



EXECUTIVE SUMMARY

HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: July 18, 2019

HCR19-081

SUBJECT: Lease Extension for TAL Store 828 LLC, at the Smart Corner Building

COUNCIL DISTRICT: 3

ORIGINATING DEPARTMENT: Real Estate

CONTACT/PHONE NUMBER: Emmanuel Arellano, (619) 578-7586

REQUESTED ACTION:

That the San Diego Housing Commission (Housing Commission) approve a lease extension for TAL Store 828, LLC a California limited liability company, to continue to occupy commercial space at 1075 11th Avenue, San Diego, CA 92101 in the Smart Corner building.

EXECUTIVE SUMMARY OF KEY FACTORS:

- TAL Store 828, LLC (TAL) currently occupies the commercial rental space at 1075 11th Avenue, San Diego, CA 92101, under a five-year Retail Lease that commenced on December 1, 2014.
- TAL is current with rent payments and in compliance with all other terms of the lease.
- The initial five-year term of the lease with TAL expires on November 30, 2019.
- In addition to exercising their lease extension renewal for five years at the end of the initial term on November 30, 2019, TAL has expressed interest in securing an additional extension renewal option for an additional five years (December 1, 2024 – November 30, 2029).
- Tenant shall be responsible for the costs of all tenant improvements. All tenant improvements must be approved by the Housing Commission prior to construction.
- The lease terms and conditions for the proposed extension of the TAL lease reflect the current fair market rent for retail commercial space in the nearby area.



REPORT

DATE ISSUED: July 11, 2019

REPORT NO: HCR19-081

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of July 18, 2019

SUBJECT: Lease Extension for TAL Store 828, LLC at the Smart Corner Building

COUNCIL DISTRICT: 3

REQUESTED ACTION

Seven-day advance notice of San Diego Housing Commission hearing of the following matter has been provided to the Housing Authority Members pursuant to the provisions of San Diego Municipal Code Section 98.0301(e)(4)(A) and (B).

Approve a lease extension for TAL Store 828, LLC a California limited liability company, to continue to occupy commercial space at 1075 11th Avenue, San Diego, CA 92101 in the Smart Corner building.

STAFF RECOMMENDATION

That the San Diego Housing Commission take the following actions:

- 1) Approve a lease extension for TAL Store 828, LLC for an additional period of five years, in addition to the current five-year renewal option, that substantially conforms to the lease attached to this report; and
- 2) Authorize the President & CEO, or designee, to execute all documents and instruments that are necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions as are necessary and/or appropriate to implement these approvals.

SUMMARY

TAL Store 828, LLC (TAL) currently occupies the commercial rental space at 1075 11th Avenue, San Diego, CA 92101 under a five-year Retail Lease that commenced December 1, 2014.

TAL is current with rent payments and in compliance with all other terms of the lease. In addition to exercising their lease extension renewal for five years at the end of the initial term on November 30, 2019, TAL has expressed interest in securing an additional extension renewal option for an additional five years (December 1, 2024 – November 30, 2029).

The key terms of the Lease during the extended term effective December 1, 2019, are:

1. Base Rent shall be \$5,775.67 per month for the first year of the extended term. Base rent shall increase each additional year by 3 percent during the extended term, per the following schedule:

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Lease Extension for TAL Store 828, LLC at the Smart Corner Building

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	Period	Monthly Rent
Year 6	December 1, 2019 – November 30, 2020	\$5,775.67
Year 7	December 1, 2020 – November 30, 2021	\$5,948.94
Year 8	December 1, 2021 – November 30, 2022	\$6,127.41
Year 9	December 1, 2022 – November 30, 2023	\$6,311.23
Year 10	December 1, 2023 – November 30, 2024	\$6,500.57

2. Commencing December 1, 2019, with the extended term, Tenant shall continue to pay to Landlord as “Additional Rent” tenant’s Pro Rata Share (8.8 percent) of the Retail Common Area Maintenance (CAM) pool.
3. Tenant shall be responsible for the costs of all tenant improvements. All tenant improvements must be approved by the Housing Commission prior to construction.
4. Subject to and upon approval of the Housing Commission Board of Commissioners, tenant will have one additional option to extend the term (December 1, 2024 – November 30, 2029) upon the same terms, covenants and conditions of the original lease, for five years. Base rent shall be adjusted to market rates and shall not be less than the rent during the fifth year of the extended term. Each year thereafter, base rent shall be increased by 3 percent.

Attached to this report is a copy of the retail lease with TAL (attachment 1).

The lease terms and conditions for the proposed extension of the TAL lease reflect the current fair market rent for retail commercial space in the nearby area. In Year 6 of the lease the TAL monthly rate of \$5,775.67 equates to \$3.16 per square foot for the approximately 1,825 square feet of currently occupied space. Data collected by a market analysis conducted using a web based search of current rents for nearby areas is displayed in the following table.

Rental Rate	Address	Proximity to TAL Store 828	Monthly comparable at 1,825 square feet
\$1.88/sqft/mo	1129-1133 Broadway	1 block south	\$3,431.00
\$1.95/sqft/mo	912 B Street	2 blocks northwest	\$3,558.75
\$2.45/sqft/mo	701 B Street	4 blocks northwest	\$4,471.25
\$3.16/sqft/mo	1075 11th Ave	TAL Store 828	\$5,767.00
\$4.00/sqft/mo	928-944 C Street	2 blocks west	\$7,300.00
\$4.30/sqft/mo	1150 Broadway	Same block	\$7,847.50

FISCAL CONSIDERATIONS

The proposed funding sources and uses approved by this action were approved by the Housing Authority in the Fiscal Year 2020 Housing Commissions Budget. Approving this action will not have an impact in the FY 2020 Total Budget.

