

INDUSTRIAL LEASE

between

THE COUNTY OF SAN MATEO,  
as Tenant

and

POLESELLI FAMILY TRUST,  
Edward Poleselli, Trustee  
as Landlord

For the lease of

937 Bransten Road  
San Carlos, California

February 1, 2005

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**LIST OF EXHIBITS:**

EXHIBIT A -- Floor Plan

EXHIBIT B -- Notice of Commencement Date

## INDUSTRIAL LEASE

### LEASE NO. 1269

THIS INDUSTRIAL LEASE (this "Lease"), dated for reference purposes only as of February 1, 2005, is between POLESELLI FAMILY TRUST, Edward A. Poleselli, Trustee ("Landlord") and the COUNTY OF SAN MATEO, a political subdivision of the State of California ("Tenant" or "County").

Landlord and Tenant hereby covenant and agree as follows:

#### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

- |  |   |
|--|---|
| 1.1 Lease Reference Date:                    | February 1, 2005  |
| 1.2 Landlord:                                | POLESELLI FAMILY TRUST  |
| 1.3 Tenant:                                  | COUNTY OF SAN MATEO   |
| 1.4 Building (Section 2.1):                  | All of that certain 14,000 square foot single story concrete industrial building constructed on San Mateo County Assessor's Parcel 046-133-050 and commonly known as 937 - 945 Bransten Road, San Carlos, California ("Building").  |
| 1.5 Premises (Section 2.1):                  | That portion of the Building consisting of approximately 4,000 square feet of warehouse and office area, together with the non-exclusive use of the parking and loading areas as indicated on the attached <u>Exhibit A</u> , and commonly known as 937 Bransten Road ("Premises"). |
| 1.6 Rentable Area of Premises (Section 2.1): | Approximately 4,000 square feet of warehouse and office.  |
| 1.7 Term (Section 3.1):                      | Estimated Commencement Date:<br>February 1, 2005;<br>Expiration Date: December 31, 2008.  |

- 1.8 Extension Option (Section 3.3) One additional term of four (4) years, exercisable by Tenant by notice to Landlord given not less than one hundred twenty (120) days in advance, with rent adjusted as set forth in Section 3.4.
- 1.9 Base Rent (Section 4.1): Monthly payments: \$2,600.00
- 1.10 Additional Charges (Section 4.3): Tenant shall pay its percentage share (29%) of any increase in Real Estate Taxes and Landlord's Insurance Costs over those of the Base Year of 2005 as set forth in Section 4.3.
- 1.11 Use (Section 5.1): Storage of records, files, equipment and other property of the County of San Mateo, and general office purposes including, but not limited to, those of the County's Office of Emergency Services.
- 1.12 Repairs and Maintenance (Section 8): Landlord shall maintain the structural elements of the Building and the Premises as further set forth in Section 8.1. Tenant shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty, as further set forth in Section 8.2.
- 1.13 Utilities and Services (Section 10): Tenant shall pay the cost of all separately metered utilities provided to the Premises for the benefit of Tenant, and for all services required by Tenant.
- 1.14 Notice Address of Tenant (Section 26.1): County Manager  
400 County Center  
Redwood City, California 94063  
Attn: Real Property Services  
Fax No.: (650) 363-4832
- 1.15 Key Contact for Tenant: Area Coordinator  
Office of Emergency Services
- 1.16 Telephone No.: (650) 363-4790

1.17 Alternate Contact for Tenant: Real Property Services Manager

1.18 Telephone No.: (650) 363-4047

1.19 Address for Landlord  
(Section 26.1): 929 Bransten Road  
San Carlos, CA 94070  
Fax No.: (650) 595-2094

1.20 Key Contact for Landlord: Edward Poleselli

1.21 Telephone No.: (650) 595-3600

1.22 Brokers (Section 26.8): Coldwell Banker Commercial  
1340 Bayshore Highway  
Burlingame, CA 94010  
(650) 344-4300  
Fax No.: (650) 344-4311

1.23 Other Noteworthy Provisions: None

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## **2. PREMISES; AS IS CONDITION**

### **2.1. Lease Premises**

Subject to the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord those premises in the building identified in the Basic Lease Information (the "Building") and shown on the floor plans attached hereto as Exhibit A (the "Premises"). The Building, land upon which the Building is located and all other improvements on and appurtenances to such land are referred to collectively as the "Property." Tenant shall have the non-exclusive right to use the public areas of the Property ("Common Areas"), and the non-exclusive right of access to and from the Premises, the Building and the Property as required for Tenant's use of the Premises.

