

1. PARTIES:

This Lease, dated, for reference purposes only **November 28, 2017** is made by and between . (herein called "Landlord") and **Mt. Diablo Unified School District** (herein called "Tenant") and who agree as follows:

2. PREMISES:

Subject to and upon all of the terms, covenants and conditions hereof, Landlord does hereby lease to Tenant and Tenant hereby leases from Landlord that certain space (herein called "Premises") containing approximately **1,356 SQUARE FEET**. The location and dimensions of said Premises are located in the 1800 Monument Center (herein called "Center") at **1800 Monument Boulevard, Concord, California, Suite M.**

2.1 Common Area: In addition to the Premises, Landlord gives to Tenant and its authorized representatives and customers the nonexclusive right to use the Common Areas of the Center with others who are entitled to use the Common Areas, subject however to the terms and conditions of this lease and to rules and regulations for such use as prescribed from time to time by Landlord. The term "Common Areas" means all areas and facilities within the exterior boundaries of the Center that are provided and designated by Landlord from time to time for the general use and convenience of the Tenant and other tenants of the Center and their respective authorized representatives and customers. Common Areas may include, without limitation, pedestrian walkways and patios, landscaped areas, sidewalks, service corridors, throughways, restrooms, loading areas, parking areas, and roads.

3. USE OF PREMISES:

3.1 Authorized Purpose: Tenant shall use and occupy the Premises solely for the purpose of **Employment Program/Agency run by the Mt. Diablo School District** and shall not use or permit the Premises to be used for any other purpose whatsoever without landlord's prior written consent

3.2 Retail Use: Tenant agree to maintain a first class retail store or office and to sell/or provide standard quality to high-quality merchandise or services. If Tenant discontinues operating its business in accordance with this paragraph, Landlord shall have the option to cancel this Lease upon thirty (30) days' written notice.

3.3 Prohibited Uses: Waste: Tenant shall not use the Premises for any purpose or in any manner prohibited by this Lease. Tenant shall not commit, or suffer to be committed, any waste upon the Premises or Common Areas, or any nuisance, or any other act or thing which may disturb the quiet enjoyment of any other tenant or occupant in the Center, or in any way obstruct, interfere with, injure or annoy them or do or permit to be done anything in any way tending to disturb them. Tenant shall not allow the Premises to be used for any immoral, improper, unlawful or objectionable purpose. Tenant shall not do or permit anything to be done in or about the Premises or Common Areas or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Center or any of its contents, or cause a cancellation of any insurance policy covering the Center or any of its contents.

4. TERM AND POSSESSION:

4.1 Term: This Lease is for a term of **36** months, commencing on **December 15, 2017** and ending on **December 31, 2020**. Rent Commencement shall be **February 15, 2018**

4.2 Option: Two (2) Three (3) Year Options to Renew

4.3.1 Failure to Deliver Possession: If the Landlord for any reason cannot deliver possession prior to the commencement date of the lease term, this Lease shall not be void or void able, and Landlord shall have no liability to Tenant for any loss or damage resulting there from, but Tenant shall have the right to abatement of rent as provided in paragraph 4.3.2 below.

4.3.2 Rent Abatement: The rental abatement referred to in subparagraph 4.3.1 shall be an abatement of all rent from the commencement of the lease term until February 15, 2018.

4.6 Holding Over: Any holding over after the expiration of said term, with or without consent of Landlord, shall be construed to be a tenancy from month-to-month, and shall be on the terms and conditions hereof, so far as applicable. Such holding over shall not constitute an extension of this Lease. Three months after commencement of such holding over, Tenant shall pay minimum monthly rent at one hundred fifty percent (150%) of the highest monthly Minimum Rent paid during the term of the Lease, plus all Adjustments and other charges payable hereunder, and shall provide Landlord with written notice at least one month prior to the date of termination of such monthly tenancy of its intention to terminate such tenancy.

5. **RENT**

5.1 Minimum Rent: Tenant shall pay to Landlord as minimum monthly rent ("Minimum Rent") without deduction, set-off, prior notice or demand the sum of **\$1,342.44** (lawful money of the United States) per month in advance on the first day of each month, commencing on the first day of the each month commencing February 15, 2018 of the lease and continuing during the term, subject to adjustment as provided in paragraph 5.2. Minimum Rent for any partial month shall be prorated at the rate of 1/30 of the Minimum Rent for each day. All rent shall be paid to Landlord at the address to which notices to Landlord are required to be given, or to such other place as Landlord may designate by written notice to Tenant.

5.2 Adjustments to Minimum Rent: The Minimum Rent provided for in paragraph 5.1 shall be subject to adjustment on each anniversary date of each calendar year ("Adjustment Date") as follows:

February 15, 2018 - February 28, 2018 = \$671.22

March 1, 2018 - December 31, 2018 = \$1,342.44

January 1, 2019 - December 31, 2019 = \$1,383.12

January 1, 2020 - December 31, 2020 = \$1,423.80

~~5.2.1 CPI Adjustment: The base for computing the adjustment is the Consumer Price Index All Urban Consumers, All Items, for the San Francisco-Oakland-San Jose Metropolitan Area published by the United States~~

Department of Labor, Bureau of Labor Statistics ("Index"), published in _____

~~("Beginning Index"). If the Index most recently published as of the month preceding the Adjustment Date ("Adjustment Index") has increased over the Beginning Index, the Minimum Rent for the following calendar year (until the next rent adjustment) shall be set by multiplying the Minimum Rent as set forth in paragraph 5.1 by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. If the Index is changed so that the base year differs from that used as of the immediately preceding factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. If no replacement index is promulgated, the Landlord shall select another governmental index measuring changes in the cost of living, and the same shall thereafter be used in adjusting Minimum Rent hereunder. (By way of illustration only, if the figure prior to the date the Lease is executed is 120, and the figure following commencement of rentals is 128, then the Minimum Rent for the ensuing calendar year would be increased by 6.67 percent.)~~

The first annual CPI adjustment will begin on _____. The CPI adjustments of each succeeding year will be limited to a maximum increase each year of _____ percent of the previous years rent. There after, the adjustments shall be equal to the total increase in the CPI.

5.3 Late Charges: Tenant acknowledges that late payment by Tenant to Landlord of rent or other sums due will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges or penalties which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any sum due from Tenant shall not be received by Landlord within five (5) days that said amount is past due, then Tenant shall pay to Landlord a late charge of ten percent (10%) of the amount past due. The parties agree that such charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant.

5.4 Interest on Late Rent: Whether or not a late charge is due, and in addition thereto, any unpaid installment of rent or other sums due from Tenant to Landlord under this Lease which is not received by Landlord when due and remains unpaid for fifteen (15) days shall bear interest from the date due until paid at the rate of ten percent (10%) per annum or the highest rate permitted by law, if higher.

5.5 Returned Checks: Tenant shall pay Landlord a collection charge of \$50.00 for every Tenant check returned by a bank to Landlord because of insufficient funds in Tenant's account.

5.6 Payment: The first month's rent, security deposit, and estimated Premises and Common Area Adjustments are to be paid to Landlord upon execution of this Lease.

5.7 Appropriation Of Funds:

(a) Tenant intends to continue to pay the Rent and other amounts due thereunder. Tenant reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Term or Terms can be obtained and agrees to do all things lawfully within its power to obtain and maintain funds from which the Rent and other amounts due may be paid.