FY2020 funding sources approved are as follows:

Commercial Lease Revenue	\$68,467
CAM Estimate Income	\$1,380

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PREVIOUS COUNCIL and/or COMMITTEE ACTION

On February 10, 2015, the Housing Authority of the City of San Diego approved the lease for TAL for a period of five years, with one five-year renewal option. (HAR15-005 and Resolution Number HA-1647).

KEY STAKEHOLDERS and PROJECTED IMPACTS

Key Stakeholders for these actions include the Housing Commission, TAL, and potential customers of the cellular phone retail store at the Smart Corner Building.

ENVIRONMENTAL REVIEW

The proposed leasing agreement is categorically exempt from the requirements of California Environmental Quality Act (CEQA) pursuant to Section 15301 because the Smart Corner is an existing facility and the proposed actions involve negligible or no expansion of the existing use. Furthermore, the project meets the criteria set forth in CEQA Section 15301 which allows for leasing activities in existing facilities where the exceptions listed in CEQA Section 15300.2 would not apply. Processing under the National Environmental Policy Act is not required since no federal funds are involved in this activity.

Respectfully submitted,

Emmanuel Arellano

Emmanuel Arellano
Director, Portfolio Management
Real Estate Division

Approved by,

Jeff Davis

Jeff Davis
Executive Vice President & Chief of Staff
San Diego Housing Commission

Attachments: 1. TAL Store 828, LLC Retail Lease

Hard copies are available for review during business hours at the security information desk in the main lobby and at the fifth floor reception desk of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at www.sdhc.org

**Portion of the Ground Floor
The Smart Corner
1122 Broadway
San Diego, California**

**RETAIL LEASE
(TAL Store 828, LLC)**

THIS RETAIL LEASE ("Lease") is made as of this 1st day of December, 2014, by and between San Diego Housing Commission, a public agency ("Landlord"), and TAL Store 828, LLC a California limited liability company ("Tenant").

1. **Definitions.**

"Additional Rent" shall have that meaning ascribed to it in Section 4(c) of this Lease.

"Base Rent" shall have that meaning ascribed to it in Section 4(b) of this Lease.

"Building" means the building commonly known as 1122 Broadway, San Diego, California.

"Building Rules and Regulations" means the rules and regulations which may hereafter be adopted by Landlord for the care, protection, cleanliness, and operation of the Premises, Project, Building and Common Areas, and any reasonable modifications or additions to such rules and regulations adopted by Landlord so long as the same does not negatively impact the Project or Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease. Notwithstanding the foregoing, Landlord and Tenant agree that the terms and conditions of this Lease shall control the rights and responsibilities of the parties and shall supersede any and all provisions of the Building Rules and Regulations which may now or in the future conflict with the terms and conditions of this Lease. Landlord shall not be responsible to Tenant for failure of any other tenant or occupant of the Building to observe or comply with any of the Building Rules and Regulations. The term "Building Rules and Regulations" shall be deemed to include any and all reasonable amendments made by Landlord to the Building Rules and Regulations after the date of this Lease as Landlord may deem desirable, in Landlord's reasonable discretion, for the proper and efficient operation and maintenance of the Building. Such rules and regulations may include, without limitation restrictions in the hours during which the Project shall be open for use so long as the same does not negatively impact the Project or Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease.

"Commencement Date" means December 1, 2014.

"Common Areas" means all areas, space, equipment and special services provided by Landlord within the ground floor of the Building for the common or joint use and benefit of the tenants, their employees, agents, servants, suppliers, customers and other invitees, including, by way of illustration, but not limitation, landscaped areas, curbs, sidewalks, restrooms, lobbies,

floor corridor hallways, patios, parking facilities, plenums above the ceiling on all floors and all other areas outside the Building. Notwithstanding the foregoing or anything to the contrary contained herein, Landlord may determine the nature, size and extent of the Common Areas as well as make changes to the Common Areas from time to time which, in its opinion, are deemed desirable so long as the same does not negatively impact the Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease and further provided Landlord cannot alter the access to the Premises, except during limited periods of construction by the Landlord, provided that alternative means of access are provided to the Tenant during such limited periods of time and provided further that advance notice is given to Tenant.

"Extended Term" shall have that meaning ascribed to it in Section 3(b) of this Lease.

"Garage" means the parking garage located generally underneath the Building. No leasehold estate is created by this Lease, or otherwise, for the Garage or any portion of it.

Hazardous Material" means: shall mean:

(1) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," "pollutant" or "contaminant" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.); the Clean Water Act (33 U.S.C. §2601 et seq.); the Toxic Substances Control Act (15 U.S.C. §9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.); or under any other Applicable Environmental Law;

(2) Those substances included within the definitions of "Extremely Hazardous Waste," "Hazardous Waste," or "Restricted Hazardous Waste," under §§25115, 25117 or 25122.7 of the California Health and Safety Code, or listed or identified pursuant to §§25140 or 44321 of the California Health and Safety Code;

(3) Those substances included within the definitions of "Hazardous Material," "Hazardous Substance," "Hazardous Waste," "Toxic Air Contaminant" or "Medical Waste" under §§25281, 25316, 25501, 25501.1, 25023.2 or 39655 of the California Health and Safety Code;

(4) Those substances included within the definitions of "Oil" or a "Hazardous Substance" listed or identified pursuant to §311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321, as well as any other hydrocarbonic substance or by-product;

(5) Those substances included within the definitions of "Hazardous Waste," "Extremely Hazardous Waste," or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(6) Those substances listed by the State of California as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.9(a) of the California Health and Safety Code;

(7) Those substances or defined as a "Hazardous Waste," Extremely Hazardous Waste," or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations;

(8) Any material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or public agency requires in order for the property to be put to any lawful purpose;

(9) Any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;

(10) Pesticides regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.;

(11) Asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;

(12) Any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level radioactive waste," "spent nuclear fuel" or "transuranic waste," and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§2011 et seq., the Nuclear Waste Policy Act, 42 U.S.C. §§10101 et seq., or pursuant to the California Radiation Control Law, California Health and Safety Code §§25800 et seq.;

