

BA 280, Real Estate and Urban Land Economics

Tuesday, March 21, 2006; 6:00 - 9:00 p.m.

Haas School of Business

Cheit Hall, Room 125

TROUBLESHOOTING THE COMMERCIAL LEASE: **NEGOTIATING SOLUTIONS TO THE CLASSIC ISSUES**

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**Top Ten Most Important Things to Consider
When Reviewing a Commercial Lease
For a Professional Services Firm**

*** Summary Page ***

The Work Letter and the Commencement Date: who builds; allowances; payment schedule; takeover rights for non-performance; how to measure commencement date; interrelationship with substantial completion definition.

Exit Strategies: assignment and subletting rights; addressing growth and shrinkage; lease buyout negotiations.

Expansion Rights: options; RFRs; RFOs; must-take.

Operating Expenses: base year; inclusions and exclusions; audit rights.

Insurance: dealing with terrorism and earthquake insurance requirements; relationship to indemnity and damage-and-destruction provisions; liability versus property coverage; business interruption and loss of earnings; self-insurance.

Services and Utilities: protection of Tenant *vis-à-vis* other tenants of Building; focus on sufficient power and meeting Tenant's special utility requirements.

Tenant Repairs: protect right of self-help where Landlord is or may be "off-shore" or otherwise not able to respond immediately with local representation.

Premises: focus on issues of measurement, relocation, visibility, access, signage and other personal rights.

Security Deposit: negotiate to minimize amount of funds tied up as security; understand and negotiate issues of guaranties and letters of credit.

Surrender of Premises; Removal of Property: coordination with alterations provision; holdover issues and rates; eliminate surprises.

- **Special issues relating to retail tenants:** use; radius restrictions; cotenancy; operating covenants; go-dark rights; parking; exclusive parking spaces; preferred areas; sightlines; modifications; reciprocal easements.
- **Special issue for Tenant's attorney:** subordination, non-disturbance and attornment agreement from lenders and other entities with priority over Tenant's Lease.

THE WORK LETTER AND THE COMMENCEMENT DATE

Base building description—landlord's cost and expense

Critical to determining sufficiency of allowance

Applies to apples when comparing alternatives

Landlord-build

Tenant improvement allowance vs. turnkey

Substantial completion/ready for occupancy

Tenant delay concept

Tenant-build

Fixed start date

Landlord delay/force majeure delay concept

Impact on time and money

Sophistication of tenant or tenant's consultants

Working drawings

Schedule of approvals

Selection of architect

Required use of landlord's engineers

Cost estimates

Over-allowance negotiations

Change orders

Fine-tuning

Utility costs

Use of hoists

Parking

EXIT STRATEGIES

Assignment and subletting

Continuing liability

Distinction between assignment and sublease

Landlord consent

Reasonableness standards

Remedies; potential limitations based on consent standards

Recapture

Impact on tenant's sublease marketing abilities

Consider landlord right of first offer

Profit sharing

Transfers of shares/interests in tenant—sale of tenant's business

Tenant affiliates

Restrictions on transfer of personal rights

Nondisturbance of assignee or subtenant

Release of tenant/assignor

Kick-out rights

Minimum term

Termination payment

Shopping center and retail leases

Negotiated termination of lease

Elements of consideration

Impact on subtenants

EXPANSION RIGHTS

Option to expand

Right of first refusal

Right of first offer

Must-take space

OPERATING EXPENSES

Landlord's goals

Tenant's goals

Specific provisions

Tenant's pro rata share

Gross-up

Base year/expense stop/triple net

Review of inclusions

Energy- or other cost-saving capital expenditures

Unforeseen governmental requirements

Negotiation of exclusions

Capital repairs and replacements

Compliance with law expenses (*Brown v. Green*)

Removal of asbestos/toxics

Costs of casualty and condemnation repairs/relationship to capital repairs and replacements

Controllable operating expenses

Audit rights

Alternative: right to an accounting

Use of commission-based auditors

INSURANCE

Liability insurance

Occurrence basis

Commercial general liability policy

Property Insurance

Terrorism coverage—if added after Base Year, reach back to increase Base Year line item for insurance premiums

Earthquake coverage—if added after Base Year, reach back to increase Base Year line item for insurance premiums

Boiler and machinery breakdown coverage

Builder's risk

Completed operations coverage

Commercial general liability policy (contractors)

Business interruption insurance

Rental loss insurance

Special coverage for unique uses

General requirements

Landlord approval

Lender approval

Primary coverage

Rating/financial strength

Additional insureds

Certificates of insurance/delivery of policy

Contractual liability

Deductible

Increased insurance

Self-insurance

Waiver of subrogation

SERVICES AND UTILITIES

Assure that Landlord is not deviating standard hours of operation for any other single tenant without appropriate adjustments in favor of Tenant.

Assure that holiday hours and Saturday hours are consistent with operational requirements of Tenant to the extent possible; outside of Building hours the Tenant will pay for services and utilities as an extra.

Be sure that the wattage per rentable square foot granted to tenants generally within the Building is sufficient to meet Tenant's requirements without having to add special equipment or pay for "overtime" rates.

Include HVAC specs in lease if possible; otherwise require the Lease to deliver a comfort standard similar to "comparable buildings" (i.e., buildings of comparable age, construction specifications, size and location).

Negotiate for rental abatement rights after minimum interruption of use (e.g. three days).

TENANT REPAIRS

Attempt to negotiate Tenant right of repair for and offset if Tenant has leverage and in all cases where the Landlord is not locally based or under contract with Class A local management.

Agree to use Landlord's list of vendors if Landlord provides such a list and it is pre-approved by Tenant.

Require offset rights, but be prepared to grant a right to arbitrate if Landlord provides written objections followed by an offset right if judgment or award not paid in 30 days.

PREMISES

Be clear as to measurement of Premises; tie to customary use of BOMA as interpreted by the owners of the Comparable Buildings.

Restrict Landlord's relocation rights, and where leverage does not allow for deletion of the relocation provision assure that all direct and indirect costs are covered, and relocation occurs over a weekend.

Confirm visibility and access where those issues are critical to Tenant; negotiate for signage and other special personal perks such as special parking.

SECURITY DEPOSIT

Be clear that the Tenant has approved any increase in the security deposit based on “stepped rent.”

Attempt to negotiate an interest credit, but be realistic relative to space which is less than 15,000 rentable square feet; take into account the fact that security deposits are typically used to pay brokerage commissions and TIs and, to such extent, doesn’t actually earn interest.

Be prepared to address requests for personal guaranties and letters of credit; if a personal guaranty is required, it should be limited to specific levels of rental defaults and should “burn down” as soon as reasonably possible after demonstration of consistent performance. Be sure Tenant has sufficient collateral before agreeing to deliver a letter of credit.

SURRENDER OF PREMISES; REMOVAL OF PROPERTY

Be as specific as possible regarding Tenant’s duties, as this is a hotbed for litigation.

Items that Tenant would expect to leave in the Premises at the end of the term, such as cabling and built-ins, should be specified.

This provision and the alterations provision need to be synchronized so that when approval of an alteration is requested, the Landlord commits up front as to whether or not Tenant must remove such item on surrender.

Negotiate a reasonable breathing period for holdover at the existing or slightly increased rental before agreeing to 150% or 200% rental increases. This situation will likely be out of the control of Tenant, as its new space may not be timely available.

Sample Tenant Representative Negotiation Guideline

The attached guideline utilized by a multi-location office credit tenant identifies lease issues and categorizes them as being mandatory or desirable at the letter-of-intent stage, and, from that tenant's perspective as being mandatory or desirable at the lease-documentation stage. The checklist should be valuable in the preparation of the negotiation agenda for both the letter of intent and the lease.

Tenant

Mandatory in LOI

The Tenant shall be defined as _____.

Landlord

Mandatory in LOI

The Landlord shall be clearly defined. Landlord shall provide financial statements to Tenant for Tenant's review within 14 days from execution of the Letter of Intent.

Lender

Mandatory in LOI

The Lender(s) shall be clearly defined. The Lender(s) shall provide a fully executed Non-Disturbance Agreement acceptable to Tenant as part of the executed Lease Agreement.

Space (Use of Other Local Measurements Standards)

Mandatory in LOI

Tenant shall have the right to have its architect certify the usable and rentable square feet of the premises prior to Lease execution. Method of space measurement must be well defined.

Desirable in LOI

The leased premises shall be defined in strict accordance with BOMA standards.

Mandatory in Lease

The Building's RSF and Tenant's proportionate share of Building for purposes of operating expenses and taxes must be well defined.

Desirable in Lease

The actual rentable square footage of the premises and Tenant's proportionate share shall be adjusted to conform with BOMA standards based on certification by Tenant architect.

Use

Mandatory in Lease

The broadest definition of use should be incorporated in the Lease to facilitate subleasing. Tenant's use of the premises shall be defined in an office lease, for example, as "general office purposes."

Rent

Mandatory in LOI

Rent shall be clearly defined as either net rent or gross rent.

Desirable in LOI

In the case of gross rent, the base year shall be established as the first full year following Lease commencement.

Mandatory in Lease

Rent shall be defined as due and payable on the first day of each month, and Tenant shall not be considered to be "in default" until 10 days following written notice from Landlord.

Operating Expenses

Mandatory in Lease

Operating expenses shall be defined to include operating expenses incurred in connection with the management, operation, repair and maintenance of the property by the Landlord and determined in accordance with generally accepted accounting principles fairly and consistently applied. This definition would include management fees. It is important to place a market-based cap on management fees. It is important to maximize the exclusions from operating expenses. The following serves as a representative list of exclusions:

The cost of any addition to the building or alterations or refurbishment of space leased to other tenants in the building.

Real estate commissions or brokerage fees.

Legal fees and all other costs in connection with tenant leases and enforcing tenant obligations.

Marketing and advertising expenses incurred with the leasing of the building.

Costs incurred by the Landlord which are reimbursed by insurance.

Financing transactions.

Interest or amortization.

Variable expenses in a less than fully occupied building shall be calculated assuming 95% occupancy. Tenant's proportionate share shall be specifically defined.

Refinancing fees and any interest payments or late penalties.

The amortization of any capital expenditures including capital expenditures incurred to comply with existing laws and other governmental rules and regulations. (The amortization of capital expenditures which reduce annual operating expenses by an amount in excess of the annual amortization of the capital expenditure shall be allowed.)

**Depreciation and amortization of any building and equipment.
(See above exception.)**

Costs to comply with all government regulations.

Operating expenses of any associated garage.

Special services performed by landlord for the benefit of individual tenants.

Charitable contributions.

Expense for artwork.

Off-site management and overhead.

Wages and salaries of supervisory and executive personnel over and above the on-site property manager.

All amounts paid to subsidiaries or affiliates of the Landlord for services on or to the building which are in excess of competitive costs for such services.

Landlord's general partnership overhead.

If Landlord increases the building's rentable square feet, then Tenant's proportionate share shall be reduced using the formula set forth in Section ____ of the Basic Lease Provision.

Any payments under a ground lease or master lease relating to the Project (while this is already addressed in interest and financing, we think it merits its own category).

Desirable in Lease

Electric power or other utility costs for which any tenant directly contracts with the local public service company.

Costs, penalties, fines, or awards and interest incurred as a result of Landlord's negligence in Landlord's operation of the Project, violations of law, negligence or inability or unwillingness to make payments and/or to file any income tax, or other tax or informational returns when due.

Costs which are covered by and reimbursable under any contractor, manufacturer or supplier warranty or service contract.

Costs arising from the negligent or intentional acts of Landlord or its agents, or any other tenant, or any vendors, contractor, subcontractors or providers of materials or services selected, hired or engaged by Landlord or its agents to the extent Landlord receives reimbursement therefrom.

Costs arising from any type of insurance maintained by Landlord which is not required or allowed to be maintained by Landlord pursuant to this Lease.

The cost of installing, operating and maintaining any specialty service, observatory, broadcasting facilities, luncheon club, museum, athletic or recreational club, or child care facility operated or supplied by a third party under an agreement between a third party and landlord

The cost arising from any commercial concession operated by Landlord.

The cost of any parties, ceremonies or other events for tenants or third parties which are not tenants of the Building, whether conducted in the Building, Project or in any other location.

Reserves of any kind, including, but not limited to, replacement reserves, and reserves for bad debts or lost rent or any similar charge not involving the payment of money to third parties.

Costs incurred by Landlord in connection with rooftop communications equipment of Landlord or other persons, tenants, or occupants of the Building or the Project if such communications equipment is not generally available to all tenants or occupants of the Building or Project.

Costs relating to any management office for the Building including rent, or for any other management office in the Project. (Fallback in a high-rise office building to allow Operating Expenses to include rent for up to 2,000 rentable square feet of a Building management office at rates then being generally charged for the middle floors of the Building.

“Takeover” expenses, including but not limited to expenses of any kind or nature incurred by Landlord with respect to space located in another building.

Any costs and fees, dues contributions or similar expenses for industry associations or organizations in which officers or employees of Landlord are members.

Entertainment expenses and travel expense of Landlord, its employees, agents, partners and affiliates.

Any other expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Operating Costs by landlords of comparable buildings.

Any costs for which Landlord has been reimbursed or receives a credit, refund or discount.

It is important to minimize management fees and either provide a cap on the amount of the management fees and/or a cap on the growth of the management fees. Three percent (3%) of the gross rent is an achievable cap on management fees.

Right to Audit Expenses

Mandatory in Lease

Tenant or its agent shall have the right to audit operating expenses. This right shall continue for at least 90 to 180 days following the date that the Landlord provides Tenant with the previous year’s audited operating expenses.

Desirable in Lease

Tenant has the right to audit previous years if a discrepancy in excess of 3% is determined.

Landlord will reimburse Tenant for the cost of the audit if a discrepancy of at least 5% is found.

Occupancy & Delivery of Space For Tenant-Build Work Letters

Mandatory in LOI

Tenant shall have the ability to take occupancy of the premises at least [90 to 120] days in advance of the commencement date for construction. The premises shall be turned over to Tenant in base building condition. Tenant shall not be charged for electricity or other services during the pre-commencement period.

Desirable in LOI

Tenant shall have the right to occupy the premises on a full or partial basis up to 60 days prior to commencement date with no rental charge or expense charge for this pre-commencement occupancy period.

Longer periods than 90 days for Tenant to construct its improvements prior to rent commencement is highly desirable.

Base Building

Mandatory in LOI

Base building shall be defined to include all structural elements of the building, elevator system, washrooms, fire exit stairways, electrical risers, telephone risers, plumbing risers, sprinkler systems, air distribution system and air handling loop, including VAV boxes, janitorial closets, telephone closets, and electrical closets. Specific language should include:

The primary and secondary electrical, mechanical, fire protection, and life safety systems distribution shall be in accordance with the Base Building Design and shall comply with the Local Building Code and other requirements of governmental agencies including ADA having jurisdiction over the Building, collectively, the “Building Regulations,” for unoccupied office space in shell condition and shall be in good working order.