(b) Tenant may terminate this Lease in whole, but not in part, by giving at least sixty (60) days notice prior to the end of the then current Fiscal Period (defined as July 1 to June 30 of any given fiscal year) certifying that: (1) sufficient funds were not appropriated and budgeted by Tenant's governing body or will not otherwise be available to continue the Lease beyond the current Fiscal Period; and (2) that the Tenant has exhausted all funds legally available for payment of the Rent beyond the current Fiscal Period. Upon termination of the Lease, Tenant's obligations under the Lease (except those that expressly survive the end of the Lease Term) and any interest in the Premises shall cease and Tenant shall surrender the Premises in accordance with applicable provisions of this Lease. Notwithstanding the foregoing, Tenant agrees that, without creating a pledge, lien or encumbrance upon funds available to Tenant in other than its current Fiscal Period, it will use its best efforts to take all action necessary to avoid termination of this Lease, including making budget requests for each Fiscal Period during each applicable Lease Term for adequate funds to meet its Lease obligations.

(c) Landlord and Tenant intend that the obligation of Lessee to pay Rent and other amounts due under a Lease constitutes a current expense of Tenant and is not to be construed to be a debt in contravention of any applicable constitutional or statutory limitation on the creation of indebtedness or as a pledge of funds beyond Tenant's current Fiscal Period.

6. ADDITIONAL RENT ADJUSTMENT'S:

6.1 Amounts of Adjustments: In addition to the Minimum Rent provided in paragraph 5 hereinabove, and commencing at the same time *as Minimum Rent*, Tenant shall pay to Landlord, as additional rental, the following items, herein called Adjustments (**currently \$656 per square foot per month**) **OR \$895.00**

6.1.1 Real Estate Tax and Insurance Adjustments: All real estate taxes and assessments and all insurance premiums on the Center, including the Premises, and including land, buildings and improvements thereon. For purposes of this Lease, the term "real estate taxes and assessments" shall mean and include all taxes, assessments, and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatever, including but not limited to assessments for public improvements or benefits, and including any gross receipts tax or excise on rents or other tax, however described, which is levied or assessed against Landlord on account of the real property constituting the Center or any rent and adjustments paid or payable hereunder, but shall exclude any franchise, estate, inheritance, succession, capital levy, transfer, net income or excess profits taxes imposed upon Landlord. Said taxes and insurance premiums for purpose of this provision shall be reasonably apportioned by Landlord in accordance with the total floor area of the Premises as it relates to the total rentable floor area of the Center of which the Premises are a part. Such ratio is currently **10.49%**. As a public entity, the Tenant is exempt from real estate taxes and assessments. Landlord and Tenant will cooperate in executing any documents necessary to provide the exemption for the Premises and seeking refund to Tenant of any taxes and assessments collected by any public agency.

6.1.2 Common Area Adjustments: That percentage of the total cost of the following items as Tenant's total floor area bears to the total floor area of the Center which is from time to time actually rented as of the first day of each calendar year. Such ratio is currently **10.49%**

a. All costs to maintain, repair and replace Common Areas, parking lots, sidewalks, driveways, and other areas used in common by

the tenants of the Center and the roof, exterior walls, common heating and air conditioning equipment, and any other improvement, structure, or expense, including without limitation, costs of resurfacing, repainting, re-stripping, cleaning, sweeping, janitorial services, purchase and maintenance of refuse receptacles, planting and re-landscaping, directional signs and markers, car stops, lighting and other utilities, and other costs as may be, in Landlord's sole and exclusive discretion and judgment, for the maintenance, repair and operation of the Center. CAM charges may, at Landlord's sole discretion, include a reasonable amount determined by Landlord to develop reserves for capital outlays. If such capital outlays are incurred, to the extent not covered by such reserves, the Landlord, at its option, may either assess the full amount thereof to all tenants at the time they are incurred, or, in the Landlord's sole discretion, adjust common area maintenance charges to amortize the Tenant's share (based on rentable square feet) over the then-remaining term of the Lease.

b. All costs to supervise and administer said Common Areas, parking lots, sidewalks, driveways, Center graphics and other areas used in common by the tenants or occupants of the Center. Said costs shall include such fees *as may* be paid to a third party in connection with same.

c. Any parking charges, utilities 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.

d. All general overhead and other costs incurred in the management and operation of the office of the Center, including salaries, wages and other compensation of clerical personnel, payroll taxes, supplies, equipment rental, postage, data processing, utilities, administration of the maintenance, repair, and operation of Common Areas, and other costs of operation, and all costs of any kind associated with the collection and administration of rents and leases, the coordination of maintenance, repair and security in the Center, and the furnishing of services to Tenants, but excluding (i) commissions, tenant improvements, and other costs incurred (other than general overhead) in the leasing of space in the Center to new tenants, and (ii) costs (other than general overhead) incurred in any legal proceedings for collection of rent or eviction of any other tenant in the Center.

e. Statements and Reconciliations: Upon commencement of rental, Landlord shall submit to Tenant a statement of the anticipated monthly Adjustments for the period between such commencement and the following January, and Tenant shall pay same and all subsequent monthly payments concurrently with the payment of Minimum Rent. Tenant shall continue to make said monthly payments in said amount until

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notified by Landlord of a change thereof No less frequently than annually Landlord shall give Tenant a statement showing the total Adjustments for the Center for the prior period and Tenant's allocable share thereof, prorated from the commencement of rental. In the event the total of the monthly payments which Tenant has made for the prior period be less than the Tenant's actual share of such Adjustments, then Tenant shall pay the difference in a lump sum within ten (10) days after receipt of such statement from Landlord and shall then commence paying the adjusted monthly payments as calculated by Landlord Any overpayment by Tenant shall be credited towards the monthly Adjustments next coming due. The actual Adjustments for the prior period shall be used for purposes of calculating the anticipated monthly Adjustments for the then current period; except that in any period in which major expenditures such as parking lot resurfacing is contemplated, Landlord shall be permitted to include the anticipated cost of same as part of the estimated monthly Adjustments. Even though the term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's share of said Adjustments for the year in which this Lease terminates, Tenant shall immediately pay any increase due over the estimated Adjustments previously paid, and conversely, any overpayment made shall be rebated by Landlord to Tenant

6.1.3 Above-Average Operating Expense Requirements: If utility *usages* by Tenant compared to typical usage by other tenants in building are greater than average, and/or if Real Estate Tax Assessments as a result of Tenant improvements are greater than average, and/or if the insurance rating of the property increases as a result of the Tenants activities, Tenant shall pay an additional amount to Landlord equal to a reasonable allocation of these expenses.

7. SERVICES AND UTILITIES:

7.1 In General: Tenant, from time it first enters the Premises for the purpose of setting fixtures, or from the commencement of the term of this Lease, whichever date shall first occur, and throughout the term of this Lease shall pay for water, gas, heat, air conditioning, light, power, sewer, garbage, telephone service and all other services supplied to or consumed in or on the Premises (including- without-limitation-all use charges or fees imposed by any municipal authority or public utility, whether billed as a utility charge or collected with taxes on the Premises or the Center). If any such utilities are not separately billed to Tenant, Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with other Premises, or at Landlord's option Landlord may install, at Tenant's expense, a separate meter therefore. Tenant shall not be entitled to any abatement or reduction of rental, and Landlord shall not be liable to Tenant for any damages resulting from an interruption in any of the foregoing whether such failure is caused by accidents, breakage, repair, strikes, lockouts, or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, whether or not reasonably within Landlord's control.