(13) Any material regulated under the Occupational Safety and Health Act, 29 U.S.C. §§651 et seq., or the California Occupational Safety and Health Act, California Labor Code §§6300 et seq.;

(14) Any material regulated under the Clean Air Act, 42 U.S.C. §§7401 et seq. or pursuant to Division 26 of the California Health and Safety Code;

(15) Those substances listed in the United States Department of Transportation Table (49 CFR Part 172.101), or by the Environmental Protection Agency, or any successor agency, as hazardous substances (40 CFR Part 302);

(16) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state or local laws or regulations; and

(17) Any material, waste or substance that is:

- (i) a petroleum or refined petroleum product;
- (ii) asbestos;
- (iii) polychlorinated biphenyl;
- (iv) designated as a hazardous substance pursuant to 33 U.S.C. §1321 or listed pursuant to 33 U.S.C. §1317;
- (v) a flammable explosive; or
- (vi) a radioactive material.

(18) Substances defined, or as may be defined, as "hazardous substances," "hazardous materials," or "toxic substances" in the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), California Health & Safety Code §§ 25100 et seq. and §§ 39000 et seq., the California Safe Drinking Water & Toxic Enforcement Act of 1986 (California Health & Safety Code §§ 25249.5 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), any and all amendments and recodifications of the foregoing laws and any rules or regulations adopted and publications promulgated pursuant to said laws; (i) any other substance which results in liability to any person or entity from exposure to such substance under any statutory or common law theory; (ii) any matter or substance which is in excess of relevant and appropriate levels set forth in any applicable federal, state, or local laws or regulations pertaining to the regulation of any hazardous or toxic substance, material or waste, or for which any applicable federal, state or local agency orders or otherwise requires the removal, treatment or remediation; (iii) asbestos; (iv) urea formaldehyde foam insulation; (v) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs) in excess of fifty (50) parts per million; or (vi) any other chemical, material, or substance, to which exposure is prohibited, limited or regulated by any governmental authority or agency or which may or could pose a hazard to the health and safety of the occupants of the Building or the owners of property adjacent to the Building.

"Initial Improvements" means the tenant improvements described as follows:

- (1) New signage to be approved by the Landlord and by all permitting jurisdictions;
- (2) New paneling to be installed where the old sign existed;
- (3) Interior fixtures to be installed, as approved by the Landlord;
- (4) New flooring to be installed, as approved by the Landlord; and
- (5) updates to floor drainage shall be installed, as approved by Landlord.

"Initial Term" shall have that meaning ascribed to it in Section 3(a) of this Lease.

"Landlord" means the San Diego Housing Commission, a public agency.

"Landlord's Affiliates" means collectively the City of San Diego, the Housing Authority of the City of San Diego, and all of their respective members, directors, council members, employees, agents, affiliates, management and other contractors.

"Plans and Specifications" means the plans and specifications approved by the Landlord, pursuant to the procedure described in this paragraph. Tenant shall submit to Landlord for review and approval plans and specifications (including without limitation, the Architectural, Mechanical, Electrical, Structural, ADA, Fire and Life Safety plans and specifications and calculations) showing all Initial Improvements to be constructed at the Premises and all proposed signage (as set forth in Section 17, below). Within ten (10) business days after receipt thereof, Landlord shall review and approve or reject the same as referenced hereinafter in this section which approval shall not be unreasonably withheld. In the event Landlord does not reasonably approve the Plans and Specifications and notify Tenant of Landlord's approval within such ten (10) business day period, then the Plans and Specifications thus submitted shall be deemed disapproved. In such event, Landlord shall provide Tenant with a written explanation of the reasons for such rejection and Tenant shall cause additional revisions to be made to the Plans and Specifications and shall submit a second revised set of Plans and Specifications ("Second Revised Plan") to Landlord for Landlord's approval. The Second Revised Plan shall be subject to the approval of the Landlord in its reasonable discretion, which approval shall not unreasonably be withheld. On or before five (5) business days of receiving the Second Revised Plan from Tenant, Landlord shall provide Tenant with written notice of Landlord's acceptance or rejection of the Revised Plan. If Landlord rejects the Second Revised Plan, this Lease shall be subject to termination by Tenant as provided in Section 3(c) of this Lease or the above described procedure shall be followed until the Plans and Specifications are approved and Tenant shall have an ongoing right to terminate this Lease until Landlord approves the Plans and Specifications. Approval of progressively more detailed Plans and Specifications will be promptly granted by Landlord if developed as a logical evolution of plans and specifications theretofore approved. Notwithstanding anything to the contrary contained in this Lease, any and all costs and expenses incurred by Tenant with respect to updating the Plans and Specifications and preparing the Revised Plan and/or the Second Revised Plan or subsequent revised plans, if any, shall be borne solely and exclusively by Tenant, including without limitation any and all fees Tenant's design professionals. Landlord shall have no responsibility to incur any costs or expenses in connection with respect to the Plans and Specifications. The parties hereby agree that any and all costs and expenses incurred in connection with constructing the Improvements in compliance with the Revised Plan and/or Revised Plans, including without limitation all costs of construction, design, overhead, profit, general conditions, contingencies labor, materials and/or supplies, shall be the obligation of the Tenant.

"Premises" means the approximately 1,825 rentable square feet comprising a portion of the ground floor of the Building, commonly known as 1075 11th Avenue, San Diego, CA 92101, as shown on the Premises Floor Plan, as calculated in substantial conformance with the American National Standard Institute Publication ANSI Z65.1-1996 as promulgated by the Building Owners and Managers Association International standard.

"Premises Floor Plan" means the Premises Floor Plan attached hereto as Exhibit A.

"Project" means the Building, Garage and surrounding real property to the extent owned by Landlord.

"Rent" means collectively Base Rent and Additional Rent.

"Tenant" means TAL Store 828, LLC a California limited liability company.

"Term" means collectively the Initial Term and the Extended Term, if any.

