
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (date of earliest event reported): April 2, 2024

GSI Technology, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

001-33387
(Commission File No.)

77-0398779
(I.R.S. Employer Identification
No.)

1213 Elko Drive
Sunnyvale, California 94089
(Address of principal executive offices)

Registrant's telephone number, including area code:
(408) 331-8800

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class:	Trading Symbol(s)	Name of each exchange on which registered:
Common Stock, \$0.001 par value	GSIT	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement

On April 2, 2024, GSI Technology, Inc. (the “Company”) entered into a purchase and sale agreement (the “Agreement”) with D.R. Stephens & Company, LLC, as purchaser, to sell the Company’s 1213 Elko Drive property in Sunnyvale, California (the “Sunnyvale Property”) for \$11.85 million in cash. The Sunnyvale Property consists of approximately 44,277 square feet of industrial and office space where the Company has its headquarters and distribution facilities. The Agreement contains customary representations, warranties, covenants and closing conditions. The Agreement can be terminated by the purchaser for any reason during the purchaser’s 45-day diligence period, and if terminated by the purchaser, the \$250,000 deposit will be refunded to the purchaser. If termination occurs after the purchaser’s 45-day diligence period and before closing, the deposit will not be refunded to the purchaser, except in the event of the Company’s default under the Agreement. The foregoing description of the terms of the Agreement is subject to, and qualified in its entirety by, the Agreement, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

The Company further agreed that upon closing, the Company will enter into a lease agreement (the “Lease”) and lease all of the Sunnyvale Property from the purchaser that it currently occupies for an initial term of ten years from the closing of the sale of the Sunnyvale Property. The Company has the option to renew the term of the Lease for two additional five-year periods. Pursuant to the Lease, the Company is responsible for base rent initially at a rate of approximately \$90,768 per month and the monthly operational expenses, such as maintenance, insurance, property taxes and utilities. The rental rate will increase three percent (3%) per year beginning on the first anniversary of the closing. The foregoing description of the terms of the Lease is subject to, and qualified in its entirety by, the form of Lease, a copy of which is filed as Exhibit 10.2 hereto and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

The information set forth in Item 1.01 of this current report on Form 8-K is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

10.1	Purchase and Sale Agreement dated April 2, 2024 between GSI Technology, Inc. and D.R. Stephens & Company, LLC
10.2	Form of Lease Agreement between D.R. Stephens & Company, LLC or its affiliate, as landlord, and GSI Technology, Inc., as tenant
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: April 2, 2024

GSI Technology, Inc.

By: /s/ Douglas M. Schirle

Douglas M. Schirle
Chief Financial Officer

**PURCHASE AND SALE AGREEMENT
WITH
ESCROW INSTRUCTIONS**

(1213 ELKO DRIVE, SUNNYVALE, CALIFORNIA)

By and Between

GSI TECHNOLOGY, INC.,

a Delaware corporation,

as Seller

and

D.R. STEPHENS & COMPANY, LLC,

California limited liability company, as Buyer

dated as of April 2, 2024

**PURCHASE AND SALE AGREEMENT
WITH
ESCROW INSTRUCTIONS**

(1213 ELKO DRIVE, SUNNYVALE, CALIFORNIA)

THIS PURCHASE AND SALE AGREEMENT WITH ESCROW INSTRUCTIONS (this “**Agreement**”) is made as of April 2, 2024 (the “**Effective Date**”), by and between GSI TECHNOLOGY, INC., a Delaware corporation (“**Seller**”), and D.R. STEPHENS & COMPANY, LLC, a California limited liability company (“**Buyer**”).

RECITALS

A. Seller is the owner of the Property (as defined in Section 2 below); and

B. Subject to the satisfaction of the conditions precedent set forth in this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property, upon the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and as contemplated by the recitals hereinabove (which recitals are incorporated into this Agreement by this reference and made a part hereof), Seller and Buyer agree as follows:

1. Fundamental Information. The following table contains certain fundamental information (the “**Fundamental Information**”) with respect to the transaction contemplated by this Agreement. Capitalized terms which are used in this Agreement but which are not otherwise defined in this Agreement shall have the meaning given to them in this table.

Defined Term/Parameter	Definition	Relevant Section Reference(s)
Effective Date:	April 2, 2024	Preamble
Seller:	GSI TECHNOLOGY, INC., a Delaware corporation	Preamble
Buyer:	D.R. STEPHENS & COMPANY, LLC, a California limited liability company	Preamble
Real Property:	That certain real property having an approximate address of 1213 Elko Drive, Sunnyvale, California, and more particularly described on <u>Exhibit A</u> attached to this Agreement and made a part hereof	
Purchase Price:	\$11,850,000	Sec. 3.1
Deposit:	\$250,000	Sec. 3.2
Due Diligence Expiration Date:	5:00 p.m. Pacific Time on the date that is forty-five (45) days after the Effective Date	Sec. 5.1(a)

Defined Term/Parameter	Definition	Relevant Section Reference(s)
Closing Date:	The date upon which the Closing (as defined in <u>Section 10</u> of this Agreement) occurs, which shall be 12 p.m. Pacific Time on the date that is fifteen (15) days after Due Diligence Expiration Date, as the same may be extended pursuant to the terms herein.	Sec. 10.1
Title Company:	First American Title Insurance Company	
Escrow Agent:	First American Title Insurance Company	
Broker (collectively):	<p>Seller's Broker:</p> <p>Jesse Millman Senior Managing Director Newmark Night Frank 3055 Olin Avenue San Jose, CA 95128</p> <p>Buyer's Broker: N/A</p>	Sec. 12
Seller's Knowledge Party:	Douglas Schirle	Sec. 5.3 and 8.1
Notice Addresses:	<p><u>Seller:</u></p> <p>1213 Elko Drive Sunnyvale, CA 94089 Attn: Douglas Schirle Phone: (408) 331-8800 Email: dschirle@gsitechnology.com</p>	Sec. 13
	<p>With a copy to:</p> <p>DLA Piper LLP (US) 3203 Hanover Street, Suite 100 Palo Alto, CA 94304-1123 Attn: Heather Srimal & Ben Griebe Phone: 650-833-2000 Email: heather.srimal@us.dlapiper.com; ben.griebe@us.dlapiper.com</p>	
	<p><u>Buyer:</u></p> <p>D. R. Stephens & Company, LLC 601 California Street, Suite 1710 San Francisco, CA 94108 Attn: Lane Stephens Phone: 415-781-8000 Email: LStephens@drstephens.com</p>	

Defined Term/Parameter	Definition	Relevant Section Reference(s)
	<p>With a copy to:</p> <p>Lubin Olson & Niewiadomski LLP The Transamerica Pyramid 600 Montgomery Street, 14th Floor San Francisco, CA 94111 Attn: Paul Niewiadomski Phone: 415-981-0550 Email: PNiewiadomski@lubinolson.com</p>	
	<p><u>Title Company:</u></p> <p>First American Title Insurance Company 333 W. Santa Clara Street, Suite 220 San Jose, CA 95113 Attn: Mike Hickey Phone: 408-451-7905 Email: mhickey@firstam.com</p>	
	<p><u>Escrow Agent:</u></p> <p>First American Title Insurance Company 333 W. Santa Clara Street, Suite 220 San Jose, CA 95113 Attn: Teresa Woest Phone: 408-451-7972 Email: twoest@firstam.com</p>	
Seller's Deal Costs:	1. The costs and expenses of its own legal counsel and Broker.	Sec. 10
Buyer's Deal Costs:	1. The costs and expenses for any new or updated Survey; 2. All costs relating to Buyer's due diligence investigation of the Property; and 3. The costs and expenses of its own legal counsel.	Sec. 4, 5 and 10
List of Exhibits:	Exhibit A: Legal Description of the Real Property Exhibit B: Form of General Assignment Exhibit C: Form of Grant Deed Exhibit D: Form of FIRPTA Affidavit Exhibit E: Form of Seller Lease	

2. Sale. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase and acquire from Seller, subject to the terms and provisions of this Agreement, Seller's right, title and interest in and to the following:

2.1 the Real Property;

2.2 any and all rights, privileges and easements appurtenant to the Real Property to the extent they apply to the Real Property and to the extent assignable, including, without limitation, Seller's interest in any minerals, oil, gas and other hydrocarbon substances on and under the Real Property, development rights, air rights, water, water rights, riparian rights and water stock relating to the Real Property and rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Real Property, and land, if any, lying in the bed of any street, road or avenue, open or proposed, at the foot of, adjoining or below the Real Property and in and to any strips and gores adjoining the Real Property (collectively, the "Appurtenances").

2.3 all improvements and fixtures located on the Real Property, including any building located on the Real Property, and all apparatus, installed equipment and appliances owned by Seller and located on or in and used exclusively in connection with the ownership, operation or occupancy of the Real Property (collectively, the "Improvements");

2.4 to the extent assignable by Seller without fee or penalty, any intangible personal property used exclusively in the ownership, use, operation or maintenance of the Real Property or Improvements, including without limitation: Seller's assignable interest in all Service Contracts (as defined below) that are not disapproved by Buyer prior the expiration of the Due Diligence Period in accordance with the terms of this Agreement, all signs, logos, trade names, or trademarks relating to the Real Property, provided the foregoing are not related to Seller's business or operations, all permits, licenses, entitlements and governmental approvals relating to the Real Property or Improvements, Seller's assignable interest in all plans, specifications and drawings, and any assignable warranty and guaranty rights, and rights under utility contracts or other agreements, each as they relate to the ownership, use or operation of the Real Property, or Improvements, but excluding the right to use "GSI" and any derivations thereof and any Confidential Information (as defined in Section 5.1(d) below) (collectively, the "Intangible Property").

All of the items referred to in subparagraphs 2.1, 2.2, 2.3 and 2.4 above are collectively referred to as the "Property".

3. Purchase Price and Deposit.

3.1 Price. The total purchase price to be paid by Buyer to Seller for the Property shall be the Purchase Price.

3.2 Deposit. Within (3) business days following the Effective Date, Buyer shall deposit the Deposit, and Buyer and Seller shall deposit fully executed counterparts of this Agreement, with the Escrow Agent.

3.3 Additional Deposit. On or before the Due Diligence Expiration Date, unless this Agreement terminates in accordance with Section 5.1 below, Buyer shall make a Two Hundred Fifty Thousand Dollar (\$250,000) addition to the Deposit with the Escrow Agent by wire transfer of immediately available federal funds and provide Seller with written confirmation thereof. If Buyer delivers the Go Forward Notice (as defined in Section 5.1(c) below) before the Due Diligence Expiration Date and fails to deliver such addition to the Deposit to the Escrow Agent by the Due Diligence Expiration Date, this Agreement shall, at Seller's election in its sole discretion, terminate, in which event the Deposit made under Section 3.2 shall be paid to and retained by Seller as liquidated damages (as Seller's sole remedy at law and in equity) and, except for those obligations that expressly survive the termination of this Agreement, Seller and Buyer shall have no further obligations or liabilities to each other hereunder.

3.4 Maintenance of Deposit. The Escrow Agent shall cause the Deposit to be placed in an interest-bearing account reasonably acceptable to Buyer and Seller (the "Deposit Escrow") within one (1) business day following receipt of the same. Any interest earned on the funds in the Deposit Escrow shall be retained therein and added thereto (and the term "Deposit" as used herein shall mean the Deposit and all interest earned thereon).

3.5 Return of Deposit. If Buyer terminates, or is deemed to have terminated, this Agreement in accordance herewith prior to 5:00 pm (Pacific Time) on the Due Diligence Expiration Date, the Deposit (less the Independent Consideration) shall be fully refundable to Buyer. If Buyer delivers a Go Forward Notice (as defined in Section 5.1(c) below), the Deposit shall thereafter be nonrefundable, except as otherwise expressly provided herein.

3.6 Failure to Deliver Deposit. If Buyer fails to deposit any portion of the Deposit with the Escrow Agent strictly as and when contemplated herein, Seller shall have the right to terminate this Agreement by delivering written notice thereof to Buyer and Escrow Agent, at which time neither party shall have any further obligations under this Agreement (except those provisions hereof which are expressly stated to survive termination).

3.7 Balance. The Deposit shall be applied to the Purchase Price. Buyer shall deposit the balance of the Purchase Price, together with Buyer's share of closing costs and prorations, in immediately available funds, with the Escrow Agent on or prior to the Closing Date or such earlier time as shall be required by Escrow Agent.

3.8 Independent Consideration. The Deposit being delivered by Buyer includes the amount of One Hundred and No/100 Dollars (\$100.00) as independent consideration for Seller's performance under this Agreement ("**Independent Consideration**"), which shall be retained by Seller in all instances. If the Closing occurs or if this Agreement is terminated for any reason, the Escrow Agent shall first disburse to Seller from the Deposit, the Independent Consideration. The Independent Consideration shall be nonrefundable under all circumstances and shall not be applied to the Purchase Price at Closing. Buyer and Seller expressly acknowledge and agree that (a) the Independent Consideration, plus Buyer's agreement to pay the costs provided in this Agreement, has been bargained for as consideration for Seller's execution and delivery of this Agreement and for Buyer's review, inspection and termination rights during the Due Diligence Period, and (b) such consideration is adequate for all purposes under any applicable law or judicial decision.

4. Title and Survey.

4.1 Obtaining and Delivery of Survey and Preliminary Title Report.

(a) Survey. Buyer may, at its sole cost and expense, obtain a new survey of the Real Property and Improvements (collectively, "**Survey**"), and if obtained, shall deliver a copy of the same to the Title Company and Seller.

(b) Preliminary Title Report. Within ten (10) days of the Effective Date, Seller or Escrow Agent shall cause the Title Company to deliver to Buyer, for Buyer's review and approval, a preliminary title report prepared for the Real Property issued by the Title Company, together with copies of all recorded documents listed as title exceptions therein (collectively, the "**PTR**").

4.2 Review and Approval of Survey and PTR.

(a) Notice of Objection; Disapproved Exceptions; Permitted Exceptions. On or before the later of (i) the date that is ten (10) days following the receipt by Buyer of the PTR and (ii) the date that is thirty (30) days after the Effective Date, Buyer shall notify Seller in writing (the “**Notice of Objection**”) of those items, if any, disclosed in the PTR and the Survey that are not acceptable to Buyer. Any item to which Buyer objects in the Notice of Objection shall be a “**Disapproved Exception**”. Any matters affecting or exceptions to title to, or showing on the Survey of, the Real Property and Improvements, and not disapproved in writing within the period specified above, shall be deemed to be approved by Buyer and each shall constitute a “**Permitted Exception**” hereunder; provided that in no event shall “Permitted Exceptions” include any liens secured by deeds of trust or mortgages securing loans made to Seller or any other monetary liens created by Seller, mechanics’ liens relating to work or materials contracted for by Seller at the Property, judgment liens against Seller or delinquent taxes. Within five (5) days following Seller’s receipt of the Notice of Objection, Seller shall notify Buyer in writing (“**Seller’s Response to Title Objections**”) that either (i) it shall take such actions as may be reasonably necessary to eliminate or otherwise resolve one or more of the Disapproved Exceptions; or (ii) it shall not take any actions with respect to any or all of the Disapproved Exceptions. If Seller elects to proceed in accordance with subsection (i) above with respect to a Disapproved Exception, then at Closing (as defined in Section 10.1 below), title to the Real Property shall either be as described in the PTR but free of the subject Disapproved Exception(s), or Buyer shall, as its sole right and remedy, either (1) waive the unsatisfied objections and close, or (2) terminate this Agreement. If Seller elects (or is deemed to have elected as provided below) to proceed in accordance with subsection (ii) above with respect to any Disapproved Exception, then Buyer shall have until the Due Diligence Expiration Date to either elect to proceed pursuant to the terms of this Agreement notwithstanding its objection, or terminate this Agreement, and if Buyer does not elect to terminate then Buyer shall be deemed to have elected to proceed and any Disapproved Exception for which Seller elected (or is deemed to have elected) to proceed under subsection (ii) above shall constitute a Permitted Exception. If Seller fails to respond to the Notice of Objection within the period provided above following Seller’s receipt of the Notice of Objection with respect to any or all of the Disapproved Exceptions, then Seller shall be deemed to have elected to proceed in accordance with subsection (ii) above with respect to such Disapproved Exceptions. Notwithstanding the foregoing, Seller shall, on or prior to the Closing, pay and discharge in order to remove of record or cause to be paid and discharged in order to be removed of record at Seller’s sole cost and expense all of the following items: Voluntary Liens (as defined below) and any delinquent federal, state or municipal tax liens which are in liquidated amounts and which may be satisfied solely by the payment of money (including the preparation or filing of appropriate satisfaction instruments in connection therewith), excluding, however, any liens relating to obligations that are subject to adjustment between Seller and Buyer pursuant to the terms of this Agreement and any liens created by or on behalf of Buyer. The term “**Voluntary Liens**” as used herein shall mean liens and other encumbrances which Seller placed or permitted to be placed on the Property (which includes any (i) mortgage, deed of trust, lien or instrument not caused by Buyer and (ii) mechanic’s lien with respect to work or materials contracted for by Seller at the Property). Notwithstanding the foregoing, in the event that Seller, in good faith, is disputing a mechanic’s lien, at Seller’s cost and expense, Seller may bond any such matters to the Title Company’s satisfaction, and such objection shall be deemed cured provided such matter shall not be reflected as an exception in the title policy obtained by Buyer. Upon any election by Buyer made in accordance with this Section 4.2(a) to terminate this Agreement, the Escrow Agent shall return the Deposit (less the Independent Consideration) to Buyer and neither party shall have any further obligations under this Agreement (except those provisions hereof which are expressly stated to survive termination). Further, notwithstanding anything to the contrary contained herein, all of the following shall also constitute Permitted Exceptions (regardless of whether Buyer disapproves of them): (A) non-delinquent real estate taxes and assessments, bond or special district assessments, personal property taxes, sewer taxes, charges or rents, in each case not yet due and payable; (B) liens, encumbrances or other matters made or created by or on behalf of Buyer, including, without limitation, liens arising as a result of any act or intentional omission of Buyer or its agents, contractors or representatives; (C) zoning and other land use restrictions and ordinances; (D) printed exceptions and exclusions set forth in the Title Company’s standard form policy of title insurance which Title Company does not agree to delete; (E) any other matters which are approved in writing or deemed approved by Buyer prior to the Closing Date; (F) any matters which could be ascertained by a proper inspection or updated survey of the Real Property; (G) the Seller Lease; and (H) any matter of record or other matters consented by, to, approved or permitted in writing by Buyer arising out of its use and occupancy of the Property.

(b) PTR Updates. If any update to the PTR discloses exceptions or matters other than the Permitted Exceptions, then, within five (5) days after its receipt of such update (but no later than the Closing Date), Buyer may notify Seller of any such exceptions or matters to which it objects. Any such exceptions or matters not timely objected to by Buyer shall become “**Permitted Exceptions**”. If Buyer timely objects to any such exceptions or matters, Seller shall have until Closing (but in any event at least five (5) days after it receives notice of Buyer’s objections) to cause the removal of such exceptions or matters (which removal may be by way of waiver or endorsement by the Title Company, provided that such waiver or endorsement is acceptable to Buyer in its reasonable discretion) and to deliver to Buyer evidence reasonably acceptable to Buyer that such matters have been cured. If Seller fails to cause the removal of any such exceptions or matters as aforesaid, Buyer shall have the option, as its sole and exclusive remedy, to either (a) waive the unsatisfied objections and close, or (b) terminate this Agreement, in which event the Escrow Agent shall return the Deposit (less the Independent Consideration) to Buyer. Except for the foregoing, neither party shall have any further obligations under this Agreement (except those provisions hereof which are expressly stated to survive termination). If Buyer does not elect to terminate this Agreement, Buyer shall consummate the Closing and accept title to the Real Property subject to all such exceptions and matters (in which event, all such exceptions and matters shall be deemed Permitted Exceptions).

(c) PTR and Survey Notices. Notices under this Section 4 may be delivered by email provided that the subject line thereof is entitled “**Notice of Objection**” or “**Seller’s Response to Title Objections**” as the case may be.

5. Due Diligence and Due Diligence Period

5.1 Due Diligence Period; Restrictions; Termination Right. This Section 5 shall not apply with respect to review and approval of any matters involving the PTR or Survey, it being agreed that the process for review and approval of such matters shall be governed by Section 4 hereinabove.

(a) Due Diligence Period. Subject to the rights of any occupants at the Property, during the period from the Effective Date until the Due Diligence Expiration Date (the “**Due Diligence Period**”), Buyer shall be provided with reasonable access to the Property for the purpose of making any non-invasive inspections, tests, and investigations that Buyer deems reasonably necessary, subject to the provisions of this Section 5.1.

(b) Due Diligence Restrictions. Notwithstanding the foregoing, in no event shall (i) Buyer’s entry onto the Property unreasonably disrupt or disturb the on-going operation or rights of Seller, any tenant or any other occupant of the building, or (ii) Buyer or its agents, representatives or consultants drill or bore on or through the surface of the Real Property or Improvements or conduct any other invasive investigation, including, without limitation, conducting a “Phase II” environmental assessment, without Seller’s prior written consent, which consent shall be in Seller’s sole and absolute discretion. Buyer shall deliver any request for entry on the Property to Seller no less than two (2) business days prior to entry, which request shall include the identity of the company or party who will perform the inspections, tests or investigations and the proposed scope of the inspections, tests or investigations. Buyer shall afford Seller an opportunity to have a representative of Seller present to accompany the party undertaking such inspections, tests or investigations. Before any such entry, Buyer shall provide Seller with a certificate of insurance or other evidence satisfactory to Seller confirming that Buyer has obtained and paid for a commercial general liability insurance policy naming Seller as an additional insured providing insurance limits and coverage of at least \$1,000,000 per occurrence, issued by an insurer and on terms and conditions that are reasonably satisfactory to Seller. After making any tests, inspections or investigations, Buyer shall promptly restore the Property to as near the condition that existed prior to making such tests and inspections as reasonably possible (which obligation shall survive the Closing or any termination of this Agreement and shall not be subject to the limitations on remedies of Seller set forth in Section 14.2). Notwithstanding the foregoing, such restoration obligations shall not apply or extend to any changes in the condition of the Property arising out of any mere discovery by Buyer or its agents, representatives or consultants of any pre-existing conditions at the Property. At Seller’s request, Buyer shall promptly deliver to Seller at no cost to Seller, without any representation or warranty, copies of all non-proprietary, non-confidential, final physical inspection reports, studies and results of tests, inspections and investigations obtained or conducted by Buyer with respect to the Property (which obligation shall survive any termination of this Agreement and shall not be subject to the limitations on remedies of Seller set forth in Section 14.2).

(c) Due Diligence Termination Right. Buyer may determine, in Buyer's sole discretion for any or no reason whatsoever, on or before the Due Diligence Expiration Date, to proceed with the purchase of the Property, in which event Buyer shall, by the Due Diligence Expiration Date, notify Seller and Escrow Agent in writing that Buyer has approved all of the matters described in Section 5.1 and elects to proceed with the acquisition of the Property (the "**Go Forward Notice**"). If Buyer fails to give Seller and Escrow Agent the Go Forward Notice on or before 5:00 P.M. (Pacific Time) on the Due Diligence Expiration Date, then Buyer shall be automatically deemed to have elected to terminate this Agreement, this Agreement shall be deemed cancelled and of no further force or effect (except those provisions hereof which are expressly stated to survive termination) and the Escrow Agent shall return the Deposit (less the Independent Consideration) to Buyer. If Buyer delivers the Go Forward Notice to Seller prior to 5:00 p.m. (Pacific Time) on the Due Diligence Expiration Date, then Buyer shall be deemed to have waived such termination right and to have affirmatively and expressly approved and accepted the Property and all conditions, elements and matters pertinent thereto including, without limitation, soil conditions and any other matter which was or could have been inspected, examined or determined by Buyer prior to the Due Diligence Expiration Date, except as otherwise provided herein.

(d) Property Documents. Within five (5) business days after the Effective Date, Seller has provided or will provide to Buyer, and agrees to continue to provide, reasonable access (which access may be via a website) to all relevant material non-confidential and non-privileged files with respect to the Property in Seller's possession for review or copying, including, without limitation, any government or other reports or notices with regard to environmental conditions, soils tests, building plans, surveys, engineering reports, the most recent title insurance policy for the Property, building systems information, maintenance reports, seismic surveys, tax and utility bills related to the Property, all service contracts which will survive the Closing (such service contracts, collectively, the "**Service Contracts**"), other plans and data affecting the operations of the Property, and such other items reasonably requested by Buyer (collectively, the "**Property Documents**"). Seller shall terminate at or prior to the Closing, (i) any Service Contracts providing property management services for the Property not approved in writing by Buyer prior to the expiration of the Due Diligence Period, (ii) any Service Contracts with an affiliate of Seller not approved in writing by Buyer prior to the expiration of the Due Diligence Period, and (iii) any other Service Contracts that are terminable without fee or penalty and that are not approved in writing by Buyer prior to the expiration of the Due Diligence Period. Seller shall reasonably cooperate with Buyer to the extent that Buyer elects to have Seller's inspection reports updated or certified to Buyer, but Seller shall have no liability nor incur any cost therefor. Notwithstanding anything set forth in this Agreement, Seller shall not be required to furnish, collect or provide access to (1) insurance policies, sale or leasing brokerage listing agreements or documents or materials that relate to leases, agreements, or other arrangements that have become obsolete or irrelevant to the current ownership and operation of the Property due to expiration, termination, substitution or more current information becoming available; (2) appraisals or economic evaluations of the Property, proprietary, confidential or privileged materials regarding the Property, forward looking budget, reports or memoranda prepared solely for internal use or for the information of the investors in, or parties related to, Seller; or (3) materials produced or prepared in connection with lawsuits or proceedings that have been settled, resolved or dismissed or that otherwise are privileged or confidential (the items in clauses (1), (2) and (3) being collectively referred to as the "**Confidential Information**"). Except as otherwise expressly set forth in this Agreement, Seller makes no representation or warranty, either express or implied, and shall have no liability with respect to the accuracy or completeness of the information, data or conclusions contained in the information provided to Buyer.

(e) Without limiting the generality of the foregoing, Buyer further waives any rights, remedies or defenses Buyer may have with respect to the requirements of California Code of Regulations, Title 20, §§1680-1684 and acknowledges that Seller has not made and does not make any representations with respect to the accuracy or completeness of any information provided to Buyer pursuant to such requirements, if required thereunder.

5.2 **Indemnity.** Buyer hereby agrees to indemnify, defend, and hold harmless the Property, Seller, and Seller's partners, members, affiliates, property manager, and their respective officers, directors, agents, employees, and representatives (collectively, the "**Seller Parties**") from and against any and all liens, claims, or damages of any kind or nature, including any demands, actions or causes of action, assessments, losses, costs, expenses, liabilities, interest and penalties, and reasonable attorneys' fees suffered, incurred, or sustained by any of the Seller Parties for any act or omission of Buyer or Buyer's agents, representatives, employees, officers, members, partners, affiliates, consultants or contractors ("**Buyer's Representatives**") with respect to any due-diligence activities at the Property pursuant to this Agreement. The provisions of this Section 5.2 shall survive the Closing or any termination of this Agreement and shall not be subject to the limitations on remedies of Seller set forth in Section 14.2. Notwithstanding the foregoing, such indemnification, defense and hold harmless obligations shall not apply or extend to any losses, claims or liabilities arising out of (a) any mere discovery by Buyer or any of Buyer's Representatives of any pre-existing conditions at the Property, or (b) the gross negligence or willful misconduct of Seller or any of the Seller Parties.