8. SECURITY DEPOSIT: On execution of this Lease, Tenant shall deposit with Landlord **\$2,000.00** as a security deposit for the performance by Tenant of the provisions of this Lease. If Tenant is in default, Landlord can use the security deposit, or any portion of it, to cure the default or to compensate Landlord for all damage sustained by Landlord resulting from Tenant's default. Tenant shall immediately on demand pay to Landlord a sum equal to the portion of the security deposit

expended or applied by Landlord as provided in this paragraph so as to maintain the security deposit in the sum initially deposited with Landlord If Tenant is not in default at the expiration or termination of this Lease, Landlord shall return the security deposit to Tenant within thirty (30) days after Tenant has vacated the Premises and returned possession thereof to Landlord. Landlord's obligations with respect to the security deposit are those of a debtor and not a trustee. Landlord can maintain the security deposit separate and apart from Landlord's general funds or can commingle the security deposit with Landlord's general and other funds. Landlord shall not be required to pay Tenant interest on the security deposit. If Landlord shall transfer its interest in the Shopping Center, the successor Landlord automatically shall be deemed to have assumed responsibility for the security deposit, and the initial Landlord shall have no further responsibility or liability to Tenant therefor.

9. COMPLIANCE WITH LAW AND REGULATIONS:

9.1 Governmental Regulations: Tenant shall at its sole cost and expense comply with all of the requirements of all municipal, state, and federal authorities now in force or which may hereafter be in force pertaining to the use, maintenance, and repair of said Premises and the operation of Tenant's business, and shall faithfully observe in said use and operation all municipal, and state and federal statutes ordinances, regulations, rules or requirements now in force or which shall hereafter be in force.

9.2 Private Regulations: Tenant at its sole cost and expense shall likewise comply with the requirements of the Board of Fire Underwriters concerning the use and occupancy of the Premises.

9.3 Landlord's Rules and Regulations: Tenant shall at its sole cost and expense comply with each and every provision of the rules and regulations as adopted or amended from time to time by the Landlord for the Center (the "Landlord's Rules and Regulations"). Tenant hereby acknowledges having received and reviewed a copy of such Landlord's Rules and Regulations. Tenant likewise shall comply with the Landlord's Rules and Regulations as the same are reasonably amended from time to time by Landlord.

9.4 Landlord Duties: Landlord shall have no responsibility or liability to Tenant for non-compliance by an other person or tenant in the Center with any government laws and regulations, private regulations, or Landlord's Rules and Regulations. Landlord shall use its best efforts to require that the other tenants of the Shopping Center comply with governmental laws and regulations, private regulations and restrictions, and Landlord's Rules and Regulations, including restriction of noise making of tenants to less than 65 decibels outside premises.

~~9.5 Merchant's Association: If Landlord alone or a majority of tenants in the Shopping Center shall determine that it is in the best interests of the Center, Tenant will become a member of, and participate fully in, and remain in good standing in the Merchant's Association (as soon as the same has been formed), organized for tenants occupying Premises in the Center, and Tenant will abide by the rules and regulations of such Association. Each member tenant shall have one (1) vote, and the Landlord shall also have one (1) vote in the operation of said Association. The objects of such~~

Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotions and center wide advertising. The Tenant agrees to pay minimum dues to the Merchant's Association, provided, however, that in no event shall the dues paid by Tenant in any fiscal year of said Association be in excess of _____ (_____) cents per square foot of the Premises leased to the Tenant. This amount shall be adjusted _____ and every five (5) years thereafter, in accordance with the proportional change in the Index, in the same manner as provided in paragraph 5.2.1 of this Lease. Default in payment of dues to the Merchant's Association shall be treated in similar manner to default in payment of rent hereunder, and the Landlord shall have the same rights and options as a result of any such nonpayment as Landlord would have for nonpayment of rent under the terms of this Lease. At Landlord's sole option, Landlord may collect dues on behalf of the Merchant's Association, in which event payment of such dues shall be made at the same location as payment of rent hereunder.

9.6 Trash: Tenant shall not allow refuse, garbage or trash to accumulate outside of the Premises.

9.7 General: The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that the Tenant has violated any law, statute, ordinance or government rule, regulation or requirement, or any private rule, regulation, or requirement, shall be conclusive of that fact as between Landlord and Tenant. The requirements of compliance by Tenant in paragraph 9.1, 9.2, 9.3, 9.4, or 9.5 shall be construed as duties of Tenant and of Tenant's agents, employees, customers, invitees, subtenants, and independent contractors, and the direction, sufferance, or permission by Tenant of any act or omission by any such person shall be deemed a commission or omission thereof by Tenant.

10. PERSONAL PROPERTY TAXES:

Tenant is a public entity and exempt from all personal and real property taxes, assessments, license fees, and other charges ("taxes"), unless specifically made applicable by law.

Tenant shall directly pay before delinquency all taxes, assessments, license fees, and other charges ("taxes") that are levied and assessed against Tenant's personal property installed or located in or on the Premises or assessed directly against Tenant's leasehold or possessor interest in the Premises. If for any reason such taxes are assessed to Landlord or become a lien upon the Premises or other property of Landlord, Tenant shall pay to assist Landlord such amounts immediately upon demand, together with any interest or penalties in seeking an exemption which may be due to from the taxing authorities, and shall also furnish to the taxing authorities such information as they may require, to assess such taxes properly to Tenant

11. ALTERATIONS AND LIENS:

11.1 Consent: Tenant shall not make or allow to be made any alterations, additions, or improvements to or of the Premises or any part thereof without the written consent of Landlord first had and obtained and any alterations, additions, or improvements to or of said Premises, including but not limited to wall covering, paneling, and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at the time Lease is terminated and at Landlord's option become a part of the realty and belong to the Landlord. In the event Landlord consents to the making of any alterations, additions, or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. In the event of the expiration or sooner termination of the term hereof, upon thirty (30) days'

written notice from Landlord, Tenant shall, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.

11.2 Bonds and Liens: If written consent of Landlord to any proposed alterations by Tenant shall have been obtained, Tenant agrees to advise Landlord, in writing at least ten (10) days in advance of the date upon which such alterations, additions and improvements will commence in order to permit Landlord to post and record notices of non-responsibility. Tenant agrees to post lien, performance and completion bonds in an amount to be determined by Landlord (not to be less than one and one-half times the estimated cost of the Tenant's work), should Landlord request that Tenant obtain the same. Tenant shall keep the Premises from any and all liens arising out of any work performed, materials furnished or obligations incurred by Tenant in the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense, and any contractor or person selected by Tenant to make the same must first be approved in writing by Landlord.

12. MAINTENANCE AND REPAIR:

12.1 Tenant's Duties: By entry hereunder, Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition and repair. Tenant shall, at its sole cost and expense, keep and maintain said Premises and every part thereof (except exterior walls, foundations and roofs) including, without limitation, glazing, storefront, walls, floors, window casements, ceilings, doors, electrical wiring conduits, and equipment, including lighting fixtures, plumbing, pipes, air conditioning, heating and sewer facilities, and the interior of the Premises, in good and sanitary order, condition and repair. Tenant shall obtain a service contract for repairs and maintenance of said system, at Tenant's sole cost and expense, said maintenance contract to conform with the requirements of the warranty, if any, on said system, and to furnish copies and evidence of renewal thereof from time to time on Landlord's request. Where there is heating and air conditioning system separately servicing the Premises, Tenant at all times shall maintain the system in operating condition at Tenant's expense. Wherever heat generating machines or equipment are used in the Premises which may affect the temperature of any other tenant's Premises, Landlord reserves the right (i) to require Tenant to install supplementary air conditioning units in the Premises, or (ii) to require Tenant to take other measures such as insulation or relocation of equipment to alleviate any adverse effect upon such other tenant, and in either case the cost thereof, including the cost of installation and the cost of operation and maintenance, shall be paid by Tenant. Tenant shall contract with a licensed HVAC contractor to service the unit, or units on a minimum basis of three times per year with a copy of the service contract to be furnished to the Lessor within ten (10) days after opening for business, and a copy on any subsequent contracts to be furnished from time to time during the term. Said service contract shall provide that the HVAC contractor shall notify owner in writing if lessee terminates said contract. Lessor shall transfer any warranties for the HVAC unit to lessee, to the extent they are transferable.