The area intended for Tenant’s Leasehold improvements shall be clean and free from any debris.

Concrete floor slabs shall be level to within ¼” cumulative deviation with ten (10) feet between any two points in the premises and two (2) inches cumulative between any two corners of the Building.

Perimeter walls and core walls shall be fully finished, ready for paint, and all exterior columns shall be furred out, enclosed, taped, spackled, sanded, and primed, ready for paint. All such work shall comply with all applicable building codes.

Restroom facilities in compliance with ADA for men and women and two drinking fountains shall be located on each floor of the premises.

All peripheral windows will have thin slat horizontal blinds in standard color installed after completion of Tenant’s Work in the Initial premises.

A fully operational life safety system with smoke detectors, fire alarm speakers, fire extinguishers and cabinets in common areas, exit lights, and emergency circuitry in full compliance with Building Regulations for Base Building Design and ADA.

The Base Building heating and air conditioning system (HVAC) shall comply with the state and local building codes, the standards established by the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) for high-rise office buildings, or such other standards customarily adopted for Class A high-rise office buildings in the local area.

Where the premises are located on a multi-tenant floor(s) of the Building, the Landlord shall be responsible for providing all construction requirements pertaining to public areas such as elevator lobbies and corridors at Landlord's sole expense.

Landlord shall provide chilled water for supplemental 24-hour cooling.

Landlord shall eliminate any non-tenant-caused Base Building and common area electromagnetic field (EMF) issues.

Desirable in LOI

The ASHRAE 1% design day should be used in establishing performance specifications.

Allowances

Mandatory in LOI

A tenant improvement allowance of \$_____ per RSF shall be provided. Landlord pays contractors directly upon invoice approval by Tenant. Tenant shall have the right either to credit any unutilized allowances against base rent next due or to apply the unutilized allowance to supplement any other allowance category.

Desirable in LOI

A repainting and recarpeting allowance of \$5.00 per RSF shall be included in the sixth and eleventh lease years.

A design allowance of \$3.00 per RSF and a moving allowance of \$2.00 per RSF shall be provided. In addition to tenant construction, allowances may be used for cabling, consultant fees, permits and permanently attached furniture.

Allowances, Right to Offset

Mandatory in LOI

Tenant shall have the right to offset against rental payments any shortfalls in payments of allowances. The amount of offset shall be equal to the shortfall in the allowance payment, plus an interest factor.

Structural Modifications

Desirable in LOI

Landlord shall provide Tenant with a reinforced floor area to accommodate high-density storage file areas (at no cost to Tenant).

Internal Stairways

Desirable in LOI

Tenant shall have the right to utilize fire stairs or install an internal staircase within the premises and shall not be required to remove the stairs at the end of the Lease term.

Right to Hire Contractor

Mandatory in LOI

If Tenant is required to utilize Landlord's contractors, Tenant must maintain schedule and cost controls. Landlord's supervisory fees will be minimized and capped.

Desirable in LOI

Tenant shall have the right to hire the general contractor and the project manager of its choice for the tenant improvement work without any obligation to hire or use the Landlord's contractor.

Tenant Construction

Mandatory in LOI

Tenant shall not be charged for any hoisting charges, electrical services, water or the use of freight elevators during the construction period.

Desirable in LOI

Landlord shall not charge any oversight fees or supervisory fees during the construction period.

Alterations

Desirable in LOI

Tenant shall have the right to make minor alterations to the premises, which are not structural in nature, including painting and carpeting without the prior consent of the Landlord.

Mandatory in Lease

For alterations other than "minor," Landlord shall approve or disapprove Tenant's alteration request within 10 days of receipt of written request which includes applicable plans and specifications. If Landlord disapproves such request, Landlord shall explain in writing its reasons for disapproving.

Restoration Obligation

Mandatory in LOI

Leasehold improvements paid for by Landlord are property of Landlord. Tenant shall not be obligated to restore the premises at the end of the lease term, except for items not typically found in offices and substantially add to Landlord's demolition costs (vaults, internal stairs, etc.)

Pre-Occupancy Contraction/Expansion

Desirable in LOI

Tenant shall have the right to expand the rentable square feet under the Lease by up to 10% prior to occupancy under the same terms and conditions of Lease. Tenant shall also have the right to contract the rentable square feet under the Lease by up to 10% prior to occupancy.

Expansion Options

Mandatory in LOI

Tenant shall have expansion options through their term. The amount of expansion space should be determined by growth projections provided by the practice office and modeled by the Real Estate and Office Planning Department. Rent for expansion space will be at prevailing market rental rates as described in the "Extension Option" section.

Desirable in LOI

Rent for expansion options shall be at the then current Lease rates, including a pro rata share of concessions and tenant improvement allowances initially provided.

Continuing Right of First Notice

Mandatory in LOI

Tenant shall have a continuing Right of First Offer for a specified block of space.

Rent for expansion space will be at prevailing market rental rates as described in the "Extension Option" section.

Desirable in LOI

Tenant shall have a continuous Right of First Offer and Right of First Refusal with respect to space in the building that is contiguous to Tenant's premises or in the same elevator bank or for the entire building depending on projected growth ranges for the practice office.

Any space acquired under the Right of First Offer will be added to Tenant's Lease at the then escalated rate with prorated allowances.

Contractual Options

Mandatory in LOI

Tenant shall have the right to contract its leased premises periodically through the Lease. (These contraction options should provide for at least a 20% reduction in space.)

Penalty amount and time of payment is specified.

Desirable in LOI

Tenant shall pay a penalty prior to the effective date equal to the unamortized tenant improvement allowances, commissions and other concessions.

Cancellation Options

Mandatory in LOI

Tenant shall have the right the cancel the Lease at the end of the fifth lease year in a ten-year lease.

penalty amount and time of payment is specified.

Desirable in LOI

If a 15-year lease is considered, Tenant shall have the right to cancel its Lease at the end of 10 years.

Tenant shall pay a penalty prior to the effective date equal to the unamortized tenant improvement allowances, commissions and other concessions.

Extension Options

Mandatory in LOI

Tenant shall have the right to renew the Lease at the prevailing market rental rate for two additional terms of five years each. The prevailing market rental rate shall be defined as the rental rate at the time Tenant provides notice for vacant space in buildings of comparable quality and age for tenants of similar size, credit quality and stature. The prevailing market rental rate shall include all comparable lease provisions including without limitation market provisions for improvement allowances, tenant procurement costs, free rent, other lease concessions, lease term, base years, lease rate escalations and operating expenses and taxes. Any dispute over the prevailing market rate shall be submitted to arbitration.

Desirable in LOI

The renewal rate will be at a specified Rent, have a Rent cap, or be at a percentage 80-95% of the prevailing market rental.

Operating Hours and Overtime HVAC

Mandatory in LOI

Building hours of operation shall be 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday.

Holidays shall be defined as Thanksgiving, Christmas, New Years Day, Memorial Day, Fourth of July and Labor Day.

Desirable in LOI

Building hours of operation shall be 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturday.

Tenant shall be allowed to have the greatest number of hours that can be negotiated of overtime HVAC for use as required at no additional cost to Tenant.

Mandatory in Lease

The cost for overtime HVAC shall be at a stated market-based rate, with a well-defined annual cap on increases.

Desirable in Lease

The cost for overtime HVAC shall be billed at the actual costs incurred by the Landlord for providing such service.

Services

Mandatory in LOI

Landlord shall provide all services including HVAC, electric, utilities, telephone access, security, janitorial, etc., consistent with other Class A buildings in the metropolitan area. Fresh air levels shall be maintained in accordance with prevailing Class A standards and ASHRAE-62 - 1989 standards (ventilation for acceptable indoor air quality). The Landlord shall also provide adequate thermal environmental comfort and air velocity limits in accordance with ASHRAE-55.

Desirable in LOI

The ASHRAE 1% design day should be used in establishing performance specifications.

Electrical Capacity

Mandatory in LOI

Landlord shall provide at least five watts per square foot of electrical capacity to the premises (in most instances six watts will be preferable), above base building lighting (i.e., lobbies, stairwells, restrooms, etc.).

Cleaning Specifications

Mandatory in Lease

Cleaning specifications shall be attached to the Lease document. Tenant may compel a change in janitorial contractors.

Compare cleaning specifications to Tenant standard.

Desirable in Lease

Tenant shall have the right to contract for its own janitorial services and have operating expenses adjusted accordingly.

Security

Mandatory in LOI

Landlord shall provide or Tenant shall have the right to install a controlled access system for the premises.

Desirable in LOI

Landlord shall provide adequate security, including 24-hour-a-day guard service.

Interruption of Services

Mandatory in LOI

If building services are interrupted for more than three consecutive days, then Tenant shall have the right to cease its base rent and additional rent payments beginning with the day of interruption pro-rated until such service is reinstated.

Desirable in LOI

If the interruption shall continue for 60 days, Tenant shall have the sole right to terminate the Lease.

Mandatory in Lease

In the event that the premises are untenable due to a casualty for a period in excess of 180 consecutive days from the date of casualty, Tenant shall have the sole right to cancel the Lease without payment of any termination fee; rent shall be abated from the date of casualty.

Self-Help

Mandatory in LOI

In the event that the Landlord has failed to perform any of its service or maintenance within the Premises, then Tenant shall have the right to perform such maintenance or service and charge Landlord.

Desirable in LOI

Tenant may offset the associated costs against rent if Landlord does not pay Tenant's invoices.

Assignment and Subletting

Mandatory in LOI

Tenant shall have the right to sublease all or a portion of the Premises with Landlord's approval, which shall not be unreasonably withheld. Landlord shall not impose any use limitation other than those previously defined in all other tenant leases in the building. Landlord shall not impose any financial requirements on the subtenant as a condition for approval. Landlord shall deliver approval to Tenant within 10 days following Tenant's request to sublease. Tenant shall have the right to assign the Lease or sublet all or a portion of the premises to the following entities without Landlord's approval: (i) to a successor to all of Tenant's businesses if such succession takes place by a merger, consolidation, reorganization, active legislature or otherwise, or (ii) any affiliate of Tenant.

Desirable in LOI

Tenant may sublet or assign the Premises to other tenants in the Building.

Mandatory in Lease

Tenant shall recover all its costs prior to any profit distribution. Profits shall be calculated by subtracting all subleasing expenses from sublease rental income. In addition to contract gross rent, expenses shall include all incentives, inducements, allowance, demising costs, commissions, legal fees, and landlord fees.

Desirable in Lease

Tenant shall retain 100% of sublease profits.

Environmental Hazardous Materials

Mandatory in LOI

Landlord shall represent to Tenant that the building is free from EHM and that the Landlord will promptly remove any EHM found in the future at the Landlord's sole expense.

Desirable in Lease

Landlord shall indemnify Tenant for any Landlord non-compliance with governmental regulations.

Americans with Disabilities Act

Mandatory in LOI

Landlord shall comply with all governmental regulations. Landlord shall warrant that the building is currently in compliance with all government regulations. Landlord shall also be responsible to bring building and all common areas (including elevator lobbies, stairwells, rest rooms, etc. on floors fully occupied by Tenant) into compliance during the term of the Lease.

Desirable in LOI

Capital costs to comply with future government regulations, including ADA in common areas of the building, including bathrooms, will be borne by the Landlord and not included in operating expenses.

ADA compliance in rest rooms on full Tenant floors is Landlord's responsibility.

Desirable in Lease

Landlord shall indemnify Tenant for any Landlord non-compliance with governmental regulations.

Non-Recourse

Mandatory in LOI

No partner of Tenant shall have any personal liability for breach of any covenant or obligation of Tenant under the Lease, and no recourse shall be had or be enforceable against the assets of any partner of Tenant for any payment of any sums due to Landlord or for enforcement of any other relief based upon any claim made by Landlord for the breach of any of Tenant's covenants or obligations under the Lease.

Non-Disturbance

Mandatory in LOI

The Lease is contingent upon the execution of a non-disturbance agreement. The Lease shall contain a Non-Disturbance Agreement executed by the current Lender or lenders, as well as non-disturbance language protecting Tenant in the event of future sale or foreclosure. All terms of the Lease shall be protected by the Non-Disturbance Agreement.

Holding Over

Desirable in LOI

Tenant shall have the right to extend the lease term by six months, subject to written modification to Landlord six months prior to the end of the term, at the then current rental rates.

Mandatory in Lease

Tenant shall have the right to holdover for up to one year, with rental rates not to exceed 150% of the Base Rent then being paid during the last year of Tenant's rent. Tenant shall not be liable for consequential damages for the first three months of holdover.

Desirable in Lease

Tenant shall have the right to holdover for up to one year at the rental rate in effect during the last year of Tenant's rent. Tenant shall not be liable for consequential damages.

Arbitration

Desirable in Lease

Where arbitration provisions apply, arbitration procedures shall be defined in accordance with "baseball arbitration."

Parking

Mandatory in LOI

During the term of the Lease, Tenant shall upon _____ days' notice to Landlord be able to increase or decrease the contracted spaces within its allocation.

The number of parking spaces allocated to Tenant and associated parking rates shall be specifically defined. Any parking rate increases shall be defined.

Tenant shall have the ongoing right to contract for allocated spaces, but not the obligation to contract for such spaces.

The methodology for increasing the number of spaces allocated in the event of an expansion shall be defined.

Naming and Signage

Mandatory in LOI

The building shall not be named for any Tenant competitors, including "Big 6" competitors or "regional" competitors or their associated consulting subsidiaries.

Desirable in LOI

Tenant shall have the right to building monument or elevator lobby signage.

Directory Listings

Mandatory in Lease

Tenant shall have a line item in the building directory identifying the firm, as well as line items for each partner in the practice office.

Agreement

Mandatory in LOI

This Agreement does not create any legally binding obligation for either the Landlord or Tenant. Landlord shall remove the proposed premises from the market for a period of 90 days with the execution of this Letter of Intent.

Building A Reputation For Being A Deal Closer

Create A Sense of Urgency – “Time Kills All Deals”

Must Be Set For Principals and Lawyers

The Wrong Method

Vacation Deadlines

Board Meeting/Officers Meeting Announcement

Commencement of Critical Event

Increased Costs Under Status Quo

Competition Will Awake

Deal Will Be Killed

The Right Method

Create a Realistic Step-by-Step Schedule

Create Reciprocal Obligations

Demonstrate Reciprocal Work Ethic

Don't Schedule Around Social/Recreational Events

Create Efficiency

Respond in Writing

Trade Computer Disks/E-Mail

Be Prepared

Pre-Negotiated Documents

Control the Selection of Lawyers

Shorter Meetings

Multiple Meetings

Smaller Meetings

Limit Appearances by Principals

Table Business Issues

Dual Drafting/Resolution Tracks

Designate the Client/Business Conduit/Information Gatherer

Stroke the Lawyer

Don't Inefficiently Manipulate Timing

Bad Words

"Can We Do This Deal in a Week?"