2. Lease of the Premises.

(a) "As-Is" Condition. Landlord leases to Tenant and Tenant leases from Landlord the Premises. Tenant hereby agrees and acknowledges that Tenant is leasing the Premises "As-Is" from Landlord, without relying on any communications not set forth herein that may have been made by Landlord, or any of Landlord's agents or employees, with respect to the Premises or Tenant's intended use thereof. Without limiting the generality of the foregoing, Tenant shall be solely responsible for determining the condition of the Premises. Landlord shall have no obligation to improve the Premises. Provided, however, as of the date of delivery of the Premises from Landlord to Tenant, the existing HVAC, plumbing, electrical, lights and restrooms shall be in good working order.

(b) Guaranty. Concurrently with Tenant's execution and delivery of this Lease to Landlord, Tenant shall cause TAL SD Warehouse, LLC, to execute and deliver to Landlord a guaranty of all of Tenant's obligations under this Lease. Such guaranty shall be in a form acceptable to Landlord and its general counsel in their sole discretions.

3. Term, Extensions and Contingencies.

(a) Term. Unless sooner terminated pursuant to the terms of this Lease, the term of this Lease shall initially be for one (1) year beginning on the Commencement Date, terminating at midnight on November 30, 2015. Subject to and upon approval of the Lease by Board of the Landlord, the term of the Lease shall be extended for a total of five (5) years, terminating at midnight on November 30, 2019 ("Initial Term").

(b) Extensions. Subject to and upon approval of the Lease by the Housing Authority of the City of San Diego, Landlord grants to Tenant one (1) option to extend the Term upon the same terms, covenants and conditions of this Lease, for five (5) years ("Extended Term"), except that the Base Rent shall be increased as set forth in Section 4(b)(2), below. If Tenant elects to exercise the option, Tenant shall notify Landlord in writing at least three (3) months prior, but not more than six (6) months prior to the expiration of the Initial Term.

(d) Board and Housing Authority Approval. This Lease shall not be extended beyond the first year unless, this Lease has been approved by the Board of Commission and resolution of the Housing Authority of the City of San Diego, in its sole discretion. Tenant hereby acknowledges that Landlord is prohibited by San Diego Municipal Code Section

98.0301(d)(8)(A) from leasing property for a term in excess of five (5) years, including without limitation entering into this Lease, without the approval of the Housing Authority of the City of San Diego.

4. Rent and Security Deposit.

(a) Security Deposit. Tenant shall pay the first month's Base Rent to Landlord no later than December 1, 2014. Tenant shall pay security deposit, in the amount of \$4,982.15.

(b) Monthly Base Rent.

(1) During Initial Term. Tenant agrees to pay Landlord rent each and every month during the Term commencing on December 1, 2014. Notwithstanding the foregoing, Base Rent shall be \$4,982.15 for the first year of the Lease. Base Rent shall increase each additional year by three percent (3%) during the Initial Term. The Base Rent shall be in the amounts set forth in the Table below ("Base Rent"), plus applicable taxes, if any, plus Additional Rent, as hereinafter described, in advance on or before the first (1st) day of each month. All Rent may be paid by check and delivered personally or by first class mail to Landlord's designated agent at 1122 Broadway, Suite 300, San Diego, California, 92101.

PERIOD	MONTHLY BASE RENT
December 1, 2014 – November 30, 2015*	\$4,982.15
December 1, 2015 – November 30, 2016	\$5,131.61
December 1, 2016 – November 30, 2017	\$5,285.56
December 1, 2017 – November 30, 2018	\$5,444.13
December 1, 2018 – November 30, 2019	\$5,607.45

* No Additional Rent shall be due for December, 2014, January, 2015, February, 2015, March, 2014, April 204, May, 2015 or June, 2015

(2) During Extended Term. The Base Rent during Extended Term shall be not less than the rent during the 5th year of the Lease. Provided, however, the rent for the Extended Term shall be adjusted to market rates if higher than the rent for the 5th year of the lease for the 6th year of the Lease. During the Extended Term, beginning in the 7th year of the Lease, and each year thereafter, the Base Rent shall increase by 3% over the rent for the immediately preceding year. For sake of example, the Base Rent for the 7th year of the Lease shall be 1.03% of the Base Rent for the 6th year of the Lease. The Base Rent for the 8th year of the Lease shall be 1.03% of the 7th year of the Lease, and so on. Additional Rent shall be charged during the 6th through 10th years of the lease as well.

(c) Additional Rent. In addition to the Base Rent, commencing on July 1, 2015, Tenant shall pay to Landlord as "Additional Rent" Tenant's Pro Rata Share of the amount by which that year's Retail CAM Pool exceeds the Retail CAM Pool for the calendar year beginning on July 1, 2015. "Tenant's Pro Rata Share" means 8.8%, which amount was obtained by dividing the square footage of the Premises by the gross floor area of the ground floor retail component of the Building. Landlord shall invoice Tenant for the foregoing amounts on a monthly, or calendar quarter or annual basis, at Landlord's option. Notwithstanding the foregoing, Tenant's Retail Annual CAM share during the Initial Term (commencing July 1, 2015 and ending November 30, 2019) shall not exceed \$9,600.00 in any of the Landlord's fiscal years, which run from July 1st through June 30th (the "Annual Additional Rent Cap"). For the remainder of the Term, including the Extended Term (if any), the Annual Additional Rent Cap shall be increased during each year by an amount equal to the lesser of three percent (3%) or the increase in the Consumer Price Index – All Urban Consumers for San Diego for the immediately preceding year. In no event shall the Annual Additional Rent Cap be decreased. The Additional Rent shall be paid by Tenant to Landlord within ten (10) days after Landlord's delivery of each invoice to Tenant.