5.3 **Natural Hazard Disclosures.** As used herein, the term "**Natural Hazard Area**" shall mean those areas identified as natural hazard areas or natural hazards in the Natural Hazard Disclosure Act, California Government Code Sections 8589.3, 8589.4 and 51183.5, and California Public Resources Code Sections 2621.9, 2694 and 4136, and any successor statutes or laws (the "**Act**"). Buyer hereby acknowledges that, prior to the Effective Date, Seller has (or has caused Title Company to provide) provided Buyer with a Natural Hazard Disclosure Statement (the "**Disclosure Statement**") in a form required by the Act. Buyer acknowledges that Seller retained the services of Title Company to examine the maps and other information made available to the public by government agencies for the purpose of enabling Seller to fulfill its disclosure obligations with respect to the Act and to prepare the written report of the result of its examination (the "**Report**"). Buyer acknowledges that the Report fully and completely discharges Seller from its disclosure obligations under the Act and under California Civil Code Sections 1102 through 1102.17. Buyer acknowledges and agrees that nothing contained in the Disclosure Statement releases Buyer from its obligation to fully investigate and satisfy itself with the condition of the Property during the Due Diligence Period, including, without limitation, whether the Property is located in any Natural Hazard Area. Buyer further acknowledges and agrees that the matters set forth in the Disclosure Statement or Report may change on or prior to the Closing and that Seller has no obligation to update, modify or supplement the Disclosure Statement or Report. Buyer is solely responsible for preparing and delivering its own Disclosure Statement to subsequent prospective purchasers of the Property.

5.4 **Seller's Environmental Inquiry.** Buyer acknowledges and agrees that the sole inquiry and investigation Seller has conducted in connection with the environmental condition of the Property is to obtain the environmental reports (if any) delivered to Buyer as part of the Property Documents, and that, for all purposes, including California Health and Safety Code Section 25359.7, Seller has acted reasonably in solely relying upon said inquiry and investigation.

6. “AS-IS” SALE; RELEASE. EXCEPT TO THE EXTENT OF ANY REPRESENTATION OR WARRANTY MADE BY SELLER EXPRESSLY SET FORTH HEREIN AND EXCEPT IN CONNECTION WITH THE EXCLUDED CLAIMS (AS DEFINED BELOW), BUYER SHALL BUY THE PROPERTY AT CLOSING IN AN “AS-IS, WHERE-IS” CONDITION, SOLELY IN RELIANCE ON BUYER’S OWN INVESTIGATION, ANALYSIS AND INSPECTION OF THE PROPERTY, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OF ANY KIND WHATSOEVER, BY SELLER, ITS AFFILIATES, AGENTS, BROKERS, CONSULTANTS, COUNSEL, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, OR TRUSTEES OR ANY OTHER SELLER PARTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER EXPRESSLY DISCLAIMS AND NEGATES ANY IMPLIED OR EXPRESS WARRANTY WITH RESPECT TO THE CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL CONDITION), ITS SUITABILITY FOR BUYER’S INTENDED USE, ITS COMPLIANCE WITH ANY ZONING OR OTHER RULES, REGULATIONS, LAWS OR STATUTES APPLICABLE TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS (AS DEFINED BELOW) IN, ON OR ABOUT THE PROPERTY, OR ANY OTHER MATTER OR THING RELATING TO THE PROPERTY. BUYER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED FROM THE TRANSACTION CONTEMPLATED HEREBY, AS ARE ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES MADE BY SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT NO PERSON ACTING ON BEHALF OF SELLER OR SELLER’S AFFILIATES IS AUTHORIZED TO MAKE, AND BY INITIALING BUYER HEREBY ACKNOWLEDGES THAT NO PERSON HAS MADE ANY REPRESENTATION, AGREEMENT, STATEMENT, WARRANTY, GUARANTY OR PROMISE REGARDING THE PROPERTY, OR THE TRANSACTION CONTEMPLATED HEREIN, OR REGARDING THE ZONING, CONSTRUCTION, ENVIRONMENTAL CONDITION, PHYSICAL CONDITION OR OTHER STATUS OF THE PROPERTY, AND NO REPRESENTATION, WARRANTY, AGREEMENT, STATEMENT, GUARANTY OR PROMISE, IF ANY, MADE BY ANY PERSON ACTING ON BEHALF OF SELLER WHICH IS NOT EXPRESSLY CONTAINED HEREIN, SHALL BE VALID OR BINDING UPON SELLER. THE PROVISIONS OF THIS SECTION 6 SHALL SURVIVE CLOSING.

Initials: LS
Buyer

BUYER HEREBY RELEASES AND WAIVES ANY AND ALL CLAIMS WHICH THE BUYER HAS OR MAY HAVE AGAINST SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL CONDITION), ITS SUITABILITY FOR BUYER’S INTENDED USE, ITS COMPLIANCE WITH ANY ZONING OR OTHER RULES, REGULATIONS, LAWS OR STATUTES APPLICABLE TO THE PROPERTY, OR ANY OTHER MATTER OR THING RELATING TO THE PROPERTY, EXCEPT TO THE EXTENT OF ANY REPRESENTATION OR WARRANTY MADE BY SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT AND EXCEPT FOR ANY EXCLUDED CLAIMS. BUYER ACKNOWLEDGES TO SELLER THAT BUYER IS GIVEN THE OPPORTUNITY UNDER THIS AGREEMENT TO FULLY INSPECT AND INVESTIGATE THE PROPERTY AND BUYER ASSUMES THE RESPONSIBILITY AND RISKS OF ALL DEFECTS AND CONDITIONS, INCLUDING SUCH DEFECTS AND CONDITIONS, IF ANY, THAT CANNOT BE OBSERVED BY CASUAL INSPECTION. IN CONNECTION WITH SUCH WAIVER AND RELINQUISHMENT, BUYER ACKNOWLEDGES THAT IT IS AWARE THAT IT OR ITS ATTORNEYS, ACCOUNTANTS OR OTHER CONSULTANTS MAY HEREAFTER DISCOVER FACTS IN ADDITION TO OR DIFFERENT FROM THOSE WHICH IT NOW KNOWS OR BELIEVES TO EXIST WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, BUT THAT IT IS BUYER’S INTENTION HEREBY TO FULLY, FINALLY, AND FOREVER SETTLE AND RELEASE ALL OF THE CLAIMS, DISPUTES, AND DIFFERENCES, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHICH NOW EXIST OR MAY EXIST HEREAFTER BETWEEN BUYER AND SELLER WITH REGARD TO THE PROPERTY (INCLUDING, WITHOUT LIMITATION, CLAIMS RELATING TO THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS), EXCEPT AS SET FORTH ABOVE.

IN ADDITION, AND WITHOUT LIMITING THE FOREGOING, TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, BUYER HEREBY EXPRESSLY AND SPECIFICALLY WAIVES THE BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE (“SECTION 1542”) AND ANY SUCCESSOR LAWS. SECTION 1542 PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

BUYER ACKNOWLEDGES THAT THIS WAIVER AND RELEASE IS VOLUNTARY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE, AND IS GIVEN AS PART OF THE CONSIDERATION FOR THE AGREEMENTS SET FORTH HEREIN. BUYER EXPRESSLY ACKNOWLEDGES THAT IT MAY HEREAFTER DISCOVER FACTS DIFFERENT FROM OR IN ADDITION TO THOSE, WHICH IT NOW BELIEVES TO BE TRUE WITH RESPECT TO THE RELEASE OF CLAIMS. BUYER AGREES THAT THE FOREGOING RELEASE SHALL BE AND REMAIN EFFECTIVE IN ALL RESPECTS NOTWITHSTANDING SUCH DIFFERENT OR ADDITIONAL FACTS.

BUYER HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND UNDERSTANDS THE SIGNIFICANCE OF THIS WAIVER OF SECTION 1542 RELATING TO UNKNOWN, UNSUSPECTED AND CONCEALED CLAIMS, AND BUYER HEREBY SPECIFICALLY ACKNOWLEDGES THAT BUYER HAS CAREFULLY REVIEWED THIS SUBSECTION AND DISCUSSED ITS IMPORT WITH LEGAL COUNSEL AND THAT THE PROVISIONS OF THIS SUBSECTION ARE A MATERIAL PART OF THIS AGREEMENT. BY ITS INITIALS BELOW, BUYER ACKNOWLEDGES THAT IT FULLY UNDERSTANDS, APPRECIATES AND ACCEPTS ALL OF THE TERMS OF THIS SUBSECTION AND RELEASE.

LS

BUYER’S INITIALS

Upon consummation of the Closing hereunder, the foregoing release shall be deemed to be restated and made again as of the Closing Date and shall survive the Closing.

As used herein, “Hazardous Materials” shall mean any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a “hazardous constituent,” “hazardous substance,” “hazardous material,” “extremely hazardous material,” “hazardous waste,” “acutely hazardous waste,” “hazardous waste constituent,” “infectious waste,” “medical waste,” “biohazardous waste,” “extremely hazardous waste,” “pollutant,” “toxic pollutant,” or “contaminant,” or any other formulation intended to classify substances by reason of properties that are deleterious to the environment, natural resources or public health or safety including, without limitation, ignitability, corrosiveness, reactivity, carcinogenicity, toxicity, and reproductive toxicity. The term Hazardous Materials shall include, without limitation, the following:

i. a “Hazardous Substance,” “Hazardous Material,” “Hazardous Waste,” or “Toxic Substance” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq. or the Solid Waste Disposal Act, 42 U.S.C. Section 6901, et seq., including any regulations promulgated thereunder, as any of the foregoing may be amended;

ii. “Oil” or a “Hazardous Substance” under Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321, as may be amended, as well as any other hydrocarbonic substance, fraction, distillate or by-product;

iii. an “Acutely Hazardous Waste,” “Extremely Hazardous Waste,” “Hazardous Waste,” or “Restricted Hazardous Waste,” under Section 25110.02, 25115, 25117 or 25122.7 of the California Health and Safety Code, or listed pursuant to Section 25140 of the California Health and Safety Code, as any of the foregoing may be amended;

iv. a “Hazardous Material,” “Hazardous Substance” or “Hazardous Waste” under Section 25117, 25260, 25281, 25316, 25501, or 25501.1 of the California Health and Safety Code, as any of the foregoing may be amended;

v. any substance or material defined, identified or listed as an “Acutely Hazardous Waste,” “Extremely Hazardous Material,” “Extremely Hazardous Waste,” “Hazardous Constituent,” “Hazardous Material,” “Hazardous Waste,” “Hazardous Waste Constituent,” or “Toxic Waste” pursuant to Division 4.5, Chapters 10 or 11 of Title 22 of the California Code of Regulations, as may be amended;

vi. any substance or material listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to Section 25249.8 of the California Health and Safety Code, as may be amended;

vii. a “Biohazardous Waste” or “Medical Waste” under Sections 117635 or 117690 of the California Health and Safety Code, as may be amended;

viii. mold;

ix. asbestos and any asbestos containing material; and

x. a substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures, or byproducts, damages or threatens to damage the environment, natural resources or public health or safety, or is required by any law or public entity to be remediated, including remediation which such law or public entity requires in order for property to be put to any lawful purpose.

Notwithstanding anything to the contrary contained in this Article 6 or otherwise in this Agreement or in any document or instrument delivered in connection with the transaction contemplated thereby, Buyer does not waive, and shall not be deemed in any event to have waived or released in any manner, and Buyer expressly reserves, all rights in connection with, any claims arising from or in connection with any fraud, gross negligence, or willful misconduct of Seller or any employee, officer or director of Seller (collectively, the “**Excluded Claims**”).

7. Conditions to Closing.

7.1 Seller's Conditions Precedent. The following shall be conditions precedent to Seller's obligation herein to convey the Property to Buyer ("**Seller's Conditions Precedent**"):

(a) As of the Closing Date, Buyer's representations and warranties contained herein shall be true and correct in all material respects and Buyer shall not be in default of any obligation herein;

(b) Buyer shall have executed and delivered to the Escrow Agent at least one (1) business day prior to the Closing Date, the following (collectively, "**Closing Documents**"):

(i) a General Assignment accepting and assuming Seller's right, title and interest in and to any Intangible Property in the form attached hereto as **Exhibit B** and made a part hereof (the "**General Assignment**");

(ii) the Settlement Statement (as defined in Section 9.5 below);

(iii) a Preliminary Change of Ownership Report;

(iv) the Seller Lease;

(v) any other documents reasonably requested of it by the Escrow Agent or the Title Company; and

(vi) a certificate certifying to Seller that all of the representations and warranties of Buyer contained herein, updated, if necessary, to reflect events that have occurred since the Effective Date that do not constitute breaches of this Agreement by Buyer, are true and correct in all material respects as of Closing, or if untrue, specifying which are not true and correct.

(c) Buyer shall have delivered to the Escrow Agent within the time period set forth in Section 3.6 above, for disbursement as directed hereunder, all cash and/or other consideration and/or other immediately available funds due from Buyer in accordance with this Agreement, including without limitation the balance of the Purchase Price, as the same may be adjusted pursuant to the terms of this Agreement, all as set forth in the Settlement Statement.

(d) At Closing, Buyer shall lease the Property back to Seller or, subject to Buyer's approval in its reasonable discretion, its affiliate or designee, pursuant to the Lease Agreement attached hereto as **Exhibit E** (the "**Seller Lease**").

The conditions set forth in this Section 7.1 are solely for the benefit of Seller and may be waived only by Seller. Seller shall, at all times prior to the termination of this Agreement, have the right to waive any of such conditions.

7.2 Buyer's Conditions Precedent. The following shall be conditions precedent to Buyer's obligation herein to purchase the Property from Seller ("**Buyer's Conditions Precedent**"):

(a) As of the Closing Date, Seller's representations and warranties contained herein shall be true and correct in all material respects and Seller shall not be in default of any obligation herein;

(b) As of the Closing Date, the Title Company shall be irrevocably committed to issue to Buyer an ALTA extended coverage Owner's Policy of Title Insurance (the "**Title Policy**") with liability in the full amount of the Purchase Price, subject only to the Permitted Exceptions (as defined in Section 4.2), insuring Buyer's interest in the Real Property, dated as of the Closing Date (provided, however, that if Buyer does not obtain prior to the Due Diligence Expiration Date a Survey that is sufficient to allow the Title Company to issue an ALTA extended coverage owner's policy of title insurance, then, notwithstanding the foregoing, the "Title Policy" shall be a standard coverage owner's policy of title insurance unless the Title Company otherwise agrees to issue extended coverage with a survey exception); and

(c) Seller shall have executed and delivered to the Escrow Agent at least one (1) business day prior to the Closing Date, the following:

- (i) a Grant Deed for the Real Property in the form attached hereto as **Exhibit C** and made a part hereof (the "**Deed**"), duly acknowledged;
- (ii) the General Assignment;
- (iii) the Settlement Statement;
- (iv) the Seller Lease;
- (v) a California Franchise Tax Board Form 593-C, or similar document, to the extent required by applicable law;
- (vi) an affidavit certifying that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, substantially in the form attached hereto as **Exhibit D** and/or as required by the laws of the State where the Real Property is located (collectively, the "**FIRPTA Affidavit**");
- (vii) any other documents reasonably required of it by Escrow Agent or the Title Company, including without limitation a Seller's Affidavit; and
- (viii) a certificate certifying to Buyer that all of the representations and warranties of Seller contained herein, updated, if necessary, to reflect events that have occurred since the Effective Date that do not constitute breaches of this Agreement by Seller, are true and correct in all material respects as of Closing, or if untrue, specifying which are not true and correct.

The conditions set forth in this Section 7.2 are solely for the benefit of Buyer and may be waived only by Buyer. Buyer shall, at all times prior to the termination of this Agreement, have the right to waive any of these conditions. Notwithstanding anything to the contrary herein, if Seller is unable to timely satisfy a Buyer's Condition Precedent, then, (i) Seller may, if it so elects and without any abatement in the Purchase Price, adjourn the Closing for a period not to exceed twenty (20) days in the aggregate, during which Seller shall use commercially reasonable efforts to satisfy Buyer's Conditions Precedent and (ii) if, after any such extension, the Buyer's Conditions Precedent continue not to be satisfied (and Buyer has not waived the same) or Seller does not elect such extension and, in either case, such failure of Buyer's Condition Precedent is not the result of Seller's default hereunder, then Buyer shall be entitled to terminate this Agreement by notice thereof to Seller. If this Agreement is so terminated, then Buyer shall be entitled to receive the Deposit and neither party shall have any further obligations hereunder, except those expressly stated to survive the termination hereof.

8. Representations and Warranties.

8.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows:

(a) Seller is a corporation duly formed and validly existing under the laws of the State of Delaware and in good standing under the laws of the State of Delaware; Seller has, or will have prior to Closing, the full right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; no consent is necessary from any party in order for Seller to enter into and perform this Agreement; the person signing this Agreement and any of the other documents on behalf of Seller has full power and authority to bind Seller; and when executed by Seller, this Agreement shall be binding and enforceable against Seller in accordance with its terms, and upon Seller's execution of any other documents contemplated herein, they shall be binding and enforceable against Seller in accordance with their terms.

(b) Other than as disclosed in the Property Documents, Seller has not received any written notice from any city, county, state or other government authority stating that the Property is in material violation of the laws, rules or ordinances applicable to the Property which violation has not been remedied.

(c) There exists no actions, suits, arbitrations, investigations, condemnations or proceedings of any kind or nature whatsoever, legal or equitable, pending or threatened in writing, against Seller or the Property, or any portion or portions thereof, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, including, without limitation, any condemnation or eminent domain proceeding, that in each case, would materially affect the current ownership or operation of the Property.

(d) To Seller's actual knowledge, Seller has not received any written notice from any city, county, state or other government authority stating that the Property is in violation of any Environmental Laws (as hereinafter defined) which violation has not been remedied. For purposes of this Agreement, "**Hazardous Materials**" shall mean any pollutants, contaminants, hazardous or toxic substances, materials or wastes (including petroleum, petroleum by-products, radon, asbestos and asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing equipment, radioactive elements, infectious agents, and urea formaldehyde), as to the extent such terms are regulated by and used in any Environmental Laws and "**Environmental Laws**" shall mean all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any governmental or quasi-governmental body or agency having jurisdiction over Seller, the Property or any portion thereof and in effect as of the date of this Agreement with respect to or which otherwise pertain to or affect the Property, or any portion thereof, the use, ownership, occupancy or operation of the Property, or any portion thereof, or any owner of the Property, and as the same have been amended, modified or supplemented from time to time prior to the date of this Agreement, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), the Superfund Amendment Reauthorization Act of 1986 (42 U.S.C. § 9601 et seq.), comparable state and local laws, and any and all rules and regulations which have become effective prior to the date of this Agreement under any and all of the aforementioned laws.

(e) To Seller's knowledge, there are no, and Seller has not entered into any, leases, subleases, occupancy agreements or purchase agreements with respect to or affecting the Property or any portion thereof, which are or will be binding upon Buyer, or which will burden the Property, after the Closing except for the Seller Lease.

(f) To Seller's knowledge, there are no, and Seller has not entered into any, purchase agreements, options or rights of first refusal to purchase, lease, or occupy the Property or portion thereof.

(g) To Seller's knowledge, all of the Property Documents delivered or made available by Seller to Buyer in connection with the Property are true and complete copies of such corresponding items in Seller's possession.

(h) Seller is not a "foreign person" which would subject Buyer to the withholding tax provisions of Section 1445 of the Internal Revenue Code of 1986, as amended.

(i) Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed Reg. 49079 (September 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"). Seller is and has always been in compliance with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act"). Seller:

(i) is not listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists");

(ii) has not been determined by competent authority to be subject to the prohibitions contained in the Orders; and

(iii) is not owned or controlled by, nor acts for or on behalf of, any person or entity on the Lists or any other person or entity that has been determined by competent authority to be subject to the prohibitions contained in the Orders.

(j) Seller has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Seller's creditors, suffered the appointment of a receiver to take possession of substantially all of Seller's assets, suffered the attachment or other judicial seizure of substantially all of Seller's assets, admitted Seller's inability to pay Seller's debts as they come due, or made an offer of settlement, extension or composition to Seller's creditors generally.

(k) Seller's Knowledge Party is the individual associated with Seller with the most knowledge of the Property and the representations and warranties of Seller set forth in this Agreement.

References to the “knowledge” of Seller shall mean and be strictly limited to the actual (not constructive or implied) knowledge of Seller’s Knowledge Party as of the Effective Date, without any duty of investigation or inquiry, and shall not be construed, by imputation or otherwise, to refer to the knowledge of any affiliate of Seller or to any other partner, officer, agent, manager, member, representative or employee of Seller or any affiliate thereof. There shall be no personal liability on the part of the designated individual arising out of any representations or warranties made herein. Seller shall notify Buyer if, prior to Closing, Seller obtains actual (not constructive or implied) knowledge of any information which would make any of Seller’s representations or warranties untrue or incorrect in any material respect as of the Effective Date or the Closing. If Seller gives such notice, or if Buyer otherwise discovers information which renders (or if known to Seller, would render) any of Seller’s representations or warranties untrue or incorrect in any material respect as of the Effective Date or the Closing, the same shall not constitute a breach or default by Seller, (provided that any such changes in or new fact is not a result of a breach by Seller of any of the terms of this Agreement), in such event, Buyer shall elect, by giving written notice to Seller within five (5) business days after receipt of such notice or discovery of such information, either (i) to terminate this Agreement, in which event this Agreement shall be deemed terminated and a nullity and of no further force and effect, Escrow Agent shall refund the Deposit to Buyer and notwithstanding any provision of this Agreement to the contrary, neither party hereto shall thereafter have any rights, duties, liabilities, or obligations whatsoever under this Agreement, other than for those provisions that expressly survive termination, or (ii) to proceed with the Closing subject to all other terms and conditions of this Agreement. If Buyer fails to give notice of its election to terminate this Agreement pursuant to clause (i) above, Buyer shall be deemed to have elected to proceed with the Closing in accordance with clause (ii) above. If the Closing Date is within the aforesaid five (5) business day period, then the Closing Date shall be extended to the next business day following the end of such five (5) business day period. If Buyer elects (or is deemed to have elected) to proceed with the Closing in accordance with clause (ii) above, such representation or warranty shall automatically be deemed conformed to the information contained in such notice or discovered by Buyer prior to the Closing, as the case may be. If Buyer acquires the Property with knowledge of an untrue or incorrect representation or warranty, then upon the Closing, Buyer shall be deemed to have fully and unconditionally waived and released any and all claims, actions and causes of action whatsoever with respect to such untrue or incorrect representation or warranty. The provisions of this paragraph shall survive Closing or any termination of this Agreement.

8.2 Survival. The representations and warranties made in Section 8.1 shall survive the Closing for a period of nine (9) months (the “**Survival Period**”). No claim for a breach of any representation or warranty of Seller shall be actionable or payable (a) if the breach in question results from or is based on a condition, state of facts or other matter which was known to Buyer prior to Closing, (b) unless the valid claims for all such breaches collectively aggregate more than Twenty-Five Thousand and No/100 Dollars (\$25,000), in which event the amount of such claims above \$25,000 shall be actionable, and (c) unless written notice containing a description of the specific nature of such breach shall have been given by Buyer to Seller prior to the expiration of the Survival Period and an action shall have been commenced by Buyer against Seller within thirty (30) days after the termination of the Survival Period provided for above in this Section 8.2. In no event shall Seller’s aggregate liability to Buyer for all claims of breach of any representation or warranty of Seller in this Agreement exceed an amount equal to two and two tenths percent (2.2%) of the Purchase Price (the “**Liability Cap**”).

8.3 Buyer’s Representations and Warranties. Buyer represents and warrants to Seller as follows:

(a) Buyer hereby represents and warrants to Seller that Buyer is a limited liability company duly formed and validly existing under the laws of the State of California and in good standing under the laws of the State of California; Buyer has full right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; no consent is necessary from any party in order for Buyer to enter into and perform this Agreement; the person signing this Agreement and any of the other documents on behalf of Buyer has full power and authority to bind Buyer; and when executed by Buyer, this Agreement shall be binding and enforceable against Buyer in accordance with its terms, and upon Buyer’s execution of any other documents contemplated herein, they shall be binding and enforceable against Buyer in accordance with their terms.

(b) Buyer has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by Buyer's creditors, suffered the appointment of a receiver to take possession of substantially all of Buyer's assets, suffered the attachment or other judicial seizure of substantially all of Buyer's assets, admitted Buyer's inability to pay Buyer's debts as they come due, or made an offer of settlement, extension or composition to Buyer's creditors generally.

(c) There exists no actions, suits, arbitrations, investigations, condemnations or proceedings of any kind or nature whatsoever, legal or equitable, pending or threatened in writing, against Buyer, in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, that in each case, would materially affect Buyer's ability to perform its obligations under this Agreement.

(d) Buyer is in compliance with the requirements of the Orders and the Patriot Act. Buyer:

(i) is not listed on the Lists; and

(ii) has not been determined by competent authority to be subject to the prohibitions contained in the Orders.

8.4 Survival. The representations and warranties made in Section 8.3 shall survive the Closing for the Survival Period.

9. Escrow Instructions.

9.1 Delivery of Agreement to Escrow Agent. Within one (1) business day after complete execution and delivery of this Agreement by Buyer and Seller, a fully executed copy of this Agreement (or fully executed counterparts) shall be delivered by Seller and Buyer to the Escrow Agent, and this Agreement shall, thereupon, constitute escrow instructions.

9.2 Delivery of Deposit. Within the period provided under Section 3.2 hereinabove, Buyer shall deposit the Deposit with the Escrow Agent. In the event that Buyer shall exercise any right of termination hereunder pursuant to Sections 4.2, 5.1, and 14.1, Escrow Agent shall notify the parties of the same, and Escrow Agent shall return the Deposit (less the Independent Consideration) to Buyer.

9.3 General Escrow Conditions; Conflicts. The Escrow Agent shall accept this escrow subject only to its standard conditions of acceptance of escrow, provided that the provisions of this Agreement shall govern in the event of conflict therewith, including but not limited to Section 5.1(c) above.

9.4 Assembly of Documents from Executed Counterparts. Upon receipt from Buyer and/or Seller of any documents in connection herewith, the Escrow Agent shall detach from the documents delivered by Buyer, and reattach to the documents delivered by Seller, counterpart signature pages and acknowledgement pages of the Buyer, as necessary, to physically form one (1) document and shall be prepared to record such documents, as applicable, concurrently with the Closing and in accordance with any separate instructions Escrow Agent may receive from Seller and, to the extent consistent with Seller's instructions, any separate instructions the Escrow Agent may receive from Buyer.

9.5 Settlement Statement. At least three (3) business days prior to the Closing Date, Escrow Agent shall prepare and deliver to Buyer and Seller a closing settlement statement showing the amounts required to be deposited by Buyer in connection herewith, and the then contemplated disbursements for such funds that shall occur on the Closing Date (the "**Settlement Statement**"). Prior to the Closing and as a condition precedent thereto, Seller and Buyer shall have reasonably approved and executed the Settlement Statement.

9.6 Recording of Documents and Delivery of Funds. Upon the Closing, the Escrow Agent shall cause the Deed to be filed for record in the county in which the Real Property is located, and disburse to Seller the net amounts due to Seller pursuant to the Settlement Statement.

9.7 Reporting Requirements. The Escrow Agent is hereby designated the “real estate reporting person” for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by the Escrow Agent shall so provide. Upon the consummation of the transaction contemplated by this Agreement, the Escrow Agent shall file the Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

10. Closing.

10.1 The closing of the purchase and sale of the Property contemplated by this Agreement (the “**Closing**”) shall be consummated on such date as may be mutually agreed upon by Seller and Buyer, but in no event later than the Closing Date unless otherwise provided in this Agreement. Closing shall take place at the offices of the Escrow Agent; provided that the Closing Documents may be sent to the Escrow Agent for receipt prior to the Closing Date, accompanied by Closing instructions for the Escrow Agent. At the Closing, Seller shall convey the Real Property to Buyer by delivery and recordation of the Deed and Buyer shall release the Purchase Price (as the same may be adjusted) to Seller. Seller shall pay Seller’s Deal Costs and Buyer shall pay Buyer’s Deal Costs upon the Closing. Additionally, (i) Buyer shall pay fifty percent (50%) of all of Title Company’s escrow fees and all costs and expenses for the Title Policy (including, without limitation to, any endorsements and extended coverage) (except as set forth in subsection (ii) of this Section 10.1), and (ii) Seller shall pay fifty percent (50%) of all of Title Company’s escrow fees, CLTA portion of the standard title insurance policy and all city and county transfer taxes. All other Closing costs shall be paid by the parties upon the Closing in accordance with the custom of the county in which the Property is located, as determined by the Title Company.