12.2 Landlord's Duties: Landlord agrees to maintain the roof over the Premises in good order and repair, to keep all drains and gutters and surfaces of said roof clear of leaves and debris, and to maintain structural areas of the building in which the Premises are located (except Tenant shall be responsible for any repairs and maintenance caused in whole or in part by the act, neglect, fault or omission of Tenant, its agents, contractors, employees, or invitees, or by any breaking and

entry, in which event Tenant shall pay to Landlord the cost thereof on demand). It is an express condition precedent to all obligations of Landlord to repair and maintain that Tenant shall have notified Landlord in writing of the need of such repairs or maintenance. After such notice, Landlord shall have a reasonable time in which to effect the necessary repairs or maintenance. Tenant agrees that any reasonable delay by Landlord in the performance of the obligations of this paragraph shall not be a basis for Tenant canceling this Lease, for nonperformance by Tenant of any of the terms hereunder, or for any abatement of rent hereunder. It is specifically understood and agreed that Landlord has no obligation and has made no promises to alter, remodel, improve, repair, decorate, or paint the Premises, or any part thereof, except if and to the extent specifically set forth in this Lease. Costs of the work as described herein shall be allocated to Tenant in accordance with paragraph 6 herein.

12.3 Surrender of Premises: Tenant agrees on the last day of the term, or sooner termination of this Lease, to surrender unto Landlord the Premises and appurtenances broom-clean, in the same condition as when received, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted, and to remove all of Tenant's signs from the Center.

12.4 Legal Requirements: In the event that the provisions of any law, ordinance, or rule now in force or hereafter enacted by Municipal, State or National authority, requires by reason of Tenant's use of the Premises, any alterations, additions, repairs or acts of any kind to be done in connection with the Premises or any part thereof, the same shall be done at the sole cost and expense of Tenant

12.5 Tenant's Breach: If Tenant fails to perform Tenant's obligations under this paragraph 12, Landlord may, at Landlord's option, upon not less than seventy-two hours prior notice to tenant, enter the Premises and put the same in good order, condition, and repair, and the cost thereof shall become due and payable as additional rental by Tenant to Landlord upon demand, but nothing contained in this sentence shall be deemed to impose any duty upon Landlord or affect in any manner the obligations placed upon Tenant by this paragraph 12.

13. INSURANCE

13.1 Liability Insurance: Tenant shall at its sole cost and expense but for the mutual benefit of Landlord and Tenant and at all times during the lease term, procure and maintain in full force and effect a policy or policies of comprehensive public liability insurance issued by an insurance carrier [authorized to conduct business in the State of California approved by Landlord](#) insuring against loss, damage or liability for injury or death to persons and loss or damage to property, ~~with coverage at least as broad as Insurance Services Office (ISO) Form CG 00 01, occurring from any cause whatsoever~~ in connection with Tenant's use and occupancy of the Premises and Common Areas. Such liability insurance shall be in amounts of not less than one million dollars (\$1,000,000) for bodily injuries to or death of any one person, and two million dollars (\$2,000,000) for bodily injuries to or death of any two or more persons arising from the same occurrence, and one million (\$1,000,000) for damage to property. Landlord shall be named as additional insured (and at Landlord's option, any other persons, firms or corporations designated by Landlord shall be additionally named insured's) under each such policy of insurance. Tenant's liability to Landlord or any other party shall not be deemed restricted by the foregoing minimum liability limits or by the amount of such liability which is actually covered by insurance, but shall extend to the full extent of such liability, whether or not covered by insurance.

13.2 Casualty Coverage of Premises and Center: Landlord shall keep that part of the Shopping Center in which the Premises are located insured (as desired by Landlord) against loss or damage by fire, vandalism, malicious mischief, sprinkler leakage, loss of rent and other risks and occurrences with such coverages and in such amounts as Landlord shall deem appropriate. Landlord shall apply monies collected by it under said insurance policies to the

fulfillment of its obligations to repair, restore or rebuild the Premises and the Center, as set forth in paragraph 16, insofar as necessary therefore. Tenant shall have no right or interest in proceeds of any insurance policy maintained by Landlord.

13.3 Casualty Coverage of Tenant's Property: Tenant at its cost shall maintain on all its personal property, fixtures, trade stock, furniture, equipment, improvements, and alterations, in, on, or about the Premises, a policy of standard fire insurance, with all risk coverage endorsement, to the extent of at least one hundred percent (100%) of their full replacement cost. The proceeds from any such policy shall be used by Tenant for the replacement of Tenant's property and the restoration of Tenant's improvements or alterations.

13.4 Glass: Tenant at its cost shall maintain full coverage plat glass insurance on the Premises. Both Landlord and Tenant shall be named as insured.

13.5 Waiver of Subrogation: Each party shall endeavor to cause each insurance policy obtained by it to provide (by special endorsement or otherwise) that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy. To the fullest extent permitted by their respective insurance policies, each party waives any claim against the other for, and releases the other from, any loss insured by fire, extended coverage, and other property insurance policies existing for the benefit of the other party. All releases, exonerations, discharges and covenants not to sue herein shall be limited by and be coextensive with the waiver of subrogation clauses or endorsements consenting to a waiver of rights of recovery contained in such policies.

13.6 Tenant's Insurers: All of the insurance policies required to be carried by Tenant shall (a) be issued by insurance companies rated in "Best's Insurance Guide" at least A+, AAA or better, unless otherwise acceptable to the Landlord, on forms and loss payable clauses satisfactory to Landlord, (b) be issued as primary policies, and (c) contain an endorsement requiring thirty (3) days' written notice from the insurance company to both parties and Landlord's lender before cancellation or change in the coverage, scope, or amount of any policy.

13.7 Deliver of Certificate: A Certificate of Insurance, together with evidence of payment of premiums, shall be delivered to Landlord at the commencement of the term, and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy.

13.8 Landlord's-Right to Obtain Insurance: If for any reason Tenant fails to perform its obligations under this paragraph 13, Landlord on behalf of Tenant ay, but is not required to, purchase any insurance policy or policies required to be maintained by Tenant hereunder, at Tenant's expense, and the amount expended by Landlord for such purpose shall be immediately due and payable by Tenant to Landlord upon notice thereof to Tenant.

13.9 Other Insurance: Nothing herein shall preclude Landlord or Tenant from obtaining, at their respective sole cost and expense, such other and additional policies of insurance as they may deem appropriate, but the obtaining of such other and additional insurance shall not in any way reduce or affect Tenant's obligations pursuant to the preceding paragraphs 13.1 and 13.7, inclusive.