### **2.2. Parking**

Tenant shall have the right to park in the parking facilities of the Property, provided that, in the aggregate, Tenant agrees not to use in excess of five (5) spaces, and agrees to cooperate with Landlord and other tenants in the use of the parking facilities.

### **2.3. Condition**

Landlord shall deliver that portion of the Premises contained in the Building to Tenant in a broom clean condition and free of debris as of the Commencement Date, and warrants that the existing roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a condition of non-compliance exists as of the Commencement Date, Landlord shall, as Landlord's obligation with respect to such matter, correct such deficiency at Landlord's expense.

## **3. TERM**

### **3.1. Lease Term**

The Premises are leased for an initial term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), or such later date as Landlord shall have delivered the Premises to Tenant and the County Board of Supervisors shall have authorized the execution of this Lease, in its sole and absolute discretion. The term of the Lease shall end on the expiration date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease.

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." If the Commencement Date occurs on a date other than the Estimated Commencement Date, then promptly thereafter Landlord shall deliver to Tenant a notice substantially in the

form of Exhibit B attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

### **3.2.Delay in Delivery of Possession**

Landlord shall use its best efforts to deliver possession of the Premises on or before the Estimated Commencement Date. However, if Landlord is unable to deliver possession of the Premises as provided above, then, subject to the provisions of this Section below, the validity of this Lease shall not be affected by such inability to deliver possession except that Tenant's obligations to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the Premises as required under this Lease. If the Term commences later or earlier than the Estimated Commencement Date, this Lease shall nevertheless expire on the Expiration Date, unless sooner terminated pursuant to the provisions under this Lease. If Landlord is unable to deliver possession of the Premises to Tenant as required hereunder within sixty (60) days after the Estimated Commencement Date, then Tenant may, at its option, terminate this Lease, without any further liability under this Lease, upon written notice to Landlord.

### **3.3.Extension Option**

Tenant shall have the right to extend the Initial Term of this Lease (the "Extension Option") for the additional term specified in the Basic Lease Information (the "Extended Term"). Such Extension Option shall be on all of the terms and conditions contained in this Lease, except that the rent shall be adjusted as hereinafter set forth. Tenant, at its sole discretion, may exercise the Extension Option, if at all, by giving written notice to Landlord no later than one hundred twenty (120) days prior to expiration of the term to be extended; provided, however, if Tenant is in material default under this Lease on the date of giving such notice and fails to cure such default as set forth in Section 15.1, Landlord may reject such exercise by delivering written notice thereof to Tenant promptly after such failure to cure.

### **3.4.Determination of Base Rent for the Extended Term**

At the commencement of the Extended Term, the Base Rent shall be adjusted to equal the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within the immediate vicinity of the City of San Carlos ("Reference Area"); provided, however, in no event shall the Base Rent be reduced below the Base Rent for the lease year prior to commencement of such Extended Term. As used herein, the term "prevailing market rate" shall mean the base rental for such comparable space, taking into account without limitation (i) any additional rental and all other payments and escalations payable hereunder, (ii) floor location and size of the premises covered by leases of such comparable space, (iii) the duration of the renewal term and the term of such comparable leases, (iv) free rent given under such



comparable leases and any other tenant concessions, and (v) building standard tenant improvement allowances and other allowances given under such comparable leases.

If Tenant disputes Landlord's determination of the prevailing market rate, Tenant shall so notify Landlord within fourteen (14) days following Landlord's notice to Tenant of the prevailing market rate and such dispute shall be resolved as follows:

(a) Within thirty (30) days following Landlord's notice to Tenant of the prevailing market rate, Landlord and Tenant shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

(b) If within this thirty (30) day period Landlord and Tenant cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and Tenant within thirty (30) days of the expiration of the thirty (30) day consultation period described in (a) above.