11. Closing Prorations and Credits.

11.1 Real Estate Taxes and Assessments.

(a) The Escrow Agent shall prorate any and all current real estate taxes and assessments for the Property that Seller pays as of the date of the filing of the Deed for record using as the basis for such proration the rate and valuation shown for the Property on the last available tax records or other separate tax or assessment invoices, which may include tax estimates from the applicable governmental authority (hereinafter referred to as the “**Estimated Taxes**”); provided, however, that such Estimated Taxes shall be provisional only and shall be properly adjusted by the parties hereto following the Closing in accordance with the amount of taxes shown on the tax bills or tax duplicates actually issued or prepared for the period in question once they are available after Closing. In addition, if after the Closing there is an adjustment or reassessment by any governmental authority with respect to, or affecting, any ad valorem taxes for the Property for the year in which the Closing occurs or any prior year (whether in the nature of a “roll-back” tax or otherwise), any additional tax payment for the Property required to be paid with respect to the year in which the Closing occurs shall be prorated between Buyer and Seller, with Seller being responsible for any additional tax payment allocable to the period prior to Closing and any such additional tax payment for the Property with respect to any year prior to the year of the Closing and Buyer being responsible for any additional tax payment for the period attributable to the date of Closing and thereafter.

(b) Any taxes payable in the calendar year of Closing shall be prorated on a cash basis based upon the amounts actually paid. If taxes and assessments due and payable during the year of Closing have not been paid before Closing, Seller shall be charged at Closing an amount equal to that portion of such taxes and assessments which relates to the period before Closing and Buyer shall pay the taxes and assessments prior to their becoming delinquent. Any such apportionment made with respect to a tax year for which the tax rate or assessed valuation, or both, have not yet been fixed shall be based upon the tax rate and/or assessed valuation last fixed. To the extent that the actual taxes and assessments for the current year differ from the amount apportioned at Closing, the parties shall make all necessary adjustments by appropriate payments between themselves within thirty (30) days after such amounts are determined following Closing.

11.2 Operating Expenses. Any common area maintenance, utility, other expenses incurred in operating the Property that Seller pays, and any other costs incurred in the ordinary course of business or the management and operation of the Property (the “**Operating Expenses**”), shall be prorated on an accrual basis. Seller shall pay all such Operating Expenses that accrue prior to the Closing Date and, subject to the terms of the Seller Lease, Buyer shall pay all such non-delinquent Operating Expenses accruing on the Closing Date and thereafter. Seller and Buyer shall obtain billings and meter readings as of the Closing Date to aid in such prorations. The agreements of Seller and Buyer set forth in this Section 11.2 shall survive the Closing for the Survival Period.

11.3 Post-Closing Reconciliation. If any of the aforesaid prorations cannot be calculated accurately on the Closing Date, then Buyer shall work diligently with Seller to finalize the prorations as soon as possible. Either party owing the other party a sum of money based on such subsequent proration(s) shall pay said sum to the other party within ten (10) days of receipt of an invoice therefor.

11.4 Survival. The provisions of this Section 11 shall survive the Closing for the Survival Period, subject to the limitations described above.

12. Brokerage. Seller and Buyer each represent and warrant to the other that they have dealt with no real estate brokers other than Broker with respect to the transaction contemplated by this Agreement. Seller shall pay to each Broker a commission pursuant to a separate commission agreement. Seller and Buyer each agree to indemnify, defend and hold the other harmless from and against any claim or liability, as well as court costs and legal fees, arising out of claims contrary to the foregoing representations and warranties by a party claiming to have dealt with the indemnifying party. Notwithstanding anything to the contrary contained herein, the mutual indemnities contained in this Section 12 shall survive Closing or any termination of this Agreement and shall not be subject to the limitations on remedies of Seller or Buyer set forth in Section 14.

13. Notices. All notices provided for herein, may be sent by electronic mail with transmission confirmation, Federal Express or other overnight courier service, personally delivered or mailed registered or certified mail, return receipt requested. If a notice is personally delivered, sent by overnight courier service or sent by registered or certified mail, it shall be deemed given upon receipt or refusal of delivery. The addresses to be used in connection with notices are those set forth in the Fundamental Information, or such other address as a party shall from time to time direct by notice given in accordance with this Section 13.

14. Default.

14.1 Buyer's Remedies For Seller's Default. If Seller is in breach or default of its obligations and covenants under the terms and conditions of this Agreement, and Closing does not occur as a result thereof, Buyer may elect one of the following remedies: (i) terminate Buyer's obligations under this Agreement by written notice to Seller, whereupon the Escrow Agent shall immediately return the Deposit to Buyer, without any authorizations or approvals of any kind from Seller or any other party, Seller shall (within ten (10) business days after request) reimburse Buyer for Buyer's due diligence costs and expenses in connection with this Agreement, including but not limited to negotiation hereof, up to a maximum amount of Forty-Five Thousand Dollars (\$45,000.00) (which reimbursement obligation shall survive any termination of this Agreement) and, thereafter, neither party shall have any further obligations hereunder except those that expressly survive termination hereof, or (ii) bring an action for specific performance of this Agreement, which action shall be brought, if at all, no later than forty-five (45) days after the scheduled Closing Date. Buyer hereby waives its right to bring any action for damages (including without limitation actual, consequential, special and punitive damages) arising out of or relating to this Agreement or Seller's default hereunder. Buyer's election to proceed with the Closing with actual knowledge of a breach or default by Seller hereunder as of or prior to the Closing (including without limitation a breach of any representation or warranty of Seller herein) shall conclusively constitute Buyer's waiver of any and all claims against Seller on account thereof. Notwithstanding the foregoing, if specific performance is not available to Buyer due to an intentional and material breach of this Agreement by Seller, then Buyer may pursue all rights and remedies available to Buyer at law and in equity in connection therewith to the extent Seller caused such damages, but in no event shall Buyer be entitled to any consequential, exemplary, special or punitive damages, and Seller shall bring such action no later than forty-five (45) days after the specific performance is determined not available to Buyer.

14.2 Seller's Remedies For Buyer's Default. If Buyer fails or refuses to timely consummate the Closing in accordance with the terms and conditions of this Agreement, except on account of a breach or default hereunder by Seller, Seller may elect, as Seller's sole remedy, to terminate Seller's obligations under this Agreement by written notice to Buyer and Escrow Agent shall deliver the Deposit to Seller and Seller shall be entitled to keep the Deposit as liquidated damages. The foregoing provision shall not limit Seller's remedies with respect to certain obligations of the Buyer which are stated to survive the termination of this Agreement and/or which are expressly stated not to be subject to this Section 14.2. The parties hereby agree that the amount of the Deposit shall be and constitutes liquidated damages. Buyer and Seller acknowledge and agree that it is difficult or impossible to determine the actual damages Seller would suffer from Buyer's breach hereof and that the agreed upon liquidated damages are not punitive or penalties and are just, fair and reasonable. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY, AT LAW OR IN EQUITY, AGAINST BUYER IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BY REASON OF A BREACH OR DEFAULT BY BUYER UNDER THIS AGREEMENT AND PROVIDED THAT SELLER HAS BEEN PAID THE DEPOSIT SELLER HEREBY WAIVES ALL OTHER CLAIMS FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. HOWEVER, NOTHING IN THIS SECTION SHALL LIMIT THE EFFECTIVENESS OF THE OBLIGATIONS OF BUYER UNDER SECTIONS 5.1, 5.2, 12 and 15.18 OF THIS AGREEMENT OR LIMIT THE RECOVERY OF ANY ATTORNEYS' FEES, WHICH MAY BE RECOVERED IN EXCESS OF THE DEPOSIT AMOUNT.

Initials: LS
Buyer

DMS
Seller

14.3 Notwithstanding anything in this Section 14 to the contrary, in the event of a default by Seller or Buyer under this Agreement, prior to pursuing any remedies under this Agreement the non-defaulting party shall provide the defaulting party with written notice of such default and the defaulting party shall have five (5) business days to fully cure such default; provided, however, that the notice and cure period set forth in this Section 14.3 shall not be applicable to either party's failure to timely close on the Closing Date.

14.4 Survival. The provisions of this Section 14 shall survive any termination of this Agreement.

15. Miscellaneous.

15.1 Business Days. References herein to a "business day" means any day other than (a) a Saturday or Sunday or (b) a day on which banking institutions in the state in which the Real Property is located are authorized or obligated by law or executive order to be closed. If the last day for performance of any obligation or exercise of any right falls on a day other than a business day, then the last day for such performance or exercise of such right shall be extended to and expire on the next succeeding business day.

15.2 Time. Time is of the essence in the performance of each party's obligations hereunder.

15.3 Attorneys' Fees. If any party shall bring an action or proceeding against the other party by reason of the breach or alleged violation of any term or obligation hereof, or for the enforcement or interpretation of any provision of this Agreement, the prevailing party in such action or proceeding shall be entitled to its reasonable costs and expenses of suit, including, but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. The provisions of this Section 15.3 shall survive the Closing or termination of this Agreement.

15.4 No Waiver. Subject to the deemed approvals under this Agreement, no waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing, nor shall it be considered to be a waiver by such party of any other covenant or condition hereunder.

15.5 Entire Agreement. This Agreement contains the entire agreement between the parties regarding the Property and supersedes all prior agreements, whether written or oral, between the parties regarding the same subject. This Agreement may only be modified by subsequent written agreement signed by the party to be charged.

15.6 Further Assurances. Before and after Closing, Buyer and Seller shall execute and deliver to the other party all such documents that such other party may reasonably require to effect, confirm or otherwise perfect the transfer of property and other covenants and agreements of the parties contemplated by this Agreement.

15.7 Successors. This Agreement shall bind and inure to the benefit of the parties hereto and to their respective successors and assigns; provided, however, that none of the rights or obligations of Buyer hereunder shall be transferred or assigned by Buyer without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole and absolute discretion. No permitted assignment or transfer by Buyer shall relieve Buyer from its obligations hereunder, it being understood that upon any assignment or transfer Buyer shall remain liable to Seller for the performance of the obligations of "Buyer" hereunder. Notwithstanding anything to the contrary set forth herein, upon prior written notice to Seller, Buyer shall have the right to assign its rights and obligations under this Agreement to any other entity owning and controlling, owned and controlled by, or under common control of Buyer or the owner or parent company of Buyer; provided, however, that such assignment document includes a provision that Buyer shall remain liable to Seller for the performance of its obligations of "Buyer" hereunder and such assignment shall not relieve Buyer from its obligations hereunder; and provided further that the assignment shall not delay Closing.

15.8 Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date, subject to the Seller Lease, together with a complete set of keys (including any fobs) for the Property, to the extent in Seller's possession.

15.9 Operation of Property.

(a) Following the expiration of the Due Diligence Period, Seller shall not enter into any lease, or amend, modify or terminate any lease (to the extent Seller's approval is required thereunder), without first obtaining Buyer's written approval thereof (which approval shall not be unreasonably withheld, delayed or conditioned).

(b) Seller shall be permitted to keep in place at Closing any Service Contracts, subject to and in accordance with the terms of the Seller Lease.

(c) Following the Effective Date, other than in the ordinary course of business, Seller shall not sell, transfer, encumber, mortgage or place any lien upon the Property or in any way create or consent to the creation of any title condition affecting the Property without first obtaining Buyer's written approval thereof, which approval may be given or withheld in Buyer's reasonable discretion.

(d) Until the Closing, Seller shall keep all existing insurance with respect to the Property to the same extent that Seller has insured the Property as of the date of this Agreement.

(e) Until the Closing, Seller shall operate and maintain the Property in substantially the manner being operated and maintained as of the date of this Agreement, ordinary wear and tear and anything due to Buyer or Buyer's Representatives excepted.

(f) Between the Due Diligence Expiration Date until the Closing, without the written consent of Buyer, which may be withheld in Buyer's sole discretion, Seller shall not make any material alterations to the Property; provided, however, if Buyer does not consent to any requested material alteration, Seller shall be released from, and Buyer hereby waives, any claim, right or remedy against Seller that the Property was not maintained or operated in compliance with this Section 15.9 to the extent that such claim, right or remedy relates to or arises from the failure to make the requested alteration.

(g) Between the Effective Date and the Closing, Seller shall notify Buyer of any written notice received by Seller of any of the following matters promptly after Seller has receipt of such notice: (i) notices of disputes involving any Service Contracts, (ii) condemnation, (iii) environmental, zoning or other land-use regulation proceedings directly and specifically relating to the Property, (iv) notice of any material violations of any laws relating to the Property, and (v) any litigation or notice of any claim relating to the Property.

15.10 Damage to Property. If, prior to the Closing Date, there is a casualty which results in Material Damage, Buyer will have the option, to be exercised within fifteen (15) days after receipt of notice of such casualty, to terminate Buyer's obligations under this Agreement and receive a refund of the Deposit (less the Independent Consideration), upon which Seller and Buyer shall be relieved of their obligations hereunder, except those that specifically survive the termination hereof, or to elect to have this Agreement remain in full force and effect. In the event that either (x) the casualty did not cause Material Damage to the Property, or (y) Buyer does not terminate this Agreement as provided in this Section, Seller will: (1) assign to Buyer all of Seller's interest in the insurance proceeds arising out of such damage (or credited to Buyer if previously received by Seller), and (2) provide Buyer with a credit against the Purchase Price in an amount equal to the deductible under such insurance. Seller and Buyer each expressly waive the provisions of California Civil Code Section 1662 and hereby agree that the provisions of this Section 15.10 and Section 15.11 below shall govern the parties obligations in the event of any damage or destruction to the Property or the taking of all or any part of the Property, as applicable. For purposes of hereof, "**Material Damage**" means loss or damage to the Property or any portion thereof (A) such that the cost of repairing or restoring the premises in question to a condition substantially identical to that of the premises in question prior to the event of damage would be, in the opinion of a general contractor selected by Seller and reasonably approved by Buyer, equal to or greater than one percent (1%) of the Purchase Price, or (B) that is uninsured (unless Seller agrees to pay for the full cost of repair or credit Buyer the cost of repair at Closing, each subject to Buyer reasonably agreeing with the scope of repairs needed and the related cost estimate) or (C) that prevents access to the Real Property from a publicly dedicated street.

15.11 Eminent Domain. If, prior to the Closing Date, there is a condemnation or sale in lieu of condemnation, and such results in Material Damage, Buyer will have the option, to be exercised within fifteen (15) days after receipt of notice of such condemnation or sale, to terminate Buyer's obligations under this Agreement or to elect to have this Agreement remain in full force and effect. In the event that either (x) the condemnation did not cause Material Damage to the Property or (y) Buyer does not terminate this Agreement as provided in this Section, Seller will assign to Buyer any and all claims for the proceeds of such condemnation or sale to the extent the same are applicable to the Property, and Buyer will take title to the Property with the assignment of such proceeds and subject to such condemnation and without reduction of the Purchase Price except for a credit for any award received by Seller. Should Buyer elect to terminate Buyer's obligations under this Agreement under the provisions of this Section, the Deposit (less the Independent Consideration) will be returned to Buyer by Escrow Agent, and neither Seller nor Buyer will have any further obligation under this Agreement, except for those that survive hereunder.

15.12 Counterparts, Electronic Signatures and Effectiveness. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement, and this Agreement shall only be effective if a counterpart is signed by both Seller and Buyer. An electronic signature (such as DocuSign) or any PDF or electronically transmitted signature on this Agreement shall be binding as an original.

15.13 Severability. In the event any provision of this Agreement shall be held to be invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15.14 Recording. Neither this Agreement nor any memorandum hereof shall be recorded or filed in the Office of the County Recorder of the county in which the Real Property is located, or in any other public records of any jurisdiction, and any attempt to do so may be treated by the other party as a material breach of this Agreement.

15.15 No Third Party Beneficiaries. Seller and Buyer agree that it is their specific intent that no broker or any other third party shall be a party to or a third party beneficiary of this Agreement or the escrow; and further that the consent of a broker or other third party shall not be necessary to any agreement, amendment, or document with respect to the transaction contemplated by this Agreement.

15.16 1031 Exchange. Seller and/or Buyer may desire to effect a tax-deferred like kind exchange with respect to its sale or purchase, respectively, of the Property (in either case, the “**Exchange**”) pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (the “**Code**”) and any similar provisions of state or local law. If either party elects to effect an Exchange (the “**Exchangor**”), then, subject to the terms and provisions of this Section, the other party (the “**Non Exchangor**”) shall reasonably cooperate with the Exchangor in effecting the Exchange; provided, however, in no event shall the Non Exchangor be required to incur any material delays, expenses or risk of ownership, title or conveyance in connection with such cooperation. The Exchange will be structured by the Exchangor at its sole cost and expense such that the Non Exchangor will have no obligation to acquire or enter into the chain of title to any property other than the Property. The Non Exchangor’s sole obligation in connection with the Exchange shall be to review and execute certain customary documentation reasonably acceptable to the Non Exchangor necessary to effectuate the Exchange in accordance with the foregoing and the applicable rules governing such exchanges. The Non Exchangor shall not by this Agreement or acquiescence to the Exchange have its rights under this Agreement modified or diminished in any material manner or be responsible for compliance with or be deemed to have warranted to the Exchangor that the Exchange in fact complies with Section 1031 of the Code. The Non Exchangor shall have the right to review and approve any documents to be executed by the Non Exchangor in connection with the Exchange; provided, such approval shall not be unreasonably withheld, conditioned or delayed. The Non Exchangor shall have no obligation to execute any documents or to undertake any action by which the Non Exchangor would or might incur any material liability or obligation not otherwise provided for in the other provisions of this Agreement. Neither the conveyance of title to the Property by the Exchangor’s designated intermediary or any “Qualified Exchange Accommodation Titleholder” (if applicable) nor the Exchange shall amend or modify the representations, warranties and covenants of the Exchangor to the Non Exchangor under this Agreement or the survival thereof pursuant to this Agreement in any material respect nor shall any such conveyance or Exchange result in a release of the Exchangor with respect to such representations, warranties and/or covenants. At the Exchangor’s election, the Deed and all closing documents with respect to the Property shall run directly between the Non Exchangor and either the Exchangor or the Exchangor’s designated intermediary or Qualified Exchange Accommodation Titleholder. The Closing shall not be extended as a result of the Exchange. The Exchangor shall indemnify and hold the Non Exchangor harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys’ fees but excluding costs incurred to review the exchange documents) arising from the Exchange (other than what would have been applicable under this Agreement without the Exchange), which indemnification agreement shall expressly survive the Closing. The Exchangor further acknowledges that the Exchange is at the request and initiation of the Exchangor, and the Non Exchangor in no manner, expressly or implicitly, participated in or offered tax advice or planning to or for the benefit of the Exchangor. The Exchangor is relying solely upon the advice and counsel of professionals of the Exchangor’s choice in structuring, executing and consummating the Exchange.

15.17 JURY WAIVER. TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER AND SELLER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) OF ANY KIND WHATSOEVER BETWEEN BUYER AND SELLER ARISING OUT OF OR IN ANY WAY RELATED TO THE PROPERTY OR THIS AGREEMENT. EACH PARTY IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THE FOREGOING WAIVER. THIS PROVISION IS A MATERIAL INDUCEMENT TO SELLER ENTERING INTO AND PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

Initials: LS
Buyer

DMS
Seller

15.18 Confidentiality.

(a) Each party hereto agrees not to disclose or permit the disclosure of any of the terms of this Agreement or the identity of the other party to this Agreement, provided that such disclosure may be made (a) to any party who is a partner, officer, director or employee of such party or an affiliate of such party or counsel to or accountants of such party or an affiliate of such party solely for their use and on a need-to-know basis, provided that such parties are notified of the party's confidentiality obligations hereunder, (b) in accordance with this Section 15.18(a), (c) with the prior consent of the other parties hereto, (d) subject to the following sentence, pursuant to a subpoena or order issued by a court, arbitrator or governmental body, agency or official of competent jurisdiction, or (e) if required under applicable law, regulatory or stock market rule or of information of the type otherwise customarily disclosed by public companies in such public filings. In the event that a party shall receive a request to disclose the terms of this Agreement under a subpoena or order, such party shall (i) promptly notify the other parties thereof, (ii) consult with the other parties on the advisability of taking steps to resist or narrow such request and (iii) if disclosure is required or deemed advisable, cooperate with any of the other parties in any attempt it may make to obtain an order or other assurance that confidential treatment will be accorded the information that is disclosed. The provisions of this Section 15.18(a) shall survive any termination of this Agreement and the Closing.

(b) In connection with Treasury Regulation §1.6011-4 of the Code, the parties hereby agree that each party (and each employee, representative, or other agent of such party) may disclose to any and all persons, without limitation of any kind, the U.S. tax treatment and U.S. tax structure of the transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such U.S. tax treatment and U.S. tax structure, other than any information for which nondisclosure is reasonably necessary in order to comply with applicable securities laws. The provisions of this Section 15.18(b) shall survive any termination of this Agreement and the Closing.

15.19 Construction. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to “**Sections**” are to Sections of this Agreement, unless otherwise specifically provided. All references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural shall be deemed to have been made in all such genders, and (c) in the singular or plural shall be deemed to have been made, respectively, in the plural or singular as well.

15.20 Limitation on Liability. Buyer and Seller each agree to the following statements in this Section 15.20, agreement to each of which is a condition to entry into this Agreement:

(a) No member or manager of Seller, nor any officer, director or shareholder of Seller or its member or manager, nor any of their direct or indirect members, managers, partners, shareholders or officers, directors, employees, agents or advisors of any of them, nor any employee, agent, or advisor of Seller, shall have any personal liability directly or indirectly, under or in connection with this Agreement or any Closing Document, and Buyer and Buyer's successors and assigns shall look solely to the assets of Seller for the payment of any claim or for any performance under this Agreement or any Closing Document or relating to the transaction contemplated hereunder, and Buyer hereby waives any and all claims for personal liability against any member or manager of Seller, and any officer, director or shareholder of any such member or manager comprising Seller, and any employee or agent of Seller or of any of Seller's members or managers.

(b) No member or manager of Buyer, nor any officer, director or shareholder of Buyer or its member or manager, nor any of their direct or indirect members, managers, partners, shareholders or officers, directors, employees, agents or advisors of any of them, nor any employee, agent, or advisor of Buyer, shall have any personal liability directly or indirectly, under or in connection with this Agreement or any Closing Document, and Seller shall look solely to Buyer for the payment of any claim or for any performance under this Agreement (or as otherwise provided in Section 14.1) or any Closing Document or relating to the transaction contemplated hereunder, and Seller hereby waives any and all claims for personal liability against any member or manager or Buyer, and any officer, director or shareholder of any such member or manager comprising Buyer, and any employee or agent of Buyer or of any of Buyer's members or managers.

15.21 Governing Law.

(a) This Agreement shall be governed by and construed under the laws of the State where the Real Property is located without regard to the principles of choice of law or conflicts of law.

(b) Each of Seller and Buyer: (i) agrees that any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith shall be brought only in the courts of Santa Clara County; (ii) irrevocably submits itself to the exclusive jurisdiction of the such courts for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith; (iii) waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court; and (iv) consents to service of process by registered mail at the address to which notices are to be given if personal service is not made after the exercise of reasonable efforts.

The provisions of this Section 15.21 shall survive the Closing or termination of this Agreement.

15.22 Exclusivity. In consideration of the significant time and expense to be devoted by Buyer to its potential acquisition of the Property, Seller agrees that, during the term of this Agreement, Seller shall not (and Seller shall instruct its third-party agents not to) list the Property for sale. If Seller breaches this Section, Buyer shall have the rights set forth in this Agreement in event of a Seller breach, subject to notice and cure periods.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

GSI TECHNOLOGY, INC.,
a Delaware corporation

By: /s/ Douglas M. Schirle
Name: Douglas M. Schirle
Title: Chief Financial Officer

BUYER:

D.R. STEPHENS & COMPANY, LLC,
a California limited liability company

By: /s/ Lane Stephens
Name: Lane Stephens
Title: Manager

NOTE: Buyer must initial Section 6 and Buyer and Seller must initial Sections 14.2 and 15.18.

AGREED TO BY:

ESCROW AGENT AND TITLE COMPANY

FIRST AMERICAN TITLE INSURANCE COMPANY

By: /s/ Teresa M. Woest
Name: Teresa M. Woest
Title: Lead Senior Commercial Escrow Officer

EXHIBIT A
LEGAL DESCRIPTION OF THE REAL PROPERTY

Real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

ALL OF PARCEL B, AS SHOWN ON THAT CERTAIN MAP ENTITLED, "PARCEL MAP BEING A SUBDIVISION OF PARCEL 2 AS SHOWN ON THAT PARCEL MAP RECORDED IN BOOK 321 OF MAPS AT PAGE 22, SANTA CLARA COUNTY RECORDS AND ALSO BEING A PORTION OF RANCHO PASTORIA DE LAS BORREGAS AND SECTION 17, TOWNSHIP 6 SOUTH, RANGE 1 WEST, M.D.B. & M.," WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON JUNE 6, 1973 IN BOOK 324 OF MAPS, PAGE 24.

APN: 104-32-029

EXHIBIT B
FORM OF GENERAL ASSIGNMENT

GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT (this "**Assignment**") is made and entered into as of the ____ day of _____, 20__, by and between GSI TECHNOLOGY, INC., a Delaware corporation ("**Assignor**"), and _____, a _____ ("**Assignee**").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), and in connection with the sale of the Property (as defined in that certain Purchase and Sale Agreement with Escrow Instructions dated as of _____, 20__, between Assignor and Assignee (the "**Purchase Agreement**")), Assignor hereby assigns and transfers unto Assignee all of its right, title, claim and interest in the Intangible Property (as defined in the Purchase Agreement) and expressly excluding any Confidential Information (as defined in the Purchase Agreement).

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Effective as of the Effective Date (as defined below), Assignee hereby accepts the assignment from Assignor of all of Assignor's right, title and interest in and to the Intangible Property.
2. Effective as of the Effective Date, Assignee hereby assumes all of Assignor's obligations arising from and after the date hereof, under the Intangible Property.
3. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, reasonable attorneys' fees.
4. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
5. This Assignment shall be governed by and construed in accordance with the laws of the State of California.
6. This Assignment is delivered pursuant to the Purchase Agreement.
7. Assignee acknowledges and agrees that the conveyance of the Intangible Property is specifically made "as-is" and "where-is" without any representations or warranties express or implied, including, without limitation, implied warranties of fitness for any particular purpose or merchantability or any other warranties whatsoever, except as expressly set forth in the Purchase Agreement. Except as expressly set forth in the Purchase Agreement, Assignee has not relied and will not rely on, and Assignor is not liable for or bound by, any express or implied warranties, guaranties, statements, representations or information pertaining to the Intangible Property or relating thereto (including specifically, without limitation, information packages distributed with respect to the property) made or furnished by Assignor, or any agent or real estate broker representing or purporting to represent Assignor, to whomever made or given, directly or indirectly, orally or in writing.

8. For purposes of this Assignment, the “**Effective Date**” shall be the date of the Closing (as defined in the Purchase Agreement).

9. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

[Next page is signature page]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

GSI TECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Title: _____

**EXHIBIT C
FORM OF GRANT DEED**

**RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:**

MAIL TAX STATEMENTS TO:

SPACE ABOVE THE LINE
FOR RECORDER'S USE

GRANT DEED

A.P.N. [_____]

DOCUMENTARY TRANSFER TAX \$ _____
...Computed on the consideration or value of property conveyed; OR
...Computed on the consideration or value less liens or
encumbrances remaining at time of sale.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GSI TECHNOLOGY, INC., a Delaware corporation ("**Grantor**"), does hereby grant and convey to _____, a _____ ("**Grantee**"), all of its right, title and interest in and to the following real property situated in the County of Santa Clara, State of California, to wit:

See **Exhibit A** attached hereto and made a part hereof by this reference,

together with all right, title and interest in and to all buildings, structures and other facilities and improvements located thereon, and any and all right, title and interest of Grantor in and to the rights and appurtenances pertaining to such property, including in and to adjacent streets, alleys or rights-of-way (the "**Property**").

