as transferee or grantee. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

18.1.10 Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third-party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto, or any relationship other than the relationship of Landlord and Tenant.

18.1.11 Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof, or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

18.1.12 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both parties.

18.2 Signs. All signs and graphics of every kind visible in or from public view or corridors, the exterior of the Premises, the exterior of the Building, or on monuments installed or caused to be installed by, for the benefit of, or at the request of Tenant ("**Signs** ") shall be subject to Landlord's prior written approval, shall be in keeping with the character of the Building and shall be subject to any applicable Laws and in compliance with Landlord's signage program, if any. Tenant shall remove all such Signs prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises;

and Tenant shall repair any injury or defacement, including, without limitation, discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and removal of Signs. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice. Notwithstanding anything in this Lease to the contrary, Landlord is not required to provide Signs beyond the standards, if any, set forth in the Rules. Under no circumstances shall Tenant install or operate lighted Signs.

18.3 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

18.4 Financial Statements. Tenant shall provide to Landlord, within ten (10) days after request, an accurate financial statement of Tenant's most recent fiscal year for Tenant and Tenant's business prepared under generally accepted accounting principles consistently applied and tax returns as may be reasonably required.

18.5 Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of Landlord and Tenant shall look solely to the Premises for satisfaction of any liability of Landlord, and shall not look to other assets of Landlord nor seek recourse against the assets of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder, and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

18.6 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's Address and Tenant's Address, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

18.7 Brokerage Commission. Landlord and Tenant represents that they have not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "**Commission**") is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of Tenant.



18.8 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

18.9 Surrender. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear." Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term except as specifically set forth above. If Tenant fails to surrender the Premises upon expiration or earlier termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or earlier termination of this Lease and any related attorneys' fees and brokerage commissions.

18.10 Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

18.11 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

18.12 Force Majeure. For purposes of this Lease, the term "**Force Majeure**" shall mean and include the following: any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over any construction anticipated to occur thereon or over any uses thereof, or by fire, flood, inclement weather, energy shortage, strikes, lockouts or other labor or industrial disturbance, civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, governmental preemption or curtailment in connection with a national emergency or in connection with any rule, order, guideline or regulation of any department or governmental agency, or by reason of the conditions of supply and demand which have been or are affected by a war or other emergency, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure an adequate supply of water, electricity, fuel, materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of hazardous or toxic materials, earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required, or any of its contractors or other representatives.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease as of the Effective Date.

LANDLORD:

**City of Rio Vista**,  
a municipal corporation of the State of California

By: \_\_\_\_\_  
Name: Roger L. Wong  
Title: Interim City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
Name: Jonathan Hobbs  
Title: City Attorney

Date: \_\_\_\_\_

TENANT:

**Manuel and Luz Wence**, Individuals

By: \_\_\_\_\_  
**Manuel Wence**

By: \_\_\_\_\_  
**Luz Wence**

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Anna Olea-Moger, CMC, City Clerk

**Exhibit A**

(Depiction of Real Property)

Real property in the City of Rio Vista, County of Solano, State of California, depicted as follows:

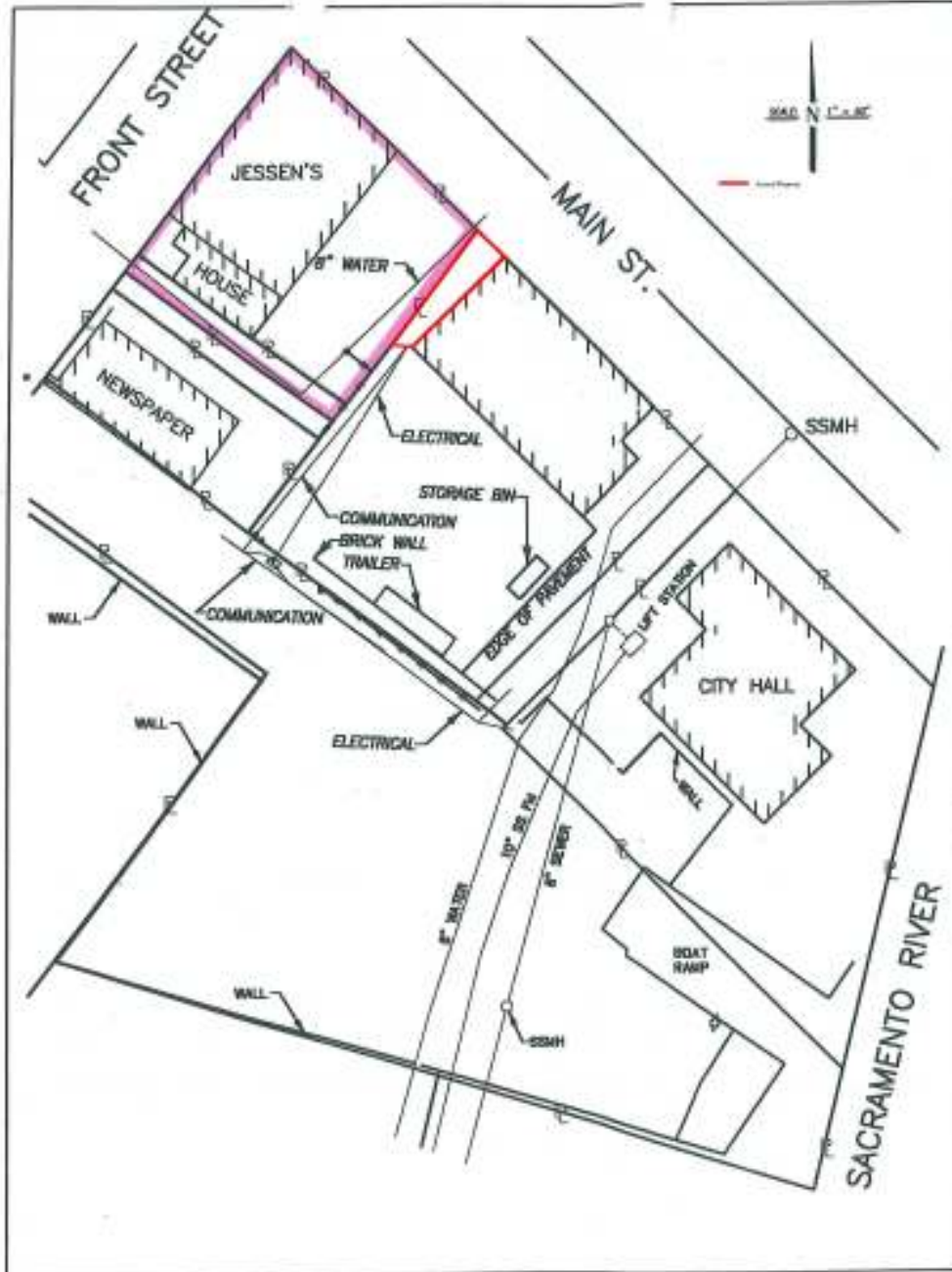


**Exhibit B**

(See Attached Legal Description of the Premises)

Exhibit C

(Depiction of the Premises)



## Exhibit D

### (Rules and Regulations)

Tenant shall comply with the following rules and regulations (individually and collectively, “**Rules**”). Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules.

1. Requirements of Tenant. Any special requirements of Tenant not set forth as an obligation of Landlord under the Lease will be considered only upon written application to Landlord at Landlord’s address set forth in the Lease. Landlord’s employees shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.
2. Flammable or Combustible Fluids or Materials; Foul or Noxious Gases or Substances; Nontoxic Materials. Tenant shall not use, or keep, or allow to be used or kept, in or on the Property or any portion thereof, any foul or noxious gas or substance, kerosene, gasoline, or other flammable or combustible fluid or material, unless such material is stored in a containment unit approved in writing by the Fire Chief of the City for the storage of such material on the Premises. All materials, fabrics and products used in Tenant’s furnishings, wall and floor coverings, and ceiling installations shall be nontoxic and subject to the prior approval of Landlord’s architect or engineer. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of their Lease addressing environmental matters and compliance, indemnities, or Laws.
3. Animals, Birds, and Vehicles. Tenant shall not bring into, or keep within, the Property or any portion thereof, animals, birds, or vehicles (e.g., bicycles, scooters) except for (a) seeing-eye dogs or other animals or vehicles required by any disabled employee or invitee of Tenant, or (b) hand trucks and similar equipment. Without Landlord’s prior consent, Tenant shall not use such items in any space or in the public halls of the Building unless they are equipped with rubber tires and side guards or similar equipment.
4. Cooking; No Use of Premises for Improper Purposes. No cooking shall be done or permitted on the Premises, except that Underwriters’ Laboratory (UL)-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. This use must be in accordance with all applicable Laws. The Premises shall not be used for lodging, or for any illegal purposes.
5. Exclusion or Expulsion. Landlord reserves the right to exclude or expel from the Property or any portion thereof, any person who, in Landlord’s judgment, is under the influence of alcohol or drugs, or commits any act in violation of any of these Rules.
6. Compliance With Safety Regulations. Tenant shall comply with all safety, fire protection, and evacuation procedures and regulations established by Landlord or by any government agency. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of their Lease addressing compliance with Laws.