(c) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the prevailing market rate and submit such determination to Landlord and Tenant. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the prevailing market rate.

(d) If Tenant's County Manager does not approve of the prevailing market rate as determined by the appraisal procedure specified above, the County Manager shall revoke the exercise of the Extension Option by Tenant.

(e) All appraisers specified herein shall be members of the American Institute of Real Estate Appraisers (MAI) with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in San Mateo County. Landlord and Tenant shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the arbitration.

## **4. RENT**

### **4.1. Base Rent**

Beginning on the Commencement Date, Tenant shall pay to Landlord during the Term the Base Rent specified in Section 1.9 of the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in Section 1.19 of the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. Tenant shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

### **4.2. Definitions**

For purposes hereof, the following terms shall have the meanings hereinafter set forth:

(a) "Base Year" means the calendar year 2005.

(b) "County's Percentage Share" is 29%, which is the ratio of the area of the Premises in comparison to the total area of the Building ( $4,000 \div 14,000$ ).

### **4.3. Additional Charges**

Tenant shall pay to Landlord any charges or other amounts required under this Lease as additional rent ("Additional Charges"), including Tenant's Percentage Share of the charges for increases in Real Estate Taxes and Insurance Costs over those for the Base Year. All such Additional Charges shall be payable to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for default in the payment of any Additional Charges as for default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent."

"Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the portion of the Property owned by Landlord or any personal property of Landlord used in the operation thereof, or Landlord's interest in the Property or such personal property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes, and any tax, fee, or excise on the act of entering into this Lease or any other use of the Property or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Building or the Property, that are

now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to Tenant's failure to pay its portion of Real Estate Taxes hereunder, (3) any personal property taxes payable by Tenant hereunder or by any other tenant or occupant of the Property, or (4) any increase in Real Estate Taxes due to any reassessment upon a transfer of any of Landlord's interest in the Building or the Property.

## **5. USE**

### **5.1. Permitted Use**

Tenant shall use and occupy the Premises during the Term for storage of files, records, equipment and other personal property of the Tenant, office use in connection with such storage, and for such other uses, if any, as may be specified in the Basic Lease Information, and for no other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

### **5.2. No Unlawful Uses, Nuisances or Waste**

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises.

### **5.3. Interference with Access**

Landlord shall provide to Tenant, at all times, use of the Premises and uninterrupted access thereto to the maximum extent possible, including, without limitation, during any power outages affecting the Premises; provided, however, that Landlord may interrupt Tenant's access to the Premises or the Building in the event of an immediate and extraordinary risk to the health or safety of the occupants of the

Premises. If Tenant's use of any of the Premises or access thereto is interrupted as a result of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than Tenant's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition impairs Tenant's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with Tenant's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after Tenant's use is interrupted and impairs Tenant's ability to carry on its business in the Premises, then Tenant shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies Tenant with evidence reasonably satisfactory to Tenant that Tenant's normal and safe use will be restored within sixty (60) days of the date Tenant's use was interrupted, and such use is actually restored within such 60-day period.

## **6. NOT USED**

## **7. ALTERATIONS**

### **7.1. Tenant's Alterations**

Tenant shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems or structural integrity of the Building, and the repainting of the interior walls and recarpeting of the Premises shall not constitute Alterations requiring Landlord's consent. Any Alterations permitted hereunder shall be made at Tenant's cost in compliance with applicable Laws as defined in Section 10. Landlord shall, without cost to itself, cooperate with Tenant in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. Tenant shall not be required to remove any Alterations upon the expiration or earlier termination of this Lease unless Landlord notifies Tenant in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date.

### **7.2. Title to Improvements**

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations, shall be and remain Landlord's property. Tenant may not remove any such property at any time during or

after the Term unless Landlord so requests as further provided in Section 20 (Surrender of Premises), below.

### **7.3.Tenant's Personal Property**

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of Tenant and that can be removed without structural damage to the Premises (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. At any time during the Term or at the expiration thereof, Tenant may remove any of Tenant's Personal Property provided Tenant shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, Tenant shall remove Tenant's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below.