This conveyance is made subject and subordinate to all (a) matters of record; (b) real property taxes which are a lien but not yet due and payable, (c) all applicable laws and ordinances, (d) the lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5, commencing with Section 75, of the California Revenue and Taxation Code as a result of a change in ownership or new construction after the date hereof; (e) all other covenants, conditions and restrictions and other encumbrances, easements, limitations, reservations, rights, charges and equitable servitudes; (f) all discrepancies, conflicts in boundary lines, shortages in area, encroachments and any state of facts which an inspection or a survey of the Property would reveal or disclose; and (g) the rights of tenants in possession of the Property or any portion thereof, solely as tenants in possession, under recorded or unrecorded leases or occupancy agreements.

IN WITNESS WHEREOF, Grantor has hereunto set its hand on this ____ day of _____.

GRANTOR:

GSI TECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)
County of _____)

On _____ before me, _____, Notary Public, personally appeared

_____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of [_____] that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit A

LEGAL DESCRIPTION OF THE REAL PROPERTY

C-3

EXHIBIT D
FORM OF FIRPTA AFFIDAVIT

FIRPTA Affidavit

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform _____, a _____ (“**Transferee**”), that withholding of tax is not required upon the disposition of a U.S. real property interest by GSI TECHNOLOGY, INC. (“**Transferor**”). Transferor is the owner of the property legally described on Exhibit A attached hereto and made hereof.

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in Section 1.1445-2(b)(2)(iii);
3. Transferor’s U.S. employer identification number is _____; and
4. Transferor’s office address is _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

TRANSFEROR:

GSI TECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

**EXHIBIT E
FORM OF SELLER LEASE**

See Attached

LEASE AGREEMENT

by and between

(“**Landlord**”)

and

GSI TECHNOLOGY, INC.

(“**Tenant**”)

_____, 2024

Property:

1213 Elko Drive, Sunnyvale, California

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EXHIBITS

Exhibit A – Premises

Exhibit B – Reserved

Exhibit C – Operating Expenses Exclusions

Exhibit D – Form of Lease Memorandum

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Lease**”) is made and entered into this ____ day of _____, 2024 (the “**Effective Date**”), by and between _____, a _____ (“**Landlord**”) and GSI TECHNOLOGY, INC., a Delaware corporation (“**Tenant**”).

RECITALS

A. WHEREAS, this Lease is being entered into by and between Landlord and Tenant in connection with and as a material portion of the consideration under that certain Purchase and Sale Agreement with Escrow Instructions dated as of _____, 2024 (as may be amended and/or modified from time to time, the “**Purchase Agreement**”), pursuant to which D.R. Stephens & Company, LLC, a California limited liability company and affiliate of Landlord, as buyer, has agreed to purchase from Tenant, as seller, all of Tenant’s right, title and interest in and to the Building (as defined below), as more particularly set forth in the Purchase Agreement.

B. WHEREAS, the parties acknowledge that Tenant is the current occupant of the Premises (as defined below) as of the date of this Lease. This Lease will be effective as of the Closing Date (as defined in the Purchase Agreement).

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference) and the Rent (as defined below) hereinafter reserved, for the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant mutually agree as follows:

ARTICLE 1 DEFINITIONS

Lease Specific

1.1 Building. A building which comprises approximately 44,277 square feet of rentable area (“**RSF**”) and located at 1213 Elko Drive, Sunnyvale, California (the “**Building**”). Landlord may adjust the RSF of the Building if there is manifest error, addition or subtraction to the Building, remeasurement or other circumstance reasonably justifying adjustment, and the terms and provisions of this Lease impacted by such adjustments shall be modified accordingly; provided, however, that in no event shall Tenant’s payment obligations under this Lease (including, without limitation, all Rent amounts) be adjusted during the Term of this Lease (including any extensions thereof).

1.2 Premises. Landlord and Tenant have agreed that the Premises comprises of the Building, as more particularly designated on **Exhibit A**, together with non-exclusive use of all easements, rights and appurtenances to the Building. Neither party shall have the right to remeasure the rentable square footage of the Premises or the Building during the initial Term or any extensions thereof.

1.3 **Term.** One hundred and twenty (120) months following the Lease Commencement Date, as more particularly defined in Section 2.1.

1.4 **Base Rent.** Initially, for the first twelve (12) months of the Term, \$2.05 per square foot of total rentable area, subject to annual increases as set forth in Section 3.1 below.

1.5 **Base Rent Annual Escalation Percentage.** Three percent (3%).

1.6 **Security Deposit.** \$90,768.00

1.7 **Brokers.** Newmark Knight Frank, as agent of Tenant

1.8 **Tenant Notice Address.**

1213 Elko Drive
Sunnyvale, CA 94089
Attention: Douglas Schirle

with a copy to:

DLA Piper LLP (US)
3203 Hanover Street, Suite 100
Palo Alto, CA 94304-1123
Attn: Heather Srimal & Ben Griebe

1.9 **Landlord Notice Address.**

c/o D.R. Stephens & Company, LLC
601 California Street, Suite 1710
San Francisco, CA 94108
Attention: Lane Stephens

with a copy to:

Lubin Olson & Niewiadomski LLP
The Transamerica Pyramid
600 Montgomery Street, 14th Floor
San Francisco, CA 94111
Attn: Paul J. Niewiadomski, Esq.

1.10 **Landlord Payment Address.**

c/o D.R. Stephens & Company, LLC
601 California Street, Suite 1710
San Francisco, CA 94108

1.11 **Building Hours.** Subject to the terms of the Lease, Tenant shall have exclusive use of, and access to, the Building and parking 24 hours per day, every day of the year.

1.12 **Tenant's Share.** 100%

1.13 **Parking.** As more particularly set forth in Article 30 hereof.

General

1.14 **Alterations.** Any improvements, alterations, fixed decorations or modifications, structural or otherwise, to the Premises, the Building or the Land, including the installation or modification of carpeting, partitions, counters, doors, air conditioning ducts, plumbing, piping, lighting fixtures, wiring, hardware, locks, ceilings and window and wall coverings.

1.15 **Default Rate.** That rate of interest which is five (5) percentage points above the annual rate of interest which is publicly announced by Bank of America or its successor entity, if applicable ("**Bank of America**"), from time to time as its "prime" rate of interest, irrespective of whether such rate is the lowest rate of interest charged by Bank of America to commercial borrowers. In the event that Bank of America ceases to announce such a prime rate of interest, Landlord, in Landlord's reasonable discretion, shall designate the prime rate of interest by another bank located in the San Francisco/San Jose, California area, which shall be the prime rate of interest used to calculate the default rate.

1.16 **Land.** The real property located at 1213 Elko Drive, Sunnyvale, California and referenced as APN# 104-32-029 in Santa Clara County, California.

1.17 **Lease Commencement Date.** The Closing Date (as defined in the Purchase Agreement).

1.18 **Mortgages.** All mortgages, deeds of trust and similar security instruments which may now or in the future encumber or otherwise affect the Building or the Land, including mortgages related to both construction and permanent financing. "**Mortgagees**" shall denote those persons and entities holding such mortgages, deeds of trust and similar security instruments.

1.19 **Operating Expenses.** All costs and expenses incurred by Landlord during the applicable calendar year in managing, operating and maintaining the Building, the Parking Area and the Land, as reasonably determined by Landlord. Such costs and expenses shall include, without limitation, as applicable (and without any obligation on Landlord to provide any of the following delineated items), the cost of water, gas, sanitary sewer, storm sewer, electricity and other utilities, trash removal, telephone services, insurance, janitorial services and supplies, security services, the cost of electricity for the Parking Area, labor costs (including social security taxes and contributions and fringe benefits), charges under maintenance and service contracts (including chillers, boilers, elevators, window and security services), heating and air conditioning, management fees (not to exceed the lesser of two percent (2%) of total gross Building revenues for any calendar year), business taxes, license fees, public space and vault rentals and charges, costs, charges and other assessments made by or for any entity operating a business improvement district in which the Building is located, assessments, dues, expenses, and the cost of any equipment or services provided by Landlord in connection with the servicing, operation, maintenance, repair and protection of the Building and the Land and related exterior appurtenances. Operating Expenses shall include the cost of capital improvements made by Landlord to manage, operate or maintain the Building, provided that such costs shall be amortized over the useful life of the improvements in accordance with generally accepted accounting principles, and only the portion attributable to the applicable calendar year shall be included in Operating Expenses for such calendar year; such capital improvements shall include, without limitation, and subject to: (a) improvements or building elements added to the Building which will increase the efficiency of the Building (i.e., are reasonably anticipated by Landlord to reduce Operating Expenses as they relate to the item which is the subject of the capital expenditure or to reduce the rate of increase in the Operating Expense which relates to the item which is the subject of the capital expenditure from what it otherwise may have been reasonably anticipated to be in the absence of such capital expenditure), (b) improvements, which if relate to an item that is a capital expenditure that is being replaced, such item shall be at the end of its useful life in accordance with generally accepted accounting principles and the required repairs to such capital expenditure would exceed the cost of replacement, and (c) improvements which are required to comply with the requirements of any Applicable Laws (as hereinafter defined in Article 5), or insurance or utility company requirements; provided however, unless otherwise approved by Tenant in writing or if required to comply with the requirements of any Applicable Laws, or insurance or utility company requirements, no capital improvements shall be replaced during the first twelve (12) months of the Term. Operating Expenses shall not include the expenses set forth on Exhibit C attached hereto and made a part hereof.

Tenant shall obtain in its own name and pay directly to the appropriate supplier the cost of all utilities serving the Premises.

1.20 Real Estate Tax Expenses. All (1) real estate taxes, arena taxes, solid waste taxes and related charges, front foot benefit charges, special user fees, rates, and assessments (including general and special assessments, if any), ordinary and extraordinary, foreseen and unforeseen, which are imposed upon Landlord or assessed against the Building or the Land or Landlord's personal property used in connection therewith; (2) other present or future taxes or governmental charges that are imposed upon Landlord or assessed against the Building or the Land which are in the nature of or in substitution for real estate taxes, including any tax levied on or measured by the rents payable by tenants of the Building, all taxes and assessments for public improvements or any other purpose and any gross receipts or receipts or similar taxes; and (3) expenses (including reasonable attorneys' and consultants' fees and court costs) incurred in reviewing, protesting or seeking a reduction of real estate taxes, whether or not such protest or reduction is ultimately successful. Subject to the foregoing, Real Estate Tax Expenses shall not include any inheritance, estate, gift, franchise, corporation, net income or net profits tax assessed against Landlord from the operation of the Building.

1.21 Rent. All Base Rent and Additional Rent.

1.21.1 **Base Rent.** The amount payable by Tenant pursuant to Section 3.1.

1.21.2 **Additional Rent.** All sums of money payable by Tenant pursuant to this Lease other than Base Rent, including, without limitation, Tenant's Share of Operating Expenses and Tenant's Share of Real Estate Tax Expenses.

1.22 Tenant's Personal Property. All equipment, furnishings, furniture, business and trade fixtures and/or other movable personal property now or hereafter installed or placed in or on the Premises by and at the expense of Tenant.

1.23 Personal. Except to the extent otherwise set forth in this Lease to the contrary, any extension/renewal and purchase options specifically granted to Tenant under this Lease are personal to the originally named Tenant or a Permitted Transferee and such rights may not be transferred to an assignee or subtenant pursuant to an assignment of this Lease or a sublease.

1.24 Actual Cost. Actual Cost shall mean the incremental out-of-pocket extra costs incurred by Landlord in acquiring property or providing a service without a markup for profit, overhead or general conditions.

ARTICLE 2

TERM

2.1 Term of Lease. The term of this Lease (the "**Term**") shall commence on the Lease Commencement Date and shall terminate at Midnight on the last day of the one hundred twentieth (120th) month after the Lease Commencement Date, or such earlier date on which this Lease is terminated pursuant to the provisions of this Lease (the "**Lease Expiration Date**").

2.2 Force Majeure. As used in this Lease, "**Force Majeure**" shall mean any delay caused by any event(s) beyond the reasonable control of a party and acts of nature (including, but not limited to, fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, shortage of materials, interruption or failure of power sources, strikes, labor disputes, delays in either party receiving permits because of delays in the permitting office not caused by such party's plans not being correctly submitted by Tenant, unavoidable casualty, or other similar or dissimilar events outside of such party's control, but in each case excluding causes delaying the payment of Rent due and payable hereunder. Notwithstanding the foregoing, if any work performed by Tenant, Tenant's contractors and/or subcontractors results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not be deemed Force Majeure upon which Tenant may rely for purposes of this Lease. Under no circumstances shall the non-payment of Rent or a failure attributable to a lack of funds be deemed to be (or to have caused) an event of Force Majeure.

ARTICLE 3

RENT

From and after the Lease Commencement Date, Tenant shall pay to Landlord Base Rent and Additional Rent as are set forth in this Article 3 and in Article 4 below.

3.1 Base Rent. Base Rent shall equal the following amounts:

Time Period (Months)	Base Rent Per Square Foot Per Annum	Monthly Base Rent	Base Rent Per Annum*
1 – 12	\$ 2.05	\$ 90,768	\$ 1,089,214
13 – 24	\$ 2.11	\$ 93,491	\$ 1,121,891
25 – 36	\$ 2.17	\$ 96,296	\$ 1,155,547
37 – 48	\$ 2.24	\$ 99,184	\$ 1,190,214
49 – 60	\$ 2.31	\$ 102,160	\$ 1,225,920
61 – 72	\$ 2.38	\$ 105,225	\$ 1,262,698
73 – 84	\$ 2.45	\$ 108,382	\$ 1,300,579
85 – 96	\$ 2.52	\$ 111,633	\$ 1,339,596
97 – 108	\$ 2.60	\$ 114,982	\$ 1,379,784
109 – 120	\$ 2.67	\$ 118,431	\$ 1,421,177

* Based on twelve (12) full calendar months (provided, however, as provided below, the first Lease year may not include twelve (12) full calendar months).

Tenant shall pay Base Rent to Landlord in equal monthly installments (“**Monthly Base Rent**”) in advance on the first day of each calendar month during the Term, without notice, demand, set-off or deduction; provided, that the first monthly installment of Base Rent shall be paid on or prior to the Closing Date (as defined in the Purchase Agreement). If the Lease Commencement Date occurs on a date other than the first day of a calendar month, the partial month in which the Lease Commencement Date occurs shall be the first (1st) Lease month for purposes of determining the duration of the Term and for purposes of determining the Monthly Base Rent rate applicable for such partial month (and Monthly Base Rent for such first (1st) Lease month shall be reduced based on the actual number of days in said partial month in which the Lease Commencement Date occurs).

3.2 Payment. All Base Rent and Additional Rent due and payable to Landlord under this Lease shall be paid by check or wire transfer to Landlord at the Landlord Payment Address, or as otherwise directed by Landlord from time to time. Payments of Rent (other than in cash), if initially dishonored, shall not be considered rendered until ultimately honored as cash by Landlord’s depository. Except as expressly set forth otherwise in this Lease, Tenant will pay all Rent to Landlord without demand, deduction, set-off or counter-claim.

3.3 Late Fee. It is agreed between the parties that late payment by Tenant of Base Rent, Additional Rent, or any other sum due hereunder will cause Landlord to incur costs not contemplated by this Lease, such costs to include, without limitation, processing and accounting charges, loss of use of funds, and unforeseen advancements by Landlord for mortgages and other financing costs. In the event of any such late payments by Tenant (i) it would be impracticable or extremely difficult to determine and fix the actual damages suffered by Landlord, and (ii) the charges hereinbelow set forth are, as of the date hereof, a fair and reasonable estimate of Landlord’s damages. If Tenant shall fail to pay in full any payment of Base Rent or Additional Rent when due under this Lease, then (i) Tenant shall pay to Landlord as Additional Rent, upon Landlord’s demand therefor, a late charge equal to the greater of (A) \$500 and (B) ten percent (10%) percent of the amount of the payment that is not paid when so due, and (ii) for so long as such amount remains outstanding on the first day of each calendar month thereafter, Tenant shall pay a monthly late charge equal to the greater of (A) \$500 and (B) ten percent (10%) of said outstanding amount for each such month not paid, until the outstanding Rent has been fully paid. Notwithstanding the foregoing, the late charge referenced above shall not be charged with respect to the first occurrence (but may be charged with respect to any subsequent occurrence) during any twelve (12) month period that Tenant fails to make payment when due, until three (3) business days after Landlord delivers written notice of such delinquency to Tenant. Nothing herein contained shall be intended to violate any Applicable Law and in all instances all such late charges shall be automatically reduced to any maximum applicable legal charge or rate allowable. The provisions of this Section 3.3 are in addition to all other rights and remedies available to Landlord for nonpayment of Base Rent or Additional Rent.

3.4 REIT/UBTI. Landlord and Tenant agree that no rental or other payment for the use or occupancy of the Premises is or shall be based in whole or in part on the net income or profits derived by any person or entity from the Building or the Premises. Tenant further agrees that it will not enter into any sublease, license, concession or other agreement for any use or occupancy of the Premises which provides for a rental or other payment for such use or occupancy based in whole or in part on the net income or profits derived by any person or entity from the Premises so leased, used or occupied.

3.5 Security Deposit. Contemporaneously with the execution of this Lease by Tenant, Tenant shall pay to Landlord the Security Deposit, which shall be held by Landlord to secure Tenant's performance of its obligations under this Lease. The Security Deposit shall be held by Landlord as security for the faithful performance of Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the Term. If at any time during the Term, any Rent or other sum payable by Tenant to Landlord under this Lease shall be overdue and unpaid, Landlord may, at its option, appropriate and apply any portion of the Security Deposit to the payment of any such overdue Rent or other sum. In the event of the failure of Tenant to keep and perform all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant, subject to all applicable notice and cure periods, then at Landlord's option, Landlord may appropriate and apply the entire Security Deposit, or so much thereof as may be necessary, to pay past due Rent, lost future Rent, and/or to compensate Landlord for any and all loss or damage sustained or suffered by Landlord, due to any breach by Tenant under this Lease. Should the entire Security Deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of Rent or any sums due and payable, Tenant shall, upon the written demand of Landlord, immediately remit to Landlord a sufficient amount of funds in cash to restore the Security Deposit to the original sum, and Tenant's failure to do so within five (5) business days after receipt of such demand shall constitute a default by Tenant. Landlord shall, within forty-five (45) days after expiration of the Term or early termination of this Lease, return to Tenant the portion of the Security Deposit remaining after deducting all damages, charges and other amounts (including, without limitation, Rent) not paid by Tenant to the extent required under this Lease. Landlord and Tenant agree that such deductions shall include, without limitation, all damages and losses that Landlord has suffered or that Landlord reasonably estimates that it will suffer to the extent caused by any breach of this Lease by Tenant. Tenant acknowledges that this Security Deposit is not prepaid Rent and shall not be applied by Tenant to the payment of Rent. Unless required otherwise by applicable Law, the Security Deposit may be commingled with other funds, and no interest shall be paid thereon. In the event that Landlord transfers the Security Deposit to Landlord's successor in interest, Landlord shall be discharged from any further liability with respect to the Security Deposit, provided such successor in interest has assumed, in writing, all of Landlord's obligations under this Lease from and after the effective date of such transfer. It is expressly agreed that the Security Deposit is to secure the obligations under this Lease, including without limitation the payment of Rent for the balance of the Term, and the Security Deposit is not subject to return as a deposit pursuant to California Civil Code Section 1950.7.

ARTICLE 4
ADDITIONAL RENT

4.1 Sales, Use or Other Taxes or Traffic Mitigation Charges. If during the Term any governmental authority having jurisdiction over the Building or the Land levies, assesses or imposes any mandatory traffic mitigation charge or any tax on this Lease, Landlord, the Premises, the Building or the Land or the Rents payable hereunder, in the nature of a sales tax, use tax or any other tax except (i) taxes on Landlord's income, (ii) estate or inheritance taxes, or (iii) Real Estate Tax Expenses, then Tenant shall pay Tenant's Share of any such tax or traffic mitigation charge to Landlord within fifteen (15) days after receipt by Tenant of notice of the amount of such tax or traffic mitigation charge.

4.2 Operating Expenses and Real Estate Tax Expenses. Commencing on the Lease Commencement Date, in addition to all other Rent set forth herein, for each calendar year during the Term, Tenant shall pay to Landlord as Additional Rent an amount equal to Tenant's Share of Operating Expenses and an amount equal to Tenant's Share of Real Estate Tax Expenses; provided, however, that for the calendar years during which the Term begins and ends, Tenant's Share of Operating Expenses and Tenant's Share of Real Estate Tax Expenses shall be prorated based upon the greater of: (i) the number of days during such calendar year that this Lease is in effect, or (ii) the number of days that Tenant actually occupies the Premises or any portion thereof.

4.3 Statements. For the calendar year which includes the Lease Commencement Date, and for each calendar year thereafter during the Term, Landlord shall deliver to Tenant a statement (listing each category of expense) (a "**Statement**") estimating Tenant's Share of Operating Expenses and Tenant's Share of Real Estate Tax Expenses for such calendar year, which Tenant shall pay in equal monthly installments in advance on the first day of each calendar month during each calendar year. Tenant shall continue to pay such estimated Tenant's Share of Operating Expenses and Tenant's Share of Real Estate Tax Expenses until Tenant receives the next such Statement from Landlord, at which time Tenant shall commence making monthly payments pursuant to Landlord's new Statement. After Tenant's receipt of a Statement from Landlord specifying Tenant's Share of estimated Operating Expenses and Tenant's Share of estimated Real Estate Tax Expenses payable during the calendar year, Tenant shall pay the difference between Tenant's monthly share of such sums for the preceding months of the calendar year and the monthly installments which Tenant has actually paid for said preceding months. Such amount shall be paid by Tenant to Landlord with the first payment of Additional Rent herein which is due at least thirty (30) days after Tenant's receipt of such Statement from Landlord.

4.4 Retroactive Adjustments. After the end of the calendar year which includes the Lease Commencement Date, and after the end of each calendar year thereafter during the Term, Landlord shall determine the actual Operating Expenses and Real Estate Tax Expenses for such calendar year, Landlord shall calculate the foregoing sums and Landlord shall provide to Tenant a Statement (listing each category of expense) of Tenant's Share of Operating Expenses and Tenant's Share of Real Estate Tax Expenses for the calendar year. Within thirty (30) days after delivery of any such Statement, Tenant shall pay to Landlord (i) any deficiency between the amount shown as Tenant's Share of Operating Expenses for the calendar year and the estimated payments thereof made by Tenant and (ii) any deficiency between the amount shown as Tenant's Share of Real Estate Tax Expenses for the calendar year and the estimated payments thereof made by Tenant. Tenant shall be credited with any excess estimated payments toward subsequent Rent payments by Tenant or Landlord shall pay such amount to Tenant if this Lease has terminated.

4.5 Tenant Right To Audit

4.5.1 Provided that Tenant delivers written notice of its intent to audit within one (1) year after receipt of Landlord's Statement of the actual Tenant's Share of Operating Expenses and Tenant's Share of Real Estate Tax Expenses, and completes such audit within two hundred ten (210) days after the date of Tenant's notice of intent to audit (which two hundred ten (210) day period will be extended for delays caused by Landlord), Tenant shall have the right, at Tenant's sole cost and expense (except as and to the extent set forth in clause 4.5.5 below), to conduct a reasonably and specifically defined audit of Landlord's books and records relating to Operating Expenses for the one (1) year immediately preceding the applicable Statement (provided, however, that Tenant shall not have the right to audit the Operating Expenses for any calendar year more than one (1) time) in accordance with the following terms and provisions:

(a) Tenant is not then in Default under this Lease with respect to payment of Base Rent and Additional Rent.

(b) Tenant shall have the right to have an employee of Tenant or a Qualified Auditor (as defined below) inspect and copy Landlord's accounting records at Landlord's office no more than once per calendar year.

4.5.2 Prior to commencing the audit, Tenant and the auditor shall: (i) provide Landlord with evidence that the auditor is from a nationally or regionally recognized accounting firm or from a lease audit firm having significant experience in the field of pass-through audits for commercial industrial buildings that is not paid on a contingency basis (a "**Qualified Auditor**") or is an employee of Tenant; and (ii) if the Qualified Auditor is not an employee of Tenant, each sign a confidentiality letter to be provided by Landlord, consistent with the provisions of this Section 4.5.

4.5.3 The audit shall be limited solely to: (i) confirming that the Operating Expenses reported in Landlord's Statement for the year audited are consistent with Landlord's books and records; (ii) confirming that Landlord has reasonable support for the expenses and items of expenses as reported by Landlord; (iii) confirming that Landlord has not accidentally or fraudulently charged the same item of expenses on a duplicate basis to the Building; (iv) confirming that Landlord has not charged any item specifically excluded from Operating Expenses in this Lease; (v) reviewing the procedure for gross-up to confirm that it is consistent with the terms of this Lease relative to such procedures; and (vi) confirming that Tenant has been properly allocated Tenant's Share of Operating Expenses. The Qualified Auditor or employee shall not make any judgments as to the reasonableness of any item of expense and/or the total Operating Expenses of the Building, nor shall such reasonableness be subject to audit.

4.5.4 If Tenant's Qualified Auditor or employee finds errors or over charges in Landlord's Statement, such findings must be promptly reported to both Landlord and Tenant, with full written support for such findings and specific reference to the relevant Lease provisions disqualifying such expenses, if applicable. Landlord shall have a reasonable opportunity to meet with Tenant's Qualified Auditor or employee to explain its calculation of Operating Expenses, it being the understanding of Landlord and Tenant that Landlord intends to operate the Building as a quality industrial building with services at or near the top of the market, and that the parties shall work in good faith to resolve any discrepancies. If Landlord agrees with said findings, appropriate adjustments shall be made in accordance with clause 4.5.5 below. If Landlord does not agree, either party may institute legal proceedings to have the matter decided by litigation.

4.5.5 If agreed to by Landlord and Tenant or finally adjudicated (in either case, hereinafter referred to as a "**Final Finding**") that Landlord has overcharged Tenant, Landlord shall credit Tenant toward the payment of the Base Rent next due and payable under this Lease the amount of such overcharge, and, if the overcharge is in excess of five percent (5%) of the correct amount, Landlord will pay to Tenant its reasonable out-of-pocket, documented costs of the audit and its reasonable attorneys' fees, not to exceed \$10,000 in the aggregate per audit. If the Final Finding determines that Tenant was undercharged, then within thirty (30) days after the Final Finding, Tenant shall reimburse Landlord as Additional Rent the amount of such undercharge.

4.5.6 The results of any audit of Operating Expenses hereunder shall be treated by Tenant, all auditors, and their respective employees and agents as confidential, and shall not be discussed with nor disclosed to any third party.

ARTICLE 5

USE

5.1 Permitted Use. Tenant shall use and occupy the Premises primarily for general industrial purposes and any other legal use that is permitted under the zoning classification for the Building.

5.2 Legal and Other Restrictions of Tenant's Use. Tenant shall not use or occupy the Premises for any unlawful purpose, or in any manner that will violate the certificate of occupancy for the Premises or the Building, or in any manner that will increase the number of parking spaces required for the Building or its full occupancy as required by Applicable Laws. Tenant shall comply with all present and future laws (including the Americans with Disabilities Act (the "**ADA**") (provided, however, if future laws require capital expenditures to the Building in order to comply with the ADA, then Landlord shall perform the same to the extent necessary to comply with the ADA, and the costs of thereof shall be amortized over the useful life, and included in Operating Expenses in accordance with the terms and conditions set forth in Section 1.19 hereof, except in each case to the extent such capital expenditures to the Building are required as a result of Tenant's particular manner of use or any Alterations performed by or on behalf of Tenant, such capital expenditures shall be performed by Tenant (or at Landlord's option, by Landlord on behalf of Tenant), at Tenant's sole cost and expense) and the regulations promulgated thereunder, as the same may be amended from time to time), ordinances (including zoning ordinances and land use requirements), regulations, orders and recommendations (including those made by any public or private agency having authority over insurance rates) of the jurisdiction in which the Building is located and of the federal, municipal and local governments, departments, commissions, agencies and boards having jurisdiction over the Building, and all fire and life safety codes (collectively, "**Applicable Laws**") concerning the use, occupancy and condition of the Premises and all machinery, equipment, furnishings, fixtures and improvements therein, all of which shall be complied with in a timely manner at Tenant's sole expense. If any such Applicable Laws requires an occupancy or use permit or license for the Premises or the operation of the business conducted therein (including a certificate of occupancy or nonresidential use permit), then Tenant shall obtain and keep current such permit or license at Tenant's expense and shall promptly deliver a copy thereof to Landlord. Use of the Premises is subject to all covenants, conditions and restrictions of record.