14. ENTRY BY LANDLORD:

14.1 Right of Entry: Tenant shall permit Landlord and its agents to enter the Premises at all reasonable times for any of the following purposes: To inspect the same; to show the Premises to prospective purchasers, lenders or tenants; to maintain the building in which the Premises are located; to make such repairs to the Premises as Landlord is obligated to or may elect to make; to make repairs, alterations, additions or utility installations to any other portion of the building in which the Premises are located, including the erection and maintenance of such scaffolding, ladders, fences and props as may be required; to post notices of non-responsibility for alterations, additions, repairs or utility installations; for the purpose of placing upon the building in which said Premises are located any ordinary "for sale" or "for lease" signs; and for any other reasonable purpose. Tenant shall permit Landlord within () days prior to the expiration of this Lease to place upon the Premises "for lease" signs, and to show said Premises to prospective tenants during reasonable business hours.

14.2 Forced Entry: Landlord, or its agents shall have the right to use any and all means which Landlord may deem proper to open doors in an emergency, including forced breaking of locks or doors, in order to obtain entry to the Premises, or any portion thereof, an any such entry to the Premises obtained by Landlord, or its agents, by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of Tenant from the Premises or any portion thereof.

14.3 Waiver of Liability: Landlord shall not be responsible to Tenant for any losses or damage incurred by Tenant in connection with any entry of the Premises, whether to person or property, pursuant to the foregoing paragraph 14.1, unless caused by the active negligence of Landlord or Landlord's employees, nor shall Tenant be entitle to any abatement of rent for any reason, and in no event shall Landlord be responsible for any injury, interference with or loss of business, or any inconvenience, loss of occupancy, loss of quiet enjoyment of the Premises, or any other loss occasioned by such entry, or for blockage of entry or loss of visibility resulting from any act permitted to be done by Landlord pursuant to paragraph 14.1, whether or not caused by such negligence. Tenant hereby waives any and all claims against Landlord for such entry other than those expressly permitted by the terms of the preceding sentence. Landlord shall have absolutely no liability or obligations to Tenant by reason of any entry of the Premises in an emergency as provided in paragraph 14.2, whether for injury to person or property or to Tenants business, and Tenant shall repair any damage to the Premises caused by such entry at Tenants expense. No entry under the terms of this Lease shall be deemed to constitute an eviction or a forcible or unlawful entry into or unlawful detainer of the Premises or any portion thereof.

15. INDEMNIFICATION OF LANDLORD:

15.1 Hold Harmless: Tenant shall indemnify, save and hold harmless Landlord from an against any and all claims, causes of action, liens, losses, damages, judgments, penalties, costs, liabilities, and injury of any kind or nature whatsoever, including attorneys' fees in any matter pertaining thereto, arising by reason of any injury, damage or death to any person, persons or property, including without limitation, third parties, Tenant, its officers, agents, employees, guests, invitees

and contractors and their property, from any cause or causes whatsoever, including without limitation, leakage, while in, or upon the Premises, or the Center and Common Areas, during the term of this Lease (except losses and claims resulting from the negligence of Landlord) and from any breach or default in the performance of Tenant's obligation under the terms of this Lease, or arising from any act or negligence of Tenant, or any officer, agent, employee, guest or invitee of Tenant, and from any and all costs, attorneys' fees and liabilities incurred in or about the defense of any such claim or action or proceeding brought thereon, and in case any action be brought against Landlord, Tenant shall defend Landlord at Tenant's expense by counsel selected by an satisfactory to Landlord.

15.2 Waiver of Claims: Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against Landlord for any injury, death or damage to any person, property, goods, wares, merchandise, loss of business or other harm howsoever suffered, and regardless of by whom suffered, from any cause whatsoever and, without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof walls, basement or other portion of the Premises or the building, or caused by gas, fire explosion, oil, electricity, water or rain which may leak from any part of the building or from pipes, appliances, or plumbing works thereon, or from the Common Areas, streets, or any other place, or from dampness for any reason, from failure to make repairs, or from any cause whatsoever in on or about the Premises or the building or any part thereof, unless caused solely by Landlord's negligence. Landlord shall not be liable to Tenant, its officers, agents, employees, customers, invitees, or third parties for loss or damage to property, including goods, wares and merchandise, or for interference with light, air, or for any latent defect in the Premises, whether or not due to Landlord's negligence. Tenant agrees to indemnify and save Landlord harmless of and from any and all cost, expense, claims, demands, obligations and liabilities, cause or causes of action by reason of or in connection with the condition or state of repair or use of the Premises, including all adjacent sidewalks, alleys, parking lots, lighting systems, security systems, and other Common Areas, unless injury results solely from Landlord's negligence. Tenant shall give prompt notice to Landlord in case of any casualty or accidents in the Premises or adjacent areas of the Center.

15.3 Other Tenants: Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Shopping Center, or by any owner or occupant of adjoining or contiguous property, or their respective agents, employees, officers, contractors, guests, invitees or any other party. No act or course of conduct by any other occupant or tenant, its agents, officers, employees, contractors, guests or invitees shall give rise to any actual or constructive eviction or any breach of the covenant of quiet enjoyment on the part of Landlord. Tenant agrees to pay for all damage to the Center as well as to other tenants or occupants caused by Tenant's, its agents', officer', contractors', guests', employees' or invitees' misuse or neglect of said Premises, Common Areas, its apparatus and appurtenances.

16. DESTRUCTION:

16.1 Insured Destruction: In the event the Premises or the building and other improvements in which the Premises are located or the Common Areas are damaged from a risk actually covered by insurance carried by Landlord pursuant to paragraph 13.2, Landlord shall promptly repair the damage, and this Lease shall remain in full force and effect. In such event, Tenant shall be entitled to a proportionate reduction of the Minimum Rent from the date of damage and while such repairs

are being made, such proportionate reduction to be reasonable based upon the extent to which the damage and making of such repairs shall interfere with the business carried on by the Tenant in the Premises. If the damage is due to the fault or neglect of Tenant, its officers, agents, contractors or employees, there shall be no abatement of Minimum Rent. Tenant may decide to not operate during the repairs and would not be liable for rent during such time.

16.2 Uninsured Destruction: In the event the Premises or the building and other improvements in which the Premises are located or other Common Areas are damaged from a risk not actually covered by insurance carried by Landlord pursuant to paragraph 13.2, Landlord shall promptly repair the damage, provided the extent of the destruction be less than twenty percent (20%) of the then full replacement cost of the Center. In the event the destruction of the Center is to an extent of twenty percent (20%) or more of the full replacement cost, then Landlord shall have the option: (a) promptly to repair or restore such damage, this lease continuing in full force and effect, but the Minimum Rent to be proportionately reduced while such repairs are being made as provided for in paragraph 16.1, or (b) give notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be thirty (30) days after the giving of such notice. In the event of giving such notice, this lease shall expire and all interest of Tenant in the Premises shall terminate on the date so specified in the notice, and the Minimum Rent, and all other sums and charges under this lease, reduced by a proportionate reduction, based upon the extent, if any, to which such damage interfered with business carried on by the Tenant in the Premises, together with Percentage Rate, Adjustments, and other charges payable hereunder, shall be paid up to the date of such expiration.

16.3 Limitation: Notwithstanding anything to the contrary in paragraph 16.1 or 16.2, Landlord shall not have any obligation to repair, reconstruct or restore the Premises when the damage resulting from any casualty occurs during the last twenty percent (20%) of the term of this Lease.

16.4 Tenant's Property: Landlord shall not be required to repair any damage by fire or other cause to, or to make any repairs or replacements of, any improvements, furniture, fixtures, equipment, or other personal property of Tenant.