### **7.4.Landlord's Alterations of the Building and Building Systems**

Landlord shall use its best efforts to minimize interference with or disruption to Tenant's use and occupancy of the Premises during any alterations, installations, additions or improvements to the Building. Landlord shall promptly remedy any such interference or disruption upon receiving Tenant's notice thereof.

## **8. REPAIRS AND MAINTENANCE**

### **8.1.Landlord's Repairs**

Landlord shall repair and maintain, at its cost, the exterior and structural portions of the Building and the Premises, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring (collectively, the "Building Systems"). Landlord shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Landlord be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

### **8.2.Tenant's Repairs**

Subject to Landlord's warranty under Section 10.1 (Premises Compliance) and Landlord's repair and maintenance obligations hereunder, Tenant shall repair and maintain at its cost the Premises and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. Tenant shall make any such required repairs and replacements that Landlord specifies in writing (i) at Tenant's cost, (ii) by contractors or mechanics selected by Tenant and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (v) in compliance with all applicable Laws, including, without

limitation, any applicable contracting requirements under the Ordinance Code or the Charter of the County of San Mateo. At all times during the Term of the Lease, Landlord shall, upon reasonable notice by Tenant, afford Tenant and its Agents with access to those portions of the Building or the Property which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by Tenant.

### **8.3.Liens**

Tenant shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by Tenant during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. Tenant shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by Tenant on the Premises.

## **9. UTILITIES AND SERVICES**

Tenant shall pay for all separately metered utilities provided to the Premises for the benefit of Tenant, including water, gas, heat, light, power, telephone and other utilities and services requested by or provided for the benefit of Tenant, together with any taxes thereon. Tenant shall pay its proportionate share, as reasonably determined by Landlord, of the cost of routine trash disposal from the Building and the Premises. Tenant shall pay all of the cost of trash disposal for any excessive disposal required by Tenant, and shall not be required to pay a share of the cost of excessive disposal required by other tenants of the Building.

## **10. COMPLIANCE WITH LAWS, PREMISES CONDITION**

### **10.1. Premises Condition and Landlord's Compliance with Laws; Indemnity**

Landlord represents and warrants to Tenant, and covenants with Tenant, as follows: to the best of Landlord's knowledge (a) the physical structure, fixtures and permanent improvements of the Premises and all portions of the Property and the Building along the path of travel to the Premises (including, but not limited to, the Building entrances, Common Areas, restrooms, and parking areas) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabilities Laws"); (b) the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, "Seismic Safety Laws"); (c) the

Building, the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (collectively, "Life Safety Laws"); (d) the Building, the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and (e) there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building or the Building Systems that would materially adversely affect Tenant's intended use of the Premises. Landlord shall Indemnify Tenant against any and all Claims arising out of any failure of the Property, Building, Common Areas, Building Systems, or any portion thereof, to comply with applicable Laws as provided in this Section or any misrepresentation by Landlord under this Section.

### **10.2. Tenant's Compliance with Laws**

Tenant shall use the Premises during the Term in compliance with applicable Laws, except that Tenant shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by Tenant pursuant to Section 7 hereof and such modifications are not otherwise Landlord's responsibility under this Lease. Tenant shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of Tenant's furniture or other Tenant Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 above.

### **10.3. Regulatory Approvals**

Tenant understands and agrees that Tenant's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Property or Landlord's intent therein must first be approved by Landlord in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and Landlord shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify Landlord and the other Indemnified Parties (as defined below) hereunder against all Claims (as defined below) arising in connection with Tenant's failure to obtain or failure by Tenant,

its Agents or Invitees to comply with the terms and conditions of any regulatory approval.

#### **10.4. Compliance with Landlord's Risk Management Requirements**

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase rates under a standard form fire insurance policy, unless Tenant agrees to pay such increases, or subject Landlord to potential premises liability.

### **11. SUBORDINATION**

This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements and extensions of any of the foregoing, that may now exist or hereafter be executed by Landlord affecting the Property, or any part thereof, or Landlord's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon Landlord's request, Tenant, or Tenant's successor-in-interest, shall execute and deliver any and all instruments desired by Landlord evidencing such subordination in the manner requested by Landlord. Notwithstanding the foregoing, Landlord or the holder shall, in its respective discretion, have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to Landlord, at the option of such successor-in-interest. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents evidencing the priority or subordination of this Lease.