"The Client Does Not Care What the Documents Look Like"

"The Deal Is Made – What's Taking the Lawyers so Long?"

"When Can we Get a Redraft?"

"This is a Below Market Deal"

"This is an Above Market Deal"

"We Never do That"

"We Always Get That"

"The Lender Won't Approve That"

Good Words

"Reasonable/Commercially Reasonable"

"Compromise"

"Good Faith"

"Non-Discriminatory"

"Best Commercially Reasonable Efforts"

Procedural Theories

The Race to Reasonableness

Don't Get Personal

Quickly List Hot Button Issues and Move On

Don't Renege or Review Once Completed

No Acting/No Ego/No Embarrassing

Solutions Are the Result of Multiple Minor Solutions

Sense of Equity Over time Can Solve Issues

Trade Listed Issues and Close Deal

Maximizing the Effectiveness of the Third Party Consultants

Learn Everyone's Roles and Parts

Take Part in Solving all Issues and Deal Impediments

Be Prepared

Don't Delegate

Control Client and Attorney

Set Schedule

Research Market Outside of Your Deals

Keep Attitude Upbeat and Expedient

Befriend Adversaries

USE OF REQUEST FOR PROPOSAL; LETTER OF INTENT

Old wives', and old husbands', tales (see how political correctness and gender sensitivity can be carried to extremes) prevail in the real estate profession. Conventional wisdom among bad real estate brokers is that part of a lawyer's job description is to "slow down every deal and then kill the deal." The conventional wisdom among the bad lawyers is that "real estate brokers don't really care about protecting their clients, all they care about is closing a deal at any cost so that they can get paid regardless of what happens to the client."

The truth differs dramatically from these "conventional wisdoms." The truth is that great real estate lawyers fully understand that their job is to find out what the business deal is and then get it closed as quickly and economically as possible while protecting the interests of the respective parties to the transaction. Great real estate brokers realize that the key to their success is their reputation over the long haul and that their reputation is dependent upon not only the transaction closing but upon the transaction being completed in a manner that will satisfy the reasonable expectations of the parties.

Any lawyer can figure any number of ways "not to make the deal" but the great lawyers will figure out a way to "make the deal" even if roadblocks appear by creative detours and new routes being created to accomplish the goals of the parties. Great real estate brokers will welcome the addition of great lawyers to a transaction because the ultimate success of the transaction is dependent the real estate broker and the lawyer working in harmony. Great lawyers know that if they develop a reputation for not getting a deal done, then they will in essence "be out of business" because no one wants to work with a deal-killer. Accordingly, the only thing worse than a deal not closing is for a deal to fail to close after three or four months of negotiations. When this happens, it is almost always the result of bad faith on the part of one of the parties or lack of communication and upfront due diligence between the real estate broker and the lawyer. At a minimum, at the very start of a transaction, the lawyer and the broker should meet with their respective clients and determine what issues, if any, are critical to the tenant or landlord and, if not obtained, would cause the landlord or tenant not to conclude the transaction. Those issues should be identified upfront and agreed upon, as a condition precedent to the broker and lawyer going forward with negotiations.

I have always had the philosophy that the best time to do lease negotiations is at the request for proposal stage, at least from the tenant's perspective. This is because the tenant's leverage is maximized prior to the time that it has settled on one particular location and one particular landlord. At this point in time, the tenant can always tell the landlord that if the landlord does not agree to this particular point, then the tenant will go elsewhere. Once a site and a location are selected, the tenant's negotiating power significantly diminishes. In addition, raising issues at the request for proposal stage strips a great deal of the "emotionalism" from the lease negotiations. The worst thing for a tenant to do is to walk away from the table because it did not get a particular point only to find out that it cannot obtain that point from any of the other landlords of comparable buildings in the vicinity. Everyone has different "hot buttons" and marketplaces differ even within the same city. If a tenant compares what it is receiving from a landlord not

to “utopia” but rather to what is typically available in the marketplace, the emotion is stripped from a decision by the landlord to stick with a 1996 BOMA measurement rather than a 1980 BOMA measurement, or to insist that capital expenditures be included as operating expenses and amortized over a five-year period rather than the useful life, or that the landlord will allow a tenant only sixty days to audit operating expenses rather than three years, etc.

For the purposes of today’s discussion, I have attached a sample Request For Proposal that we normally use when working with a real estate broker in marketplaces where the tenant has reasonable leverage. The proposal sets forth our list of issues that we think are critical and we ask the real estate broker to request that each of the owners respond in detail to each of the positions set forth on the Request For Proposal. The responses from various landlords are then placed on a spreadsheet and the tenant isolates on the basis of the responses one landlord for the purposes of negotiating a detailed letter of intent. No one has to call anyone names and the issues that could cause a problem later on are simply addressed before a project is selected. Under these circumstances, the actual lease negotiations turn out to be much more amicable and much less likely to ever bog down or fall apart. I intend to address the reasons why we have some of these provisions in our Request For Proposal, why we think they are important and how we address them with the landlord today.

**SAMPLE Long Form
Request for Proposal
Office Space 15,000 SF+
2005 Michael E. Meyer
DLA Piper Rudnick Gray Cary**

US LLP

_____, 200_

RE: _____

Dear _____:

_____ has been authorized by _____ (hereinafter referred to as “Tenant”) to request a proposal to lease space in the above-referenced project (the “Project”). In your proposal please address the following items:

PROJECT: (Please see EXHIBIT “B” for Building Questionnaire)

FLOOR & AREA: Approximate contiguous usable square feet: _____

Exact square footage to be initially leased is subject to Tenant’s approval of a final space plan.

Rentable area of a single-tenancy floor is the area of the entire floor measured in accordance with the methods specified in the BOMA publication ANSI Z65.1-1980 (as reaffirmed in 1989). The Premises shall be measured in accordance with such BOMA standards and appropriate adjustments shall be made to the gross rent to reflect the actual square footage (see Attachment 1). Please define the Building Loss Factor.

OPERATIONAL COVENANT: Landlord shall operate the Building and the Project in as first class manner and at all times shall keep the Project and Building in first class condition and repair. Landlord shall have the responsibility for maintenance and operation of the Building Structure and Building Systems (see Attachment 2).

OCCUPANCY: Projected at _____.

PRIMARY LEASE TERM: _____ years.

BASE ANNUAL RENTAL RATE: Please indicate the lowest possible fully serviced, net effective rental rate.

CANCELLATION

PROVISION: Tenant will require a one time right to cancel all or a portion of this lease, with written notice to Landlord, on the ____ month of the Primary Lease Term, effective the ____ month of said term. Tenant shall pay to Landlord a cancellation penalty equivalent to the then unamortized transaction fees and tenant improvement monies expended by Landlord. Said penalty shall be due upon the date of Tenant's actual vacation of the Premises.

OPERATING EXPENSES: Tenant shall share in any increase in the actual operating costs of the Building on a prorata basis, predicated upon a _____ base year method-of-expense calculation ("Base Year"). All operating expenses shall be based upon the Building being 100% occupied and fully assessed for real estate taxes with all tenants paying full rent, as contrasted with free rent, half rent and the like. (See Exhibit "A" for Exclusions from Operating Expenses). Any pass-throughs above the Base Year shall be capped at five percent (5%) per annum.

Tenant shall receive Proposition 8 protection during the Base Year.

For the purpose of payment of operating expenses, to the extent Landlord pays taxes and/or insurance premiums less frequently than monthly, the cost of same shall not be included in operating expenses but shall be separately calculated, with Tenant being obligated to pay Tenant's prorata share of same on the later of five (5) business days after receipt of an invoice from Landlord or ten (10) days prior to the date Landlord is obligated to pay same to the taxing authority or insurance company.

In the event that Tenant ceases to occupy, but still leases, _____ rentable square feet of the Premises, Tenant shall receive a credit against operation expenses equal to the cost of electricity, janitorial, service, water HVAC and any additional utility and/or service not used by Tenant as a result of such vacancy.

RIGHT TO CONTRACT: Please articulate Tenant's ability to shed up to _____ square feet at the ____ and ____ months of the primary lease term.

EVENT OF SALE

INCREASE IN TAXES: In the event of a reassessment of the Building or Project resulting from a sale, refinancing or disposition of the Building or Project or any interest therein, any change in ownership whatsoever or any renovation or new construction in the Project during the Primary Lease Term or any extensions thereof, Landlord shall be 100% responsible for the increase in real estate taxes over the then-current Base Year.

MOVING ALLOWANCE: Landlord to provide a moving allowance equivalent to \$_____ per rentable square foot.

USE: Tenant may use the Premises for general office purposes, for purposes incidental thereto (including a cafeteria, an exercise health club facility, or a child care facility) and for any other lawful purpose consistent with the uses permitted by comparable landlords of comparable space in comparable projects in the vicinity of the Project. Tenant requires access to the Premises seven (7) days per week, 24 hours per day, 365 days per year.

RIGHT TO SUBLEASE/

ASSIGN: Tenant shall have the right at any time to sublease, assign or otherwise permit occupancy of all or any portion of its space to any related entity, subsidiary, parent company or affiliate of Tenant, any company in which Tenant has a controlling interest, or to any successor corporation, whether by merger, consolidation or otherwise or to any person who purchases all or substantially all of Tenant's assets without the Landlord's approval or consent. Tenant may retain one hundred percent (100%) of any revenues derived from the Sublease.

In addition, Tenant shall have the right to sublease or assign all or any portion of the Premises during the initial or extended lease term to any 3rd party subtenant of a type and quality suitable for a first-class office building with Landlord's prior written consent which will not be unreasonably withheld, conditioned or delayed. Tenant may retain one hundred percent (100%) of any revenues derived from the sublease. **[*In the event that Tenant must share the "Profits", see Attachment 3 for the definition of Profits.*]**

Landlord shall not have the ability to recapture such sublease space during the initial or extended terms.

In the event of a sublease of ____ rentable square feet or more, Landlord shall agree that in the event of a default by Tenant under the Lease, Landlord will recognize the sublease as a direct lease between Landlord and the subtenant on the terms and conditions of the lease except that the rent will be the higher of the rent provided (per rentable square foot) in the lease and the rent (per rentable square foot) provided in the sublease.

OPTIONS TO EXPAND: Tenant requires the following Expansion Options:

- Approximately _____ contiguous Usable Square Feet (as defined herein) on the ____ anniversary of the Commencement Date;
- Tenant agrees to give six (6) months prior notice of its intent to lease the additional space;
- Rent rate for the additional space will be the lesser of the;
 1. then escalated rent rate for the initial space in effect at the time of exercising the option, to include a “turn-key” deal for the expansion space or;
 2. current Fair Market Rental Rate as defined below;
- Rent rate for the expansion space shall include leasehold improvements consistent with those described below.

FIRST RIGHT TO LEASE:

Tenant shall have the First Right to Lease, after the execution of the lease, any space which may become available which is contiguous space on same floor or on the floor above or below. Landlord shall notify Tenant of any such space becoming available and shall propose a rent and other lease terms and conditions for the space.

Thereafter, the parties shall negotiate in good faith in an attempt to reach agreement with respect to rent, terms and conditions. If Landlord and Tenant are unable to agree within a forty-five (45) day period, then Landlord must lease such space to Tenant at the Fair Market Rental Rate as defined below.

MOVE-IN: Tenant's Premises shall be thoroughly cleaned at Landlord's sole cost and expense prior to and immediately following Tenant's move into Tenant's Premises. Tenant and Tenant's contractors, subcontractors, architects, engineers and designers shall not be charged for the use of elevators, restrooms, loading docks, parking or utilities during the construction of Tenant's Premises or during Tenant's actual move into the Building. Landlord shall run the HVAC twenty-four (24) hours per day for the seven (7) day period prior to the date Tenant anticipates commencing business operations to flush out new finish odors, etc.

EARTHQUAKE

INSPECTION : Please verify whether or not the Building's welded steel frame has been seismically tested and repaired according to the earthquake safety ordinance, Section 91.8908 of the Los Angeles Municipal Code.

PARKING: Tenant shall need up to _____ spaces per 1,000 square feet of rentable area in the Building parking structure and/or surface parking areas immediately adjacent to the Building. Please indicate if parking charges are applicable and, if so, the amount of the charges both monthly and transient and whether or not there are any specific monthly city taxes assessed to Tenant. Tenant also requires the ability to convert up to ____% of its parking ratio into reserved stalls.

ELECTRICITY: Landlord shall provide electricity for normal office purposes during Normal Business Hours (as defined below), including but not limited to, fluorescent and incandescent lighting, including task and task ambient lighting systems, normal office equipment, including, but not limited to, duplicating (reproductions) machines, computers, terminals, communications and audiovisual equipment, vending machines, kitchen equipment. Landlord will furnish to Tenant wattage and electricity up to an amount necessary to operate their business and all equipment of not less than 6.5 watts per usable square foot.

**HEATING, VENTI-
LATING AND AIR**

CONDITIONING (HVAC): Landlord shall furnish heating, ventilating, and air conditioning, Monday through Friday from 7:00 a.m. to 9:00 p.m. and on Saturdays from 7:00 a.m. to 2:00 p.m., except for New Year's Day, Memorial Day,

Independence Day, Labor Day, Thanksgiving Day and Christmas Day ("Normal Business Hours").

It is to be understood and agreed that any after-hour air conditioning costs will be reduced to the extent that any other tenant has requested utilization of the system, with such overall cost to be prorated. Tenant shall be charged for any after-hour air conditioning costs at Landlord's Actual Cost. "Actual Cost" shall mean an amount equal to the actual out-of-pocket incremental extra costs to Landlord to provide such after-hour air conditioning (or other additional services or utilities), without markup for profit, overhead, depreciation or administrative costs. Please identify any after hour's cost.

CLEANING

SPECIFICATIONS: Landlord shall clean Tenant's Premises, five (5) days per week pursuant to the building standard Janitorial Schedule attached hereto as Exhibit C and made a part hereof.

BUILDING SECURITY: Landlord shall provide building security, equipment, personnel, procedures, and systems twenty-four (24) hours per day, every day of the year. The lease shall contain an exhibit setting forth building standard security specifications, procedures and systems. Tenant shall be permitted to install its own security system for the Premises at Landlord's cost. In addition, on request, Landlord's security guards will accompany Tenant's employees and/or visitors to their vehicles after dark. Please provide information on the Building's security system.

DIRECTORY BOARD: Landlord, at Landlord's expense, shall furnish Tenant with space on the Building directory board in the lobby of the Building and any other directory which may be a part of the complex for _____ (___) designated names per each one thousand (1,000) square feet of space leased. Tenant shall also be permitted group and alphabetical listings on the lobby directory board.