16.5 Waiver: 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 or any portion thereof, or the Center or any portion thereof

17. EMINENT DOMAIN:

17.1 Taking of Fee: In the event any proceedings shall be commenced by any public or quasi-public authority under the powers of eminent domain, condemnation, otherwise, affecting the Premises, Tenant shall have no right to claim any valuation for his leasehold interest or otherwise by reason of his occupancy of or improvements to the Premises, and any award adjudicated or by way of settlement or sale in lieu of condemnation shall belong in its entirety to Landlord. Tenant shall, however, be entitled to any award made to him for depreciation to and cost of removal of stock, fixtures, and equipment placed in the Premises by Tenant, provided that said award does not otherwise diminish the amount to be received by Landlord. In the event of a partial taking of the Premises, the Minimum Rent shall be reduced in the proportion that the floor area taken bears to the total floor area prior to the taking, and Tenant shall remain responsible for Percentage Rent, Adjustments and other charges hereunder. If any of the floor area of said Premises is taken, only then may Tenant, at Tenant's option, terminate this Lease as of the date the public or quasi-public authority takes possession of said portion by giving written notice of termination to Landlord within ten (10) days after the public or quasi-public authority takes such possession. If Tenant does not terminate this Lease as

hereinabove provided, then the rent payable shall be reduced as set forth above. If any part of the building other than the Premises, or any part of the Common Areas shall be so taken or appropriated, Landlord shall have the right, at its option, to terminate the Lease and shall be entitled to the entire award, as provided above.

18. ASSIGNMENT AND SUBLEASING:

18.1 Consent Required: Tenant shall not assign, mortgage, pledge, encumber or hypothecate this Lease in whole or in part, ~~nor sublease or allow other persons occupy or use all or any part of the Premises~~, or change the use of the Premises, without prior written consent of the Landlord in each instance to the specific assignee, subtenant or use proposed (which consent shall not unreasonable be withheld subject to the terms set forth in paragraph 18.1 through 18.11 below), and the consent by Landlord to any one or more instances of such assignment, subletting or change in use shall not constitute a waiver of the necessity for such consent to any subsequent assignment of subletting.

18.2 Submission of Information: If Landlord's consent to assignment or subleasing is requested, Tenant shall supply (or cause the New Tenant to supply) to Landlord all information, financial statements, and records reasonable requested by Landlord to enable Landlord to make the determinations described herein, and failure to do so shall entitle Landlord to decline consent to the proposed subleasing, assignment or change in use, ipso facto, whether or not Landlord otherwise would have been required to consent thereto. Such information will, at a minimum, include (a) profit and loss statements and balance sheets for the two (2) preceding years, (b) a detailed pro forma operating statement for the next two (2) years, (c) full documentation concerning the legal composition of the New Tenant and the holders of all beneficial interests therein, (d) all of the terms and conditions under which the assignment or subletting is to be made, (e) the written consent of the proposed assignee or subtenant to all of the terms and conditions of this Lease, and (f) the written consent of any guarantors of this Lease to the specific sublease or assignment.

Upon such submittal, Landlord shall have the right to either approve said new Tenant, and said information and documentation (with such modifications and amendments as may be required by Landlord under the terms of this Article 18) or disapprove said New Tenant, and/or such information and agreement (s), thereby continuing this Lease is full force and effect.

18.3 Fees: Tenant shall pay Landlord a reasonable fee, not to exceed \$1,000, to reimburse Landlord for the cost of processing documents pertaining to any proposed sublease, transfer, encumbrance, hypothecation, assignment or change of use.

18.4 No Release: Landlord's consent to an assignments, transfer, hypothecation, encumbrance, or subletting shall not release the original named Tenant or any guarantor of this Lease from its obligation to pay rent and adjustments and to perform all of the other obligations to be performed by Tenant under this Lease unless Landlord specifically in writing releases the original named Tenant and such guarantor from said obligation. Landlord shall have no obligation to execute any such release.

18.5 Additional Rent: If the Tenant receives any consideration from the new Tenant for an assignment or transfer of this Lease, or any sublease is at a Minimum Rent greater than that provided in this Lease, Tenant and Landlord shall split such increased Minimum Rent or other consideration fifty-fifty (50/50), and failure of Tenant to cause such payment to Landlord shall be a default under this lease. Under no circumstances shall Tenant receive any Percentage Rent from a subtenant, all of said Percentage Rent shall belong solely to Landlord, and landlord may condition its approval of any subtenant upon such Subtenant's achievement of gross sales and payment of Percentage Rent

equivalent to that anticipated under this Lease for the original Tenant and use. At Landlord's election, further, Landlord may adjust the Percentage Rent applicable to any subtenant, transferee, assignee or new use so as to achieve the Percentage Rent level anticipated under the original terms of this Lease based on the sales volume anticipated of such assignee, transferee, subtenant or new use.

18.6 Failure to Obtain Consent: Any purported assignment, encumbrance, hypothecation, or transfer of this Lease or subletting of the Premises without prior written consent of Landlord shall be void and shall at the option of Landlord, constitute a material default and enable Landlord to terminate this Lease.

18.7 Hypothecation: Involuntary Assignment: Landlord shall have no obligation to approve any encumbrance, mortgage, pledge or hypothecation of this Lease unless the proposed holder of the security interest satisfies each and every term and condition set forth in paragraphs 18.2 through 18.7 above. Any involuntary assignment or assignment by operation of law shall constitute a material default by Tenant, and Landlord shall have the right to terminate this Lease.

18.8 Entity Interests: If Tenant is a partnership, corporation, trust or other entity or association, then any transfer, encumbrance, hypothecation or assignment of any partnership interest, shares, membership or other beneficial interest in Tenant shall be deemed to constitute a transfer, hypothecation, assignment, or encumbrance of this Lease for purposes of paragraph 18.1 through 18.8, inclusive. If Tenant is two or more tenants in common or joint tenants, any transfer, encumbrance, hypothecation, or assignment of any interest between co-tenants, or any transfer, encumbrance, hypothecation or assignment of one co-tenant's interest to a third party shall be deemed in the same manner to be a transfer of this Lease for purposes of paragraph 18.1 through 18.8, inclusive.

18.9 Subsequent Transfers: The terms of this paragraph 18 shall be binding upon any subtenant, transferee, encumbrancer, or other successor in interest of Tenant or any beneficial interest in Tenant to the same extent as they are binding upon the original Tenant and holders of beneficial interests in Tenant.

18.10 Amendments: The terms of any sublease, assignment or other documentation approved by Landlord under this paragraph 18 shall not thereafter be amended or modified without prior written consent of Landlord.

18.11 Landlord may, within thirty (30) days after submission of Tenant's written request for Landlord's consent to an assignment or subletting, cancel this Lease as to the portion of the Premises proposed to be sublet or assigned as of the date the proposed Transfer is to be effective. If Landlord cancels this Lease as to any portion of the Premises, then this Lease shall cease for such portion of the Premises, Tenant shall pay to Landlord all Rent accrued through the cancellation date relating to the portion of the Premises covered by the proposed Transfer, and Rent shall be reduced proportionately based on the remaining square footage in the Premises. Thereafter, Landlord may lease such portion of the Premises to the prospective transferee (or to any other person) without liability to Tenant.