Landlord shall use its best efforts to provide to Tenant, before the Effective Date, executed non-disturbance and attornment agreements from the holder of any existing Encumbrance. The form of such agreement shall be subject to Tenant's reasonable approval.

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

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on Leasehold Improvements made by Tenant or if Tenant at its sole option makes funds available to Landlord, Landlord shall also repair such Leasehold Improvements), provided that such repairs can be made under applicable laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than one hundred eighty (180) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that



Tenant shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with Tenant's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to Tenant's Personal Property or any damage caused by the negligence or willful misconduct of Tenant or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify Tenant whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of Tenant's business in the Premises, and Tenant shall pay such reduced Rent up to the date of termination. Landlord shall refund to Tenant any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord carries hereunder (excluding any deductible, for which Landlord shall be responsible), Landlord may terminate this Lease by written notice to Tenant within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, the Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or Tenant may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair such damage.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and Tenant each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## **13. EMINENT DOMAIN**

### **13.1. Definitions**

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

### **13.2. General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. Tenant and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.10, 1265.40, 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

### **13.3. Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

### **13.4. Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (A) the partial Taking, in Tenant's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant for its intended purposes or otherwise materially adversely affect Tenant's normal operations in the Premises, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (C) Tenant elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, Tenant and Landlord shall each have the

right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to Tenant's right to terminate, the portion of the Building taken shall, in Tenant's reasonable judgment, render the Premises unsuitable for continued use by Tenant for its intended purposes or otherwise materially adversely affect Tenant's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

### **13.5. Rent; Award**

Upon termination of this Lease pursuant to an election under Section 13.4 above, then: (i) Tenant's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 below for any period during which this Lease continues in effect after the Date of Taking, and (ii) Landlord shall be entitled to the entire Award in connection therewith, except that Tenant shall receive any Award made specifically for Tenant's relocation expenses, the interruption of or damage to Tenant's business, Tenant's improvements pertaining to realty or damage to Tenant's Personal Property.

### **13.6. Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that Tenant shall receive any Award made specifically for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's Personal Property.

### **13.7. Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking.

## **14. ASSIGNMENT AND SUBLETTING**

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease").

## **15. DEFAULT; REMEDIES**

### **15.1. Events of Default**

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

(a) Tenant's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first payment of Rent at the beginning of the Term, Tenant shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) Tenant's abandonment of the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) Tenant's failure to perform any other covenant or obligation of Tenant hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if Tenant commences such cure within such period and diligently prosecutes such cure to completion.

### **15.2. Landlord's Remedies**

Upon the occurrence of any event of default by Tenant that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Tenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Tenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate Tenant's right to possession, if Tenant has the right to sublet or assign, subject only to reasonable limitations.

### **15.3. Landlord's Default**

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of Tenant's other cure rights under this Lease) Tenant may, at its sole option, cure such default at Landlord's expense if such default continues after thirty (30) days from the date Tenant gives notice to Landlord of Tenant's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such 30-day period, such 30-day period shall be extended if Landlord, promptly upon receipt of Tenant's notice, advises Tenant of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not Tenant elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with Tenant's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs Tenant's ability to carry on its business in the Premises, then Tenant shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such 60-day period. Tenant's rights hereunder shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

## **16. INDEMNITIES**

### **16.1. Tenant's Indemnity**

Tenant shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs and expenses (collectively, "Claims"), incurred as a result of (a) Tenant's use of the Premises, (b) any default by Tenant in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of Tenant or its Agents in, on or about the Premises or the Property; provided, however, Tenant shall not be obligated to indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by Tenant hereunder, Tenant may, at its sole option, elect to defend such Claim by attorneys in Tenant's Office of County Counsel, by other attorneys selected by Tenant, or both. Tenant shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding,

provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Tenant's obligations under this Section shall survive the termination of the Lease.