ARTICLE 6
CARE OF PREMISES

6.1 Maintenance and Repair of Premises. Tenant shall at its expense keep the interior, non-structural portions of the Premises (including all improvements, fixtures and other property located therein) in good order and repair. Tenant shall maintain all fixtures, furnishings and equipment located in, or exclusively serving, the Premises, shall take good care thereof and make all required repairs and replacements thereto. Tenant shall give Landlord prompt notice of any defects or damage to the structure of, or equipment or fixtures in, the Building or any part thereof. Tenant shall surrender the Premises at the end of the Term in the same condition as they were in on the Lease Commencement Date, ordinary wear and tear, casualties, condemnation and alterations or other interior improvements which it is permitted to surrender at the expiration or early termination of this Lease excepted and in all instances subject to Section 9.3.

6.2 Compliance with Applicable Laws. Except as specifically provided herein to the contrary and unless Tenant elects to take over this responsibility, Landlord shall, at Landlord's sole cost and expense, which costs and expenses may be included in Operating Expenses, maintain the Building, Building Structure (as hereinafter defined) and Building System (as hereinafter defined) in accordance with all Applicable Laws, including, but not limited to, the ADA, and shall promptly correct any violation thereof following receipt of actual knowledge of such violation, provided that any such non-compliance is not triggered by Tenant's particular use or Alterations, and Tenant shall only be responsible for costs of compliance to the extent non-compliance is triggered by Tenant's particular use of the Premises or Alterations.

6.3 Building Structure and Building Systems. Landlord agrees that at all times it will maintain (and shall promptly make any repair following receipt of actual knowledge of the need for such repair) 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), parking areas, stairs or stairwells, escalators, elevator cabs, plazas, pavement, sidewalks, curbs, entrances, landscaping, art work, sculptures, washrooms, mechanical, electrical and telephone closets, and all 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**") and, together with the Building Structure, collectively, the "**Base Building**") in good condition and repair, which costs and expenses may be included in Operating Expenses. 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, except to the extent caused by Tenant's (or its employee's, agent's or contractor's) acts or omissions or triggered by Tenant's particular use of the Premises or Alterations. Landlord shall have no obligation to make repairs until a reasonable time after Landlord receives written notice from Tenant of the need for such repairs; provided, however, unless Landlord responds to Tenant within one (1) business day following receipt of Tenant's initial written notice of the need for the applicable repair that Landlord will perform the applicable repair, Tenant shall thereafter have the right to make such repairs upon a second written notice to Landlord, and if Tenant elects to do so, Landlord shall pay Tenant all reasonable out-of-pocket costs and expenses for such repair no later than thirty (30) days after Landlord's receipt of written notice and copies of all paid invoices therefor documentation evidencing such repairs. Subject to the foregoing, Landlord shall not be liable to Tenant for any failure to make any such repairs, or to perform any maintenance hereunder, and there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of or a failure to make any repairs, alterations or improvements in or to any portion of the Premises or the Building, or in or to fixtures, appurtenances and equipment therein, including, without limitation, any repairs, maintenance, alterations or improvements that are required by Applicable Laws. To the extent allowed by law, Tenant waives the right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, and the right to terminate the Lease under Section 1932(1) of the California Civil Code, and any other laws, statutes or ordinances now or hereafter in effect of like import.

6.4 “As-Is”. Tenant acknowledges that it is currently in possession of the Premises and that it accepts the Premises in its “AS IS” condition, with no representations or warranties by Landlord of any kind as to the condition of the Premises, including whether it complies with applicable laws, such as those related to handicap access, or its suitability for any particular use and Landlord shall not be obligated to reimburse Tenant or provide any allowance for any costs related to the demolition or construction of improvements therein. The foregoing acknowledgement is not intended in any way to limit, abridge or diminish Landlord’s continuing obligations under the Lease for repair and maintenance pursuant to Section 6.3 above.

6.5 California Civil Code Section 1938. Landlord and Tenant acknowledge and agree that the Premises have not been inspected by a Certified Access Specialist (“**CASp**”) pursuant to Section 1938 of the Civil Code (“**Code**”). The parties further agree, pursuant to subdivision (e) of Section 55.53 of the Code, to the following:

6.5.1 A CASp can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, Landlord may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant, if requested by the Tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of the construction-related accessibility standards within the Premises.

6.5.2 Pursuant to the paragraph above, the parties expressly agree that, if Tenant elects to obtain a CASp inspection of the Premises, Tenant shall be solely responsible for scheduling the inspection and that such inspection shall not unreasonably interfere with the operations of the Premises and/or the Building or disturb any other tenant or occupant thereof. Tenant shall be solely responsible for any and all costs to perform the CASp inspection, including any ancillary costs relating thereto. If the results of the inspection determine that modifications or Alterations are required to meet all applicable construction-related accessibility standards, Tenant agrees to perform such work, in its sole cost and expense and provided approvals from Landlord are obtained pursuant to the terms and conditions of the Lease. Tenant agrees that all work shall be performed in a good and workmanlike manner in compliance with all laws and using best efforts to minimize any disruption to the Premises and/or the Building and other tenants or occupants thereof.

ARTICLE 7

ALTERATIONS BY TENANT

7.1 Making of Alterations; Landlord's Consent. Tenant shall not make or permit to be made any Alterations without the consent of Landlord as provided herein both as to whether the Alterations may be made and as to how and when they will be made. Notwithstanding the foregoing, Landlord shall not unreasonably withhold, condition or delay its consent to any Alteration which Tenant may desire to make to the Premises except to the extent such Alteration (1) adversely affects the Building Structure or Building Systems (including, without limitation, any overloading), (2) affects the exterior appearance of the Building, or (3) would not comply with Applicable Laws (each of the foregoing items (1) through (3) being sometimes referred to herein as a "**Design Problem**"). Notwithstanding the foregoing, Tenant shall have the right, after providing at least ten (10) days' notice to Landlord, but without the necessity of obtaining Landlord's consent, to recarpet, repaint, or to make purely "cosmetic" or "decorative" nonstructural Alterations in and to the Premises that (I) do not fall within clauses (1) through (3) above, (II) do not require the issuance of a building permit, and (III) do not cost more than Two Hundred Fifty Thousand Dollars (\$250,000) for each particular proposed Alteration. Tenant shall reimburse Landlord within thirty (30) days after receipt of a written invoice for out-of-pocket sums actually paid by Landlord for third party examination of Tenant's plans for Alterations requiring Landlord's consent, not to exceed \$2,500.

Any Alterations shall be made at Tenant's expense, by its contractors and subcontractors, in a good, workmanlike and first-class manner, and in accordance with plans and specifications approved in advance by Landlord, and only after Tenant: (i) has obtained all necessary permits from governmental authorities having jurisdiction and has furnished copies thereof to Landlord; and (ii) has submitted to Landlord an architect's certificate that the Alterations will conform to all Applicable Laws. Landlord's consent to any Alterations and approval of any plans and specifications constitutes approval of no more than the concept of these Alterations and not a representation or warranty with respect to the quality or functioning of such Alterations, plans and specifications. Tenant shall be and is solely responsible for the Alterations and for the proper integration thereof with the Building, the Building Systems and existing conditions. At no charge to Tenant, Landlord shall have the right, but not the obligation, to inspect and review the making of any Alterations, so long as such inspection does not hinder or delay the performance of such Alterations in more than a de minimis manner. All Alterations involving structural, electrical, mechanical or plumbing work, the heating, ventilation and air conditioning system of the Premises or the Building, the roof of the Building, and/or any other portion of the Base Building shall be performed by contractors and subcontractors reasonably approved by Landlord and at Tenant's expense, or by Landlord's designated contractor or subcontractor at Tenant's expense, provided that the fees charged by such designated contractor or subcontractor do not exceed the market range applicable to the Sunnyvale, California submarket in more than a de minimis manner and further provided that such fees are based on no less favorable rate structures than those provided by such designated contractor or subcontractor to Landlord without mark-up. Within ten (10) days following completion of any Alterations, except with respect to cosmetic or decorative nonstructural Alterations which do not require Landlord's approval, Tenant shall deliver to Landlord a complete set of "as built" plans showing the Alterations, in hard copy and an electronic version thereof which is acceptable to Landlord (the "**As-Built Plans**"), or shall reimburse Landlord for any expense incurred by Landlord in causing the Building plans to be modified to reflect the Alterations. Tenant shall give Landlord written notice not less than ten (10) days prior to any Alterations to be performed by Tenant to the Premises thereby permitting Landlord to record and post notices of non-responsibility.

7.2 Contractor Requirements. Prior to commencing Alterations, Tenant shall provide to Landlord the name and address of each contractor and subcontractor which Tenant intends to employ to perform Alterations, the use of which subcontractors and contractors shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed if (1) the contractor or subcontractor is properly licensed and (2) neither Landlord nor any affiliate of Landlord has a prior experience with such contractor or subcontractor which was unsatisfactory to Landlord or such affiliate. Prior to the commencement of any of Alterations, Tenant shall deliver to Landlord, with respect to each contractor and subcontractor which Tenant intends to employ to perform any of Alterations, a certificate of insurance from each such contractor or subcontractor specifying Landlord as an additional insured and evidencing that each such contractor or subcontractor has obtained the following insurance coverages:

(a) commercial comprehensive general liability insurance, on a standard ISO form or its equivalent, which shall include independent contractor's liability coverage, contractual liability coverage, products and completed operations coverage, and a "per project" endorsement, to afford protection, with limits for each occurrence, of not less than Two Million Dollars (\$2,000,000) combined single limit with respect to bodily injury and property damage;

(b) comprehensive automobile liability insurance for owned, non-owned, and hired vehicles with limits for each occurrence of not less than One Million Dollars (\$1,000,000) with respect to bodily injury or death and One Million Dollars (\$1,000,000) with respect to property damage; and

(c) worker's compensation and employer's liability insurance in form and amounts required by law and satisfactory to Landlord.

Said contractors and subcontractors shall also comply with other reasonable industry standard requirements of Landlord.

7.3 No Liens. Tenant shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord or Tenant in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises by or through Tenant on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon and that, subject to Section 12.2 with respect to Tenant's limitations on indemnifying Landlord, Tenant will indemnify, defend and hold Landlord harmless from and against any and all loss, cost or expense (including without limitation attorneys' fees and costs) based on or arising out of asserted claims or liens created by or through Tenant against the leasehold estate or against the right, title and interest of Landlord in the Premises or under the terms of this Lease. Tenant shall take all necessary steps to minimize the likelihood of mechanic's or materialmen's liens are filed against the Premises, the Building or the Land as a result of any Alterations made by the Tenant. If any mechanic's lien is filed, Tenant shall discharge the lien within ten (10) business days thereafter, at Tenant's expense, by paying off or bonding the lien, Tenant failing to do so within such ten (10) business day period, Landlord shall have the right, but no obligation, in addition to all other remedies, to discharge such lien at Tenant's expense, and Landlord's cost thereof shall be reimbursed by Tenant upon demand as Additional Rent hereunder. If Landlord gives its consent to the making of any Alteration, such consent shall not be deemed to be an agreement or consent by Landlord to subject its interest in the Premises or the Building to any liens which may be filed in connection therewith, nor shall Landlord's receipt of any fee in connection with any Alterations or Landlord's payment of any allowance to Tenant with respect to any work performed in or with respect to the Premises by or on behalf of Tenant be deemed to constitute a basis for Landlord's interest in the Premises or the Building to be subjected to any lien. Landlord and Tenant acknowledge and agree that their relationship is and shall be solely that of "landlord-tenant" (thereby excluding a relationship of "owner-contractor", "owner-agent", "partners" or other similar relationships).

ARTICLE 8 **EQUIPMENT**

8.1 Permitted Equipment. Tenant shall not install or operate in the Premises any equipment or other machinery that, in the aggregate, will cause a Design Problem.

8.2 Generator. Landlord acknowledges that Tenant shall have the right, at Tenant's option and at Tenant's sole cost and expense, to install, operate, repair, replace and maintain supplemental generators, fuel tank or both of same (collectively, the "**Generator**") in a location at the Premises reasonably determined by Tenant and subject to Landlord's consent, which shall not be unreasonably withheld (the "**Generator Space**"), the use of which Generator Space shall be at no charge to Tenant; provided, however, that (i) Tenant shall be solely responsible for obtaining all necessary governmental permits, licenses and approvals with regard to the operation of the Generator, and shall comply with all Applicable Laws pertaining to such use; (ii) Tenant shall be solely responsible for all costs of installation, maintenance, insurance, repair and replacement of the Generator, (iii) Tenant shall be solely responsible for all costs of operation of such Generator (including, but not limited to, all costs of electrical consumption from such Generator), and (iv) Tenant's installation of the Generator shall be subject to Landlord's prior written approval in accordance with the terms and conditions of Section 8.1 hereof. Tenant shall comply with Landlord's standard requirements regarding Tenant's use, operation and maintenance of the Generator with respect to noise, vibration, screening and testing. Landlord shall have the right, in Landlord's reasonable judgment, by providing Tenant with prior written notice and paying the reasonable cost of relocation of the Generator, to relocate the Generator from the Generator Space to another area which shall permit the Generator to continue to serve the Premises as it had prior to such relocation. In addition, Landlord and Tenant acknowledge that the installation of the Generator shall include the costs of installation of connecting conduits, and all Actual Costs of installation, operation, maintenance, repair, replacement and removal of the Generator, all of which costs shall be paid solely by Tenant. The installation and placement of the Generator shall comply with all Applicable Laws.

8.3 Additional HVAC. Landlord acknowledges that Tenant shall have the right, at Tenant's sole cost and expense, to install, operate, repair, replace and maintain supplemental heating and air conditioning units (collectively, "**Additional HVAC Equipment**"), at Tenant's option, in a location or locations within the Premises; provided, however, that (i) Tenant shall be solely responsible for obtaining all necessary governmental permits, licenses and approvals with regard to the operation of the Additional HVAC Equipment, and shall comply with all Applicable Laws pertaining to such use; (ii) Tenant shall be solely responsible for all costs of installation, maintenance and repair of any Additional HVAC Equipment, (iii) Tenant shall be responsible for all costs of operation of such Additional HVAC Equipment (including, but not limited to, all costs of electrical consumption from such Additional HVAC Equipment), and (iv) Tenant's installation of any Additional HVAC Equipment (including, without limitation, the location(s) within the Premises) shall be subject to Landlord's prior written approval, in accordance with the terms and conditions of Section 8.1 of this Lease. Tenant shall not remove any existing convector units nor any plumbing in the Building without Landlord's prior written consent, which may be withheld or denied in Landlord's sole and absolute discretion. The costs of operation of any Additional HVAC Equipment shall be submetered using submeters installed by Tenant, at its sole cost and expense, and payable as Additional Rent to Landlord within thirty (30) days following Landlord's written demand therefor. The cost of maintenance, repair and replacement of such submeter(s) shall be Tenant's sole responsibility, at Tenant's sole cost and expense. At the expiration or earlier termination of this Lease, the Additional HVAC Equipment shall be removed from its location at Tenant's sole cost and Tenant shall restore such area to the condition existing prior to such installation, and any damage caused by such removal shall be repaired at Tenant's sole cost. If Tenant fails to so remove the Additional HVAC Equipment within ten (10) days of the termination of this Lease, Tenant hereby authorizes Landlord to, following ten (10) business days' notice to Tenant, remove and dispose of the Additional HVAC Equipment and charge Tenant for all costs and expenses incurred.

8.4 Condenser Water Loop. In addition to the foregoing, if required for the operation of the Additional HVAC Equipment, at Tenant's election, Landlord shall provide Tenant with the right to tap into the condenser water loop serving the Building at no additional charge to Tenant, and Tenant shall have the right to use Tenant's proportionate share of the available condenser water based upon the rentable area of the Premises versus the rentable area of the Building. Condenser loop piping, including a valve and connection stub, shall be made available to Tenant in the mechanical room of the Building.

ARTICLE 9
OWNERSHIP AND REMOVAL OF PROPERTY

9.1 Landlord's Property. Any Alterations and other improvements and any equipment, machinery, furnishings and other property, permanently installed in the Premises, the Building or the Land by or on behalf of Landlord or Tenant (collectively, "**Equipment**"): (i) shall become the property of Landlord at the end of the Term, and (ii) shall be surrendered to Landlord with the Premises as a part thereof at the end of the Term, except for Tenant's Personal Property any Alterations and other improvements and any equipment, machinery, furnishings and other property performed or installed following the Lease Commencement Date for which Landlord requires removal (all of which Tenant shall remove prior to the Lease Expiration Date and Tenant shall repair any damage caused by such removal); provided, however, that Tenant may request that Landlord designate any such removal requirements with respect to any Alterations and other improvements and any equipment, machinery, furnishings and other property performed or installed following the Lease Commencement Date, which request shall be made by written notice to Landlord at the time Tenant requests Landlord's approval for the applicable Alterations or other improvements or prior to the installation of any equipment, machinery, furnishings and or personal property. Except as set forth above, Tenant shall have no obligation to remove any Alterations or other improvements or any equipment, machinery, furnishings and other property, permanently installed in the Premises, the Building or the Land by or on behalf of Landlord or Tenant, except for Tenant's Personal Property, on the Lease Expiration Date and Landlord agrees not to remove the Equipment unless and until the Lease terminates. Provided, however, Tenant may at any time remove all or any part of the Equipment as long as it repairs all damage to the Building caused by such removal. Notwithstanding anything to the contrary in this Lease, in the event that this Lease terminates (without any election by either party), because of damage and destruction under Article 14 or condemnation under Article 16, any insurance proceeds actually received by Landlord and solely and directly paid for Tenant's Equipment shall be paid by Landlord to Tenant upon receipt of such proceeds by Landlord (provided, however, that the foregoing shall not impose any requirement on Landlord to insure Tenant's Equipment).

9.2 Removal of Property At End of Term. On or before the Lease Expiration Date, Tenant shall remove from the Building and the Land all of Tenant's Personal Property and repair any and all damage caused by such removal. Any Tenant's Personal Property belonging to Tenant or any other personal property belonging to any other person or entity claiming under or through Tenant which is left in the Building or on the Land after the date this Lease is terminated for any reason shall be deemed to have been abandoned. In such event, Landlord shall have the right to store such property and/or to dispose of it in whatever manner Landlord considers appropriate, at Tenant's sole cost, without waiving its right to claim from Tenant all expenses and damages caused by Tenant's failure to remove such property, and Tenant and any other person or entity shall have no right to compensation from or any other claim against Landlord as a result.

9.3 Surrender Condition. Tenant agrees to surrender the Premises on the last day of the Term, or other sooner termination of this Lease, broom clean and in the condition as of the Lease Commencement Date, subject to ordinary wear and tear, condemnation, Hazardous Materials (other than those released or emitted by Tenant or any person or entity acting on behalf of or under Tenant) and any casualty damage. Notwithstanding anything in this Lease to the contrary, Tenant will not have to remove any improvements that existed in the Premises on the Lease Commencement Date or which existed in the Premises as of the Effective Date.

ARTICLE 10
LANDLORD'S ACCESS TO PREMISES

Landlord (or Landlord's designated agents) may at any reasonable time, upon two (2) business days' notice to Tenant (which notice may be given by email to the following address lstephens@drstephens.com), enter the Premises to examine them, or to make alterations or repairs thereto in order to fulfill its obligations under this Lease; however, in the case of any emergency that involves imminent damage to property or imminent danger of bodily harm ("**Emergency**"), Landlord and its agents may enter the Premises at any time and in any manner so long as Landlord subsequently and promptly notifies Tenant of such entry within a reasonable time thereafter. Tenant shall allow the Premises to be exhibited by Landlord: (i) at any reasonable time to representatives of actual or proposed lenders, or investors or prospective purchasers of the Building, and (ii) during the last twelve (12) months of the Term, as extended, in each case at any reasonable time, upon two (2) business days' notice to Tenant, to persons who may be interested in leasing the Premises. Landlord reserves the right and shall be permitted reasonable access to the Premises upon two (2) business days' notice to Tenant to install facilities within and through the Premises in order to fulfill its obligations under this Lease and to install and service any systems deemed advisable by Landlord to provide services or utilities to any tenant of the Building or otherwise in connection with the Building in order to fulfill its obligations under this Lease. Notwithstanding the foregoing, Tenant shall be permitted to maintain secured areas in the Premises if Tenant notifies Landlord in writing that it has such a secured area(s) and of the location(s) of same, in which case Landlord shall not enter such area(s) without providing Tenant three (3) business days prior notice (which may be given by email to the address set forth in this paragraph above), and affording Tenant the opportunity to have a representative of Tenant present during any such entry, and, in consideration for such rights granted by Landlord, Tenant hereby authorizes Landlord and any of its employees, agents and contractors to break any such locks and the doors and walls to which they are attached only in the event of (x) an Emergency (as defined above), or (y) Tenant's refusal to provide access to such secured areas following the required three (3) business days' notice from Landlord. Landlord shall have no obligation to make repairs or provide services to such areas during the time Landlord is denied access to such space.

ARTICLE 11
SERVICES AND UTILITIES

11.1 Services Provided. Tenant by using the Building Systems shall be provided the following, without additional charge, except as otherwise provided herein:

11.1.1 Central heating and air conditioning during Building Hours, exclusive of legal holidays, during the seasons of the year and within the temperature ranges usually furnished in comparable quality industrial buildings in the city (or, if not a city, other local jurisdiction) in which the Building is located. Landlord shall provide all such heat and air conditioning at Tenant's expense, by including such expense as part of Operating Expenses.

11.1.2 Electrical facilities to furnish electricity up to the Premises.

11.1.3 Restroom facilities as they currently exist.

11.1.4 Intentionally Omitted.

11.1.5 Reasonable access to the Premises in accordance with Article 10.

11.1.6 Tenant shall provide security to the Building at it deems to be necessary. Security shall be the sole responsibility of Tenant. No Security measures (including any infrastructure or staffing) will be provided by Landlord.

11.2 Failure to Provide Services. Landlord shall have no liability for damages, abatement of Rent or otherwise, to Tenant or others based on any failure by Tenant to furnish or delay in furnishing the foregoing or any other utilities or services hereunder, or for any diminution in the quality or quantity thereof, due, in whole or in part, to Force Majeure, repair or maintenance work or any other reason, and such failure shall neither render Landlord liable for damages to either person or property, nor be construed as an eviction of Tenant, nor a disturbance of Tenant's use and possession of the Premises, nor cause a diminution or abatement of Rent nor relieve Tenant of any of Tenant's obligations hereunder. Furthermore, Landlord shall not be liable under any circumstances for a loss of, or injury to, property or for injury to, or interference with, Tenant's business, including, without limitation, loss of profits, however occurring, through or in connection with or incidental to a failure to furnish any of the services or utilities required hereunder. To the extent possible, any scheduled Building Systems shutdown shall be reasonably coordinated with Tenant to minimize impact on Tenant's business operations. Notwithstanding the foregoing or anything to the contrary contained herein, if any of the essential services to be provided pursuant to this Lease is suspended as a result of the gross negligence or willful misconduct of Landlord (or Landlord's agents, employees or contractors) (a "**Service Interruption**"), and such Service Interruption renders all or a material portion of the Premises unusable for Tenant's normal business purposes permitted hereunder and Tenant does not actually use the affected portion of the Premises as a result thereof, for a continuous period of five (5) or more consecutive business days following written notice thereof from Tenant (except in the event of Force Majeure or any act or omission of Tenant) (the "**Service Interruption Eligibility Period**"), then, as Tenant's sole remedy in connection with such Service Interruption, Base Rent due under this Lease shall be abated based on the proportion that the affected portion of the Premises bears to the entire Premises (provided, however, that if the affected portion of the Premises is such that Tenant cannot operate for its normal business purposes permitted hereunder from, and does not actually use, the entirety of the Premises, then all Base Rent shall so abate) from the expiration of the Service Interruption Eligibility Period until the earlier of (i) the date the Service Interruption is corrected and (ii) the date Tenant is able to use the affected portion of the Premises for its normal business purposes..

11.3 Property Energy Reporting. Following Tenant's written request, to the extent available, Landlord shall deliver to Tenant information relating to Tenant's electricity and energy consumption at the Premises (which is not separately metered by Tenant) or any other matter related to Tenant's occupancy for Tenant's ESG, CSR or other sustainability or corporate filing requirements.

ARTICLE 12
REPAIRS & INDEMNIFICATION

12.1 Repairs. Except as otherwise expressly provided in this Lease, all injury, breakage and damage to the Land, the Building or the Premises caused by any act or omission of Tenant shall be repaired by and at the sole expense of Tenant to the extent the waiver of subrogation is not applicable, except Landlord shall have the right, at its option, to make such repairs and to charge Tenant for all costs and expenses incurred in connection therewith as Additional Rent payable within ten (10) days after the rendering of a bill therefor.

12.2 Indemnification. Tenant hereby agrees to indemnify and hold harmless Landlord and its shareholders, members, partners, contractors, licensees, invitees, affiliates, and their respective employees, agents, officers and directors and contractors (collectively, "Landlord Parties"), from and against all costs, damages, claims, liabilities and expenses, including but not limited to court costs and reasonable attorneys' fees, incurred by Landlord and to the extent caused by: (i) Tenant's use and occupancy of the Premises during the Term of this Lease, or (ii) the business conducted by Tenant therein or Tenant's presence in the Building or on the Land in violation of this Lease and, or (iii) any Default by Tenant under this Lease, or (iv) any negligence of Tenant or any person claiming under Tenant, or the contractors, agents, employees, invitees, or visitors of Tenant or any such person, in, on or about the Building or the Land, except in any of the foregoing cases set forth in (i) through (iv) as and to the extent caused by the negligence or willful misconduct of Landlord or Landlord Parties, Landlord's violation of any law, order or regulation, or a breach of Landlord's obligations under this Lease (beyond any applicable notice, cure and/or grace period provided hereunder). Further, Tenant's agreement to indemnify Landlord pursuant to this paragraph is not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant pursuant to the provisions of this Lease, to the extent such policies cover the matters subject to Tenant's indemnification obligations; nor shall they supersede any inconsistent agreement of the parties set forth in any other provision of this Lease. Notwithstanding anything to the contrary in this Lease, Landlord shall indemnify, protect and hold harmless Tenant from, all losses, damages, liabilities, claims, attorneys' fees, costs and expenses to the extent caused by the gross negligence or willful misconduct of Landlord or Landlord Parties, Landlord's violation of any law, order or regulation, or a breach of Landlord's obligations under this Lease (beyond any applicable notice, cure and/or grace period provided hereunder). The provisions of this paragraph shall survive the expiration or sooner termination of this Lease with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

ARTICLE 13
LIMITATION ON LANDLORD LIABILITY

13.1 Limitation on Total Liability. Notwithstanding any other provision of this Lease, it is expressly understood and agreed that the total liability of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant hereunder and/or Tenant's use of the Premises, shall be limited to the Landlord's interest and equity in the Property. No other property or assets of Landlord or any partner or owner of Landlord shall be subject to levy, execution, or other enforcement proceedings or other judicial process for the satisfaction of any judgment or any other right or remedy of Tenant arising out of or in connection with this Lease, the relationship of Landlord and Tenant hereunder and/or Tenant's use of the Premises. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this paragraph shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor Tenant shall be liable under any circumstances for injury or damage to, or interference with, the other party's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring, except as and to the extent of Tenant's liability under Articles 19 or 31.