TENANT

IMPROVEMENTS: Landlord shall furnish \$_____ per rentable square foot as a lump sum payment over and above the building core and shell ("Tenant Improvement Allowance") or, if you prefer, please quote a rental rate on an AS IS basis. A core and shell definition will be attached as a separate exhibit to the lease. The Tenant Improvement Allowance may be used for any and all

costs associates with the design and construction of the tenant improvements and for Tenant's moving expenses, including any amount paid to a project coordinator, construction consultant or similar consultant, and for Tenant's legal fees in negotiating the lease. In addition, Tenant may use the Tenant Improvement Allowance for any additional freestanding workstations, furniture, fixtures, and/or equipment. Monies remaining from the Tenant Improvement Allowance shall, at Tenant's option, be used as free rent or be converted into cash. Tenant reserves the right to competitively bid all contracted and subcontracted work and Landlord shall not charge a supervision fee. In the event Tenant leases expansion space, please confirm that Tenant will receive the same tenant improvement allowance as is offered with the initial space. Please also confirm that such allowance should be upwardly adjusted by the increase in the Consumer Price Index from the commencement date of the lease until the commencement date for Tenant's expansion space. Please deliver the space in first class condition and operating order and in compliance with all laws applicable to new construction, disregarding variances and grandfathered rights, subject to the following definition of Landlord's Basic Work.

APPROVAL CRITERIA: Tenant needs to have assurances that once the lease is executed, it can construct its tenant improvement and subsequent alterations in a manner which will allow Tenant to efficiently and effectively operate its business. Accordingly, Landlord may not withhold or condition its consent unless the making or installation of the improvements or alterations (a) adversely affects the Building Structure, (b) adversely affects the Building Systems, (c) do not comply with applicable laws, (d) affect the exterior appearance of the Building, or (e) would unreasonably interfere with the normal and customary business operations of the other tenants in the Building (individually and collectively, a "Design Problem").

LANDLORD'S BASE

BUILDING WORK: Landlord will provide the following at its expense:

1. The HVAC distribution main loop shall be in place, tight to the slab above, and provide for the installation of VAV mixing boxes,

flex duct and linear slot diffusers installed at the window line.

2. Electrical service to the electrical closed on each floor proposed, with 120/208-volt power panels and circuit breakers in place, along with an isolated grounding system.
3. Interior surfaces of the exterior walls shall be finished in drywall; taped, speckled and sanded.
4. All interior columns on the floor proposed for Tenant shall be finished in drywall; taped, speckled and sanded.
5. All work in common areas of the Building, including, but not limited to, common corridors and common elevator lobbies shall be completed.
6. The automatic sprinkler system main loop shall be fully completed, operational and tested in accordance with NFPA requirements.
7. All building standard restroom work shall be completed and meet all ADA requirements.
8. Floor slabs shall be flash patched to achieve a level, smooth surface and prepped for carpet installation. All vertical penetrations shall be sealed and fireproofed.
9. Connection "stub outs" shall be available for vent, hot and cold water at all wet columns.
10. Connection point installed on the floor(s) for fire alarm system. The complete core fire detection system shall be installed, operating and tested in accordance with NFPA requirements.
11. Exterior window coverings to be furnished and installed by Landlord.

WAIVER OF CLAIM/

SUBROGATION: Tenant requires a mutual waiver of claim and subrogation for loss or damage to property, both real and personal, caused by or resulting from casualties customarily insurable.

COMPLIANCE WITH LAWS: Landlord shall ensure that the Premises, and the Building of which they are a part, are in compliance with all federal, state and local laws and regulations, including, but not limited to the Americans with Disabilities Act (ADA), both at the time of Tenant's possession of the Premises and throughout the Primary Lease Term and any extensions thereof.

RIGHT OF OFFSET/

SELF HELP: Tenant shall have the right (but not the obligation) to fulfill Landlord's obligations with respect to the maintenance and repair of the Premises (and Tenant shall have access to utility systems and elements outside the Premises which service the Premises in order to do so) in the event Landlord defaults on its obligations to do same and after the expiration of appropriate notice from Tenant and Landlord's failure to cure. In such event, Tenant shall deduct its actual cost so incurred from the next monthly installment of base rental due (See Attachment 4).

DAMAGE TO PREMISES OR BUILDING; INTERRUPTION OF ESSENTIAL SERVICES:

If the Premises or any part thereof, including parking areas, shall be untenable as a result of any damage or destruction to the Building or the Premises, or any failure of Landlord to provide access to the Premises, or if there is an interruption of essential services, for more than three (3) consecutive business days or ten (10) business days within a twelve month period, or such lesser periods if covered by insurance, then the Base Rent, additional rent and any other amounts owed by Tenant to Landlord shall be abated and shall not be payable with respect to such affected portion of Tenant's Premises from the date of such interruption until such services or access have been restored or such damage or destruction has been repaired and Tenant has been given sufficient time to reconstruct its tenant improvements, install and test its furniture, fixtures and equipment, and move back into the Premises. Tenant's entry into the Premises to remove Tenant's personal property during an interruption of essential services shall not be deemed as use of the Premises

and such entry shall not effect any abatement of rent (see Attachment 5).

CASUALTY LOSS/

CONDEMNATION: If the Building (including the parking areas) and/or premises are damaged by fire, taken by eminent domain or the threat thereof, or otherwise are unavailable to Tenant for the conduct of its business for more than six (6) months, Tenant will have the right to terminate the lease and move its business operations elsewhere (See Attachment 6).

BUILDING SIGNAGE: Please indicate whether Tenant shall have the right to major building signage and, if so, please specify.

SPACE PLANNING: Tenant shall have the right to engage a space planner of its choice relative to the preparation of preliminary working drawings. Landlord to provide an allowance of \$_____ per rentable square foot and said amount shall be over and above the Tenant Improvement Allowance mentioned herein.

ENGINEERING: Landlord shall be responsible for the cost of all electrical, mechanical and structural engineering including all permits, licenses and fees relative to the development of Tenant's Premises.

BUILDING

MANAGEMENT: Any management agreement shall provide that the managing agent shall operate the building in a first-class and cost effective manner so as to minimize operating expenses. Tenant shall have the right to inspect all operating records and costs for the Building as required.

NON-DISTURBANCE

AGREEMENT: Landlord shall agree that concurrently with the execution of the lease, Landlord will provide Tenant with a Non-Disturbance Agreement acceptable to Tenant from any current or future ground lessors, mortgage holders or lien holders. Such Non-Disturbance Agreement shall acknowledge that, to the extent any of the concessions to be provided to Tenant have not been fully funded or performed by Landlord at the time of a foreclosure, deed in lieu of foreclosure or any other transfer of the Building as a result of a default of Landlord under the terms of the applicable ground lease, loan documents, etc., subject to Landlord and lender protections set forth in the lease,

Tenant, to the extent Tenant pays or has paid such unfunded amount, may deduct the unfunded amount or equivalent value thereof, together with interest, from the Base Rent, additional rent and other amounts owed by Tenant to Landlord next becoming due and payable (See Attachment 7 and Exhibit A to Attachment 7).

**STRUCTURAL/
LATENT DEFECTS:**

Landlord, at Landlord's sole cost and expense, shall be 100% responsible for repair of any and all structural defects including roof and flooring and/or latent defects in the Building over the primary lease term and the extension periods (including earthquake damage). Further, Landlord's cost for repair of any and all structural and/or latent defects, shall be excluded from operating expenses which would otherwise be passed through to Tenant.

**HAZARDOUS
MATERIALS:**

Landlord warrants, neither Landlord nor any preceding owners of the property have used the property or any portion thereof for the production, disposal or storage of any Hazardous Materials (as defined below), and Landlord is not aware of any such prior use or any proceeding or inquiry by a governmental authority with respect to the presence of such waste or substance on the property or the movement thereof from or to adjoining property. Landlord warrants there is no asbestos in the Building. Landlord will not, at any time, use or permit the use of any portion of Tenant's Premises, the Building, parking facilities or the land beneath any of them (collectively, the "Site") to be used in violation of any governmental laws, ordinances, regulations or orders ("Regulations"), including those relating to environmental conditions on, under or about the Site, including but not limited to asbestos, soil and ground water conditions and Hazardous Materials. Landlord agrees to remove at Landlord's sole cost and expense, any Hazardous Materials, which may have been used in the construction of the Building. Further, Landlord's cost for the removal of Hazardous Materials from Tenant's Premises or the project shall be excluded from operating expenses which would otherwise be passed through to Tenant inclusive of any material which is deemed toxic presently or in the future. Landlord shall defend, indemnify and

hold Tenant harmless from and against any and all losses, costs (including reasonable attorneys' fees), liabilities and claims arising from any violations of the Regulations and/or the existence of Hazardous Materials that are now or hereinafter become located in, on or under the Site, and shall assume full responsibility and cost to remedy such violations and/or the existence of Hazardous Materials, provided and to the extent that such violation or the existence of Hazardous Materials is not caused by Tenant. Prior to the mutual execution of the lease, the Landlord shall, at Landlord's sole cost and expense, engage a qualified environmental testing company to analyze and provide a detailed report to Tenant regarding the existence and corresponding level(s) of the following Hazardous Materials: (i) radon, (ii) asbestos, and (iii) lead, if any, in, on, under or about the Site.

Hazardous Materials shall include, but shall not be limited to, substances requiring investigation, removal or remediation under any federal, state or local statute, regulation, ordinance or policy including substances defined as "hazardous substances" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 1802; the Resource Conservation Recovery Act, 42 U.S.C. Section 6901, et. seq.; or those substances defined as "hazardous wastes" in applicable codes in the State of California and in the regulations adopted and publications promulgated to such codes.

OPTION(S) TO EXTEND: Tenant shall have Options to Extend the lease for _____ (____) consecutive _____ (____) year periods for all or any part of the premises and any space added to the premises pursuant to the exercise of Tenant's expansion rights. Tenant shall be required to give Landlord no less than _____ (____) months prior written notice of Tenant's election to exercise an Option to Extend. Such extension shall be upon the same terms and conditions as the lease except that the rental rate for each option period shall be at a Fair Market Rental Rate (as defined below) and the base year for operating expenses shall be adjusted forward to the first full twelve calendar months of the extension term.

**FAIR MARKET
DEFINITION:**

The term “Fair Market Rental Rate” shall mean the annual amount per rentable square foot that Landlord has accepted in current transactions between non-affiliated parties from new, non-expansion, non-renewal and non-equity tenants of comparable credit-worthiness, for comparable space, for a comparable use for a comparable period of time (“Comparable Transactions”) in the Building, or if there are not a sufficient number of Comparable Transactions in the Building, what a comparable landlord of a comparable building in the vicinity of the Building with comparable vacancy factors would accept in Comparable Transactions. In any determination of Comparable Transactions appropriate consideration shall be given to the annual rental rates per rentable square foot, the standard of measurement by which the rentable square footage is measured, the ratio of rentable square feet to usable square feet, the type of escalation clause (e.g., whether increases in additional rent are determined on a net or gross basis, and if gross, whether such increases are determined according to a base year or a base dollar amount expense stop), the extent of Tenant’s liability under the lease, abatement provisions reflecting free rent and/or no rent during the period of construction or subsequent to the commencement date as to the space in question, brokerage commissions, if any, which would be payable by Landlord in similar transactions, length of the lease term, size and location of premises being leased, building standard work letter and/or tenant improvement allowances, if any, and other generally applicable conditions of tenancy for such Comparable Transactions. The intent is that Tenant will obtain the same rent and other economic benefits that Landlord would otherwise give in Comparable Transactions and that Landlord will make, and receive the same economic payments and concessions that Landlord would otherwise make, and receive in Comparable Transactions. If, for example, after applying the criteria set forth above, Comparable Transactions provide a new tenant with comparable space at Thirty-Two Dollars (\$32) per rentable square foot, with a Ten Dollar (\$10) base amount expense stop, three (3) months at no rent to construct improvements, four (4) months’ free rent, Fifty Dollars (\$50) per usable square foot tenant improvement allowance, a “lease takeover”

obligation in the amount of One Hundred Thousand Dollars (\$100,000), a brokerage commission of Fifty Thousand Dollars (\$50,000), and certain other generally applicable economic terms, the Fair Market Rental Rate for Tenant shall not be Thirty-Two Dollars (\$32) per rentable square foot only, but shall be the equivalent of Thirty-Two Dollars (\$32) per rentable square foot, a Ten Dollar (\$10) base amount expense stop, three (3) months at no rent to construct improvements or three (3) months' additional free rent in lieu of such construction, an additional four (4) months' free rent, Fifty Dollars (\$50) per usable square foot tenant improvement allowance or payment in lieu of such allowance, One Hundred Thousand Dollars (\$100,000) cash payment in lieu of a lease takeover, a payment to Tenant's then broker of a Fifty Thousand Dollar (\$50,000) brokerage commission (or if Tenant is not then represented by a broker, Tenant shall receive a rent credit in the amount of the brokerage commission that Landlord would have otherwise been required to pay) and such other generally applicable economic terms. The Fair Market Rental Rate shall be determined in accordance with Attachment 8.

TENANT'S RIGHT

TO AUDIT: Tenant shall have the right, at its own cost and expense (except as provided below), to audit or inspect Landlord's records (but not more than once in any Lease Year) with respect to operating expenses and real estate taxes, as well as all other additional rent payable by Tenant hereunder for any Lease Year. Tenant shall give Landlord not less than thirty (30) days prior written notice of its intention to conduct any such audit. Landlord shall cooperate with Tenant during the course of such audit, which shall be conducted during normal business hours in Landlord's office. Landlord agrees to make such personnel available to Tenant as is reasonably necessary for Tenant, or for Tenant's employees or agents to conduct such audit. If such audit discloses that the amount paid by Tenant as Tenant's operating expenses and/or real estate taxes, or of other additional rental payable by Tenant hereunder, has been overstated by more than two percent (2%), then, in addition to immediately repaying such overpayment to Tenant with interest, Landlord shall also pay the reasonable costs incurred by Tenant in connection with such audit.

FINANCIAL STATEMENTS/

SECURITY DEPOSIT: Tenant will submit to Landlord any and all relevant financial information reasonably required for credit purposes. Please confirm that Tenant shall not be required to post any security deposit.

**BUILDING ANTENNA/
SATELLITE DISH(ES):**

Tenant shall have the right, without rental or other charge, to use a portion of the roof to install, operate and maintain telecommunications antennas, microwave dishes and other communications equipment. Such use shall be subject to receipt of all required governmental approvals and shall not interfere with the Building Systems. Tenant will pay for any abnormal wear and tear to the roof area to which said equipment is installed or utilized as access to the area of installation. The location of such equipment shall be mutually acceptable to both Landlord and Tenant. Landlord may not withhold its consent unless a Design Problem exists.

HOLDING OVER: Tenant will require the ability to holdover in its lease space with notice and approval, for a period of up to six months, under the same terms and conditions of the existing Lease. Thereafter, the rental rate shall be one hundred twenty (120%) of the rental rate in effect during the last month of the primary lease term or extension term, as applicable.