#### **16.2. Landlord's Indemnity**

Landlord shall Indemnify Tenant and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify Tenant or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Tenant or its Agents. In any action or proceeding brought against Tenant or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Tenant shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of the Lease.

#### **16.3. Concurrent Negligence**

In the event of concurrent negligence of Tenant, its officers and/or employees, and Landlord, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

### **17. INSURANCE**

#### **17.1. Tenant's Self-Insurance**

Landlord acknowledges that Tenant maintains a program of self-insurance and agrees that Tenant shall not be required to carry any insurance with respect to this Lease. Tenant assumes the risk of damage to any of Tenant's Personal Property, except for damage caused by Landlord or its Agents.

Tenant is presently self-insured in the amount of \$500,000 each occurrence giving rise to personal injury and property damage liabilities for which Tenant could be held responsible. In addition, Tenant presently has in force excess insurance in the amount of \$1,500,000 per occurrence with an annual aggregate of \$10,000,000. Said self-insurance and excess insurance provide coverage for personal injury and property damage liabilities arising out of the acts and/or omissions of Tenant, its officers, agents, contractors and employees, while on the Premises. Tenant upon request of Landlord shall furnish Landlord with a Certificate of Insurance that shall provide that Landlord

would receive ten (10) days' prior notice of cancellation, change in scope or modification in coverage of such coverage. Nothing herein shall be interpreted to require Tenant or its insurer to provide a defense for, to provide insurance for, or to indemnify Landlord except as may be otherwise required by law or this Lease.

#### **17.2. Landlord's Insurance**

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a property insurance policy in an amount equal to one hundred percent of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by Tenant, provide to Tenant a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to reduction of coverage or otherwise be subject to modification except after thirty (30) days prior written notice to Tenant. Landlord hereby waives any rights against Tenant for loss or damage to the Premises or any other part of the Property, to the extent covered by Landlord's property insurance.

#### **17.3. Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, Landlord and Tenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Property, the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent (i) such loss or damage is actually recovered from valid and collectible insurance covering the Waiving Party, and (ii) the Waiving Party's insurance carrier agrees to its written waiver of right to recover such loss or damage.

#### **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving Tenant at least twenty four (24) hours' advance written or oral notice, for the purpose of (i) inspecting the Premises, (ii) supplying any service to be provided by Landlord hereunder, (iii) showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, (iv) posting notices of non-responsibility, and (v) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that Tenant's use shall not be interfered with.

## **19. ESTOPPEL CERTIFICATES**

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, shall execute, acknowledge and deliver to the other party, or such persons or entities designated by such other party, a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the date to which Rent has been paid, and (e) any other information that may be reasonably required.

## **20. SURRENDER OF PREMISES**

Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Tenant shall remove from the Premises all of Tenant's Personal Property and any Alterations Tenant desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Tenant's Alterations), above. Tenant shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## **21. HAZARDOUS MATERIALS**

### **21.1. Definitions**

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of



the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

#### **21.2. Landlord's Representations and Covenants**

Landlord represents and warrants to Tenant that, to the best of Landlord's knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises or the common areas of the Building contain any lead-based paints; (e) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to Tenant's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of Tenant's employees or Tenant's use, occupancy or enjoyment of the Premises for their intended purposes.

#### **21.3. Landlord's Environmental Indemnity**

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify Tenant and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Property, unless Tenant or its Agents caused such Release.

#### **21.4. Tenant's Covenants**

Neither Tenant nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the

Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws, provided that Tenant may use such substances in such limited amounts as are customarily used in connection with the Tenant's Use as set forth in Section 5 hereof, so long as such use is in compliance with all applicable Environmental Laws.

#### **21.5. Tenant's Environmental Indemnity**

If Tenant breaches its obligations contained in the preceding Section 21.4, or if Tenant or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then Tenant shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by Tenant, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to Tenant's occupancy.

### **22. SPECIAL PROVISIONS**

*Not Used*

### **23. GENERAL PROVISIONS**

#### **23.1. Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) Tenant at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other address as either Landlord or Tenant may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile.