(1) Retail CAM Pool and Office CAM Pool. Landlord shall compute and maintain two (2) separate operating expense pools, one for the ground floor retail component of the Building ("Retail CAM Pool") and a second for the office space component of the Building ("Office CAM Pool"). To the extent that any amounts properly incurred as Operating Expenses hereunder are incurred solely with respect to the ground floor retail component of the Building such costs shall be allocated to the Retail CAM Pool. To the extent that any amounts properly incurred as Operating Expenses hereunder are incurred solely with respect to the office space component of the Building such costs shall be allocated to the Office CAM Pool. To the extent that any amounts properly incurred as Operating Expenses hereunder are incurred with respect to or benefit of the entire Building and/or both the ground floor retail component of the Building and the office space component of the Building, Landlord shall reasonably allocate such amounts between the Retail CAM Pool and the Office CAM Pool.

(2) Operating Expenses Defined. Operating Expenses means, collectively, the maintenance, cleaning, repair or replacement of the Common Areas (and/or the roof of the Building) which maintenance and cleaning expense shall not exceed the reasonable and customary expense for such services in the area in which the Premises are located. Operating Expenses shall also include the reasonable cost of insurance required to be obtained by Landlord pursuant to this Lease and the aggregate of all costs and expenses payable by Landlord in connection with the ownership, operation, management and maintenance of the Garage, the Premises, the Building, and the Common Areas collectively, the "Project", including, but not limited to, the cost of (a) landscaping, repaving, resurfacing, repairing, replacing, painting, lighting, cleaning, removing trash and similar items with respect to the Common Areas; (b) all taxes; (c) trash disposal service; (d) operating, repairing and maintaining life safety systems, including, without limitation, sprinkler systems; (e) operating, repairing, and maintaining the HVAC system and elevator services; (f) painting, window washing and general cleaning, and janitorial services for the Building; (g) monitoring services, if provided by Landlord, including, without limitation, any monitoring or control device used by Landlord in regulating the parking

areas; (h) legal, accounting and consulting fees and expenses incurred in connection with the management and operation of the Building and Common Areas; (i) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected with the operation, maintenance and repair of the Building or Common Areas; (j) energy allocation, energy use surcharges, or environmental charges; (k) municipal inspection fees or charges; (l) the cost of compliance with all applicable laws and regulations, including, without limitation, current amortization of capital improvements which are either (i) required by law (including, but not limited to, improvements required to comply with The Americans With Disabilities Act of 1990, 42 U.S.C. Section 12101 et. seq. and the regulations promulgated thereunder (hereinafter "ADA") and Title 24 of the California Code of Regulation (hereinafter "Title 24"), or (ii) are installed for the purpose of reducing operating costs over the period of such amortization; (m) any other costs or expenses incurred by Landlord in connection with the Common Areas which are not otherwise reimbursed directly by tenants; (n) management fees; (o) that part of office rent or rental value of space used or furnished by Landlord to enhance, manage, operate and maintain the Project; (q) accounting and legal fees incurred in connection with the operation and maintenance of the Project or any other costs related thereto; and (p) any additional services which Landlord reasonably deems necessary or desirable in connection with the management or operation of the Project. The computation of Operating Expenses shall be made in accordance with generally accepted accounting principles. Charges for any services, goods or materials furnished by Landlord at Tenant's request and charges for services, goods and materials furnished by Landlord as a result of uses or demands by Tenant in excess of those charges which are normally furnished to other tenants in the Building and all other sums payable by Tenant under this Lease shall not be included in Operating Expenses, but shall be payable by Tenant within thirty (30) days after Landlord delivers a statement for such services, goods or materials to Tenant. In no event shall any brokerage fees or costs with respect to the Building, or costs of acquisition of new land or construction of new buildings, any expenditures for which Landlord is reimbursed from any source (other reimbursements from tenants for common expenses), including, without limitation, insurance and condemnation proceeds and expenses in connection with services or other benefits of a type that are not provided to another tenant or occupant of the Building, be a part of the Operating Expenses.

(d) Delinquent Rent.

(1) Interest. Any amount due from Tenant to Landlord which is not paid when due (subject to any applicable grace period) shall bear interest at ten percent (10%) per annum from the date such payment is due until paid. Notwithstanding the foregoing, Tenant shall have a five (5) day grace period. Provided Tenant's Rent is paid during a grace period, such Rent shall not be subject to the interest charge described in this Section 4(d)(1). The interest required to be paid by Tenant pursuant to this Section 4(d)(1) shall constitute additional rent under this Lease

(2) Late Charges. Tenant hereby acknowledges that in addition to lost interest, the late payment by Tenant to Landlord of Rent or any other sums due hereunder will cause Landlord to incur other costs not contemplated in this Lease, the exact amount of which will be extremely difficult and impracticable to ascertain. Such other costs include, but are not limited to, processing, administrative and accounting costs. Accordingly, if any installment of

Rent or other sum due from Tenant to Landlord is not paid when due, Tenant shall pay to Landlord, immediately upon receipt of notice from Landlord, as additional rent, a late charge equal to five percent (5%) of such overdue amount. Notwithstanding the foregoing, Tenant shall have a five (5) day grace period. Provided Tenant's Rent is paid during a grace period, such Rent shall not be subject to the late charge described in this Section 4(d)(2). The parties hereby agree that (i) such late charge represents a fair and reasonable estimate of the costs Landlord will incur in processing such delinquent payment by Tenant, (ii) such late charge shall be paid to Landlord as liquidated damages for each delinquent payment pursuant to California Civil Code Section 1671, and (iii) the payment of late charges and the payment of interest are distinct and separate from one another in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for the additional administrative expense incurred by Landlord in handling and processing delinquent payments. The late charge is not intended to compensate Landlord for the costs incurred by Landlord to handle NSF checks tendered by Tenant, and Landlord shall have the right to charge Tenant a NSF Fee.

(3) No Waiver. Neither assessment nor acceptance of interest or late charges by Landlord shall constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its other rights and remedies under this Lease. Nothing contained in this Section 4(d) shall be deemed to condone, authorize, sanction or grant to Tenant an option for the late payment of rent, additional rent or other sums due hereunder, and Tenant shall be deemed in default with regard to any such payments should the same not be made by the date on which they are due.