19. TENANTS DEFAULT AND LANDLORD'S REMEDIES:

19.1 Material Default: The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

a. The vacating or abandonment of the Premises by Tenant. (Failure to occupy and operate the Premises for ten (10) consecutive days shall be deemed and abandonment and vacation.)

b. The failure by Tenant to pay rent or any other payment required to be made by Tenant, as when due, where such failure shall continue for a period of Three (3) days after written notice by Landlord to Tenant. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be performed by the Tenant other than described in (b) above, where such failure shall continue for a period of thirty (30) days after written notice by Landlord to Tenant; provided, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) days' period and diligently prosecutes such cure to completion.

c. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; of the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days.

19.2 **Remedies:** In the event of any such materials default or breach by Tenant, Landlord may at any time thereafter, in its sole discretion, exercise the following rights or remedies which he may have by reason of such default:

a. Landlord can continue this Lease in full force and effect (even though Tenant has abandoned the Premises) unless Landlord elects to terminate Tenant's rights to possession by a written notice. Landlord can enforce all its rights and remedies, including the right to recover rent as it becomes due. In no event shall Landlord's acts of maintenance or preservation of the Premises, or Landlord's exercise of its rights under any other agreement between Landlord and Tenant, or the appointment of a receiver upon the initiative of Landlord (which shall be at Tenant's expense) to protect its interest under this Lease, be deemed to constitute a termination of Tenant's right to possession. Landlord may take whatever actions provided herein, or as permitted by law, without terminating this Lease, and this lease shall continue in full force and effect until, and unless, Landlord gives to the Tenant written notice of his election to terminate this Lease. After Tenant's default and for as long as landlord does not terminate Tenant's right to possession of the Premises, Tenant may with Landlord's prior written consent assign this lease or sublet the Premises, but Tenant shall not be released from liability. Landlord's consent to a proposed assignment or subletting shall not be unreasonable withheld, subject to the provisions of paragraph 18 above.

b. Landlord can elect to terminate this Lease at any time after the-occurrence of any event of default by written notice, and if Landlord so elects may declare this Lease and Tenant's right to possession terminated, re-enter the Premises, remove Tenant's property therefrom with court order and at Tenant's expense, eject all persons from the property and recover damages from Tenant as provided. If re-entry is made after abandonment by Tenant, Landlord may consider any property belonging to Tenant and left on the Premises to have been abandoned. Landlord may utilize or dispose of such property without liability. Any such re-entry shall be permitted by Tenant without

hindrance; and Landlord shall not thereby be liable in damages for such re-entry or be guilty of trespass or forcible entry. In the event Landlord elects to terminate this Lease and Tenant's right to possession in accordance with the above, or the same is terminated by operation of law, Landlord may recover as damages from Tenant the following:

(1) The worth at the time of the award of the unpaid rent and other sums due hereunder which had been earned at the time of termination of this Lease; and

(2) The worth at the time of the award of the amount by which the unpaid rent and other sums due hereunder which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of such loss of rent and other sums due that Tenant proves could have been reasonably avoided; and

(3) The worth at the time of award of the amount by which the unpaid rent and other sums due hereunder for the balance of the Lease term after the time of award exceeds the amount of the loss of such rent and other sums that Tenant proves could be reasonably avoided; and

(4) That the portion of the leasing commission, if any, paid by Landlord and applicable to the unexpired term of this Lease; and

(5) Any other amount, including attorneys' fees and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs 19.2 (b) (1) and (2) above shall be computed by allowing interest at the rate of ten percent (10%) per annum. The "worth at the time of award" of the amount referred to in subparagraph 19.2 (b) (3) above shall be computed by discounting such amount at the discount rate of Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

d. Efforts by Landlord to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages under the foregoing provisions.

e. Nothing herein affects the right of Landlord to indemnification for liability arising prior to the termination of this Lease for personal injuries or property damages as may be provided elsewhere in this Lease.

19.3 Remedies Cumulative: The foregoing remedies of Landlord shall be cumulative or alternative, as Landlord determines, and shall be in addition to all rights and remedies now or hereafter provided or allowed by law.

19.4 No Merger: No termination of this Lease shall cause a merger of the estates of Landlord and Tenant unless Landlord so elects.

20. DEFAULT BY LANDLORD:

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the premises whose name and address shall have theretofore been furnished to Tenant in

writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this lease as a result of Landlord's default, and Tenant's remedies shall be limited to damages and/or an injunction.

21. WAIVER:

The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition therein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease, other than the failure of Tenant to pay the particular sum of rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent

22. SIGNS AND ADVERTISING:

22.1 Permitted Signs: Tenant shall at its cost have the right to place, construct and maintain on the exterior of the Premises an exterior sign or signs as set forth in Landlord's Rules and Regulations, Exhibit "C". Landlord reserves the right to modify its sign program from time to time, in Landlord's sole discretion, and Tenant shall at all times comply therewith. Any change required of tenant's signage, which was previously approved by Landlord, shall be at Landlord's expense.

Tenant may install signs in and on the Premises to the maximum extent permitted by local law and in accordance with the Landlord's Sign Criteria. Landlord will have the right to approve signage and awnings permanently mounted on the exterior of the Premises, however, Landlord will not unreasonably withhold its approval. Tenant, subject to the City of Concord's ordinances, to install signage on the upper facade, similar to the existing dentist/boost signage. Additionally, Tenant has the right to install colorful vinyl window coverings subject to the City of Concord ordinances and Landlord's written approval.

23. SUBORDINATION, ATTORNMENT:

23.1 In General: This Lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust or any other hypothecation for security subsequently placed upon the real property of which the building and Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. However, if any mortgage, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage or deed of trust, and shall give written notice to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording.

23.2 Attornment: The subordination of this Lease to any such ground lease, mortgage or deed of trust shall be subject to the following:

a. In the event of the termination of any ground lease or the sale of the real property of which the building and Premises are a part (pursuant to foreclosure or deed in lieu of foreclosure or the exercise of a power of sale under any such mortgage, deed of trust, or other security instrument) Tenant shall attorn to the ground lessor or the purchaser, as the case may be, and recognize such person as the Landlord under this Lease.

b. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default at the time of any termination or sale described in subparagraph 23.2(a) above and so long as this Lease is not otherwise terminated pursuant to its terms.

23.3 Further Documents: Upon Landlord's request, Tenant agrees to execute any documents, in addition to this Lease, which may be required or requested by any lender, purchaser or ground lessor to effectuate or amplify the terms of such subordination or to make this Lease prior to the lien of any ground lease, mortgage or deed of trust, *as* the case may be.

24. RIGHT TO ESTOPPEL CERTIFICATES:

24.1 Duty to Deliver: Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default there under; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

24.2 Failure to Deliver: Failure to deliver the certificate within ten (10) days shall be conclusive that this Lease is in full force and effect and has not been modified except as may be represented by either Landlord or Tenant, whichever the case may be.

25. NOTICES:

25.1 Manner of Giving: Wherever in this Lease it shall be required or permitted that notice and demand be given or served in writing by either party, it shall be given or served personally or sent by prepaid, certified mail, return receipt requested, addressed *as* follows:

TO LANDLORD:

C/O SPM Properties, Inc.
1330 N. Broadway, Suite C
Walnut Creek, CA 94596

TO TENANT:

Chief Business Officer
Mt. Diablo Unified School District
1800 Monument Blvd. #M 1936 Carlotta
Drive
Concord, CA. 94519

25.2 Change of Address: Either party may change such address by written notice to each other. If mailed, all such notices shall be deemed conclusively to have been delivered forty-eight (48) hours after deposit in the United States mail as shown by the postmarked receipt for such deposit.