13.2 Assumption of Risk. Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever and agrees that Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors (collectively, "Landlord Parties") shall not be liable for, and are hereby released from any responsibility for, any injury or damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant, except in each case to the extent of the negligence or willful misconduct of Landlord or its employees, contractors or agents, Landlord's violation of any law, order or regulation, or a breach of Landlord's obligations under this Lease.

ARTICLE 14
DAMAGE AND DESTRUCTION

14.1 Repair of Damage to Premises by Landlord. To the extent that Landlord does not have knowledge of the same, Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. If this Lease does not terminate pursuant to Section 14.2 of this Lease or for any other reason, if the Premises, Building Structure, Building Systems, or any portion of the Land serving or providing access to the Premises shall be damaged by fire or other casualty, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment (not to exceed sixty (60) days with respect to such adjustment) or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 14, restore the Base Building and such Land. Such restoration shall be to substantially the same condition of the Base Building and the Land prior to the casualty, except for modifications required by zoning and building codes and Applicable Laws or reasonably required by any Mortgagee or any other modifications to the Base Building and/or the Land deemed desirable by Landlord. If this Lease does not terminate pursuant to Section 14.2 of this Lease or for any other reason, Tenant shall, at its sole cost and expense (regardless of the availability or sufficiency of insurance proceeds), repair any injury or damage to any Alterations installed in the Premises and shall return the Premises to substantially their pre-existing condition, subject to such Alterations as Tenant desires to make in accordance with the terms and provisions of this Lease. Prior to the commencement of construction, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto, which Landlord approval shall not be unreasonably withheld unless a Design Problem exists. Landlord shall have the right to reasonably approve the contractors to perform such improvement work. Landlord shall not be liable for any inconvenience or annoyance to Tenant or its visitors, or injury to Tenant's business resulting in any way from such damage or the repair thereof; provided however, that if such fire or other casualty shall have damaged the Premises or Land necessary to Tenant's occupancy, Landlord shall allow Tenant an abatement of Rent, provided that Tenant's right to Rent abatement pursuant to the terms of this Article 14 shall terminate as of the date Tenant should have completed repairs to the Premises (including a reasonable period for re-installation of Tenant's furniture, fixtures and equipment and moving back into the damage portion of the Premises) assuming Tenant used reasonable due diligence in connection therewith (provided that in no event shall such Rent re-commence until such time as Landlord has restored the Base Building to a commercially reasonable condition and Landlord has obtained whatever occupancy permits that are required to allow Tenant to perform work necessary to allow Tenant to conduct business operations from its Premises (assuming that Tenant has received a certificate of occupancy, temporary certificate of occupancy, or its legal equivalent, for its Premises, which shall remain Tenant's obligation)).

14.2 Landlord's Option to Repair. Notwithstanding the terms of Section 14.1 of this Lease, Landlord may elect not to rebuild and/or restore the Premises, Building and/or Property, and instead terminate this Lease, by notifying Tenant in writing of such termination within sixty (60) days after the date of discovery of the damage, such notice to include a termination date giving Tenant ninety (90) days to vacate the Premises, but Landlord may so elect only if the Building or Property shall be damaged by fire or other casualty or cause, and one or more of the following conditions is present: (i) in Landlord's reasonable judgment, repairs cannot reasonably be completed within six (6) months after the date of discovery of the damage (when such repairs are made without the payment of overtime or other premiums) and Landlord does not commence rebuilding or reconstructing within six (6) months from the date of such damage and/or destruction; (ii) the damage to the Base Building and Land is not fully covered by Landlord's insurance policies and Landlord elects not to commence rebuilding or reconstructing within six (6) months from the date of such damage and destruction; or (iii) the damage occurs during the twelve (12) months of the Term; provided, however, that if Landlord does not elect to terminate this Lease pursuant to Landlord's termination right as provided above and so long as Tenant (or any of Tenant's contractors, agents, employees, invitees, or visitors of Tenant or any such person, in, on or about the Building or the Land) did not cause the damage, and, based upon the good faith estimate provided by Landlord to Tenant, either (a) the repairs will require an interruption of Tenant's use of all or a substantial portion of the Premises for a period in excess of nine (9) months after the date of the discovery of the damage, or (b) the Premises or the Building is destroyed or damaged to any substantial extent during the last six (6) months of the Term (as the same may be extended), then Tenant may elect, no earlier than forty-five (45) days after the date of the damage and not later than ninety (90) days after the date of such damage, to terminate this Lease by notice to Landlord effective as of the date specified in the notice, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days following Tenant's delivery of such notice. At any time, from time to time, after the date occurring forty-five (45) days after the date of the damage, Tenant may request that Landlord provide Tenant with its reasonable opinion of the date of completion of the repairs, and Landlord shall respond to such request within fifteen (15) business days.

14.3 The provisions of this Lease, including this Article 14, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or the Building, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation of similar import, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises or the Building.

ARTICLE 15
INSURANCE

15.1 Tenant's Insurance.

15.1.1 Throughout the Term, Tenant shall obtain and maintain (a) commercial general liability insurance (written on an occurrence basis) including contractual liability coverage insuring the obligations assumed by Tenant under this Lease, premises and operations coverage, broad form property damage coverage and independent contractors coverage, and containing an endorsement for personal injury, (b) "all risk" business property insurance covering Tenant's business personal property, stock, and, if applicable, inventory, (c) comprehensive automobile liability insurance (covering all vehicles owned, maintained, used or hired by or on behalf of Tenant, or otherwise non-owned and used in connection with Tenant's business carried on, in and from the Premises), (d) workers' compensation insurance and employer's liability insurance, and (e) business income interruption plus extra expense insurance. Such commercial general liability insurance shall be in minimum amounts typically carried by prudent tenants engaged in similar operations, but in no event shall be in an amount less than One Million Dollars (\$1,000,000.00) per occurrence with a Two Million Dollars (\$2,000,000.00) annual aggregate, and Tenant shall also obtain and maintain umbrella excess liability insurance with a policy limit of not less than Five Million Dollars (\$5,000,000.00). Such property insurance shall be in an amount not less than that required to replace all of the original tenant improvements within the Premises, all Alterations and all other contents of the Premises (including Tenant's trade fixtures, decorations, furnishings, equipment and personal property). Such automobile liability insurance shall be in an amount not less than One Million Dollars (\$1,000,000.00) bodily injury and property damage for each accident. Such worker's compensation insurance shall carry minimum limits as defined by the law of the jurisdiction in which the Building is located (as the same may be amended from time to time) but not less than Five Hundred Thousand Dollars (\$500,000.00) for each accident. Such employer's liability insurance shall be in an amount not less than One Hundred Thousand Dollars (\$100,000.00) for each accident, Five Hundred Thousand Dollars (\$500,000.00) per person for illness or disease-policy limit, and One Hundred Thousand Dollars (\$100,000.00) disease each employee. Such business income interruption shall be for one year (1) plus extra expense insurance in such amounts, such coverage not to exceed Ten Million Dollars (\$10,000,000), as will reimburse Tenant for actual direct or indirect loss of earnings. Notwithstanding anything to the contrary contained herein, Tenant shall carry and maintain during the entire Term, at Tenant's sole cost and expense, such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord based upon the then custom in the comparable area for comparable tenants.

15.1.2 The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. All insurance carried by Tenant pursuant to Section 15.1.1 shall: (a) be issued by a company that is licensed to do business in the jurisdiction in which the Building is located, and that has a rating equal to or exceeding A-VII from Best's Insurance Guide; (b) name Landlord, the managing agent of the Building, the holder of any Mortgage, and any other persons or entities designated by Landlord as additional insureds/loss payees (as applicable); (c) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured may have waived its right of action against any party prior to the occurrence of a loss (Tenant hereby waiving its right of action and recovery against and releasing Landlord and its employees and agents (including Landlord's managing agent) from any and all liabilities, claims and losses for which they may otherwise be liable to the extent Tenant is covered by insurance carried or would have been covered by insurance it is required to carry under this Lease); (d) provide that the insurer thereunder waives all right of recovery by way of subrogation against Landlord, its partners, agents (including Landlord's managing agent), employees, and representatives, in connection with any loss or damage covered by such policy; (e) be primary and non-contributory; and (f) contain an endorsement for cross liability and severability of interests. Tenant will notify Landlord within five (5) business days of any cancellation, failure to renew, reduction of amount of insurance or change in coverage of such occurrence. Tenant shall deliver a certificate (on Acor Form 27) of all such insurance to Landlord prior to accessing the Premises and at least annually thereafter not later than one (1) day prior to the date of expiration of each such policy. Neither the issuance of any insurance policy required under this Lease nor the minimum limits specified herein shall be deemed to limit or restrict in any way Landlord's or Tenant's liability arising under or out of this Lease except as may result from the waiver of subrogation. Tenant shall obtain and deliver to Landlord, Third Party Contractor's (as hereinafter defined) certificates of customary insurance and applicable customary endorsements at least seven (7) business days prior to the commencement of work in or about the Premises by any vendor or any other third-party contractor (collectively, a "Third Party Contractor"). All such insurance shall name Landlord as an additional insured under such party's liability policies as required above and (b) comply with Landlord's commercially reasonable minimum insurance requirements.

15.2 Landlord's Insurance. Landlord agrees to carry and maintain special cause of loss property insurance (with replacement cost coverage) covering the Building and Landlord's property therein in an amount required by its insurance company to avoid the application of any coinsurance provision. Landlord hereby waives its right of recovery against Tenant and releases Tenant from any and all liabilities, claims and losses for which Tenant may otherwise be liable to the extent Landlord is entitled to recover from its property insurance therefor. Landlord shall secure a waiver of subrogation endorsement from its insurance carrier. Landlord also agrees to carry and maintain commercial general liability insurance in limits it reasonably deems appropriate.

15.3 Effect of Tenant's Activities on Insurance. Tenant shall not conduct or permit to be conducted any activity, or place any equipment in or about the Land, the Building or the Premises which will increase the rate of (unless Tenant pays for such increase), or make void or voidable, any fire or other insurance maintained or required to be maintained by Landlord or any Mortgagee on the Building, the Land or the property kept thereon or therein, which will conflict with the provisions of any such insurance policy or which will make it impracticable for Landlord to obtain insurance covering any risks against which Landlord reasonably deems it advisable to obtain insurance. In the event any increases in the rates of such insurance are, in Landlord's reasonable judgment, due to Tenant's presence in the Building, to any activity conducted or property installed or placed by Tenant on or about the Land, the Building or the Premises or to Alterations installed by Tenant or at Tenant's request, Tenant shall reimburse Landlord for the amount of such increases promptly upon demand therefor.

15.4 Waiver of Subrogation. Notwithstanding anything to the contrary herein, the parties hereto waive and release each other and their respective agents, employees, successors, assignees and subtenants from all liability for damage to any property that is caused by or results from a risk which is actually insured against, which is required to be insured against under the Lease, or which would normally be covered by all risk property insurance, without regard to the negligence or willful misconduct of the entity so released. The foregoing waiver and release shall also apply to any deductible, as if the same were a part of the insurance recovery. All of Landlord's and Tenant's repair and indemnity obligations under the Lease shall be subject to the waiver contained in this paragraph.

ARTICLE 16 CONDEMNATION

16.1 Landlord's Right to Terminate. If a substantial part of the Premises, the Building or the Land is taken or condemned by any governmental or quasi-governmental authority for any purpose or is granted to any authority in lieu of condemnation (collectively, a "**taking**"), Landlord shall have the right in its sole discretion to terminate this Lease by notice to Tenant, and upon the giving of such notice, the Term shall terminate as of the date title vests in the authority, and Base Rent and Additional Rent shall be abated as of that date. For purposes of this Article 16, a substantial part of the Premises, the Land or the Building shall be considered to have been taken if the taking shall render it commercially undesirable for Landlord to permit this Lease to continue or to continue operating the Building.

16.2 Adjustment of Rent. If a portion of the Premises is taken and Landlord does not elect to terminate this Lease pursuant to Section 16.1, then Base Rent and Additional Rent shall be equitably adjusted as of the date title vests in the authority and this Lease shall otherwise continue in full force and effect.

16.3 Division of Award. Tenant shall have no claim against Landlord arising out of or related to any taking, or for any portion of the amount that may be awarded as a result, damages or compensation attributable to damage to the Premises, value of the unexpired portion of the Term, loss of profits or goodwill, leasehold improvements or severance damages, and Tenant hereby assigns to Landlord all its rights, title and interest in and to any such award; provided, however, that Tenant may assert any claim it may have against the authority for compensation for Tenant's Personal Property and for any relocation expenses compensable by statute, as long as such awards shall be made in addition to and stated separately from the award made for the Land, the Building and the Premises.

16.4 Landlord and Tenant each waives the provisions of Sections 1265.130 and 1265.150 of the California Code of Civil Procedure and the provisions of any successor or other law of like import.

ARTICLE 17
DEFAULT

17.1 **Default of Tenant.** The following events shall be a default by Tenant (a “**Default**”) under this Lease:

17.1.1 Failure of Tenant to pay Rent as and when due; provided, however, no Default shall be deemed to have occurred unless such failure continues for a period of five (5) business days after Tenant’s receipt of written notice thereof from Landlord.

17.1.2 Failure of Tenant to comply with or perform any covenant or obligation of Tenant under this Lease (other than those concerning the payment of Rent, which shall be subject to Section 17.1.1 above), if the failure continues for thirty (30) days after notice from Landlord to Tenant specifying the failure; provided, however if such default is not capable of being cured in such thirty (30) day period, such default shall not be a Default hereunder so long as Tenant promptly commences such cure during such 30-day period, and thereafter diligently prosecutes such cure to completion, but, subject to Force Majeure, in no event exceeding a period of time in excess of one hundred eighty (180) days after written notice to Tenant.

17.1.3 To the extent permitted by law, (i) Tenant being placed into receivership or conservatorship, or becoming subject to similar proceedings under Federal or State law unless the receiver or other remedy is not discharged within sixty (60) days, or (ii) a general assignment by Tenant for the benefit of creditors unless the assignment or other remedy is not discharged within sixty (60) days, or (iii) the filing by or against Tenant of any proceeding under an insolvency or bankruptcy law, unless in the case of such a proceeding filed against Tenant the same is dismissed within sixty (60) days, or (v) the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant, unless the appointment, receiver or other remedy is not discharged within sixty (60) days, or (vi) any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within sixty (60) days.

17.1.4 The failure by Tenant to observe or perform according to the provisions of Articles 15, 20 and 24 of this Lease where such failure continues for more than ten (10) business days after Tenant’s receipt of written notice from Landlord.

All notices from Landlord to Tenant under this Lease shall be in addition to, and not in lieu of, notices required by Applicable Law and no such statutory notice may be sent until the notice periods in this Section 17.1.1 and 17.1.2 have expired.

17.2 **Remedies Upon Default.** Upon the occurrence of a Default, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (all of which remedies shall be distinct, separate and cumulative), the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever:

17.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or for any claim for damages therefor; and Landlord may recover from Tenant damages provided under California Civil Code Section 1951.2, as the same may be amended, supplemented or replaced from time to time. Landlord may recover from Tenant the following:

17.2.1.1 The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

17.2.1.2 The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

17.2.1.3 The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

17.2.1.4 Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

17.2.1.5 At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Section 17.2.1 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Section 17.2.1 above, the "worth at the time of award" shall be computed by allowing interest at the Interest Rate. As used in Section 17.2.1 above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

17.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant beyond any and all applicable notice, grace and/or cure periods, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

17.2.3 Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 17.2.1 and 17.2.2, above, or any law or other provision of this Lease), without prior demand or notice except as required by applicable law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

17.3 Subleases of Tenant. Whether or not Landlord elects to terminate this Lease on account of any Default, as set forth in this [Article 17](#), Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder.

17.4 Efforts to Relet. No re-entry or repossession, repairs, maintenance, changes, alterations and additions, reletting, appointment of a receiver to protect Landlord's interests hereunder, or any other action or omission by Landlord shall be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, nor shall same operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, unless express written notice of such intention is sent by Landlord to Tenant. Tenant hereby irrevocably waives any right otherwise available under any law to redeem or reinstate this Lease.

17.5 No Redemption. Tenant hereby expressly waives any and all rights of redemption or relief from forfeiture granted by or under any present or future laws in the event of any judgment declaring a forfeiture of or terminating this Lease for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation of the Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord herein are in addition to any rights that may be given to Landlord by any statute or otherwise.

17.6 Intentionally Omitted.

17.7 Liability of Tenant. If Landlord terminates this Lease or reenters the Premises (with or without terminating this Lease), Tenant shall remain liable (in addition to all other liabilities of Tenant accrued at the time of the Default) for the sum of (i) any unpaid Rent accrued prior to the time of termination and/or reentry, as the case may be, plus interest thereon from the due date at the Default Rate, (ii) all Base Rent and Additional Rent provided for in this Lease from the time of termination and/or reentry, as the case may be, until the date this Lease would have expired had a Default not occurred, plus interest thereon from the due date at the Default Rate, (iii) any and all expenses (including reasonable attorneys' and brokerage fees) incurred by Landlord in reentering and repossessing the Premises, in correcting any default, in painting, altering or repairing the Premises in order to place the Premises in first-class rentable condition (whether or not the Premises are relet), in protecting and preserving the Premises and in reletting or attempting to relet the Premises, and (iv) any other amounts necessary to compensate Landlord for any other injury or detriment caused by the Default; *minus* the net proceeds (after deducting any rental abatements, tenant improvement allowances and other concessions and inducements) actually received by Landlord, if any, from any reletting to the extent attributable to the period prior to the date this Lease would have expired had a Default not occurred but Landlord shall use commercially reasonable efforts to mitigate its damages by reletting. Landlord shall have the option to recover any damages sustained by Landlord either at the time of reletting, if any, or in separate actions from time to time as said damages shall have been made more easily ascertainable by successive relettings or, at Landlord's option, to defer any such recovery until the date this Lease would have expired in the absence of a Default, in which event Tenant hereby agrees that the cause of action shall be deemed to have accrued on the aforesaid date. The provisions of this [Section 17.7](#) shall be in addition to, and shall not prevent the enforcement of, any claim Landlord may have for anticipatory breach of this Lease.

17.8 Right of Landlord to Cure. All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. If Tenant shall fail to perform any of its obligations under this Lease, within a reasonable time after such performance is required by the terms of this Lease, and such failure continues beyond any and all notice, cure and/or grace periods contained in this Lease, Landlord may, but shall not be obligated to, after five (5) business days' prior notice to Tenant (except in an emergency in which event no such notice shall be required), if Tenant does not commence to perform the applicable obligation, make any such payment or perform any such act on Tenant's part without waiving its right based upon any default of Tenant and without releasing Tenant from any obligations hereunder. Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, within ten (10) business days after delivery by Landlord to Tenant of detailed statements therefor: sums equal to the actual out-of-pocket expenditures reasonably made by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of this Section 17.7. Tenant's obligations under this Section 17.7 shall survive the expiration of the Term or sooner termination of the Lease.

17.9 Attorneys' Fees. In the event of any Default hereunder by Tenant, Tenant shall pay to Landlord all reasonable attorneys' fees incurred by Landlord in connection with such Default or the enforcement of Landlord's rights or remedies arising in connection therewith, whether or not this Lease is terminated. In addition to the foregoing, whether or not this Lease is terminated, Tenant shall pay to Landlord all Actual Costs reasonably incurred by Landlord, as appropriate, with respect to any lawsuit instituted or legal action taken by the other to enforce the provisions of this Lease, to the extent the lawsuit results in a judgment in favor of Landlord.

17.10 Survival. Tenant's liability pursuant to this Article 17 shall survive the termination of this Lease, the institution of summary proceedings and/or the issuance of a warrant thereunder.

17.11 Landlord Default; Tenant's Right to Self-Help.

17.11.1 Landlord shall be in default under this Lease (a "**Landlord Default**") if Landlord fails to perform any of the obligations required of Landlord hereunder and such failure continues for thirty (30) days after written notice is delivered by Tenant to Landlord and to any Mortgagee or Ground Lessor whose name and address shall have theretofore been furnished to Tenant in writing, specifying the obligation which Landlord has failed to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then no Landlord Default shall occur if Landlord or its Mortgagee or Ground Lessor commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion; further, provided, however, that Tenant acknowledges and agrees that Landlord's Mortgagee or Ground Lessor may reasonably require more than thirty (30) days to commence and/or complete performance. In no event shall Tenant have the right to terminate or rescind this Lease as a result of Landlord Default. Tenant waives such remedies of termination or rescission and agrees that Tenant's remedies for default by Landlord under this Lease and for breach of any promise or inducement are limited to a suit for damages and/or injunction, and are specifically subject to this paragraph and Article 13, or Tenant's remedy set forth in Section 17.11.2 below. The liability of Landlord (and its partners, shareholders, members, employees, agents or consultants) to Tenant (or any person or entity claiming by, through or under Tenant) for any Landlord Default or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Building shall be limited to Tenant's actual direct, but not consequential (including claims for loss of income or profit) or other speculative damages therefor and shall be recoverable only from the interest of Landlord in the Building and the Land, and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency. Additionally, to the extent allowed by Applicable Law, Tenant hereby waives any statutory lien it may have against Landlord or its assets, including without limitation, the Building and the Land. In all circumstances under this Lease where the consent, permission or approval of Landlord is required before Tenant is authorized to take any particular action, Tenant agrees that its exclusive remedy if it believes that such consent, permission or approval has been improperly withheld by Landlord shall be to institute an action pursuant to this paragraph above either for a declaratory judgment or for a mandatory injunction requiring that such consent, permission or approval be given in lieu of any claim for damages.

17.11.2 If a Landlord Default is not cured by Landlord or the Mortgagee or Ground Lessor prior to the date of expiration of the notice and cure period provided above, and such Landlord Default poses an imminent threat of injury to persons or material damage to property at the Premises, then, if such Landlord Default continues for five (5) business days following Tenant's delivery of a second written notice to Landlord, in addition to, but not in limitation of, any other remedies available to Tenant under this Lease, Tenant shall have the right, but not the obligation, to take such steps as are reasonably necessary to cure such then uncured Landlord Default. In the event that Tenant exercises its self-help rights in accordance with the terms and conditions set forth above in this paragraph, then in effecting such cure of such Landlord Default, Tenant may, without limitation, hire repairmen, pay bills, and generally perform any other act which Landlord is required to perform that is the subject of such Landlord Default. In the event that any mechanic's lien is filed against the Building for any work performed by Tenant to cure such Landlord Default pursuant to this Section 17.11.2, then Tenant shall be responsible to remove such lien from the Building in accordance with the terms of this Lease. Landlord shall, within thirty (30) days after receipt of written notice and copies of all paid invoices therefor, reimburse Tenant for all actual, third party reasonable out-of-pocket costs and expenses reasonably incurred by Tenant in effecting such cure of such Landlord Default; provided, however, that in no event shall Tenant be entitled to offset or credit against, or otherwise withhold, any Rent or any other sums due and payable by Tenant hereunder.

17.12 Intentionally Omitted.

17.13 Mitigation of Damages. In the event that Landlord terminates this Lease or terminates Tenant's right of possession of the Premises due to a Default, Landlord shall use commercially reasonable efforts to re-let the Premises to a prospective replacement tenant (a "**Substitute Tenant**"), subject to the following provisions:

17.13.1 Landlord has no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises, including, without limitation, the final and unappealable legal right to relet the Premises free of any claim of Tenant;

17.13.2 Landlord is not obligated to enter into a lease with any proposed Substitute Tenant which does not have, in Landlord's reasonable opinion, sufficient financial resources or operating experience to operate the Premises in a first-class manner; and

17.13.3 Landlord is not obligated to enter into a new lease with a Substitute Tenant if Landlord would have the right to reasonably withhold Landlord's consent to an assignment or subletting to such Substitute Tenant in accordance with the provisions of Article 21 of this Lease.

ARTICLE 18
NO WAIVER

No failure or delay by Landlord or Tenant in enforcing its right to performance by the other of every provision of this Lease or in exercising any right or remedy hereunder, and no payment by Tenant or acceptance by Landlord of full or partial rent during the continuance of any default, shall constitute a waiver of the provision or the default, and no provision shall be waived or modified except by a written instrument executed by Landlord or Tenant, as applicable. No payment by Tenant, or receipt by Landlord, of a lesser amount than the full Rent shall be deemed to be other than a payment on account, notwithstanding any endorsement or statement on any check or letter accompanying any payment of any Rent. No waiver of any default or settlement of any proceeding instituted on account of any claimed default shall affect or alter this Lease or constitute a waiver of any of Landlord's or Tenant's rights hereunder.

ARTICLE 19
HOLDING OVER

If Tenant shall be in possession of the Premises after termination of this Lease (whether by normal expiration of the Term or otherwise): (i) Tenant will be deemed to be occupying the Premises as a tenant from month-to-month, at the sum of (a) one hundred fifty percent (150%) of the Monthly Base Rent in effect for the last full month of the Term, with respect to the first ninety (90) days of such holding over, and (b) thereafter, two hundred percent (200%) of the Monthly Base Rent in effect for the last full month of the Term, plus, in all cases, the monthly installment of Additional Rent which is then payable, and subject to all of the other provisions of this Lease; and (ii) Landlord may exercise any or all remedies for Default and at law and in equity, including an action against Tenant for wrongfully holding over and an action for actual damages, and with respect to any holdover lasting longer than thirty (30) days, consequential damages; provided, however, that Tenant shall not be liable for consequential damages incurred by Landlord as a result of any holding over for any period of holdover that is shorter than thirty (30) days.

ARTICLE 20
SUBORDINATION

20.1 Lease Subordinate. This Lease shall, subject to the terms and conditions of this Lease, be subject and subordinate to the lien of any and all Mortgages and to any Ground Leases now or hereafter placed upon the Premises, the Building and/or the Land, and any and all renewals, extensions, modifications, recastings and refinancings thereof. This Article shall be self-operative, without execution of any further instrument; but if requested by Landlord or any Mortgagee, Tenant shall promptly execute a commercially reasonable certificate or other commercially reasonable document evidencing and providing for such subordination. Tenant shall attorn to any lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Building by any purchaser at a foreclosure sale or by a lender in any manner. This Lease shall not be terminated by foreclosure or any other transfer of the Building and/or the Land. After a foreclosure sale of the Building and/or the Land, lender or any other purchaser at such foreclosure sale may, at lender's or such purchaser's option, accept or terminate this Lease. Tenant agrees that, if any Mortgage is foreclosed or Ground Lease terminated, upon request by the purchaser at the foreclosure sale or Ground Lessor, as the case may be, Tenant shall attorn to and recognize the purchaser or Ground Lessor as the landlord under this Lease and shall make all payments required hereunder to such new landlord without any deduction or set-off of any kind whatsoever except as specifically provided for in this Lease. Tenant waives the provisions of any Applicable Laws, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure, termination or other proceeding is filed, prosecuted or completed. Notwithstanding anything herein to the contrary, any Mortgagee may at any time subordinate the lien of its Mortgage to the operation and effect of this Lease without Tenant's consent, by giving Tenant notice of such subordination, in which event this Lease shall be deemed to be senior to such Mortgage, and thereafter such Mortgagee shall have the same rights as it would have had if this Lease had been executed, delivered and recorded before said Mortgage.

20.2 Current Non-Disturbance Obligations. Landlord shall use commercially reasonable efforts to obtain from its current Mortgagee a non-disturbance agreement for the benefit of Tenant in a commercially reasonable form, which will be provided at Tenant's sole cost and expense and at no additional cost or expense to Landlord.

20.3 Future Non-Disturbance Obligations. Landlord shall use commercially reasonable efforts to obtain from any future Mortgagee a non-disturbance agreement for the benefit of Tenant in a commercially reasonable form, which non-disturbance agreement will provide, at a minimum, that such Mortgagee recognizes this Lease; provided, however, that Tenant shall pay all reasonable out-of-pocket costs incurred by Landlord which are imposed by such Mortgagee with respect to such future non-disturbance agreement.