**AMERICANS WITH
DISABILITIES**

ACT OF 1990: Landlord shall perform all work in full compliance with the applicable laws including any governing regulations involving the Americans With Disabilities Act of 1990 ("ADA") and the laws set forth in Chapters 2-71, Part 2, Title 24 of the California Administrative Code or as allowed by an approved variation or legally non-conforming conditions to the extent same will not cause Tenant to incur any increased costs in constructing the tenant improvements (collectively, "applicable laws"), in order to make the Building, the Premises, and the Project suitable for Tenant's intended use.

YEAR 2000: Landlord represents and warrants that the Building services including, without limitation, the elevators, heating, ventilating and air conditioning, electrical systems, plumbing and security (collectively, the "Services") are designed to be provided prior to, during, and after the

calendar year 2000 A.D., and that the Services will be provided during each time period without interruption due to an error relating to, or the product of, date data which represents or references different centuries or more than one century. Landlord covenants to maintain said Services in such a manner as to assure continued compliance with the foregoing representation and warranty, and Landlord further agrees to make such modifications as may be necessary or desirable to satisfy any new or modified requirement, including, but not limited to a new and modified interpretations of any prior requirement(s). Landlord agrees to pay, hold harmless and indemnify Tenant from and against any and all losses, damages, claims, suits, actions, judgments and costs (including reasonable attorneys' and witnesses fees) which may arise from any failure of Landlord to comply with the terms of this section. Any and all costs (capital or otherwise) incurred by Landlord in satisfying the terms of this section shall be solely paid by Landlord and not passed on to Tenant as operating costs, additional rent or otherwise.

CONSENT: Except as otherwise provided herein (and except for matters which (1) could have an adverse effect on the structural integrity of the Building Structure, (2) could have an adverse effect on the Building Systems, or (3) could have an effect on the exterior appearance of the building, whereupon in each such case Landlord's duty is to act in good faith and in compliance with the Lease), any time the consent of Landlord or Tenant is required, such consent shall not be unreasonably withheld, conditioned or delayed. Whenever the lease grants Landlord or Tenant the right to take action, exercise discretion, establish rules and regulations or make allocations or other determinations (other than decisions to exercise expansion, contraction, cancellation, termination or renewal options), Landlord and Tenant shall act reasonably and in good faith and take no action which might result in the frustration of the reasonable expectations of a sophisticated tenant or landlord concerning the benefits to be enjoyed under the lease.

ARBITRATION: Unless otherwise stated herein, in addition to all of the legal rights and remedies that are available to Tenant at law or in equity, in the event that any dispute or disagreement between Landlord or Tenant arises under the lease or

any related document, the matter shall be resolved pursuant to binding arbitration.

DEFAULT BY LANDLORD

AND TENANT: Any time a payment is due from Landlord to Tenant or from Tenant to Landlord, and if a specific time period is not set forth in the Lease, the payment will be deemed due in thirty (30) days (see Attachment 9). There shall be only one event of default by Landlord (see Attachment 10). There shall be only two events of default by Tenant (nonpayment or nonperformance of a lease provision) (see Attachment 11). If Landlord files for bankruptcy protection, Tenant may remain in the Premises even if the lease is rejected (see Attachment 12).

LIABILITY AND

INSURANCE: Landlord shall carry casualty and all risk insurance for the full replacement value of the Building (and parking areas) and shall carry earthquake insurance for the Building (and Building parking areas) and rental loss insurance on such terms as those contained in policies maintained by owners of comparable buildings (and containing waivers of subrogation). Furthermore, notwithstanding such insurance, Landlord agrees to indemnify and defend Tenant and its affiliates and to hold them harmless from liability for any and all claims, liabilities and costs (including attorneys' fees and expenses) arising in connection with any and all negligent acts or willful misconduct of Landlord, its agents, employees, contractors, invitees and licensees.

RESTRICTION ON

LEASING: Landlord agrees that it will not, during the primary lease term (as it may be extended) lease any space in the Building to any other tenant, or consent to a sublease or an assignment, to either (i) any other person or entity whose business is in direct competition with Tenant ("Competitor") or (ii) an entity or person that conducts a business or connotes an image that adversely conflicts with the corporate and public image of Tenant as a major corporation conscious of maintaining a reputation for integrity, financial reliability, and for good corporate and moral citizenship. In the event that Landlord violates its agreement set forth in this Section, Tenant shall have, in addition to all other remedies which it may have under the lease or at law, the right to terminate this

lease upon notice to Landlord, in which case this lease shall terminate on the date set forth in Tenant's notice as if that were the date set forth in the lease for the natural expiration thereof.

**REAL ESTATE
COMMISSION :**

_____ has been retained by Tenant to act as its real estate representative. Tenant understands, agrees, and expects that _____ will be compensated on the basis of a full market real estate commission paid by the owner of the project that is ultimately selected. The commission will be calculated based on the average fully serviced rental paid by Tenant to Landlord during the entire Primary Lease Term. In the event Tenant elects to expand its square footage, _____ will also receive a commission related to these events based on a full market commission schedule. Your proposal should reflect this expectation.

APPROVALS: The above referenced terms and conditions are subject to the final approval of Tenant and its Real Estate Committee. Your proposal should include the following:

1. A specific response to each of the requirements outlined above.
2. The rentable and usable square footage of the space proposed to Tenant.
3. The building's estimated/actual operating expenses and real estate taxes for the Base Year and budget years _____ and _____ (assuming 95% occupancy).

Landlord and Tenant shall act in good faith and in a reasonable and prudent manner.

THIS LETTER IS AN INVITATION TO NEGOTIATE. IT IS NEITHER AN OFFER NOR A CONTRACT. TENANT RESERVES THE RIGHT TO NEGOTIATE WITH OTHER PARTIES. NO PARTY SHALL HAVE ANY LEGAL RIGHTS OR OBLIGATIONS WITH RESPECT TO ANY OTHER PARTY, AND NO PARTY SHOULD TAKE ANY ACTION OR FAIL TO TAKE ANY ACTION IN DETRIMENTAL RELIANCE UNTIL DEFINITIVE WRITTEN AGREEMENTS ARE PREPARED AND SIGNED BY ALL PARTIES INVOLVED. TIME IS OF THE ESSENCE.

We look forward to receiving your proposal seven (7) days from the date of this Request for Proposal. If you have any questions or comments please contact the undersigned at _____.

Yours very truly,

Exhibit A
OPERATING EXPENSE EXCLUSIONS

Notwithstanding anything to the contrary in the Lease, Operating Expenses shall not include the following except to the extent specifically permitted by a specific exception to the following:

- (1) Any ground lease rental;
- (2) Costs of items considered capital repairs, replacements, improvements and equipment under generally accepted accounting principles consistently applied or otherwise (“Capital Items”), except for (A) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, incurred by Landlord after the Commencement Date for any capital improvements installed or paid for by Landlord and required by any new (or change in) laws, rules or regulations of any governmental or quasi-governmental authority which are enacted after the Commencement Date; (B) the annual amortization (amortized over the useful life) of costs, including financing costs, if any, or any equipment, device or capital improvement purchased or incurred as a labor-saving measure or to affect other economics in the operation or maintenance of the Building (provided the annual amortized costs does not exceed the actual cost savings realized and such savings do not redound primarily to the benefit of any particular tenant other than Tenant); or (C) minor capital improvements, tools or expenditures to the extent each such improvement or acquisition costs less than five thousand dollars (\$5,000);
- (3) Rentals for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased, rather than rented, would constitute a Capital Item which is specifically excluded under Subsection (ii) above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);
- (4) Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds, and costs of all capital replacements, regardless of whether such repairs are covered by insurance (except if permitted under subsection (ii) above) and cost of earthquake repairs in excess of twenty-five thousand dollars (\$25,000) per earthquake (which for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to such initial earthquake);
- (5) Costs, including permit, license and inspection costs, incurred with respect to the installation of tenants’ or other occupants’ improvements in the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Building;

- (6) Depreciation, amortization and interest payments, except as provided herein and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services' all as determined in accordance with generally accepted accounting principles, consistently applied, and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life;
- (7) Marketing costs including without limitation leasing commissions, attorneys' fees in connection with the negotiation and preparation of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building;
- (8) Expenses in connection with services or other benefits which are not offered to Tenant or for which Tenant is charged for directly but which are provided to another tenant or occupant of the Building;
- (9) Overhead and profit increment paid to Landlord or to subsidiaries or affiliates of Landlord for goods and/or services in the Building to the extent the same exceeds the costs of such goods and/or services rendered by unaffiliated third parties on a competitive basis for comparable buildings;
- (10) Interest, principal, points and fees on debts or amortization on any mortgage or mortgages or any other debt instrument encumbering the Building or the Land (except as permitted in subsection (ii) above);
- (11) Landlord's general corporate overhead and general and administrative expenses;
- (12) Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord and/or all fees paid to any parking facility operator (on or off site);
- (13) Rentals and other related expenses incurred in leasing HVAC systems, elevators or other equipment ordinarily considered to be Capital Items, except for: (A) expenses in connection with making repairs on or keeping Buildings Systems in operation while repairs are being made and (B) costs of equipment not affixed to the Building which is used in providing janitorial or similar services;
- (14) Advertising and promotional expenditures and costs of signs in or on the Building identifying the owner of the Building or other tenant's signs;

- (15) The cost of any electric power used by any tenant in the Building in excess of the Building-standard amount, or electric power costs for which any tenant directly contracts with the local public service company or of which any tenant is separately metered or sub-metered and pays Landlord directly; provided, however, that if any tenant in the Building contracts directly for electric power service or is separately metered or sub-metered during any portion of the relevant period, the total electric power costs for the building shall be “grossed up” to reflect what those costs would have been had each tenant in the Building used the Building-standard amount of electric power;
- (16) Services and utilities provided, taxes attributable to, and costs incurred in connection with the operation of the retail, parking (to the extent same services the retail operations of the Project), and restaurant operations in the Building, except to the extent the square footage of such operations are included in the rentable square feet of the Building and do not exceed the services, utility and tax costs which would have been incurred had the retail and/or restaurant space been used for general office purposes;
- (17) Costs incurred in connection with upgrading the Building to comply with the current interpretation of disability, life, fire and safety codes, ordinances, statutes, or other laws in effect prior to the Commencement Date, including, without limitation, the ADA, including penalties or damages incurred due to such non-compliance;
- (18) Tax penalties incurred as a result of Landlord’s negligence, inability or unwillingness to make payments and/or to file any tax or informational returns when due;
- (19) Costs for which Landlord has been compensated by a management fee, and any management fees in excess of those management fees which are normally and customarily charged by comparable landlord’s of comparable buildings;
- (20) Costs arising from the negligence or fault of other tenants or Landlord;
- (21) Notwithstanding any contrary provision of the Lease, including, without limitation, any provision relating to capital expenditures, other than normal and customary office building maintenance materials and office supplies, any and all costs arising from the release of hazardous materials or substances (as defined by Applicable Laws in effect on the date the Lease is executed) in or about the Premises, the Building or the Land in violation of applicable law including, without limitation, hazardous substances in the ground water or soil, not placed in the Premises, the Building or the Land by Tenant;
- (22) Costs arising from Landlord’s charitable or political contributions;

- (23) Costs arising during the contractual warranty period from construction defects in the base, shell or core of the Building or improvements installed by Landlord;
- (24) Costs arising from any mandatory or voluntary special assessment on the Building or the Land by any transit district authority or any other governmental entity having the authority to impose such assessment in connection with the initial construction of the Building;
- (25) Costs for sculpture, paintings or other objects of art;
- (26) Costs (including in connection therewith all attorneys' fees and costs of settlement judgments and payments in lieu thereof) arising from claims, disputes or potential disputes in connection with potential or actual claims, litigation or arbitration pertaining to the Landlord and/or the Building and/or the Land;
- (27) Costs associated with the operation of the business of the partnership or entity which constitutes Landlord as the same are distinguished from the costs of operation of the Building, including partnership accounting and legal matters, costs of defending any lawsuits with any mortgagee (except as the actions of Tenant may be in issue), costs of selling, syndicating, financing, mortgaging or hypothecating any of Landlord's interest in the Building, costs of any disputes between Landlord and its employees (if any) not engaged in Building operation, disputes of Landlord with Building management, or outside fees paid in connection with disputes with other tenants;
- (28) Any increases of, or reassessment in, Real Property Taxes and assessments in excess of two percent (2%) of the taxes for the previous year, and any increase in Real Property Tax resulting from a change in ownership of the Landlord or from major alterations, improvements, modifications or renovations to the Building or the Land (collectively, "Transfers") except that Operating Expenses shall include the portion of Real Property taxes resulting from or attributable to an assessed value of the Building and Land greater than the market value per rentable square foot at the inception of the lease resulting from a change in ownership, or;
- (29) Costs of any "tap fees" or any sewer or water connection fees for the benefit of any particular tenant in the Building;
- (30) Any expenses incurred by Landlord for use of any portions of the Building to accommodate events including, but not limited to shows, promotions, kiosks, displays, filming, photography, private events or parties, ceremonies and advertising beyond the normal expenses otherwise attributable to providing Building services, such as lighting and HVAC to such public portions of the Building in normal operations during standard Building hours of operation;

- (31) Any entertainment, dining or travel expenses of Landlord for any purpose;
- (32) Any flowers, gifts, balloons, etc. provided to any entity whatsoever, including, but not limited to, Tenant, other tenants, employees, vendors, contractors, prospective tenants and agents;
- (33) Any “validated” parking for any entity;
- (34) Any “finders fees,” brokerage commissions, job placement costs or job advertising cost, other than with respect to a receptionist or secretary in the Building office, once per year;
- (35) Any “above-standard” cleaning, including, but not limited to construction cleanup or special cleanings associated with parties/events and specific Tenant requirements in excess of service provided to tenant, including related trash collection, removal, hauling and dumping;
- (36) The cost of any “tenant relations” parties, events or promotion not consented to by an authorized representative of Tenant in writing;
- (37) “In-house” legal and/or accounting fees;
- (38) Any other expenses which, in accordance with generally accepted accounting principles, consistently applied, would not normally be treated as Operating Expenses by comparable landlords of comparable buildings.
- (39) To the extent that an expense included in Operating Expenses includes an expense related to the Project and not the Building, then the word “Building” utilized in these exclusions shall mean, and be extended to include, the Project.

OTHER

In the event any facilities, services or utilities used in connection with the Building or the Project are provided from another building or project owned or operated by Landlord or vice versa, the cost incurred by Landlord in connection therewith shall be allocated to Operating Expenses by Landlord on a reasonably equitable basis.