26. RECORDATION:

26.1 Memorandum: Neither party shall record a memorandum of this Lease.

27. SALE OR TRANSFER OF PREMISES:

If Landlord sells or transfers all or any portion of the building, other improvements, and land of which the Premises are a part, Landlord, on consummation of the sale or transfer, shall be deemed automatically to be released from all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of **any** act, occurrence or omission occurring after the consummation of such sale or transfer, and Landlord's successor shall be deemed, without any further agreement between the parties or their successors in interest, to have assumed all the covenants and obligations of the Landlord from and after the consummation of the sale or transfer, and any liability thereafter accruing under this Lease.

28. MISCELLANEOUS CLAUSES:

28.1 Attorney's Fees: In the event of any action or proceedings brought by either party against the other under this Lease, the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable as attorneys' fees.

28.2 Surrender of the Premises: Upon the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Premises and Tenant's improvements and alterations in good condition except for alterations that Tenant may be required to remove under the provisions of paragraph 11.1. Tenant shall remove from the Premises on or prior to such expiration or termination all of its furniture, fixtures, equipment and other personal property and shall repair any damage caused by such removal.

Any personal property, furniture, equipment or fixtures not so removed, at the option of Landlord, shall be considered abandoned by Tenant and become the property of the Landlord, or may be removed by Landlord at Tenant's cost, in which event Tenant shall pay the cost of such removal on demand by Landlord.

28.3 Authority of Tenant: If Tenant is a corporation, partnership, trust, or other legal entity, each individual executing this Lease on behalf of said entity represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said entity, in accordance with the articles of incorporation and bylaws (if a corporation), partnership agreement, certificate, or statement (if a partnership), trust instrument (if a trust) or other governing documents of such entity, and that this Lease is binding upon said entity and its assets, and in the case of a

partnership, upon all general partners of such partnership.

28.4 Successors and Assigns: This Lease shall be binding upon and insure to the benefit and be enforceable by the respective heirs, executors, administrators, and permitted successors and assigns of the parties, respectively.

28.5 Exhibits. Incorporation in Lease: All exhibits referred to are attached to this Lease and incorporated by reference.

28.6 California Law: This Lease shall be construed and interpreted in accordance with the laws of the State of California.

28.7 Integrated Agreement: This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest. However, any minor changes or interlineations may be made if initialed by each of the parties on all counterparts hereof. This Lease shall not be effective or binding on any party until fully executed by both parties.

28.8 Relationship of the Parties: Landlord shall not by reason of this Lease or any provision hereof, or any course of dealing pursuant hereto, be deemed in any way or for any purpose, to have become a partner or joint venture of Tenant in conduct of its business or otherwise. The sole relationship of the parties shall be that of Landlord and Tenant.

28.9 Captions: Table of Contents: The captions and the table of contents of this Lease are for convenience and reference only and shall have no effect on its interpretation.

28.10 Pronouns: Singular and Plural: Masculine and feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any places or places herein in which the context requires such substitution.

28.11 Joint and Several Obligations: "Party" shall mean Landlord or Tenant; and *if* more than one person or entity is Landlord or Tenant, then the obligations imposed on that party shall be joint and several.

28.12 Severability: The unenforceability, invalidity, or illegality of any provision of this Lease, or of any portion of any such provision, shall not render any other provision of this Lease, or the remaining portions of such provision, unenforceable, invalid or illegal. In case of any such partial invalidity, unenforceability or illegality, the provision (or portion thereof affected) shall be interpreted in accordance with governing law so as to render it enforceable, valid, and legal.

28.13 Time: Time is of the essence of this Lease and of each provision hereof.

28.14 Quiet Possession: Subject to Tenant paying the rent and observing and performing all of the covenants, conditions and provisions hereof, Tenant shall have quiet possession of the Premises, subject to all the provisions of this Lease.

28.15 Inability to Perform: This Lease and the obligations of Tenant there under shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is

delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, act of God, or any other cause beyond the reasonable control of the Landlord.

28.16 Independent Covenants: The covenants of Landlord under this Lease are independent, unless expressly otherwise stated, and the covenant of Tenant to pay rent shall not be affected by any breach or failure of performance of any other covenant of this Lease.

28.17 Landlord's Liability: Notwithstanding anything to the contrary in this Lease, there shall be absolutely no personal liability of any person, firm, or entity who constitutes Landlord with respect to any of the term, covenants, conditions and provisions of this Lease, and Tenant shall, subject to the rights of any mortgages, fee owners and ground lessors, look solely to the interest of landlord, its successors and assigns, in Landlord's interest in the Center, for the satisfaction of each every remedy of Tenant in the event the satisfaction of each and every remedy of Tenant in the event of default by Landlord hereunder, such exculpation of personal liability is absolute and without any exception whatsoever.

28.18 Landlord's Performance for Account of Tenant: If Tenant shall default in the performance of any covenant on its part to be performed by virtue of any of the provisions of this Lease, Landlord may after any notice and the expiration of any period with respect thereto as required pursuant to the applicable provisions of this Lease, perform the same for the account of Tenant. If Landlord, at any time, *is* compelled to pay or elects to pay any sum of money or do any acts which would require the payment of any sum of money by reason of the failure of Tenant after any notice and the expiration of any period with respect thereto as required pursuant to the applicable provisions of this Lease, to comply with any provision of this Lease, or if Landlord is compelled to incur any expense including attorneys' fees, in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Tenant hereunder, the sum or sums so paid by Landlord with all interest, cost and damages, shall be paid by Tenant to Landlord within ten (10) days of demand therefore.

28.19 Tenant's Performance for Account of Landlord: If Tenant is compelled to incur any expense including reasonable attorneys' *fees*, *in* instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Landlord hereunder, the sum or sums so paid by a Tenant with all interest, costs and damages, shall be due and payable from the Landlord to Tenant on the first day of the month following the incurring of such expense. Tenant shall not under any circumstances be entitled to withhold from rent payable to Landlord any of the aforesaid sums.

28.20 Lease Counterparts: This Lease shall be simultaneously executed in two counterparts, each of which when so executed and delivered shall constitute an original fully-enforceable counterpart for all purposes.

28.21 Plats and Riders: Clauses, plats, riders and addendums, if any, affixed to this Lease are a part hereof

28.22 Third Party Beneficiaries: There are no third-party beneficiaries of the Lease.

28.23 Accessibility: Americans with Disabilities Act.

(a) The Premises: have not undergone an inspection by a Certified Access Specialist (CASp). have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable

construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is partially dependant upon Tenant's specific use of the Premises, Landlord makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Tenant's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Tenant agrees to make any such necessary modifications and/or additions at Tenant's expense.

29. CONFIDENTIALITY AGREEMENT: We both understand and acknowledge that the unauthorized disclosure of information by either of us to others would irreparably damage each. We both agree to hold the information in confidence, this includes the rental rates of this lease, not to disclose it to any other person, tenant in the project, or entity and not to circumvent the relationships we mutually have introduced the other to, subject to the California Public Records Act or similar law.

This agreement shall be governed by the laws of the State of California, and shall be binding upon and shall insure to our benefit and to the benefit or out respective legal representatives, successors and assigns.

This agreement and any supplement, addendum or modification relating thereto, including any photocopy or facsimile thereof, may be executed in two or more counterparts, all of which shall constitute one and the same writing.

30. ATTACHMENTS:

Exhibit "A" Parking Plan

TENANT: Mt. Diablo Unified School District

Signature: _____ Date: _____

Print Name: _____

Position: _____

LANDLORD: _____

Signature: _____ Date: _____

Print Name: _____

Position: _____