ARTICLE 21
ASSIGNMENT AND SUBLETTING

21.1 No Transfer Without Consent. Except with respect to a Permitted Transfer, Tenant shall not, voluntarily or involuntarily, without the consent of Landlord in each instance (i) assign, transfer, mortgage or otherwise encumber this Lease or any estate or interest herein or any of its rights hereunder, whether directly or by operation of law; and (ii) sublet the Premises or any part thereof or permit the occupancy or use of the Premises or any part thereof by any persons or entities other than Tenant (any of the events listed in (i) through (ii) being a “**Transfer**”). Any attempted Transfer in violation of the foregoing sentence shall be void. If at any time during the Term Tenant desires to Transfer, then in connection with Tenant’s request to Landlord for Landlord’s consent thereto, Tenant shall give forty-five (45) days’ notice prior to Landlord (“**Tenant’s Request Notice**”) containing: the identity of the proposed assignee, subtenant or other party and a description of its business; a written description of all of the terms of the proposed assignment, subletting or other Transfer and copies of the proposed pertinent and reasonable documentation; the commencement date of the proposed assignment, subletting or other Transfer (the “**Proposed Sublease or Assignment Commencement Date**”); the area proposed to be assigned, sublet or otherwise encumbered (the “**Proposed Sublet or Assignment Space**”); the most recent financial statement or other evidence of financial responsibility of such proposed assignee, subtenant or other party and reasonably satisfactory information about its business and business history, its proposed use of the Premises, commercially reasonable credit information, and such other commercially reasonable information or materials requested by Landlord sufficient to enable Landlord to determine the proposed transferee’s creditworthiness and character; and a certification executed by Tenant and such party stating whether or not any premium or other consideration is being paid in connection with the assignment, sublease or other transaction (including payments for personalty). Notwithstanding the foregoing, Landlord agrees that it shall not unreasonably withhold, condition or delay its consent to a proposed subletting or assignment. Without limiting Landlord’s rights, it shall not be deemed unreasonable for Landlord to withhold consent to such transfer if based on one or more of the following grounds:

21.1.1 at the time of either Tenant’s notice of the proposed assignment or sublease or the proposed commencement date thereof, there shall exist any uncured Tenant Default or matter which would become a Tenant Default with the giving of notice or the passage of time or both unless cured;

21.1.2 Landlord disapproves of the proposed assignee or subtenant’s creditworthiness (which shall include the proposed assignee or subtenant meeting the then current commercially reasonable financial standards required by Landlord and transferee’s tangible net worth must be equal to or greater than the greater of: (a) Tenant’s tangible net worth at the time the Lease was executed, or (b) Tenant’s tangible net worth at the time of the proposed transfer);

21.1.3 the assignment or subletting would involve a change in use from that expressly permitted under this Lease;

21.1.4 the assignment constitutes an assignment of less than all of Tenant’s entire remaining right, title and interest under this Lease;

21.1.5 the assignment or subletting would subject the Premises to a use which would: (a) materially increase the insurance rates for the Building; or (b) violate any exclusive right granted to another tenant of the Building or the terms of any easement, covenant, condition or restriction, or other agreement affecting the Property; or

21.1.6 the proposed assignee or subtenant is: (a) an entity with which Landlord is already in negotiation as evidenced by the issuance of a written proposal within one hundred twenty (120) days prior to Tenant's Request Notice, (b) a governmental or quasi-governmental agency, or (c) incompatible with the character of occupancy of the Property as determined by Landlord.

Notwithstanding anything to the contrary in this Lease, if Tenant or any proposed transferee claims that Landlord has unreasonably withheld or delayed its consent under this Article 21 or otherwise has breached or acted unreasonably under this Article 21, their sole remedies shall be a suit for declaratory judgment and an injunction for the relief sought, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable Laws, on behalf of the proposed transferee.

21.2 Transfer of Ownership Interests. Notwithstanding anything to the contrary contained in this Section 21.2, the provisions of this Section 21.2 are subject and subordinate to Tenant's right to make certain Permitted Transfers (as defined below) pursuant to the terms and conditions of Section 21.5 below, it being understood and agreed by Landlord that so long as a transfer in the interests of Tenant satisfies the terms and conditions of Section 21.6 below, then this Section 21.2 shall not be applicable with respect to such Permitted Transfer. In addition to the foregoing and not in limitation thereof, this Section 21.2 shall not apply to entities the ownership interests in which are publicly traded on a national or regional exchange or over-the-counter market. If Tenant is a partnership, then any event or series of events (whether voluntary, concurrent or related) resulting in a dissolution of Tenant, any withdrawal or change (whether voluntary, involuntary or by operation of law) of partners which results in beneficial ownership of less than fifty-one percent (51%) of the partnership interests in Tenant (or less than fifty-one percent (51%) of the beneficial ownership of any general partner in Tenant) being owned by the same partners owning at least fifty-one percent (51%) of the partnership interests in Tenant (or less than fifty-one percent (51%) of the beneficial ownership of such general partner in Tenant) on the Effective Date or which results in a change in management control of Tenant from the management control of Tenant on the Effective Date, or any structural or other change having the effect of limiting the liability of the partners shall be deemed a Transfer subject to the provisions of this Article 21. If Tenant is a non-public corporation (or a partnership with a corporate general partner), then any event or series of events (whether voluntary, concurrent or related) resulting in a dissolution, merger, consolidation or other reorganization of Tenant (or such corporate general partner), or the sale or transfer or relinquishment of the interest of shareholders which results in beneficial ownership of less than fifty-one percent (51%) of the capital stock in Tenant being owned by the same shareholders owning at least fifty-one percent (51%) of the capital stock in Tenant on the Effective Date or which results in a change in management control of Tenant from the management control of Tenant on the Effective Date, shall be deemed a Transfer subject to the provisions of this Section 21; provided, however, that this sentence shall not apply to corporations whose stock is traded through a national or regional exchange or over-the-counter market. If Tenant is a limited liability company, then any event or series of events (whether voluntary, concurrent or related) resulting in a dissolution of Tenant, any withdrawal or any change (whether voluntary, involuntary or by operation of law), of members which results in beneficial ownership of less than fifty-one percent (51%) of the membership interests in Tenant (or less than fifty-one percent (51%) of the beneficial ownership of any member of Tenant) being owned by the same members owning at least fifty-one percent (51%) of the membership interests in Tenant (or less than fifty-one percent (51%) of the beneficial ownership of such member of Tenant) on the Effective Date or which results in a change in management control of Tenant from the management control of Tenant on the Effective Date shall be deemed a Transfer subject to the provisions of this Article 21.

21.3 Expenses and Profits; Effect of Consent.

21.3.1 Landlord's consent to any proposed Transfer is expressly conditioned upon Tenant's delivery to Landlord of a copy of the documents effecting the Transfer, which documents shall include a written agreement whereby the transferee expressly assumes Tenant's obligations hereunder; however, any transferee of less than all of the space in the Premises shall be liable only for obligations under this Lease that are properly allocable to the space subject to the Transfer for the period of the Transfer. Except as agreed to between Landlord (in Landlord's sole and absolute discretion) and Tenant in writing, no Transfer shall release Tenant or any guarantor of Tenant's obligations hereunder (a "**Guarantor**") from its obligations under this Lease, but rather Tenant, any such Guarantor and the transferee shall be jointly and severally liable therefor. If a Default occurs while the Premises or any part thereof are subject to a Transfer, then Landlord, in addition to its other remedies, may collect directly from such transferee all rents becoming due to Tenant and apply such rents against Rent. Tenant authorizes its transferees to make payments of rent directly to Landlord upon receipt of notice from Landlord to do so following the occurrence of a Tenant Default hereunder. Tenant shall pay for the cost of any demising walls or other improvements necessitated by a proposed subletting or assignment (provided that the foregoing shall not waive any approval right that Landlord may have with respect to such improvements pursuant to another provision of this Lease) . Upon any partial or full subletting or assignment by Tenant in accordance with the terms hereof (except with respect to a Permitted Transfer), any extension or renewal options, expansion options, rights of first offer or refusal and/or exclusive use provisions shall become null and void.

21.3.2 Tenant shall be responsible for all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in connection with any proposed or purported Transfer (not to exceed Three Thousand Dollars (\$3,000.00)), whether or not Landlord ultimately consents to the proposed or purported Transfer.

21.3.3 The consent by Landlord to any Transfer shall neither be construed as a waiver or release of Tenant from any covenant or obligation of Tenant under this Lease, nor as relieving Tenant from giving Landlord the aforesaid forty-five (45) days' notice of, or from obtaining the consent of Landlord to, any further Transfer. The collection or acceptance of Rent from any such assignee or subtenant shall not constitute a waiver or release of Tenant from any covenant or obligation of Tenant under this Lease, except as expressly agreed by Landlord in writing.

21.3.4 Tenant shall pay to Landlord, immediately upon receipt thereof, fifty percent (50%) the excess of all compensation received by Tenant for a Transfer over the Rent allocable to the portion of the Premises covered thereby. All compensation received by Tenant for a Transfer shall also include, but not be limited to, key money, bonus money and any other amounts paid by the transferee to Tenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Tenant to Transferee or for assets, fixtures, inventory, equipment or furniture transferred by Tenant to Transferee in connection with such Transfer. Landlord shall at all times have the right to audit the books and records of Tenant and of each transferee pertaining thereto and Tenant and each transferee shall permit Landlord to inspect and copy all such books and records upon request by Landlord.

21.4 Conditions of Assignment or Sublease. All restrictions and obligations imposed pursuant to this Lease on Tenant shall be deemed to extend to any subtenant, assignee, licensee, concessionaire or other occupant or transferee, and Tenant shall cause such person to comply with such restrictions and obligations as to the Premises and the Building in the event of an assignment and as to the subleased space and the Building in the event of a sublease. Any assignee shall be deemed to have assumed obligations as if such assignee had originally executed this Lease and at Landlord's request shall execute promptly all reasonable documents confirming such assumption. Each sublease is subject to the condition that if the Term is terminated or Landlord succeeds to Tenant's interest in the Premises by voluntary surrender or otherwise, at Landlord's sole option, the subtenant shall be bound to Landlord for the balance of the term of such sublease and shall attorn to and recognize Landlord as its landlord under the then executory terms of such sublease or, at Landlord's sole option, the sublease shall be deemed terminated.

21.5 Permitted Subleases and Assignments. Notwithstanding anything to the contrary in this Lease, in the event of a merger, reorganization or consolidation of Tenant, the sale of its interests or all or substantially all of its assets or stock, Landlord agrees that so long as the creditworthiness and tangible net worth of the transferee is at least equal to the creditworthiness and tangible net worth of Tenant originally named herein as of the Effective Date and as of the day immediately preceding the effectiveness of the applicable assignment or subletting, then, in such event, the provisions of Sections 21.1, 21.3, 21.4 and 21.10 shall not be applicable with regard to an assignment of this Lease or a subletting of all or any portion of the Premises (a "**Permitted Transfer**") to Tenant's Affiliate (as hereinafter defined) (a "**Permitted Transferee**"), so long as (1) Tenant originally named herein shall remain primarily liable under this Lease, notwithstanding any such assignment or subletting (unless Tenant is no longer existing, in which case such surviving entity shall assume all of the obligations of Tenant under this Lease), (2) except as provided in this Section 21.5, no other or further assignment or subletting shall be permitted without Landlord's prior written consent in accordance with this Article 21, (3) Tenant notifies Landlord at least thirty (30) days prior to the effective date of any such assignment or sublease (or if such prior notice is prohibited by confidentiality obligations or law, promptly following the effective date of any such assignment or sublease) and promptly supplies Landlord with any then available non-confidential documents or information reasonably requested by Landlord regarding such Transfer or Permitted Transferee as set forth above, (4) no Default is then existing and continuing and such assignment or sublease is not a subterfuge by Tenant to avoid its obligations under this Lease, and (5) in the case of an assignment, the assignee executes an assignment and assumption agreement in Landlord's then standard form with respect to the assumption by the assignee of all of Tenant's then existing and future obligations under this Lease. An "**Affiliate**" shall be a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Tenant or its parent, or which has succeeded to the ownership of Tenant or of substantially all of Tenant's assets or stock by merger, reorganization or consolidation. "**Control**" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise.

21.6 Occupancy by Affiliates. Tenant shall have the right to permit any of its Affiliates to occupy the Premises without the Landlord's consent, provided that any such occupancy shall (i) be effectuated through occupancy license agreements as opposed to subleases or assignment agreements, and (ii) not affect Tenant's obligations under this Lease, and any such occupants shall be subject to all of terms and conditions of this Lease.

21.7 Permitted Occupancy Agreements. Notwithstanding anything contained in this Section 21 to the contrary (except Section 21.5 above), if no Default on the part of Tenant then exists hereunder then Tenant may, without Landlord's prior written consent and without being subject to Landlord's rights and Tenant's obligations set forth in Sections 21.1, 21.3 and 21.4 above, license one or more individual offices (and the use of areas ancillary thereto) in the Premises, or to grant short-term occupancy or "desk space" rights to third parties (the "**Permitted Occupancy Agreements**"); provided, however, that (a) such arrangements shall be with Tenant's clients, customers, prime contractors or subcontractors working on contracts with Tenant and other parties with whom Tenant has a bona fide business relationship, (b) any such desk space user shall agree to indemnify Landlord, Landlord's management agent and any Mortgagees and to hold them harmless from and against all costs, damages, claims, liabilities and expenses, including, but not limited to, reasonable attorneys' fees, directly or indirectly, based on, arising out of or resulting from: (i) such desk space user's use and occupancy of the Premises or the business conducted by such desk space user therein or such desk space user's presence in the Premises, (ii) any act or omission of such desk space user or its employees, agents or contractors, and (iii) any breach or default by such desk space user in the observance or performance of Tenant's covenants and obligations under this Lease (other than Tenant's obligations to pay Base Rent and Additional Rent hereunder); (c) Tenant shall notify Landlord of such arrangement at least ten (10) business days after request by Landlord of notice of such arrangement(s) commencing; (d) such Permitted Occupancy Agreements shall not comprise more than twenty-five (25%) of the rentable area of the Premises in the aggregate then being leased by Tenant hereunder; (e) in no event shall the use of any portion of the Premises by any such desk space user create or be deemed to create any right, title or interest of desk space user in any portion of the Premises or this Lease, (f) such occupancy shall terminate automatically upon the termination of this Lease, (g) Tenant does not separately demise any space so occupied by such desk space user, and no desk space user shall occupy a separately demised portion of the Premises or which contains an entrance to such portion of the Premises other than the primary entrance to the Premises, and (h) such occupancy shall not be a subterfuge by Tenant to avoid its obligations under this Lease or the restrictions on transfers pursuant to this Article 21. Tenant shall promptly supply Landlord with any documents or information reasonably requested by Landlord regarding any Permitted Occupancy Agreement, and no such occupancy shall relieve Tenant from any liability under this Lease. Notwithstanding anything contained herein to the contrary, for purposes of this Section 21 only, individual consultants and/or independent contractors retained by Tenant for a particular project working on an on-going basis pursuant to bona fide contractors directly with Tenant may occupy portions of the Premises during the Term hereof (and subject in all events to all of the terms and conditions of this Lease) without Landlord's consent.

21.8 Intentionally Omitted.

21.9 Intentionally Omitted.

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

ARTICLE 22
TRANSFER BY LANDLORD

Landlord (and any successor or affiliate of Landlord) may freely sell, assign or transfer all or any portion of its interest in this Lease or the Premises, the Building or the Land and, in the event of any such sale, assignment or transfer and assumption of Landlord's liabilities and obligations under this Lease, shall be relieved of any and all obligations under this Lease from and after the date of the sale, assignment or transfer and the assumption of Landlord's obligations under this Lease by the transferee. From and after said date, Tenant shall be bound to such purchaser, assignee or other transferee, as the case may be, as though the latter had been the original Landlord hereunder, provided that the purchaser, assignee or transferee agrees to assume the obligations of Landlord hereunder first arising on and after the date of the sale, assignment or transfer.

ARTICLE 23
INABILITY TO PERFORM

Landlord and/or Tenant shall be excused for the period of delay in the performance of any of their obligations hereunder, except Tenant's obligations to pay any Rent or other sums of money due under the terms of this Lease, and shall not be considered in default, when prevented from so performing because of Force Majeure; provided, however, the claiming party must notify the other party of any such delay, with full details, within a reasonable period of time after Landlord or Tenant becomes aware following the initial occurrence of such Force Majeure event in order to delay the performance of any obligation hereunder. Notwithstanding anything to the contrary contained in this **Article 23**, if any work performed by Tenant, Tenant's contractors and/or subcontractors results in a strike, lockout and/or labor dispute, such strike, lockout and/or labor dispute shall not be deemed Force Majeure upon which Tenant may rely for purposes of this Lease. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused. Under no circumstances shall the non-payment of money or a failure attributable to a lack of funds be deemed to be (or to have caused) an event of Force Majeure. Nothing in this **Article 23** shall permit Tenant to holdover in the Premises after the expiration or earlier termination of this Lease.

ARTICLE 24
ESTOPPEL CERTIFICATES; FINANCIAL STATEMENTS

24.1 Estoppel Certificates. Tenant and Landlord, as appropriate, shall, without charge, within fifteen (15) business days after receipt of any request therefor, execute and deliver to Landlord or Tenant, as applicable, a certificate stating: (i) whether 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 and setting forth all such modifications); (ii) whether, to the best of Landlord's or Tenant's knowledge, as applicable, there then exist any defenses against the enforcement of any right of Landlord or Tenant, as applicable, hereunder (and, if so, specifying the same in detail); (iii) the dates to which rent and any other charges hereunder have been paid by Tenant; (iv) that Tenant or Landlord, as applicable, has no knowledge of any then uncured defaults under this Lease (or, if Tenant or Landlord, as applicable, has knowledge of any such defaults, specifying the same in detail); (v) that Tenant or Landlord, as applicable, has no knowledge of any event that will or may result in the termination of this Lease (or, if Tenant or Landlord, as applicable, has such knowledge, specifying the same in detail); (vi) the address to which notices to Tenant are to be sent; and (vii) such other information as may be reasonably requested. It is understood that any such certificate may be relied upon by Landlord, Tenant, any sublessee or assignee of Tenant, any Mortgagee, prospective Mortgagee, Ground Lessor, prospective Ground Lessor, or purchaser or prospective purchaser of the Land or the Building or of all or any of Landlord's interest therein or purchaser of, or successor to, Tenant's business.

24.2 Financial Statements. Within ten (10) business days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements certified as "true and correct" by Tenant's chief financial officer or treasurer to Landlord. If Tenant is a publicly traded corporation, Tenant may satisfy all obligations under this Section 24.2 by providing to Landlord Tenant's most recent annual and quarterly reports publicly filed with the U.S. Securities and Exchange Commission or other similar government commission or body applicable to Tenant. Tenant will discuss its financial statements with Landlord and, following the occurrence of a Tenant Default hereunder, will give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements. Landlord will not disclose any aspect of Tenant's financial statements that Tenant designates to Landlord as confidential except: (1) to Landlord's mortgagee or prospective mortgagees or purchasers of the Building or investors or prospective investors in Landlord; (2) to Landlord's advisors and consultants; (3) in litigation between Landlord and Tenant; and (4) if required by court order. Tenant shall not be required to deliver the financial statements required under this **Section 24.2** more than once in any twelve (12) month period unless requested by Landlord's Mortgagee or a prospective buyer or lender of the Property or a Tenant Default occurs.

ARTICLE 25
COVENANT OF QUIET ENJOYMENT

Landlord covenants that it has the right to make this Lease and that, if Tenant shall pay all Rent and may not be in Default under Section 17.1 of this Lease, Tenant shall have the right, during the Term and subject to the provisions of this Lease, to quietly occupy and enjoy the Premises pursuant to the terms and conditions of this Lease without hindrance by Landlord or its successors and assigns lawfully claiming by or through Landlord.

ARTICLE 26
WAIVER OF JURY TRIAL

To the extent permitted under Applicable Law, Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other with respect to any matter arising out of or connected with this Lease.

ARTICLE 27
BROKERS

Landlord and Tenant each represents and warrants to the other that neither of them has employed or dealt with any broker in procuring or carrying on any negotiations relating to this Lease. Landlord and Tenant shall indemnify and hold each other harmless from any loss, claim or damage relating to the breach of the foregoing representation and warranty.

ARTICLE 28
NOTICES

No notice, request, approval, consent, waiver, demand or other communication which may be or is required or permitted to be given under this Lease shall be effective unless the same is in writing and hand-delivered, sent by registered or certified mail, return receipt requested, first-class postage prepaid, or sent with charges prepaid by a nationally recognized air courier service, addressed to Landlord at the Landlord Notice Address or to Tenant at the Tenant Notice Address, as applicable, or at any other address of which either party shall notify the other in accordance with this Article 28. Such communications, if sent by registered or certified mail, shall be deemed to have been given (a) when delivered, if delivered by hand, or (b) if mailed as set forth above in this Article 28, two (2) days after the date of mailing, or (c) if sent by a nationally recognized air courier service as set forth above in this Article 28, one (1) business day after the date of deposit of the notice with such service. Notwithstanding the foregoing, if such party's address has changed and the other party has not been given notice of such change in accordance with the requirements of this Article 28, or if a party refuses delivery, a communication shall be deemed to have been given upon the first attempted delivery to the address for a party set forth in this Lease. If any Mortgagee shall notify Tenant that it is the holder of a Mortgage affecting the Premises, no notice, request or demand thereafter sent by Tenant to Landlord shall be effective until a copy of same shall be sent to such Mortgagee in the manner prescribed in this Article 28 at such address as such Mortgagee shall designate.

ARTICLE 29
MISCELLANEOUS PROVISIONS

29.1 Benefit and Burden. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective successors and permitted assigns.

29.2 Governing Law. This Lease shall be construed and enforced in accordance with the laws of California.

29.3 No Partnership. Nothing contained in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant, or to create any other relationship between the parties other than that of Landlord and Tenant.

29.4 Delegation by Landlord. Wherever Landlord has the authority to take any action under this Lease, Landlord shall have the right to delegate such authority to others, and Landlord shall be responsible for the authorized actions of such agents, employees and others, to the same extent as if Landlord had taken such action itself.

29.5 Tenant Responsibility for Agents. In any case where Tenant is responsible for performing or refraining from an act or for preventing an action or result from occurring, if Tenant delegates (by notice to Landlord) such authority to others, Tenant shall also be responsible for the authorized actions taken or omitted by Tenant's agents, and Tenant shall also be responsible for actions taken or omitted by employees, business invitees, licensees, contractors and subtenants.

29.6 Invalidity of Particular Provisions. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be held invalid or unenforceable, the remaining provisions and the application of such invalid or unenforceable provisions to persons, entities and circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

29.7 Counterparts; Digital Signatures. This Lease may be executed in several counterparts, all of which shall constitute one and the same document. In any action or proceeding, any photographic, photostatic, or other copy of this Lease may be introduced into evidence without foundation. The parties agree to accept a digital image (including but not limited to an image in the form of a PDF, JPEG, GIF file, or other e-signature including DocuSign) of this Lease, if applicable, reflecting the execution of one or both of the parties, as a true and correct original.

29.8 Entire Agreement. This Lease, and any exhibits and addenda attached hereto, embody the entire agreement of the parties hereto, and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Lease or in the exhibits or addenda shall be of any force or effect. No rights, privileges, easements or licenses are granted to Tenant hereby, except as expressly set forth herein.

29.9 Amendments. This Lease may not be modified in whole or in part in any manner other than by an agreement in writing.

29.10 Mortgagee's Performance. Tenant shall accept performance of any of Landlord's obligations hereunder by any Mortgagee.

29.11 Limitation on Interest. In any case where this Lease provides for a rate of interest that is higher than the maximum rate permitted by Applicable Laws, the rate specified herein shall be deemed to equal, and the party designated as recipient of such interest shall be entitled to receive, the maximum rate of interest permitted by Applicable Laws.

29.12 Remedies Cumulative. All rights and remedies of Landlord and Tenant shall be cumulative and shall not be exclusive of any other rights or remedies of Landlord or Tenant, as applicable, hereunder or now or hereafter existing at law or in equity.

29.13 Construction of Lease. There shall be no presumption that this Lease be construed more strictly against the party who itself or through its agent prepared it. Landlord and Tenant hereby agree that all parties hereto have participated in the preparation of this Lease and that each party had the opportunity to consult legal counsel before the execution of this Lease.

29.14 Authority. Tenant and Landlord each represents and warrants that such person is duly authorized to so act; that Tenant and Landlord are each duly organized, is qualified to do business in the jurisdiction in which the Building is located, is in good standing under the Applicable Laws of the state of its organization, and has the power and authority to enter into this Lease; and that all action required to authorize Tenant and Landlord, as applicable, and such person to enter into this Lease has been duly taken.

29.15 Use of Certain Terms. Whenever the terms “including” or “include” are used herein, such terms shall mean “including, but not limited to,” and “include, but not be limited to,” respectively. Whenever an action, decision or similar right is described herein as being at Landlord’s or Tenant’s option, such action, decision or similar right shall be at Landlord’s or Tenant’s, as applicable, sole option. References to Sections or Articles shall mean sections or articles, as applicable, of this Lease, and use of the terms “hereunder,” “herein,” or similar terms shall refer to this Lease in its entirety, as opposed to the specific sentence, subsection, section or article of this Lease in which such term appears.

29.16 Exhibits. All exhibits are incorporated into and made a part of this Lease.

29.17 Intentionally Omitted.

29.18 Qualified Leases. The parties intend that all payments made to Landlord under this Lease will qualify as rents from real property for purposes of Sections 512(b)(3) and 856(d) of the Internal Revenue Code of 1986, as amended (“**Qualified Rents**”). If Landlord, in its sole discretion, advises Tenant that there is any risk that all or part of any payments made under this Lease will not qualify as Qualified Rents, Tenant agrees (i) to cooperate with landlord to restructure this Lease in such manner as may be necessary to enable such payments to be treated as Qualified Rents, and (ii) to permit an assignment of this Lease, in each case to the extent such restructuring or assignment will not have a material adverse economic impact on Tenant.

29.19 Intentionally Omitted.

29.20 Confidentiality. Landlord and Tenant each acknowledges that the terms and conditions of this Lease are to remain confidential and may not be disclosed to anyone by any manner or means, directly or indirectly, without the other party’s prior written consent, except to personnel employed by a party hereto, as reasonably necessary for Landlord’s or Tenant’s performance of its obligations under this Lease or for tax reporting, public company filing purposes or legal purposes, to prospective purchasers, partners, financiers, or lenders, and to prospective subtenants or assignees under this Lease. The preceding provisions of this Section shall not apply to, or bar or limit any legal action between Tenant and Landlord to enforce this Lease. The consent by a party to any disclosures shall not be deemed to be a waiver on the part of such party of any prohibition against any future disclosure.

29.21 Agreed Figures. Except as otherwise expressly set forth set forth herein, all figures set forth in this Lease including the square footage of the Premises represent negotiated sums and percentages and are binding and conclusive as between Landlord and Tenant, and, are not subject to adjustment regardless of any future or differing measurements of the Premises.

29.22 OSHA Regulations. Tenant acknowledges that it has been notified of the presence or potential presence of asbestos-containing materials (“**ACM**”) and materials designated by the Occupational Safety and Health Administration (“**OSHA**”) as presumed asbestos-containing materials (“**PACM**”) located in the Premises, the Building or the Property. The following materials must, in accordance with OSHA regulations, be treated as PACM: any thermal system insulation and surfacing material that is sprayed on, troweled on, or applied in some other manner, as well as any resilient flooring material installed in 1980 or earlier. Upon written request by Tenant without any duty of investigation by Landlord, Landlord shall provide Tenant with copies of any information pertaining to ACM or PACM located in Landlord’s files; provided that, any such information Tenant has received or may receive from Landlord is furnished without any warranty whatsoever and on the express condition that Tenant shall make an independent verification of the accuracy of such information.