Landlord further agrees that since one of the purposes of Operating Expenses and the gross up provision is to allow Landlord to require Tenant to pay for the costs attributable to its Premises and pro-rata share of Operating Expenses, Landlord agrees that (I) Landlord will not collect or be entitled to collect Operating Expenses from all of its tenants in an amount which is in excess of one hundred percent (100%) of the Operating Expenses actually paid by Landlord in connection with the operation of the Project. All assessments and premiums which are not specifically charged to Tenant because of what Tenant has done, which can be paid by Landlord in installments, shall be paid by Landlord in the maximum number of installments permitted by law if requested by Tenant and not included as Operating Expenses except in the year in which the assessment or premium installment is actually paid; provided, however, that if the

prevailing practice in comparable buildings is to pay such assessments or premiums on an earlier basis, and Landlord pays on such basis, such assessments or premiums shall be included in Operating-Expenses as paid by Landlord.

Each time Landlord provides Tenant with an actual and/or estimated statement of Operating Expenses, such statement shall be itemized on a line item by line item basis, showing the applicable expense for the applicable year and the year prior to the applicable year.

In the event Tenant ceases to occupy a contiguous portion of the Premises constituting a full floor on any floor of the Premises for a period of more than thirty (30) consecutive days, then upon Tenant giving Landlord written notice thereof, Tenant shall receive a credit against Tenant's Pro Rata Share of Operating Expenses and Real Property Taxes equal to the charges, on a per square foot of rentable Area basis, for utilities and services (if Tenant has not elected to provide its own utilities and services and receive a separate credit, and HVAC not used by Tenant as a result of such vacancy during the period of such vacancy.

Payment of Taxes and Insurance Premiums: Gross Up. Notwithstanding any Sections of the Lease to the contrary, Tenant shall not be required to pay its Pro Rata Share of Real Property Taxes or insurance premiums on any basis of estimates or in monthly installments. Tenant shall only be required to pay such Pro Rata Share of Real Property Taxes or insurance premiums five (5) days prior to the date Landlord is required to pay such taxes or insurance premiums. Landlord shall bill Tenant for Tenant's Pro Rata Share of Real Property Taxes ten (10) days before Landlord is required to make payment of such taxes to the appropriate taxing authorities. Landlord shall bill Tenant for Tenant's Pro Rata Share of insurance premiums ten (10) days before Landlord is required to make payment of such insurance premiums to the appropriate insurer(s). Landlord shall in any year, including the Base Year, during which the Project is not one hundred percent (100%) occupied during the entire calendar year with all occupants paying full rent (as contrasted with free rent, half rent and the like), adjust such Operating Expenses to what the Operating Expenses would have been had the Project been one hundred percent (100%) occupied during the entire calendar year and had all occupants been paying full rent (as contrasted with free rent, half rent, etc.).

"Real Property Taxes" shall mean all taxes, assessments (special or otherwise) and charges levied upon or with respect to the Project and ad valorem taxes on personal property used in connection therewith. Real Property Taxes shall include, without limitation, any tax, fee or excise on the act of entering into this Lease, on the occupancy of Tenant, the rent hereunder or in connection with the business of owning and/or renting space in the Project which are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision, public corporation, district or other political or public entity, and shall also include any other tax, assessment, fee or excise, however described (whether general or special, ordinary or extraordinary, foreseen or unforeseen), which may be levied or assessed in lieu of, as a substitute for, or as an addition to, any other Real Property Taxes. Landlord may pay any such special assessments in installments when allowed by law, in which case Real Property Taxes shall include any interest charged thereon. Real Property Taxes shall also include (except as restricted in the exclusion to Operating Expense Exclusions) legal fees,

costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Property Taxes; provided, however, notwithstanding anything to the contrary Real Property Taxes shall not include income, franchise, transfer, inheritance or capital stock taxes, unless, due to a change in the method of taxation, any of such taxes are levied or assessed against Landlord, in whole or in part, in lieu of, as a substitute for or as an addition to, any other tax which would otherwise constitute a Real Property Tax. For purposes of computing rent adjustments pursuant to this Article 5, Real Property Taxes shall be allocated and charged to Tenant in accordance with generally accepted accounting and management practices and expressed as an amount per square foot of Rentable Area. Tenant shall pay Real Property Taxes on any portion of the Tenant Improvements that are constructed by Tenant at a cost in excess of \$30.00 per square foot of Rentable Area. Landlord shall seek a reduction in Real Property Taxes to the extent reasonably requested by Tenant, provided that Tenant shall pay directly for all of the costs of seeking such reduction in Taxes and Tenant shall be reimbursed for the amount of such costs that it pays out of any actual reduction in Real Property taxes achieved by such effort.

If Landlord receives a reduction in Real Property Taxes attributable to the Base Year as a result of a commonly called Proposition 8 application, the Real Property Taxes for the Base Year and each Lease Year shall be calculated as if no Proposition 8 reduction in Real Property Taxes was applied for and/or received.

If Landlord provided Tenant pursuant to this Lease a service or utility, the cost of which was included in Operating Expenses during the Base Year, then to the extent Tenant provides such service or utility itself, the cost of which was included in Operating Expenses during the Base Year, then to the extent Tenant provides such service or utility itself, the cost of providing same may be deducted by Tenant from the Rents next due and owing under this Lease, but not in an amount in excess of the corresponding amount included in Operating Expenses during the Lease Year that was attributable to Tenant's use of such service and/or utility during the Lease Year.

In the event Landlord incurs, subsequent to the Base Year, costs or expenses associated with or relating to separate items or categories or subcategories of Operating Expenses which were not part of Operating Expenses during the entire Base Year, Operating Expenses for the Base Year shall be deemed increased by the amounts Landlord would have incurred during the Base Year with respect to such costs and expenses had such separate items or categories or subcategories of Operating Expenses been incurred in Operating Expenses during the entire Base Year.

In the event any portion of the Project is covered by a warranty or service agreement at any time during the Base Year and to the extent the Project is not covered by such warranty or service agreement during a subsequent Lease year, Operating Expenses for the Base Year shall be deemed increased by such amount as Landlord would have incurred during the Base Year with respect to the items or matters covered by the subject warranty, had such warranty or service agreement not been in effect at the time during the Base Year.

In the event that the property management agreement attributable to the Base Year changes, and a service that was previously performed pursuant to, and as a part of,

such property management agreement, then such cost shall either be excluded from Operating Expenses or the Base Year shall be grossed up to reflect such cost of such performance.

If the Project is not fully assessed for Real Property Taxes during the Base Year, the Real Property Taxes shall be grossed up during the Base Year to reflect what they would have been had such Real Property Taxes been fully assessed.

In the event a service is added subsequent to the Base Year, and is included in Operating Expenses, the Base Year shall be grossed up to reflect what Operating Expenses would have been had such service been provided during the Base Year.

Landlord shall cause retail and restaurant operations in the Project to be separately metered in order to facilitate the computation and allocation of Project Expenses.

Exhibit B
BUILDING QUESTIONNAIRE

This form will be used by Tenant in evaluating a building. All information provided shall pertain to the space that is currently under consideration by Tenant.

1. BUILDING NAME & LOCATION

a. Name

Street Address, Suite No. _____

City, State, Zip Code _____

b. Contact

2. BUILDING INFORMATION

a. Completion Date

b. Number of floors in building

c. Total building rentable SF
(BOMA definition)

d. Total building usable SF
(BOMA definition)

e. Total rentable SF per floor
(BOMA definition)

f. Usable SF per floor
(BOMA definition)

g. Common area factor
(BOMA definition)

h. Ceiling height (finished)

i. Slab to slab height

j. Parking ratio (spaces/RSF)

- k. Exterior signing/signage rights _____
3. **ELECTRICAL SPECIFICATIONS**
- a. Lighting

- b. Additional electrical power
service capacity _____
- c. Type of electrical distribution
(under floor duct, cellular
deck, "poke through") _____
- d. Emergency lighting
Generator _____ with Automatic Start _____ Battery Pack _____
4. **VOICE & DATA**
- No. of future trunklines available _____
- Service to building _____
- Risers _____
- Fibre Optics Available? YES NO
5. **HVAC**
- a. Describe HVAC System
Type

Manufacturer _____
Capacity _____
- b. Heating
Capable of maintaining
a minimum of 72°F degrees? YES NO
- c. Cooling
Capable of maintaining

a maximum of 78°F degrees? YES NO

d. Ventilation

Capable of providing minimum
make up fresh air of 20%? YES NO

Capable of providing
rest room ventilation -
10 air changes per hour? YES NO

- e. Supplemental (Spot) Cooling:
Please attach a description
of the availability of additional
supplemental cooling including
type, capacity and time constraints.

6. **PLUMBING**

- a. Nominal pressure of domestic hot and cold water at lavatories (PSIG
_____)

- b. Per code, the rest rooms can accommodate on each floor

Women

Men

7. **ELEVATORS & DOCKS**

Passenger Elevators

Floors served per bank _____ Cabs per bank _____

Capacity per cab (pounds) _____ Freight cab capacity _____

8. **STRUCTURAL**

Total live load capacity _____ (Partition load _____ +live load
_____)

9. **LIFE SAFETY**

- a. Fire Towers/Stairs

Number of rated enclosures: Smoke proof _____ Pressurized _____

Number of Towers that lead directly to the exterior or through rated areas directly to the exterior

Number of Towers _____ Number of Towers to add _____

b. Sprinklers

Building sprinklered? Full _____ Part _____

Are Fire Department connections provided? YES NO

c. Standpipe and Hose System

Standpipe and hose connections installed in the building? _____

d. Hydrant Protection and Water Supply

1. Two fire hydrants within 500 feet of the property?

2. Do they each supply a minimum of 1,000 gallons per minute at pressure of at least 40 pounds per square inch (PSI)?

e. Alarms

1. Automatic Fire/Smoke detection provided? At Core _____
Throughout _____

2. Are manual pull stations provided at all exit routs? YES NO

3. Manual pull stations alarmed? Local _____
Remote _____

f. Public Address System - provided _____

10. **SECURITY PROTECTION**

Attach description of the type of security system.

11. **DISABLED ACCESS**

Does the building completely comply with the 1991 ADA Accessibility Guidelines?

YES NO If not, attach explanation of exceptions.

12. **ASBESTOS**

Building is asbestos free YES NO If no, attach explanation of exceptions.

13. **PCB**

Electrical equipment does not contain PCB? YES NO , If so, attach explanation.

14. **GOVERNING CODES**

Date of Proposal _____

Name of Owner or Developer _____

Submitted By _____

Name

Firm

Title _____

Address _____

Telephone _____

Exhibit C
JANITORIAL SCHEDULE

Premises

Daily

1. All desks and other furniture will be dusted with specially treated dust cloths.
2. All window sills, chair rails, baseboards, moldings, partitions, and picture frames fewer than six feet in height will be hand dusted and wiped clean.
3. All floors will be dust mopped with specially treated dust mops.
4. All bright metal work will be maintained and kept in a clean, polished condition.
5. All drinking fountains will be thoroughly cleaned and sanitized.
6. All stairways will be swept with a chemically treated dust mop and wet mopped as needed.
7. Replacement of light bulbs as needed.
8. All elevators will be wet mopped, on coat of finish applied to floor and machine buffed. If floors are carpeted, carpet will be vacuumed nightly. Interior of cabs will be wiped clean and all metal hardware polished.
9. Empty, clean and dust all wastepaper baskets, ash trays, receptacles, etc.
10. Remove trash and wastepaper to designated areas.
11. Carpeting and rugs to be vacuum cleaned nightly.
12. All tile floors in all areas will maintain a satin finish. Trafficked areas to receive regularly programmed floor maintenance to insure luster and remove black marks and scuffs.

Lavatories

13. Floors to be swept and washed, using antiseptic liquid detergent.
14. Bowls, urinals and basins will be cleaned nightly. A safe antiseptic and deodorant bowl cleaner will be used.
15. All metal and mirrors will be cleaned and polished.

16. Fill and maintain mechanical operations of all tissue, towel, soap and sanitary napkin dispensers. Materials to be supplied from contractor's stock.
17. Remove wastepaper and refuse.

Weekly

1. Spot clean all interior partition glass as required.
2. Remove fingerprints, smudges and scuff marks from all vertical and horizontal surfaces (doors, walls, and sills) under six feet in height.
3. Wash and refinish resilient floors in public areas, strip, wash and polish as needed.
4. Clean all elevator cabs and door tracks.

Monthly

1. Polish and buff (no wax) resilient floors in tenant areas as needed.
2. Dust all louvers, grills and other than flush light fixtures.

Quarterly

1. Dust clean all vertical surfaces; such as, walls, partitions, doors, etc. not reached in nightly cleaning.
2. Dust and wipe clean all venetian blinds.

Every Four (4) Months

1. Wax and buff all resilient flooring in tenant areas, or as needed. Floors shall be stripped, re-waxed and buffed when required. Unusual traffic conditions will receive special attention.
2. Wash windows, inside and outside.

Every Six (6) Months

Dust and damp wipe all ceiling vents.

ATTACHMENT NO. 1

BOMA Method of Measurement. The rentable and usable areas of the Premises and the Building shall be determined in accordance with the standards set forth in ANSI Z65.1-1996, as promulgated by the Building Owners and Managers Association ("BOMA Standard"). Landlord and Tenant shall each have the right, upon notice delivered to the other party within ninety (90) days following the date Tenant commences business operations from the Premises to remeasure the Premises and the Building. Landlord and Tenant shall have a parallel right to remeasure any expansion space leased by Tenant within ninety (90) days following the date Tenant commences conducting business therefrom. In the event that any remeasurement pursuant to the terms of this Section indicates that the square footage measurement previously set forth in the Lease or otherwise agreed upon by Landlord and Tenant is in excess of or lower than the square footage number which would have resulted had the BOMA Standard been properly utilized, any payments due either party (or other rights between Landlord and Tenant) based upon the amount of square feet contained in the Premises shall be proportionally, retroactively and prospectively reduced or increased, as appropriate, to reflect the actual number of square feet as properly remeasured under the BOMA Standard. If either party disagrees with the other party's remeasurement and if a dispute occurs regarding the final accuracy of the measurement of the Premises and the Building in accordance with the BOMA Standard, such dispute will be resolved pursuant to binding arbitration pursuant to the Section __ [Arbitration].

ATTACHMENT NO. 2

Building Structure and Building Systems. Landlord agrees that at all times it will maintain the structural portions of the Building, including the foundation, floor/ceiling slabs, roof, curtain wall, exterior glass and mullions, columns, beams, shafts (including elevator shafts), stairs, parking areas, stairwells, escalators, elevator cabs, plazas, pavement, sidewalks, curbs, entrances, landscaping, art work, sculptures, washrooms, mechanical, electrical and telephone closets, and all Common Areas and public areas (collectively, "Building Structure") and the mechanical, electrical, life safety, plumbing, sprinkler systems (connected to the core) and HVAC systems (including primary and secondary loops connected to the core) ("Building Systems") in first class condition and repair and shall operate the Building as a first class office building. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to make any repair to, modification of, or addition to the Building Structure and/or the Building Systems and/or the Site except and to the extent required because of Tenant's use of all or a portion of the Premises for other than normal and customary business office operations.