7. Obstructions. Tenant and Tenant's employees shall not in any way obstruct the sidewalks, entry passages, pedestrian passageways, driveways, entrances and exits to the Building or Property, and they shall use the same only as passageways to and from the Premises.

8. Disposal of Trash and Garbage. Tenant shall store all trash, garbage and refuse ("Trash") within the interior of the Premises. Tenant shall not place or have placed in Trash boxes or receptacles any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of Trash in the Building's vicinity. Tenant shall comply fully with all applicable Laws when disposing of Trash. All Trash disposal shall be made only through routes and at times designated by Landlord.

9. Provision of Information to Tenant's Employees. Tenant shall comply with requests by Landlord that Tenant inform Tenant's employees and agents of items of importance to Landlord.

10. Prohibited Uses and Activities.

10.1 Any use, operation or activity which causes or produces the attraction of flies, insects, rodents or other animals, or the creation or emission of dust or dirt;

10.2 Any use, operation or activity which causes or produces any emission into the air of any: (a) noxious, toxic, hazardous or corrosive fumes or gases; (b) excessive smoke, dirt or dust; or (c) pollutants in violation of any state or federal standards;

10.3 Any use, operation or activity which causes or produces any discharge of toxic substances or hazardous waste material into any sewer system or storm drain serving the Property in a manner that will result in any leaching into the soil, or release into the atmosphere or water table;

10.4 Hazardous or unsafe uses by reasons of danger of fire or explosion, or uses that will increase the fire hazard rating on the Property or other properties, or uses objectionable or offensive to the Property or adjoining properties;

10.5 Uses in violation of any applicable Laws;

10.6 Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Property, whether such portion is improved or unimproved, except as specifically permitted by Landlord; and

10.7 Additional prohibited uses as determined by Landlord from time-to-time.

11. Conflict. In the event of any conflict between these Rules or any further or modified Rules from time-to-time issued by Landlord and the Lease provisions, the Lease shall govern and control.

12. Rule Changes; Waivers. Landlord reserves the right at any time to change or rescind any one or more of these Rules or to make such other and further reasonable Rules as, in Landlord's judgment, may from time-to-time be necessary for the operation, management, safety, care and cleanliness of the Property or any portion thereof, for the preservation of good order therein, or

for the convenience of other occupants and tenants of the Property. Landlord may waive any one or more of these Rules for the benefit of any particular tenant(s). Landlord further reserve(s) all the rights reserved to it or them by the provisions of the Lease, by any CC&Rs, or by operation of Law. No waiver by Landlord shall be construed as a waiver of those Rules in favor of any other tenant, and no waiver shall prevent Landlord from enforcing those Rules against any other tenant or occupant of the Property. Tenant shall abide by any additional Rules or regulations which are ordered or requested by any governmental or military authority. Tenant shall be deemed to have read these Rules and to have agreed to abide by them as a condition of Tenant's occupancy of the Premises.



**Exhibit E**

(Improvements to the Premises)

Tenant is to install the following Improvements upon commencement of the Lease.

1. Install bollards on the Premises that are subject to approval by the City Engineer to protect the Building from any damage due to the use of the parking lot.
2. Provide through access from entrance to parking lot from Main Street to either Front Street or to the City Boat Launch entrance.
3. Permission to install fence between existing fence and back corner of the Building to limit traffic.