29.23 Joint and Several. If Tenant is comprised of more than one (1) party, each such party shall be jointly and severally liable for Tenant’s obligations under this Lease. All unperformed obligations of Tenant hereunder not fully performed at the end of the Term shall survive the end of the Term, including payment obligations with respect to Rent and all obligations concerning the condition and repair of the Premises.

29.24 Attorneys’ Fees. In the event of any action at law or suit in equity to interpret or enforce the provisions of this Lease, the prevailing party shall be entitled to recover from the other party reasonable attorneys’ fees and costs.

29.25 Law Governing. This Lease shall be governed by the laws of the State of California.

29.26 Time is of the Essence. Time is of the essence of this Lease in the performance of each and every term, covenant and condition of this Lease.

29.27 Disclaimer. LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT’S INTENDED COMMERCIAL PURPOSE, AND TENANT’S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

ARTICLE 30

PARKING

30.1 Use of Parking. Tenant shall have the use of all parking spaces located within the Property. In addition, Tenant may, at Tenant's sole cost and expense, from time to time contract with a valet company to provide valet services as long as Tenant does not utilize more spaces than it is allocated under this Lease.

ARTICLE 31

HAZARDOUS MATERIALS

31.1 Definition. As used in this Lease, the term "**Hazardous Material**" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any Applicable Laws, including, without limitation, oil, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

31.2 General Prohibition. Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated, discharged, released, spilled or disposed of on, in under or about the Premises, the Building, or the Land (hereinafter referred to collectively as the "**Property**") by Tenant or Tenant's employees, agents, invitees, guests, assignees, subtenants, contractors or visitors (collectively, "**Tenant's Invitees**") except for the liquid nitrogen tank in the Premises and any other existing Hazardous Materials disclosed to Landlord (together with such liquid nitrogen tank, collectively, "**Existing HM**") provided that all such Existing HM are used, stored and disposed of in accordance with Applicable Laws. Tenant shall indemnify, defend and hold harmless Landlord, Landlord's managing agent and all Mortgagees from and against any and all actions (including remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including reasonable attorneys', consultants', and experts' fees, court costs and amount paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses arising from a breach of this prohibition by Tenant or Tenant's Invitees or from the Existing HM. Nothing herein shall prohibit Tenant's use of materials generally found in industrial buildings such as cleaning supplies, toner for copy machines, and materials used in kitchens such as dry ice, refrigeration materials and the like, provided that all such materials are used, stored and disposed of in accordance with Applicable Laws.

31.3 Notice. In the event that Hazardous Materials including Existing HM are discovered upon, in, or under the Property, and any governmental agency or entity having jurisdiction over the Property requires the removal or other treatment of such Hazardous Materials, Tenant shall be responsible for the removal or other treatment of those Hazardous Materials arising out of or related to the use or occupancy of, or the performance of any work at the Property, including, but not limited to, the disturbance of any pre-existing Hazardous Materials, by Tenant or Tenant's Invitees. Notwithstanding the foregoing, Tenant shall not take any remedial action in or about the Property or any portion thereof without first notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to protect Landlord's interest with respect thereto. Tenant agrees that Landlord shall have the right to manage or perform (or any combination thereof), at Tenant's sole cost and expense, any work required in connection with the inspection, identification, removal or treatment of any such Hazardous Materials, including, but not limited to, the right to interrupt the performance of any Alterations and to assert control over the procedures and work necessary to accomplish such inspections, identification, removal or other treatment of Hazardous Materials, and Tenant shall reimburse Landlord for all costs incurred by Landlord in connection with the foregoing within ten (10) days following Landlord's written demand to Tenant therefor.

Tenant immediately shall notify Landlord in writing of (to the extent not previously disclosed to Landlord): (i) any spill, release, discharge or disposal of any Hazardous Material in, on or under the Property or any portion thereof; (ii) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated, or threatened (if Tenant has notice thereof) pursuant to any Applicable Laws respecting Hazardous Materials; (iii) any claim made or threatened by any person against Tenant or the Property or any portion thereof relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iv) any reports made to any governmental agency or entity arising out of or in connection with any Hazardous Materials in, on under or about or removed from the Property or any portion thereof, including any complaints, notices, warnings, reports or asserted violations in connection therewith. Tenant also shall supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises, the Property or Tenant's use or occupancy thereof.

31.4 Survival. The respective rights and obligations of Landlord and Tenant under this Article 31 shall survive the expiration or earlier termination of this Lease.

31.5 Landlord's Representation Regarding Hazardous Materials. In the event that Landlord receives written notice from a governmental agency of the presence of Hazardous Materials on the Premises or in the Building (whether or not such Hazardous Materials are utilized by Tenant in a quantity and of a nature that violates any Applicable Laws or constitute Existing HM), Tenant shall take such action, if any, as may be required to comply with such Applicable Laws within thirty (30) days after Landlord notifies Tenant of such discovery, except as and to the extent such Hazardous Materials were introduced to the Property by or on behalf of Landlord in which case Landlord shall take such action, if any, as may be required to comply with such Applicable Laws within thirty (30) days after receipt of written notice from a governmental agency; provided, however, that Landlord shall have the right to contest any such notice of violation, in which case Landlord's obligation to cure, if any, shall not arise until after the final adjudication of the validity of the violation notice. If the removal of such Hazardous Material cannot be completed within said 30-day period, such period will be extended for a reasonable additional time as is necessary to effect such removal or remediation, provided Landlord and/or Tenant (as applicable) has commenced the removal within thirty (30) days after notice of discovery and proceeds diligently thereafter to effect such removal.

31.6 Overriding Exception. Notwithstanding anything to the contrary in this Lease, Landlord shall not include in Operating Expenses, or pass on to Tenant directly or indirectly, the cost or expense incurred by Landlord in monitoring, reporting, testing, abating and/or removing any Hazardous Materials introduced to the Property by or on behalf of Landlord.

ARTICLE 32
RECORDATION OF MEMORANDUM

On the Effective Date, Landlord and Tenant shall enter into and record a short form memorandum of the Lease, in the form of **Exhibit D** attached hereto or otherwise in proper form for recording. Tenant shall pay the cost, fees or other amounts for the recording of the memorandum. Upon expiration of the Term or earlier termination of this Lease, Landlord and Tenant shall enter into and record a termination of such memorandum.

ARTICLE 33
SIGNS

Tenant (including its successors) shall have the right to retain all signage that currently exists on or in or outside the Building and any replacements thereof, in each case at Tenant's sole cost and expense.

ARTICLE 34
OPTION TO EXTEND

34.1 Option to Extend. Provided that (i) the original Tenant has not assigned the Lease or sublet the Premises (except with respect to a Permitted Transfer), and (ii) Tenant is not then in Default at the time of exercise of the Renewal Option (as hereinafter defined), and at the commencement of the Renewal Period (as hereinafter defined), Tenant shall have two (2) options (the "**Renewal Option**") to extend the initial Term of this Lease for an additional five (5) year period (the "**Renewal Period**") after the expiration of the initial Term. The Renewal Option shall be exercisable only by written notice given by Tenant to Landlord not later than nine (9) months, nor earlier than twelve (12) months, prior to the expiration of the initial Term. In the event that Tenant does not timely exercise the Renewal Option, the Renewal Option shall be null and void and of no further force or effect, time being of the essence in the exercise of the Renewal Option and it being acknowledged and agreed by Tenant that Landlord shall be entitled to rely on any failure by Tenant to give written notice of its exercise of the Renewal Option by the date set forth herein for such exercise thereof.

34.2 Prevailing Market Rent. All terms and conditions of this Lease shall be applicable during the Renewal Period except that the amount of Base Rent charged for the Renewal Period shall be the then “Prevailing Market Rent”. The term “**Prevailing Market Rent**” shall mean the annual amount per rentable square foot that a tenant has paid and Landlord has accepted in transactions during the period of eighteen (18) months and twelve (12) months prior to the commencement of the Renewal Period 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 comparable buildings in the Sunnyvale submarket of California with comparable vacancy factors would accept in Comparable Transactions. In any determination of Comparable Transactions 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), 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, the value of the existing tenant improvements to the typical prospective tenant and ignoring the fact that the existing improvements were built out for Tenant, 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 (\$100,000.00), a brokerage commission of Fifty Thousand Dollars (\$50,000), and certain other generally applicable economic terms, the Prevailing Market Rent 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, a lease takeover obligation in the amount of One Hundred Thousand Dollars (\$100,000.00), 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. If within thirty (30) days following delivery of Tenant’s notice, Landlord and Tenant have not mutually agreed on the Prevailing Market Rent for the Renewal Period in question, then the parties shall use the following method to determine the Prevailing Market Rent (the “**Three Broker Method**”): within ten (10) business days after the expiration of such thirty-day period, each party shall give written notice to the other setting forth the name and address of a Broker (as hereinafter defined) selected by such party who has agreed to act in such capacity, to determine the Prevailing Market Rent. If either party has failed to select a Broker as aforesaid, the Prevailing Market Rent shall be determined by the Broker selected by the other party. Each Broker shall thereupon independently make his or her determination of the Prevailing Market Rent within twenty (20) days after the appointment of the second Broker. If the two Brokers’ determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower of them, then the Prevailing Market Rent shall be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two Brokers shall jointly appoint a third Broker within ten (10) days after the second of the two determinations described above has been rendered. The third Broker shall independently make his determination of the Prevailing Market Rent within twenty (20) days after his appointment. The highest and the lowest determinations of value among the three Brokers shall be disregarded and the remaining determination shall be deemed to be the Prevailing Market Rent.

34.3 Amendment. Within thirty (30) days (subject to written extension by Landlord) after the later to occur of (i) the date on which Landlord and Tenant agree upon the Prevailing Market Rent or (ii) the date on which the Prevailing Market Rent is otherwise determined by the Three Broker Method, Landlord shall deliver to Tenant an amendment to this Lease which does not modify any of the terms and conditions of this Lease except to incorporate the applicable economic terms of the Renewal Period, and Tenant and Landlord shall execute such amendment to this Lease setting forth the terms as to the Renewal Period within thirty (30) days after delivery of such amendment which complies with the terms of this Section 34.3; provided, however, in the event that either party fails to execute such amendment within such thirty (30) day period, the failure of either party to execute such amendment shall not affect the legally binding nature of Tenant's exercise of the Renew Option or the Rent for the Renewal Period as determined herein.

34.4 Broker. For the purposes of this Article 34, "Broker" shall mean a real estate broker or salesperson licensed in the State of California, who has been regularly engaged in such capacity in the business of commercial industrial leasing in the Sunnyvale submarket of California for at least ten (10) years immediately preceding such person's appointment hereunder. Each party shall pay for the cost of its Broker and one half of the cost of the third Broker.

ARTICLE 35 **ROOFTOP EQUIPMENT LICENSE**

35.1 Subject to the terms of this Article 35, Landlord hereby grants to Tenant a license to use all rooftop space that it is currently using as of the Effective Date ("**Rooftop Equipment**").

35.2 This Article 35 shall be subject at all times to the following conditions:

35.2.1 The Rooftop Equipment shall be at all times operated, maintained and repaired by Tenant, at Tenant's sole cost and expense. All penetrations into any Building surfaces shall be sealed so as to prevent any water leakage. Tenant shall not undertake or engage in any installation of the Rooftop Equipment without first submitting to Landlord detailed working plans of all such installations and obtaining prior written approval of Landlord, which may only be granted or withheld pursuant to Article 8 hereof. Landlord shall also have the right to approve the contractor or subcontractor installing the Rooftop Equipment, provided Landlord's approval shall not be unreasonably withheld, conditioned or delayed, further provided no such contractor or subcontractor shall nullify or otherwise adversely affect any warranty covering the roof.

35.2.2 Throughout the period of such installation, and thereafter during any operation, maintenance or repair of the Rooftop Equipment, Tenant shall install and utilize, at Tenant's sole expense, such screening supports, walk boards, and such other materials as may be required by Landlord to protect the Building or any part thereof, the Building generally, pedestrians, vehicles on adjacent roadways and any other property or owners of property adjacent to the Building.

35.2.3 The Rooftop Equipment installed or operated by Tenant hereunder shall be installed, operated, maintained and repaired by Tenant in a good and workmanlike manner and in a manner which shall not impair the structure, value, rental value or rentability of, or detract from the appearance of, the Building or any part thereof.

35.2.4 The Rooftop Equipment installed or operated by Tenant hereunder shall be installed, operated, maintained and repaired by Tenant in a manner which shall not cause a violation of any agreements or warranties with respect to the Building or any part thereof as are now or hereafter shall be held by or entered into by Landlord or Landlord's management agent.

35.2.5 The Rooftop Equipment installed or operated by Tenant hereunder shall be installed, operated, maintained and repaired by Tenant in a manner which shall not interfere with or disturb Landlord.

35.2.6 The installation, operation, maintenance, repair and replacement of the Rooftop Equipment shall be performed by Tenant in accordance with all Applicable Law.

35.2.7 Tenant acknowledges and agrees that Landlord has not made any representation, warranty or other statement to Tenant (and none is implied) regarding the feasibility of installing or operating the Rooftop Equipment hereunder.

35.2.8 At the expiration of the Term or earlier termination of this Lease, Landlord may require Tenant to remove the Rooftop Equipment, repair any damage caused by such removal and restore the Building to the condition existing prior to the installation of such Rooftop Equipment, provided Landlord advised Tenant that such Rooftop Equipment must be removed at the time of approving the plans as contemplated in Section 35.2.1.

35.3 Landlord agrees to permit Tenant reasonable, nonexclusive access to portions of the Building as necessary so as to facilitate the installation, operation, maintenance, repair, and removal of the Rooftop Equipment in accordance with this [Article 35](#) and [Article 36](#) below. Tenant shall notify Landlord in advance when Tenant requires access to the roof of the Building and shall not attempt to gain such access to the roof of the Building without being accompanied by an employee, agent or contractor of Landlord.

ARTICLE 36
COMMUNICATIONS AND ACCESS

Tenant shall be permitted exclusive access of the space in the Building risers and telecommunications closets.

ARTICLE 37
SECURITY

Tenant will be allowed to have its own security personnel (in addition to the security provided by Landlord pursuant to this Lease) and Tenant's security personnel shall, to the extent permitted by Applicable Laws, be allowed to carry concealed guns and other concealed weapons while on the Premises and when escorting Tenant's personnel and guests. Notwithstanding anything to the contrary contained herein, Landlord shall have no obligation to provide security for the Premises, the Building and/or the Land. Landlord shall not be liable to Tenant, and Tenant hereby waives any claim against Landlord for: (i) any unauthorized or criminal entry of third parties into the Premises, the Building or the Land; (ii) any damage to persons or property caused by such entry; or (iii) any loss of property in and about the Premises, the Building or the Land from any unauthorized or criminal acts of third parties, regardless of any action, inaction, failure, breakdown or insufficiency of such access control measures; provided, however, Landlord shall not be released from, and shall indemnify, defend, protect and hold harmless Tenant from, all losses, damages, liabilities, claims, attorneys' fees, costs and expenses in connection with (i) through (iii) above arising from the negligence or willful misconduct of Landlord or its agents, employees, contractors, licensees or invitees, Landlord's violation of any law, order or regulation, or a breach of Landlord's obligations under the Lease (beyond any notice, cure and/or grace periods provided hereunder).

ARTICLE 38
PURCHASE OPTION

Provided that (i) Tenant has not assigned this Lease or sublet the Premises (except with respect to a Permitted Transfer), and (ii) there is no Default then existing and continuing, Tenant shall have the option to purchase the Premises, as and to the extent specifically provided in this Article 38. If Landlord decides to sell the Premises, Landlord shall submit to Tenant a written offer (the "**Landlord Purchase Offer**") identifying the purchase price at which Landlord is willing to offer the Premises for sale. If Tenant elects to accept the Landlord Purchase Offer, then Tenant shall deliver Landlord written notice thereof within ten (10) days after receipt of the Landlord Purchase Offer (the "**Tenant Purchase Acceptance**") and Tenant thereafter shall have an exclusive negotiating period of thirty (30) days with Landlord to reach formal agreement on material terms of a sale based on the purchase price set forth in Landlord Purchase Offer, enter into a binding Purchase and Sale Agreement, and for Tenant to perform its due diligence of the Premises (the "**PSA Negotiating Period**"). Tenant's failure to timely deliver a Tenant Purchase Acceptance shall be deemed to constitute a rejection of the Landlord Purchase Offer. If Tenant rejects or is deemed to have rejected the Landlord Purchase Offer, or if Tenant timely delivers a Tenant Purchase Acceptance, but, despite the diligent, good faith efforts of the parties, the parties fail to enter into a binding Purchase and Sale Agreement prior to the expiration of the PSA Negotiating Period, Landlord shall be free to market and sell the Premises without any restriction; provided, however, that if the purchase price that Landlord offers or is prepared to accept for a sale of the Premises to an unaffiliated third party is at least five percent (5%) less than purchase price set forth in the Landlord Purchase Offer rejected by Tenant, then Tenant shall have ten (10) days to elect to either agree to purchase the Premises on such new purchase price (and the above referenced PSA Negotiating Period and related provisions shall apply thereto for a period of thirty (30) days) or to decline to purchase the Premises on such new purchase price. The failure of Tenant to respond within such ten (10) day period shall be deemed to be Tenant's election not to purchase the Premises on such purchase price.

In the event that Landlord sells the Premises to an unaffiliated third party purchaser after Tenant rejects or is deemed to have rejected the Landlord Purchase Offer, the purchaser shall not be bound in any manner by the terms of this Article 38 (and the provisions hereof shall not apply to any subsequent sale of the Premises by such purchaser). Tenant's purchase option set forth in this Article 38 shall not apply with respect to and shall remain in full force and effect irrespective any sale at foreclosure (or a deed in lieu of foreclosure) or any sale following foreclosure (or a deed in lieu of foreclosure) or to any transfer by Landlord to an affiliate of Landlord. In addition, and notwithstanding any other provisions hereof and without limiting any other rights or remedies of Landlord, if Tenant either does not timely deliver a Tenant Purchase Acceptance or defaults beyond any applicable notice and cure periods (at no fault of Landlord) in the purchase of the Premises pursuant to a final form of PSA executed by the parties in accordance with this Article 38 above, Tenant thereafter shall have no further purchase option pursuant to this Article 38. For the avoidance of doubt, except with respect to a Permitted Transfer, Tenant's purchase option set forth in this Article 38 shall expire upon the assignment of this Lease, sublet of the Premises or on the expiration or sooner termination of the term of this Lease, and this Article 38 shall be null and void and of no further force and effect on such date.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Deed of Lease under seal as of the day and year first above written.

LANDLORD:

a _____

By: _____
Name: _____
Its: _____

TENANT:

GSI TECHNOLOGY, INC.,
a Delaware corporation

By: _____
Name: _____
Its: _____

EXHIBIT A

PREMISES

A-1

EXHIBIT B

[RESERVED]

B-1

EXHIBIT C

OPERATING EXPENSES EXCLUSIONS

1. Real Estate Tax Expenses;
2. intentionally omitted;
3. intentionally omitted;
4. franchise, excise, excess profit, revenue, capital stock, foreign ownership or control taxes, mortgage recording taxes, transfer and transfer gains, inheritance, estate, gift or income taxes imposed upon Landlord;
5. all valuation costs, mortgage brokerage fees, mortgage amortization, interest and debt service (including interest, principal and amortization) and all financing and refinancing costs (including, without limitation, legal, accounting, brokerage and other professional fees related to such financings or refinancings) with respect to Mortgages;
6. wages, salaries and benefits paid to any persons above the level of the senior property manager or any fee, profit or compensation retained by Landlord or its affiliates for management and administration of the Property in excess of two percent (2%) of all gross receipts from the Property;
7. legal, arbitration, brokerage, accounting, and other professional fees incurred in connection with (A) any negotiations and/or disputes with tenants, prospective tenants or other occupants of the Building or in interpreting or enforcing any leases or in the prosecution of any eviction proceedings, (B) mortgagees or prospective mortgagees of the Building or the Land or any part of either, or (C) any modification, amendment, extension, surrender or cancellation of any leases, contracts of sale or mortgages related to the Building;
8. costs that are reimbursed out of insurance (or that would have been reimbursed if Landlord had carried the insurance required hereunder), warranty or condemnation proceeds or which are reimbursable by Tenant or other tenants other than pursuant to Section 1.19 of the Lease;
9. costs, including, but not limited to, interest charges or late fees in the nature of penalties or fines (except to the extent attributable to Tenant's acts or omissions);
10. any costs or expenses (including fines, interest, penalties and legal fees) arising out of Landlord's failure to timely pay Operating Expenses or Real Estate Taxes (except to the extent attributable to Tenant's acts or omissions);
11. intentionally omitted;
12. any expenses incurred in connection with any ground or land lease, including, without limitation, any land rent or ground rent, if any, except to the extent the same constitute Real Estate Taxes, insurance premiums or the like;

13. all leasing or brokerage commissions, legal fees, or the fees of any appraiser or consultant in connection with the preparation and/or negotiation of any space lease or any extension, modification, amendment, surrender, or cancellation of any space lease, any consents to assignments or subleases, or alterations for any tenant occupancy (including consents thereto) in the Building;

14. the cost of tenant installations or decorations incurred in connection with preparing space for a new tenant including any tenant improvement contributions made by Landlord and all costs of any base building work for any tenant or for any subsequent build-out by such tenant (including Tenant) including permit, license and inspection fees with respect thereto;

15. intentionally omitted;

16. depreciation, amortization, and/or any non-cash expenses, except as provided in the Lease;

17. any fee, expenditure or cost for services, supplies or repairs paid (i) to any person which shall Control, be under the Control of, or be under common Control with Landlord, or in which Landlord directly or indirectly owns not less than a fifty percent (50%) interest or (ii) to any shareholder owning at least fifty percent (50%) of the common stock, any general partner, any officer above the rank of vice president, or member of any Board of Directors of Landlord or of any Person described in this clause 22 or (iii) to any person who is a relative by blood (to the first degree of consanguinity, lineal or lateral) or marriage of any such persons, in each case in excess of the amount which would be paid in the absence of such relationship; provided, however, that, notwithstanding the foregoing, management fees paid to an affiliate of Landlord which are not in excess of 2% of all gross receipts from the Property shall be included in, and not excluded from, Operating Expenses;

18. (i) all costs and expenses incurred with respect to a sale, refinancing, transfer, or other disposition of all or any portion of the Building and/or the land or any interest therein (including, without limitation, transfer, sales, and/or gains taxes) and/or the lessee's interest in any ground lease or any ownership interest in Landlord, or (ii) the negotiation or renegotiation of any ground lease affecting the Building, including, but not limited to, legal, accounting, and any other professional fees, any transfer and gains taxes and recording charges incurred in connection therewith or in connection with the purchase, transfer, or sale of any air, development, easement, or other real property interests;

19. to the extent any costs includable in Operating Expenses are incurred with respect to both the Building and other properties (including, without limitation, salaries, fringe benefits and other incentive compensation of Landlord's personnel who provide services to both the Building and other properties and all insurance premiums), there shall be excluded from Operating Expenses a fair and reasonable percentage thereof which is properly allocable to such other properties;

20. any compensation paid to clerks, attendants or other person in commercial concessions owned or operated by Landlord or its affiliates in the Building which are for services not supplied to Tenant in the Building as part of Operating Expenses;

21. the cost of maintaining, organizing or reorganizing the entity that is Landlord;
 22. lease payments for equipment rented on a long term basis in lieu of purchase, to the extent the costs of such equipment would constitute a capital expenditure not includable in Operating Expenses if such equipment were purchased;
 23. the cost of acquisition, restoring, removing, or replacing any sculptures, paintings or other objects of fine art in the Building (but the cost of maintaining, cleaning, and insuring (provided such insurance is included as part of Landlord's and its affiliates' blanket property insurance coverage or is not materially greater than it had been when covered under such blanket policy) such art shall be included within Operating Expenses);
 24. costs incurred in constructing additional stories on the Building or adding structures to the Building or the Property;
 25. the cost of any judgment, settlement or arbitration award and any reasonable attorney's fees and disbursements and other costs incurred in connection therewith resulting from any liability of Landlord for negligence or of Landlord's or Landlord's agents', servants' or contractors' negligent or otherwise tortious acts or omissions;
 26. all penalties incurred as the result of a violation of a legal requirement for which Landlord is obligated to comply (except to the extent attributable to Tenant's acts or omissions);
 27. any costs that duplicate costs for which Landlord is reimbursed by Tenant under other provisions of this Lease;
 28. any costs that duplicate costs for which Landlord is directly reimbursed by any other party (as opposed to reimbursement of Operating Expenses);
 29. all charitable contributions and political contributions and all dues to professional and lobbying associations;
 30. all bad debt losses and reserves of any kind, except to the extent that reserves are used from time to time in a particular calendar year to pay for expenses that would otherwise be includable in Operating Expenses pursuant to Section 1.19 of the Lease;
 31. any off-site general and administrative expenses, including auditing fees (except for auditing fees in connection with the preparation of statements for Tenant, payroll and any other off-site general or administrative expenses which are customarily included in Operating Expenses in comparable Buildings);
 32. all entertaining, dining and travel expenses; and
- the cost of complying with recycling requirements to the extent of any revenues or other economic benefits arising from the sale of recycled refuse (i.e., if the cost of recycling is \$1,000 and Landlord realized \$500 from the sale of recycled refuse, only \$500 will be included in Operating Expenses).

EXHIBIT D

FORM OF LEASE MEMORANDUM

**RECORDING REQUESTED BY AND WHEN RECORDED
RETURN TO:**

Attention: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum"), dated as of the _____, 2024, is made by and between _____, a _____ ("Landlord"), with an address _____, and _____, a _____ ("Tenant"), with an address _____.

RECITALS

A. Landlord and Tenant have entered into that certain Lease Agreement dated ____ (the "Lease"), pursuant to which Tenant has leased that certain building located at 1213 Elko Drive, Sunnyvale, California, as described on Exhibit A attached hereto and made a part hereof (the "Leased Premises"), upon the terms and conditions set forth in the Lease.

B. Landlord is the fee owner of the Leased Premises.

C. Landlord and Tenant desire to set forth certain terms and provisions contained in the Lease in this Memorandum for recording purposes.

NOW, THEREFORE, in consideration of the rents reserved and the covenants and conditions set forth in the Lease, Landlord and Tenant do hereby covenant, promise and agree as follows:

1. **Definitions**. Capitalized terms used herein which are not otherwise defined herein shall have the respective meanings ascribed to them in the Lease.

2. **Grant of Lease.** Pursuant to the Lease and this Memorandum, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises upon the terms and conditions set forth in the Lease.

3. **Commencement Date.** The Term of the Lease commenced on _____ (the "Commencement Date").

4. **Expiration Date.** The Term of the Lease shall expire (unless sooner terminated or unless extended or renewed as provided in the Lease) on the last day of the 120th full calendar month after the Commencement Date, subject to Tenant's extension options.

5. **Extension Options.** Tenant, at its option, may extend the Term of the Lease for two (2) consecutive periods of five (5) years each, subject to the terms and conditions of the Lease.

6. **Purchase Option.** Subject to the terms and conditions of the Lease, Tenant has an option to purchase the Leased Premises, along with the real property and all improvements thereon, as more particularly set forth in the Lease.

7. **Incorporation of Lease.** This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Lease, the terms of which are incorporated herein by reference. This instrument is merely a memorandum of the Lease and is subject to all of the terms, provisions and conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the date first written above.

LANDLORD:

By: _____
Name: _____
Its: _____

TENANT:

By: _____
Name: _____
Its: _____

Exhibit A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE QTY OF SUNNYVALE, COUNTY OF SANTA CLARA, STATE OF CAUFORNIA AND IS DESCRIBED AS FOLLOWS:

All of Parcel B, as shown on that certain Map entitled, "Parcel Map being a Subdivision of Parcel 2 as shown on that Parcel Map recorded in Book 321 of Maps at Page 22, Santa Oara County Records and also being a portion of Rancho Pastoria De Las Borregas and Section 17, Township 6 South, Range 1 West, M.D.B. & M., which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of california on June 6, 1973 in Book 324 of Maps, Page 24.

APN: 104-32-029