ATTACHMENT NO. 3

Definition of Profits. Whenever Landlord is entitled to share in any excess income resulting from an assignment or sublease of the Premises, the following shall constitute the definition of "Profits": the gross revenue received from the assignee or sublessee during the sublease term or during the assignment, with respect to the space covered by the sublease or the assignment ("Transferred Space") less: (a) the gross revenue paid to Landlord by Tenant during the period of the sublease term or during the assignment with respect to the Transferred Space; (b) the gross revenue as to the Transferred Space paid to Landlord by Tenant for all days the Transferred Space was vacated from the date that Tenant first vacated the Transferred Space until the date the assignee or sublessee was to pay Rent; (c) any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee; (d) brokers' commissions; (e) attorneys' fees; (f) lease takeover payments; (g) costs of advertising the space for sublease or assignment; (h) unamortized cost of initial and subsequent improvements to the Premises by Tenant; and (i) any other costs actually paid in assigning or subletting the Transferred Space or in negotiating or effectuating the assignment or sublease; provided, however, under no circumstance shall Landlord be paid any Profits until Tenant has recovered all the items set forth in subparts (a) through (i) for such Transferred Space, it being understood that if in any year the gross revenues, less the deductions set forth in subparts (a) through (i) above (the "Net Revenues"), are less than any and all costs actually paid in assigning or subletting the affected space (collectively "Transaction Costs"), the amount of the excess Transaction Costs shall be carried over to the next year and then deducted from Net Revenues with the procedure repeated until a Profit is achieved.

ATTACHMENT NO. 4

Right to Repair. Notwithstanding any provision set forth in this Lease to the contrary, if Tenant provides written notice (or oral notice in the event of an emergency such as damage or destruction to or of any portion of the Building Structure and/or the Building Systems and/or anything that could cause material disruption to Tenant's business) to Landlord of an event or circumstance which requires the action of Landlord with respect to repair and/or maintenance, and Landlord fails to provide such action within a reasonable period of time, given the circumstances, after the receipt of such notice, but in any event not later than seven (7) days after receipt of such notice, then Tenant may proceed to take the required action upon delivery of an additional three (3) business days' notice to Landlord specifying that Tenant is taking such required action (provided, however, that neither of the notices shall be required in the event of an emergency which threatens life or where there is imminent danger to property or a possibility that a failure to take immediate action could cause a material disruption in Tenant's normal and customary business activities), and if such action was required under the terms of the Lease to be taken by Landlord and was not taken by Landlord within such ten (10) day period (unless such notice was not required as provided above), then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's reasonable costs and expenses in taking such action plus interest thereon at the Interest Rate (as defined in Section __) below plus rent abatement to the extent Tenant would have otherwise been entitled to rent abatement under Section __ of this Lease. Landlord agrees that Tenant will have access to the Building, Building Systems, Building Structure and Site to the extent necessary to perform the work contemplated by this provision. In the event Tenant takes such action, and such work will affect the Building Structure and/or the Building Systems, Tenant shall use only those contractors used or approved by Landlord in the Building for work on such Building Structure or Building Systems unless such contractors are unwilling or unable to perform (and are able to immediately perform), or timely and competitively perform, such work, in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in Comparable Buildings. Furthermore, if Landlord does not deliver a detailed written objection to Tenant within thirty (30) days after receipt of an invoice by Tenant of its costs of taking action which Tenant claims should have been taken by Landlord, and if such invoice from Tenant sets forth a reasonably particularized breakdown of its costs and expenses in connection with taking such action on behalf of Landlord, then Tenant shall be entitled to deduct from Rent payable by Tenant under the Lease, the amount set forth in such invoice. If, however, Landlord delivers to Tenant, within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of the Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not then be entitled to such deduction from Rent, but as Tenant's sole remedy, Tenant may proceed to claim a default by Landlord or, if elected by either Landlord or Tenant, the matter shall proceed to resolution by the selection of an arbitrator to resolve the dispute, which arbitrator shall be selected and qualified pursuant to the procedures set forth the arbitration provision in the Lease, and whose costs shall be paid for by the losing party, unless it is not clear that there is a "losing party", in which event

the costs of arbitration shall be shared equally. If Tenant prevails in the arbitration, the amount of the award which shall include interest at the Interest Rate (from the time of each expenditure by Tenant until the date Tenant receives such amount by payment or offset and attorneys' fees and related costs) may be deducted by Tenant from the rents next due and owing under the Lease.

ATTACHMENT NO. 5

Abatement of Rent When Tenant Is Prevented From Using Premises. In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof, for three (3) consecutive business days or ten (10) business days in any twelve (12) month period (the "Eligibility Period") as a result of (1) any damage or destruction to the Premises, the Parking Facility and/or the Building, (2) any repair, maintenance or alteration performed by Landlord after the Commencement Date, which substantially interferes with Tenant's use of the Premises, the Parking Facility and/or the Building, (3) any failure by Landlord to provide Tenant with services or access to the Premises, the Parking Facility and/or the Building, (4) because of an eminent domain proceeding or (5) because of the presence of hazardous substances in, on or around the Premises, the Building or the Site which could pose a health risk to occupants of the Premises, then Tenant's Rent shall be abated or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. However, in the event that Tenant is prevented from conducting, and does not conduct, its business in any portion of the Premises for a period of time in excess of the Eligibility Period, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time after expiration of the Eligibility Period during which Tenant is so prevented from effectively conducting its business therein, the Rent for the entire Premises shall be abated; provided, however, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the Rent allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence. If Tenant's right to abatement occurs during a free rent period (for these purposes, free rent shall be deemed to include half rent, etc.) which arises after the Commencement Date, Tenant's free rent period shall be extended for the number of days that the abatement period overlapped the free rent period ("Overlap Period"). Landlord shall have the right to extend the Expiration Date for a period of time equal to the Overlap Period if Landlord sends a notice to Tenant of such election within ten (10) days following the end of the extended free rent period. If Tenant's right to abatement occurs because of an eminent domain taking and/or because of damage or destruction to the Premises, the Parking Facility, the Building and/or Tenant's property, Tenant's abatement period shall continue until Tenant has been given sufficient time, and sufficient access to the Premises, the Parking Facility and/or the Building, to rebuild such portion it is required to rebuild, to install its property, furniture, fixtures, and equipment to the extent the same shall have been removed and/or damaged as a result of such damage or destruction and/or eminent domain taking and to move in over a weekend. To the extent Tenant is entitled to abatement without regard to the Eligibility Period, because of an event covered by Sections __ [Damage or Destruction] and __ [Eminent Domain] of the Lease, then the Eligibility Period shall not be applicable. To the extent Tenant has prepaid rent (as it does each month since Rent is due on the first day of each month) and Tenant is subsequently entitled to an abatement, such prepaid, and subsequently abated,

Rent should be refunded to, and paid by Landlord to, Tenant within thirty (30) days after the end of the appropriate month.

ATTACHMENT NO. 6

Right to Terminate.

(a) Notwithstanding anything in either Section __ [Damage or Destruction] and __ [Eminent Domain] to the contrary, and except as expressly set forth in Subsection (b) below, in the event that Tenant is notified or becomes aware of the fact that as a result of:

(i) damage or destruction of the Premises, the Parking Facility and/or the Building or any part thereof so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building;

(ii) a taking by eminent domain or exercise of other governmental authority of the Premises, the Parking Facility and/or the Building or any part thereof so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building;

(iii) the inability of Landlord to provide services to the Premises, the Parking Facility and/or the Building so as to interfere substantially with Tenant's use of all or a portion of the Premises, the Parking Facility and/or the Building; or

(iv) any discovery of hazardous substances in, on or around the Premises, the Building and/or the Site not placed in, on or around the Premises, the Building and/or the Site by Tenant, that may, considering the nature and amount of the substances involved, interfere with Tenant's use of all or a portion of the Premises or which may present a health risk to any occupants of the Premises); or

(v) the discovery of any other hazardous condition with respect to the Premises, the Parking Facility and/or the Building which would make it dangerous or unsafe for Tenant and its employees to conduct their normal and customary business operations from the Premises (each of the items set forth in provision (a)(i), (ii), (iii), (iv) and (v) being referred to herein as a "Trigger Event"),

Tenant cannot, within six (6) months ("Non-Use Period") of the occurrence of the Trigger Event, be given reasonable use of, and access to, a fully repaired, restored, safe and healthful Premises, Parking Facility and Building (except for minor "punch-list" items which will be repaired promptly thereafter), and the utilities and services pertaining to the Premises, the Parking Facility and the Building, all suitable for the efficient conduct of Tenant's business therefrom, then Tenant may thereafter elect at any time to exercise an on-going right to terminate the Lease upon ten (10) days' written notice sent to Landlord at any time following the expiration of the Non-Use Period.

(b) In the event of any Trigger Event occurring during the last year of the Lease Term or, if an applicable renewal option has been exercised, during the last year of any renewal term, should the Non-Use Period continue for thirty (30) days, Tenant may elect to exercise an on-going right to terminate the Lease upon ten (10) days' written notice sent to Landlord at any time following the expiration of the Non-Use Period.

ATTACHMENT NO. 7

Non-Disturbance, Attornment and Subordination Agreement. Landlord agrees that, prior to the earlier of: (1) the Commencement Date, (2) the exhaustion by Tenant of its Tenant Improvement Allowance (as defined in the Work Letter Agreement), or (3) twenty (20) days after the date of full execution of the Lease, it will provide, without cost to or charge of, Tenant with non-disturbance, subordination and attornment agreements (“non-disturbance agreement”) in favor of Tenant from any ground lessors, mortgage holders or lien holders (each, a “Superior Mortgagee”) then in existence, substantially in the form of Exhibit “A” attached hereto. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant’s election and expense. In the event Landlord fails to provide such commercially reasonable non-disturbance agreements within the time frame set forth in this Section, Tenant shall have the right, exercisable at any time thereafter, to give ten (10) business days’ written notice to Landlord terminating the Lease. In the event Landlord does not provide Tenant with the applicable non-disturbance agreements within such ten (10) day period, the Lease shall terminate and Landlord shall reimburse Tenant all of Tenant’s out-of-pocket costs incurred in connection with the design and construction of the Tenant Improvements and Tenant’s legal fees incurred in connection with the review and negotiation of the Lease and this provision shall survive the termination of the Lease.

Landlord agrees to provide Tenant with non-disturbance agreement(s) substantially in the form of Exhibit “A” attached hereto, in favor of Tenant from any Superior Mortgagee(s) of Landlord who later come(s) into existence at any time prior to the expiration of the Term of the Lease, as it may be extended, in consideration of, and as a condition precedent to, Tenant’s agreement to be bound by Lease Section _____. Said non-disturbance agreements shall be in recordable form and may be recorded at Tenant’s election and expense.

Notwithstanding anything to the contrary set forth in this Lease, in the event that Landlord fails to pay to Tenant (i) the Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord’s expense, (ii) [***the Lease Takeover Payment***] (as hereinafter defined), (iii) any final arbitration award or court judgment, or (iv) [***return to Tenant any Security Deposit***], the Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to Tenant, together with interest at the Interest Rate (as defined in Section _____), such unpaid amounts and shall recognize and honor any remaining credit of Base Rent and/or Operating Expenses. In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or Superior Mortgagee shall pay to _____, Tenant’s broker, any unpaid commission that was due and not paid by Landlord to Tenant’s broker, together with interest thereon at the Interest Rate. With respect to all such payments, interest thereon shall be computed from the date such amounts should have been paid until the date such amounts are in fact paid.

All non-disturbance agreements shall acknowledge that, and Landlord hereby independently agrees that, to the extent Landlord has failed to fulfill its

obligations with respect to the payment of any (i) Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant of constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (ii) [***monetary obligations arising out of Tenant's existing lease at _____ which Landlord has agreed to directly or indirectly assume ("Lease Takeover Payment")***], (iii) unpaid arbitration or court award, (iv) [***unrefunded security deposit***], (v) remaining credit of Base Rent and/or Operating Expenses, or (vi) unpaid commission due and owing to Tenant's real estate broker ("Key Obligations"), and to the extent Superior Mortgagee has failed to fulfill its obligations with regard to the payment of such Key Obligations as provided in the preceding paragraph, Tenant may deduct the amount of the Key Obligation which Landlord has not paid, together with interest thereon at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease.

In addition to the foregoing, Landlord agrees that in the event Landlord has failed to pay its Key Obligations, Tenant may deduct the amount of the Key Obligations which Landlord has not paid, together with interest at the Interest Rate, from the Rent next coming due and payable, from time to time, under the Lease. Landlord further agrees that, upon Tenant's request, Landlord will provide Tenant with a preliminary title report within [***_____ (___)***] business days following such request by Tenant.

EXHIBIT A

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Agreement is made on _____, 200_, between _____
_____ (“Superior Mortgagee”), whose address is
_____, _____ (“Landlord”), whose
address is _____, and _____, a
_____ corporation (“Tenant”), whose address is
_____, who agree as follows:

1. Recitals. This Agreement is made with reference to the following facts and objectives:

(a) Superior Mortgagee is, or it is anticipated that Superior Mortgagee will become, the beneficiary under a certain deed of trust (“Trust Deed”) on improved property located at _____ (“Property”), more specifically described in Schedule “___” attached hereto and made a part hereof by this reference. Superior Mortgagee shall also be deemed to include any lender who executes this Agreement and subsequently acquires title to the Building pursuant to a bankruptcy proceeding involving Landlord.

(b) On or about _____, 200_, Landlord leased to Tenant, and Tenant leased from Landlord, a portion of the Property. A copy of the lease between Landlord and Tenant (“Lease”) is attached hereto as Schedule “___” and made a part hereof by this reference.

(c) The parties desire, under the provisions set forth in this Agreement, to assure Tenant that in the event of the foreclosure of the Trust Deed, or in the event of a sale in lieu of such foreclosure, or in the event that Superior Mortgagee directly or indirectly becomes the new landlord of the Building because of its providing financing to Landlord, the terms, covenants and conditions of the Lease shall not be terminated, disturbed, or adversely affected, provided an uncurable Event of Default has not occurred under Section __ of the Lease and subject to the cure rights set forth in Section __ of the Lease (“Tenant Default”).

2. Attornment. If Landlord is in default under the Trust Deed after expiration of the applicable period that Landlord has in which to cure its default, and if a foreclosure sale takes place due to such default, or if Superior Mortgagee shall notify Tenant of such transfer of title to the Property or if Superior Mortgagee becomes the new Landlord of the Building, after receipt of such notice, upon the effective date of such transfer of title, and after Tenant has received written notice of such transfer of title, Tenant shall attorn to Superior Mortgagee and shall recognize Superior Mortgagee as Tenant’s landlord under the Lease, and Tenant agrees to execute any instruments reasonably requested to evidence such attornment. Upon attornment, the Lease shall continue in full force and effect, so long as a Tenant Default has not occurred, and Tenant shall perform all Tenant’s obligations under the Lease directly to Superior Mortgagee, as if Superior Mortgagee were the landlord under the Lease. Tenant agrees to make any modifications of the Lease requested by Superior Mortgagee hereunder,

provided that such modifications do not materially or adversely affect any right of Tenant under the Lease or increase any of Tenant's monetary obligations under the Lease.