5. Alterations.

(a) By Landlord. Landlord may make alterations or other changes to the Project which Landlord determines in its sole and absolute discretion are necessary or desirable without notice to or consent of the Tenant so long as the same does not negatively impact the Project or Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease. Tenant shall cooperate with Landlord if Landlord elects to make alterations or other changes to the Premises.

(b) By Tenant. Tenant shall not make any alterations to the Premises without Landlord's consent. Any alterations, improvements or additions consented to by Landlord in writing as provided in this Section 5(b), shall be constructed without cost to Landlord, in a first class, good, workmanlike and defect-free manner by licensed contractors (with experience in construction of tenant improvements in Class A buildings, approved by the Landlord, which may be withheld by Landlord in its reasonable discretion). Tenant shall be solely responsible for the effect of any alterations made by Tenant on the Premises or the Building, regardless of Landlord's consent to such alterations. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be responsible for repair of or liability to Tenant for any defects in the Initial Improvements, as defined below, and/or any other alterations, improvements or additions. Tenant shall give Landlord fifteen (15) days advance notice before beginning any work on alterations to permit Landlord to file a Notice of Nonresponsibility and take any other

actions in advance of commencement of any alterations. Upon completion of the alterations, Tenant shall provide Landlord with a complete set of "as-built" plans

(1) Initial Improvements. Tenant, at Tenant's sole cost and expense shall construct and install and complete, as reasonably and fairly determined by the Landlord and/or its designee and City of San Diego Building Department, the Initial Improvements set forth in the Plans and Specifications, on or before January 31, 2015. Notwithstanding the foregoing, such deadline may be extended for a period of up to sixty (60) days, provided that Tenant has commenced and is diligently causing construction of the Initial Improvements. Time is of the essence. Prior to constructing and installing the Initial Improvements, Tenant shall apply for and obtain, any and all permits or licenses required by applicable governmental authorities (including without limitation Civic San Diego) necessary or desirable for Tenant to construct and install the Initial Improvements and to otherwise use the Premises in accordance with the terms and conditions of this Lease.

(2) Subsequent Improvements. After the completion of the Initial Improvements, Tenant shall not make any alterations, improvements or additions to the Premises without the prior written consent of Landlord, which may be withheld in Landlord's reasonable discretion. After receiving written consent from the Landlord and prior to making any subsequent alterations, improvements or additions, Tenant shall apply for and obtain, any and all permits or licenses required by applicable governmental authorities (including without limitation Civic San Diego) necessary or desirable for Tenant to construct and install the same. Landlord shall be deemed to have rejected any subsequent improvement proposed by Tenant unless Landlord approves of Tenant's proposal in writing within thirty (30) days of receiving Tenant's proposal and request for consent.

(3) Trade and Other Fixtures. Tenant shall not install any trade or other fixtures on or in the Premises without first securing the written consent of Landlord's President/CEO, which may be withheld by Landlord in its reasonable discretion. Any fixtures consented to by Landlord in writing, shall be installed in a first class, good, workmanlike and defect-free manner by licensed contractors without cost to Landlord, and shall be free and clear of mechanics' and materialmen's liens; provided that if any such lien is filed, Tenant shall either promptly bond or discharge the same or it may contest the same in good faith. Tenant shall obtain all necessary permits required for any such fixtures and shall comply with all applicable laws, regulations, ordinances, and codes. Tenant, at Tenant's expense, at the expiration of the Term, remove the fixtures and shall repair any damage caused by such removal.

(4) Permits/Licenses. Tenant shall apply for and obtain, any and all permits or licenses required by applicable governmental authorities (including without limitation Civic San Diego or the Redevelopment Agency of the City of San Diego) necessary for Tenant to construct the Initial Improvements or any other construction at the Premises approved by Landlord, perform maintenance, remodeling, alterations and repairs of the Premises, or to otherwise use the Premises in accordance with the terms and conditions of this Lease.

(5) Lien Free Construction. All alterations, improvements and additions shall be constructed free and clear of mechanics' and materialmen's liens; provided that if any such

lien is filed, Tenant shall remove and discharge the same within ten (10) business days of written notice from the Landlord. Time is of the essence. Failure to timely remove the lien shall constitute a "Material Default" under the terms of this Lease. Notwithstanding the foregoing, Tenant may contest the mechanics' and/or materialmen's liens in good faith, at Tenant's own expense, by appropriate proceedings, provided Tenant posts a bond and removes such lien or stays enforcement thereof.

(6) General Requirements for Construction of the Initial Improvements. Tenant shall comply with the following requirements concerning the construction of the Initial Improvements and all other construction at the Premises:

(A) Approval of Construction Estimate. Tenant shall submit to the Landlord for its information (but not approval) a construction estimate ("Construction Estimate") prepared by a licensed contractor (the "Contractor"). Notwithstanding the foregoing, Landlord shall have the right to approve the Contractor selected by Tenant, in Landlord's sole discretion. The Construction Estimate shall include all costs of construction, including direct and indirect costs. The Construction Estimate shall include the name and qualifications of the Contractor and a listing of similar projects completed by the Contractor on first class office buildings in the City of San Diego. Time is of the essence in the submittal of the Construction Estimate.

(B) Approval of Construction Contract. The Tenant shall submit to the Landlord, for approval, a guaranteed not to exceed fixed price construction contract ("Construction Contract") from Contractor for all of the Initial Improvements, on or before December 1, 2014. The amount of the Construction Contract shall not exceed the amount of the Construction Estimate. The Construction Contract shall include completion guarantees, acceptable to the Landlord, by the contractor and shall name the Landlord as a third party beneficiary of the Construction Contract, allowing the Landlord to enforce the terms and conditions of the Construction Contract, upon the Tenant's default.