#### **23.2. No Implied Waiver**

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while Tenant is in default hereunder shall constitute a waiver of such default by Landlord. No express

written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or Tenant given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

### **23.3. Amendments**

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by Tenant of its consent or approval, the County Manager, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable law, including the County's Ordinance Code and Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of Landlord and Tenant and may be made upon the sole approval of the County Manager, or his or her designee; provided, however, material amendments or modifications to this Lease (i) changing the legal description of the Premises, (ii) increasing the Term, (iii) increasing the Rent, (iv) changing the general use of the Premises from the use authorized under Section 5.1 of this Lease, and (v) any other amendment or modification which materially increases the Tenant's liabilities or financial obligations under this Lease shall additionally require the approval of the County's Board of Supervisors.

### **23.4. Authority**

Landlord represents and warrants to Tenant that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject.

### **23.5. Parties and Their Agents; Approvals**

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by Tenant under this Lease shall be made by or through Tenant's County Manager unless otherwise

provided in this Lease, subject to any applicable limitations in the Ordinance Code or the Charter of the County of San Mateo.

### **23.6. Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties. Except as otherwise specifically provided herein, wherever in this Lease Landlord or Tenant is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Tenant holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

### **23.7. Successors and Assigns**

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

### **23.8. Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and Tenant shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **23.9. Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

### **23.10. Governing Law**

This Lease shall be construed and enforced in accordance with the laws of the State of California and the Ordinance Code and Charter of the County of San Mateo.

### **23.11. Entire Agreement**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

### **23.12. Holding Over**

Should Tenant hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of the Lease or such other rental as Landlord and Tenant may mutually agree in writing as a condition to Landlord's consent to such holding over, and Tenant shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving Tenant or Tenant giving Landlord at least thirty (30) days' prior written notice of termination. Should Tenant hold over without Landlord's consent, the rent payable by Tenant during the period of such holding over shall be one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

### **23.13. Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

#### **23.14. Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

#### **23.15. Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

#### **23.16. Signs**

Tenant may erect or post signs on or about the Premises subject to Landlord's prior approval as provided below. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

#### **23.17. Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that Tenant, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify Tenant and its Agents against Claims arising out of any assertion that would interfere with Tenant's right to quiet enjoyment as provided in this Section.

#### **23.18. Bankruptcy**

Landlord represents and warrants to Tenant that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and Tenant agree that Tenant's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such

services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, Tenant shall have the right to (i) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (ii) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by Tenant in obtaining such services, facilities or amenities.

#### **23.19. Transfer of Landlord's Interest**

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to Tenant of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to Tenant an express assumption by the transferee of all of Landlord's obligations hereunder.

#### **23.20. Non-Liability of County Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of County shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by Tenant or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of Tenant under this Lease.

#### **23.21. Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

#### **23.22. Acceptance of Lease by Landlord**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF THE COUNTY HAS AUTHORITY TO COMMIT TENANT HERTO UNLESS AND UNTIL THE COUNTY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF LANDLORD HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE COUNTY'S BOARD OF SUPERVISORS AUTHORIZES EXECUTION OF THIS LEASE, IN ITS RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF COUNTY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON COUNTY.

Landlord and Tenant have executed this Lease as of the date first written above.

LANDLORD: POLESSELLI FAMILY TRUST,

By: Edward A. Poleselli  
Edward A. Poleselli  
Its: Trustee 1/19/05

TENANT: COUNTY OF SAN MATEO,  
a political subdivision of the State of  
California

\_\_\_\_\_  
Richard S. Gordon  
President, Board of Supervisors

ATTEST:

RESOLUTION NO.: \_\_\_\_\_

\_\_\_\_\_  
Clerk of the Board

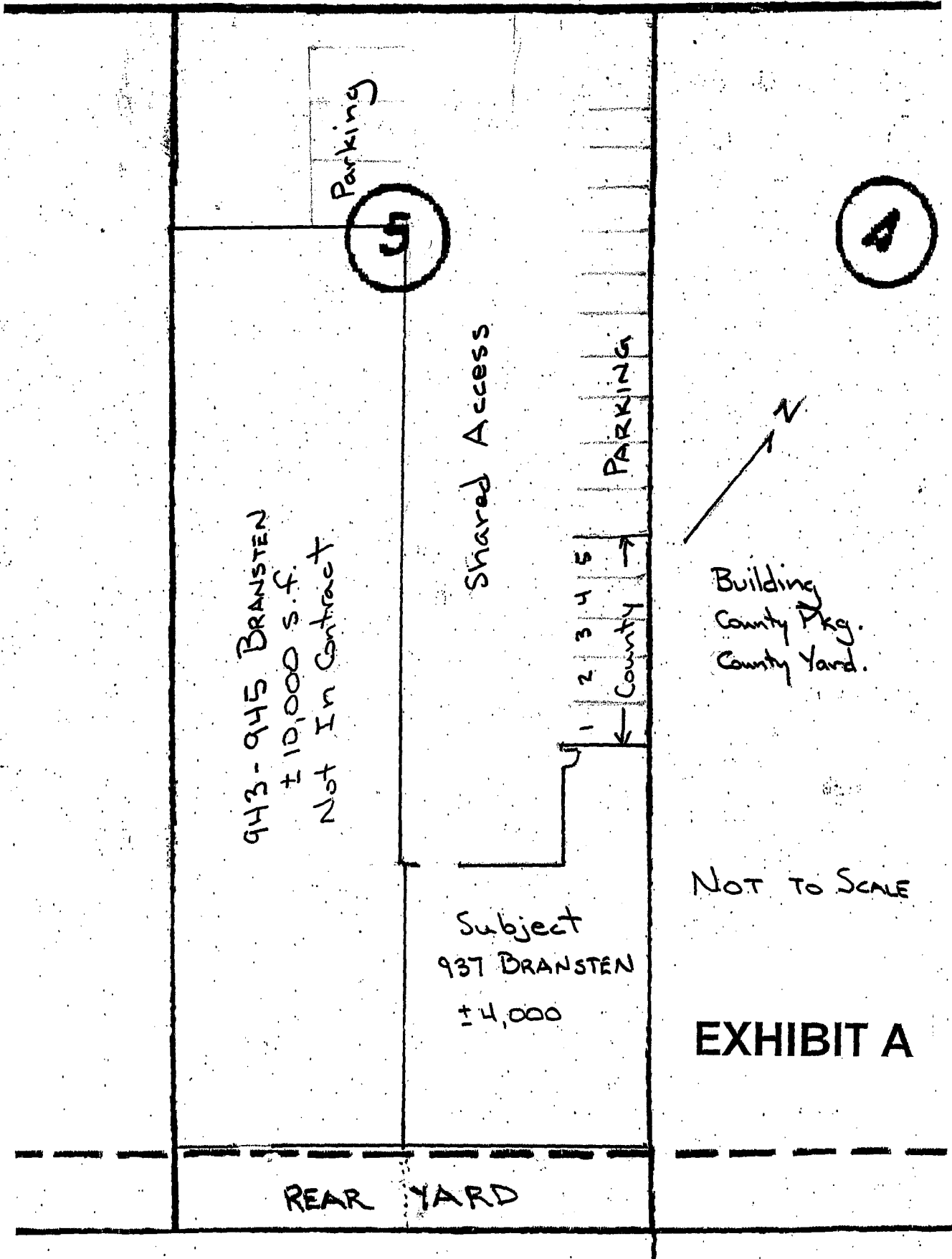


OFFICE LEASE

EXHIBIT A

FLOOR PLANS  
CONSISTING OF ONE PAGE

# BRANSTEN ROAD



943-945 BRANSTEN  
±10,000 S.F.  
Not In Contract

Subject  
937 BRANSTEN  
±4,000

Shared Access

Parking

PARKING

County

Building  
County Pkg.  
County Yard.

NOT TO SCALE

EXHIBIT A

REAR YARD

EXHIBIT B

[Date]

Mr. John Maltbie  
County Manager  
County of San Mateo  
400 County Center  
Redwood City, CA 94063

RE: Acknowledgement of Commencement Date, Lease Between  
EDWARD POLESSELLI (Landlord),  
and the COUNTY OF SAN MATEO (Tenant), for premises known as

Dear Mr. Maltbie:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is , 2005.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_

Accepted and Agreed:

By \_\_\_\_\_  
County Manager