3. Non-Disturbance by Superior Mortgagee. If a Tenant Default is not in existence at the time of the transfer of title as provided in the above paragraph, the Lease shall continue with the same force and effect as if Superior Mortgagee and Tenant had entered into a lease with the same provisions as those contained in the Lease, and the terms of the Lease and Tenant's leasehold estate in the Property shall not be terminated, disturbed, or adversely affected, except according to the terms, covenants or conditions of the Lease.

4. Conditions of Superior Mortgagee's Recognition. Until a Tenant Default occurs, Superior Mortgagee or such other purchaser shall recognize the leasehold estate of Tenant under all of the terms, covenants and conditions of the Lease for the remaining balance of the term and any renewals thereof with the same force and effect as if Superior Mortgagee or such other purchaser were the landlord under the Lease, and Superior Mortgagee and Tenant shall immediately enter into a written agreement with the same provisions as those in the Lease, except for any technical changes that are necessary because of the substitution of Superior Mortgagee in place of Landlord; provided, however, that Superior Mortgagee, or such other purchaser, shall not be (1) liable for any act or omission of Landlord or any other prior lessor which occurred prior to the time the Superior Mortgagee purchased or acquired its interest under the Lease, except for the obligations of Landlord or any other prior lessor to perform under the Lease those obligations which are in the nature of on-going obligations under the Lease, and except with respect to Tenant's right to deduct from rents next due under the Lease, together with interest thereon at the Interest Rate, as defined in the Lease, any (i) remaining credit of Base Rent, or operating expenses, (ii) unpaid Tenant Improvement Allowance (including allowances for expansions, renewals, initial construction, remodeling or refurbishing), or the cost incurred by Tenant in constructing or completing the Tenant Improvements which were required to be constructed or completed by Landlord at Landlord's expense, (iii) unpaid arbitration or court award, (iv) unpaid obligation of Landlord arising out of Tenant's existing Lease at **[*Existing Location*]** which Landlord has agreed to directly or indirectly assume, (v) unrefunded security deposit, or (vi) unpaid commission due and owing to Tenant's real estate broker all as set forth in the Lease, (2) except as provided in (i) to the contrary, obligated to cure any defaults of Landlord or any other prior lessor under the Lease which occurred prior to the time that Superior Mortgagee purchased or acquired its interest under the Lease (except to the extent that the default is not monetary and remains in existence at the time the Superior Mortgagee purchased or acquired its interest under the Lease), (3) except as provided in (i) to the contrary, subject to any offsets or defenses which Tenant may be entitled to assert against Landlord or any other prior lessor; (4) bound by any payment of rent or additional rent by Tenant to Landlord or any other prior lessor for more than one month in advance, (5) bound by any amendment or modification of the Lease which would adversely affect any right of Landlord under the Lease made without the written consent of Superior Mortgagee or such other purchaser who has first, in writing, notified Tenant of its interest, which consent cannot be unreasonably withheld, or (6) except as provided in (i) to the contrary, liable or responsible for or with respect to the retention, application and/or return to Tenant of any security deposit paid to Landlord or any other prior lessor,

whether or not still held by Landlord, unless and until Superior Mortgagee or such other purchaser has actually received for its own account as landlord the full amount of such security deposit, or any portion thereof (such liability and responsibility being limited to the amount received, if any).

5. Special Payment. Notwithstanding anything to the contrary set forth in this Agreement or in the Lease, in the event that the Landlord fails to pay to Tenant (a) the Tenant Improvement Allowance, (b) unpaid final arbitration award or court judgment, (c) unpaid obligation of Landlord with respect to a Lease Takeover or similar agreement, or (d) unrefunded security deposit, Superior Mortgagee or such other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to the Tenant, together with interest at the Interest Rate, such unpaid amounts and shall recognize and honor any remaining credit of (or so called free) Base Rent and operating expenses ("Outstanding Credit"). In addition, Superior Mortgagee or any other successor to the interests of Landlord and/or the Superior Mortgagee shall pay to _____, Tenant's broker, any unpaid commission that was due and not paid by Landlord to Tenant's broker together with interest at the Interest Rate. With respect to all such payments, interest shall be computed from the date such amounts are in fact paid.

In the event Landlord, Superior Mortgagee or such other successor to the interests of Landlord and/or Superior Mortgagee shall fail to pay to Tenant such unpaid amounts, honor any Outstanding Credit, or pay to Tenant's broker any unpaid commission that was due and not paid by Landlord to Tenant's broker, Tenant may deduct such amounts, together with interest thereon at the Interest Rate and computed as set forth above, from the rent next becoming due and payable under the Lease.

6. Covenants of Superior Mortgagee.

(a) Superior Mortgagee shall, at the request of Tenant, oppose any rejection of this Lease in the event a bankruptcy proceeding is instituted involving Landlord as the debtor.

(b) Superior Mortgagee shall serve Tenant, in the same manner and at the same time, with a copy of all notices it serves on Landlord with respect to any default by Landlord on any obligation of Landlord to Superior Mortgagee.

7. Miscellaneous.

(a) No Effect on Trust Deed. Nothing in this Agreement shall be deemed to change in any manner the provisions of the Trust Deed as between Superior Mortgagee and Landlord, to waive any right that Superior Mortgagee may now have or later acquire against Landlord by reason of the Trust Deed.

(b) Attorneys' Fees. In the event of any suit under this Lease, reasonable attorneys' fees and costs shall be awarded by a court or arbitrator to the prevailing party and are to be included in any judgment or award. In addition, the prevailing party shall be entitled to recover reasonable attorneys fees and costs incurred in enforcing any judgment arising from a suit under this Lease including

but not limited to post judgment motions, contempt proceedings, garnishment, levy and debtor and third party examinations, discovery and bankruptcy litigation, without regard to schedule or rule of court purporting to restrict such award. This post judgment or award of attorneys' fees and costs provision shall be severable from any other provisions of this Lease and shall survive any judgment on such suit and is not to be deemed merged into the judgment or award. For the purpose of this provision, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of internal/external legal counsel to the parties hereto, which include printing, photocopying, duplicating, mail, overnight mail, messenger, court filing fees, cost of discovery, fees billed for law clerks, paralegals, investigators and other persons not admitted to the bar but performing services under the supervision or direction of an attorney. For the purpose of determining in-house counsel fees, the same shall be considered as those fees normally applicable to a partner in a law firm with like experience in such field.

(c) Notice. All written notices, statements, or other communications required or permitted to be given hereunder shall be given by letter, telex, telegram, mailgram, cable or fax and shall be deemed delivered if dispatched by certified or registered mail, return receipt requested, postage prepaid or personal delivery or telex or fax transmission or other form of electronic transmission, addressed to the parties as set forth opposite their respective names in the Fundamental Lease Provisions A or B, as is appropriate.

If personally delivered, such notice shall be effective upon delivery. If notice is sent by telex or fax transmission or other form of electronic transmission, such notice shall be effective upon transmission (if prior to 6:00 p.m. in the recipient's time zone. If after 6:00 p.m., the notice shall be effective at 9:00 a.m. on the next business day after such transmission). If mailed, notice shall be deemed given on the third day after it is deposited in the mail in accordance with the foregoing. Any party may change the address at which to send notices by notifying the other party of such change of address in writing in accordance with the foregoing. Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed or considered undeliverable by the postal authorities, messenger, officer of the law or overnight delivery service.

(d) Successors. This Agreement shall be binding on and inure to the benefit of the parties and their successors.

(e) Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of [*California*].

(f) No Modifications Unless in Writing. This Agreement contains all of the agreements and understandings between the parties regarding this Agreement relating to the leasing of the Premises and the obligations of Landlord and Tenant in connection with such Lease. This Agreement supersedes any and all prior agreements and understandings between Landlord, Tenant and Superior Mortgagee and alone expresses the agreement of the parties. This Agreement

shall not be amended, changed or modified in any way unless in writing executed by Landlord, Tenant and Superior Mortgagee. Landlord, Tenant and Superior Mortgagee shall not have waived or released any of their rights hereunder unless in writing and executed by Landlord, Tenant and Superior Mortgagee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LANDLORD:

_____,
a _____

By: _____
Its: _____

TENANT:

_____,
a _____ corporation

By: _____
Its: _____

SUPERIOR MORTGAGEE:

_____,
a _____

By: _____
Its: _____

ATTACHMENT NO. 8

Landlord shall determine the Fair Market Rental Rate by using its good faith judgment. Landlord shall provide written notice of such amount within fifteen (15) days (but in no event later than twenty (20) days) after Tenant provides the notice to Landlord exercising Tenant's option rights which require a calculation of the Fair Market Rental Rate. Tenant shall have thirty (30) days ("Tenant's Review Period") after receipt of Landlord's notice of the new rental within which to accept such rental in writing. In the event Tenant fails to accept the new rental proposed by Landlord, Landlord and Tenant shall attempt to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Tenant's Review Period ("Outside Agreement Date"), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below. Failure of Tenant to so elect in writing within Tenant's Review Period shall conclusively be deemed its disapproval of the Fair Market Rental Rate determined by Landlord.

In the event that Landlord fails to timely generate the initial written notice of Landlord's opinion of the Fair Market Rental Rate which triggers the negotiation period of this Section, then Tenant may commence such negotiations by providing the initial notice, in which event Landlord shall have fifteen (15) days ("Landlord's Review Period") after receipt of Tenant's notice of the new rental within which to accept such rental. In the event Landlord fails to accept in writing such rental proposed by Tenant, then such proposal shall be deemed rejected, and Landlord and Tenant shall attempt in good faith to agree upon such Fair Market Rental Rate, using their best good faith efforts. If Landlord and Tenant fail to reach agreement within fifteen (15) days following Landlord's Review Period (which shall be, in such event, the "Outside Agreement Date" in lieu of the above definition of such date), then each party shall place in a separate sealed envelope their final proposal as to Fair Market Rental Rate and such determination shall be submitted to arbitration in accordance with subsections (a) through (e) below.

(a) Landlord and Tenant shall meet with each other within five (5) business days of the Outside Agreement Date and exchange the sealed envelopes and then open such envelopes in each other's presence. If Landlord and Tenant do not mutually agree upon the Fair Market Rental Rate within one (1) business day of the exchange and opening of envelopes, then, within ten (10) business days of the exchange and opening of envelopes Landlord and Tenant shall agree upon and jointly appoint a single arbitrator who shall by profession be a real estate lawyer or broker who shall have been active over the five (5) year period ending on the date of such appointment in the leasing of comparable commercial properties in the vicinity of the Building. Neither Landlord nor Tenant shall consult with such broker or lawyer as to his or her opinion as to Fair Market Rental Rate prior to the appointment. The determination of the arbitrator shall be limited solely to the issue of whether Landlord's or Tenant's submitted Fair Market Rental Rate for the Premises is the closer to the actual Fair Market Rental Rate for the Premises as determined by the arbitrator, taking into account the requirements of this Section. Such arbitrator may hold such hearings and require such briefs as the arbitrator, in

his or her sole discretion, determines is necessary. In addition, Landlord or Tenant may submit to the arbitrator with a copy to the other party within five (5) business days after the appointment of the arbitrator any market data and additional information that such party deems relevant to the determination of Fair Market Rental Rate ("FMRR Data") and the other party may submit a reply in writing within five (5) business days after receipt of such FMRR Data.

(b) The arbitrator shall, within thirty (30) days of his or her appointment, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental Rate, and shall notify Landlord and Tenant of such determination.

(c) The decision of the arbitrator shall be binding upon Landlord and Tenant, except as provided below.

(d) If Landlord and Tenant fail to agree upon and appoint an arbitrator, then the appointment of the arbitrator shall be made by the Presiding Judge of the Superior Court, or, if he or she refuses to act, by any judge having jurisdiction over the parties.

(e) The cost of arbitration shall be paid by Landlord and Tenant equally.

ATTACHMENT NO. 9

When Payment Is Due. Whenever in this Lease a payment is required to be made by one party to the other, but a specific date for payment is not set forth or a specific number of days within which payment is to be made is not set forth, or the words “immediately”, “promptly” and/or “on demand”, or the equivalent, are used to specify when such payment is due, then such payment shall be due thirty (30) days after the party which is entitled to such payment sends written notice to the other party demanding payment.

ATTACHMENT NO. 10

Default by Landlord. Landlord shall be in default in the performance of any obligation required to be performed by Landlord under the Lease if Landlord has failed to perform such obligation within thirty (30) days after the receipt of notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) calendar days are required for its performance, Landlord shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon any such default by Landlord, Tenant may exercise any of its rights provided in law or at equity and shall have the right, but not the obligation, to cure any such default by Landlord and to deduct the costs incurred by Tenant to cure such default, including legal fees and expenses, from the amounts next due and owing under the Lease.

ATTACHMENT NO. 11

Default by Tenant. Lease Section __ pertaining to defaults by Tenant, is hereby deemed deleted, and the following paragraph is deemed inserted in its place:

“A. The occurrence of any of the following shall constitute an event of default (“Event of Default”) hereunder on the part of Tenant:

“(1) Nonpayment of Rent. Failure to pay any installment of Base Rent due and payable hereunder, upon the date when payment is due, such failure continuing for a period of ten (10) business days after written notice of such failure; or

“(2) Other Obligations. Failure to perform any obligation, agreement or covenant under the Lease, other than Tenant’s obligation to pay Base Rent, such failure continuing for thirty (30) calendar days after written notice of such failure or such longer period as is reasonably necessary to remedy such failure, provided that Tenant shall continuously and diligently pursue such remedy until such failure is cured.

“B. All notices to be given pursuant to this Section __ shall be in addition to, and not in lieu of, the notice requirements of [***California Code of Civil Procedure Section 1161***].

“C. Tenant shall have, and under no circumstances shall Tenant be deemed to have waived, the rights set forth in Sections 1174 and 1179 of the California Civil Code of Procedure.”

ATTACHMENT NO. 12

Landlord Bankruptcy Proceeding. In the event that the obligations of Landlord under the Lease are not performed during the pendency of a bankruptcy or insolvency proceeding involving the Landlord as the debtor, or following the rejection of this Lease in accordance with Section 365 of the United States Bankruptcy Code, then notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to set off against Rents next due and owing under this Lease (a) any and all damages caused by such non-performance of Landlord's obligations under the Lease by Landlord, debtor-in-possession, or the bankruptcy trustee, and (b) any and all damages caused by the non-performance of Landlord's obligations under the Lease following any rejection of the Lease in accordance with Section 365 of the United States Bankruptcy Code.