(C) Approval of Change Orders. No change order to the Construction Contract may be executed by the Tenant, without the express advance written approval of the Landlord.

(D) Timeline for Construction. Tenant shall submit a critical path time line, showing that the Initial Improvements will be completed and that the Premises will be ready for occupancy by January 15, 2015. The time line shall be submitted to the Landlord on or before December 31, 2014. The timeline shall designate the times when operations involving excessive noise will be experienced and detailing that these operations will occur at times designed to not disrupt the quiet enjoyment of the other tenants of the Building.

(E) Non Liability for Observations and Inspections. Landlord will, from time to time, observe and inspect the status of the construction of the Initial Improvements. Tenant acknowledges that by the observation and inspection of the Initial Improvements, Landlord will incur no liability to the Tenant whatsoever. Further, Tenant acknowledges that Landlord owes no duty to Tenant to communicate the presence of any defects in the construction and/or design of the Initial Improvements by such observations and inspections.

(F) Noise During Construction. Tenant will not cause the quiet enjoyment of any of the tenants of the Building to be unreasonably (given the nature of the Initial Improvements) disturbed during the term of the construction of the Initial Improvements and Landlord will provide access to the Premises twenty-four (24) hours per day, seven (7) days per week so that Tenant and the Contractor may diligently proceed with construction of the Initial Improvements.

(G) No Interference with Parking Easement. Tenant, the Contractor and their subcontractors, agents, employees and consultants, acknowledge that a parking easement agreement ("Parking Easement") exists that regulates the use of the Garage. Tenant, on its own behalf, and on the behalf of the Contractor and Tenant and Contractor's subcontractors, agents, employees and consultants, warrants that: (i) no actions shall cause a violation of the terms and conditions of the Parking Easement; (ii) no actions shall cause a restriction to the use of the Garage by the Landlord, its tenants or any occupants and residents of the condominium tower; (iii) no actions shall result in the interruption of any utility services for the occupants of the Building and/or the occupants and residents of the condominium tower; (iv) no actions shall result in the relocation of any facilities, structures, traffic patterns or the number of parking spaces located within the Garage; and (v) no actions shall result in the interruption of any of the marked handicapped parking spaces in the Garage.

(H) Other Requirements. Tenant will comply with all other requirements for construction at the Building, as referenced within the Building Rules and Regulations.

(7) General and Subcontractor Insurance Requirements.

(A) Initial Insurance Requirements. Tenant shall require that each contractor and subcontractor hired by Tenant to perform work at the Premises, shall be contractors and subcontractors licensed with the State of California and each shall maintain liability insurance against risk of bodily injury, personal injury, and damage to property of others, and direct damage insurance covering physical damage to personal property belonging or leased or rented to it with terms and in amounts sufficient to pay all incurred liabilities and claim expenses and to replace such personal property in the event of loss, at such contractor's and subcontractor's sole cost and expense. With that understanding, Tenant shall require from contractors, subcontractors and vendors the following insurance, in the following minimum amounts:

INSURANCE

MINIMUM LIMITS

Workers' Compensation

As required by law in California, with waiver of subrogation against Landlord.

Employer's Liability

\$1,000,000 each accident and \$1,000,000 aggregate limits.

Commercial General Liability*	\$1,000,000 per occurrence/\$2,000,000 aggregate (Including Railroad liability coverage endorsement to the CGL policy)
Comprehensive Auto Liability*	\$1,000,000 (any auto/owned/non-owned/hired)
"Builder's All Risk"	On replacement cost terms for the full value of the structure and improvements with inflation coverage, including builder's risk insurance and demolition, debris removal and increased cost coverage where applicable, to cover physical loss or damage to the Project from fire and extended coverage perils, including but not limited to vandalism and malicious mischief
Railroad Protection Insurance	As required by the Landlord and the San Diego Metropolitan Transit Board

(B) Increases In Minimum Insurance Requirements. If, the Landlord determines in its reasonable discretion that the amount of liability insurance specified herein is not adequate, Landlord may require such limits of coverage to be increased by written notice to Tenant.

(C) Additional Insurance Requirements. These coverages shall be primary as to Landlord, the Housing Authority of the City of San Diego, the City of San Diego and Metropolitan Transit Board and will cover the same as insureds for any allegation, claim, loss, damage, demand, or judgment, or other causes of action arising out of their presence or out of the contractors' or subcontractor's presence upon or out of operations or operations or work done at the Premises by the contractor or subcontractor for or on behalf of Tenant. Landlord, the Housing Authority of the City of San Diego, the City of San Diego and the Metropolitan Transit Board shall be named as additional insureds on such all general liability policies both for operations and for completed operations of the named insured. The policies shall be written on an "occurrence" and not "claims-made" form basis. If any contractor's or subcontractor's work involves Hazardous Materials (as defined in this Lease) or environmental abatement work, such contractor or subcontractor will be required to provide evidence of Contractor's pollution liability coverage, with Landlord, the Housing Authority of the City of San Diego, the City of San Diego and the Metropolitan Transit Board as additional insureds. If any contractor's or subcontractor's work involves professional design or engineering, special evidence of design professional liability (also known as E&O) coverage will also be required. Landlord may require additional coverage if the work to be performed is, in Landlord's judgment, sufficiently large or hazardous and may waive certain limits or requirements on a case-by-case basis for incidental or personal service contracts or jobs. Before any work can begin, each contractor or subcontractor will submit Certificates of Insurance and endorsements in form and substance satisfactory to Landlord as evidence of the coverages required. Each liability policy certificate will provide for (i) cross-liability or severability of interests, covering the named insured for any claim brought against it by any of the additional insureds; (ii) waiver of subrogation as against Landlord and

the additional insureds and waiver of any right of contribution from their respective insurers; and (iii) if any contractor's or subcontractor's insurance is provided by means of a so-called "blanket policy," the aggregate must apply per project, or per location. Each certificate will bear an endorsement requiring thirty (30) days' prior written notice of cancellation, material alteration, or non-renewal. All such policies shall be issued by insurers with a Best's rating of A-VIII or higher as reported in the most recent Property & Casualty Reports Key Rating Guide edition.

(8) Removal of Improvements. The term "Tenant's Property" shall mean all personal property, furnishings, machinery, trade fixtures, equipment and improvements (trade or otherwise) which Tenant installs in the Premises. Upon the termination or expiration of the Term, Tenant shall remove Tenant's Property from the Premises no later than the termination or expiration date. Tenant shall repair any damage to the Premises or the Building caused by such removal, including without limitation, patching and filling holes. Notwithstanding the foregoing, in no event shall Tenant be entitled pursuant to this Section 5(b)(8) to remove, nor shall Tenant be required to remove, any HVAC systems, restroom fixtures, flooring, plumbing, ceilings, walls or utility or electrical components.

6. Use.

(a) Permitted Use.

(1) Retail Cellular Store. Tenant shall use the Premises only as a retail store selling cellular telephones, accessories and related items and electronics.

(2) Tenant's Exclusive Use. So long as Tenant operates a retail cellular telephone store, Landlord shall not use or allow any other person or entity except Tenant to operate a retail cellular telephone store in the Building. Notwithstanding the foregoing, 7-Eleven, Inc., shall be exempt from Tenant's exclusive. Tenant agrees and acknowledges that Tenant's exclusive use is limited to cellular telephones only; nothing contained herein grants Tenant the exclusive right to operate an electronics store or similar store at the Building. Tenant hereby acknowledges there are retail stores located across the trolley tracks on the northeast side of the Building. Tenant further acknowledges and agrees that Landlord does not own or otherwise control such retail stores and Landlord makes no representations or warranties with respect to such retail stores, including without limitation, whether one or more of such stores may be in a line of business that competes with Tenant in any way.

(b) Other Exclusive Uses. Tenant represents and warrants to Landlord that Tenant shall use the Premises only as allowed by Section 6(a), above. Tenant acknowledges that Landlord has entered into leases with retail tenants of the building and has granted certain exclusive rights to those entities to operate as providers of certain goods and services within the Building which are set forth in Exhibit B attached hereto. Tenant shall not use the Premises in any manner that conflicts with the written exclusive uses presently granted to 7-Eleven, Inc., which are set forth in Exhibit B attached hereto. In addition to any other indemnity contained in this Lease, Tenant shall defend, indemnify and hold Landlord and Landlord's Affiliates harmless from and against any and all losses, liabilities, general, special, consequential and/or incidental damages, injuries, costs, expenses or claims of any and every kind whatsoever

(including, without limitation, court costs, attorneys' fees, damages to any person, the Premises, the Building, the Project or loss of rents) which at any time or from time to time may be paid, incurred or suffered by or asserted against Landlord with respect to, or as a direct or indirect result of the breach by Tenant of any of the covenants set forth in this Section 6(b). Tenant's indemnification obligations under this Section 6(b) shall survive the expiration or earlier termination of this Lease.

(c) Additional Use Limitations. Tenant shall not permit the occupancy of the Premises at any time during the Term to exceed that allowed by the applicable codes and regulations concerning occupancy. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them or use or allow the Premises to be used for any immoral or unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or permit to be committed any waste in or upon the Premises.

(d) Compliance With Laws, Covenants and Requirements. Tenant represents and warrants to Landlord, that Tenant, its agents, servants, employees, invitees and licensees, shall comply with, and shall not use the Premises in any way (or permit or suffer anything to be done in or about the Premises) which will conflict with: (i) any law, statute, ordinance or governmental rule or regulation affecting the Project or Building, now in force or which may be hereafter promulgated, including, but not limited to, the provisions of any city or county zoning codes regulating the use of the Project or Building or any transportation management program established by any governmental or quasi-governmental entity that is either voluntarily or involuntarily made applicable to the Project or Building; (ii) any covenant, condition or restriction (whether or not of public record) affecting the Building or Project, now in force or which may hereafter be enacted or promulgated; (iii) the Americans With Disabilities Act, including, without limitation, the architectural barrier removal requirements of said Act; (iv) all requirements, now in force or which may hereafter be in force, of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises; or (v) any licensing requirements of any city, county, or other governmental or quasi-governmental entity regulating Tenant's use of the Premises (hereinafter collectively referred to as "Applicable Laws, Covenants and Requirements"). Tenant shall promptly notify Landlord of and shall promptly provide Landlord with true, correct and legible copies of all orders, reports, notices and correspondence (including those which may be considered confidential) of or concerning the investigation, compliance, and corrective actions and all complaints, pleadings, and other legal documents filed against Tenant relating to Tenant's failure to comply with Applicable Laws, Covenants and Requirements. Tenant shall, at its sole cost and expense, promptly comply with all Applicable Laws, Covenants and Requirements in so far as they relate to the specific manner of Tenant's use and occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any Applicable Laws, Covenants and Requirements, shall be conclusive of the fact as between Landlord and Tenant. The Building is a non-smoking building and the Tenant shall not allow its employees, agents, contractors, subcontractors, clients, invitees or others using or occupying the Premises to smoke while in the Premises.

(e) Hazardous Material.

(1) Except with respect to commercially packaged products used and stored by Tenant at the Premises, such as, common cleaning fluids and supplies, Tenant hereby agrees that neither Tenant, nor Tenant's agents, employees, contractors, invitees or licensees will engage in any activity in, on or about the Premises or the Building, nor permit others to engage in any such activity, which will result in the Premises or the Building containing any Hazardous Material. If at any time it is determined that Tenant or Tenant's agents, employees, contractors, invitees or licensees, have been responsible for the Premises or the Building containing any Hazardous Material, then Tenant shall be solely responsible for and shall pay for all costs incurred in connection with the removal of said Hazardous Materials. The obligations on the part of Tenant set forth in this paragraph 6(e) shall survive the expiration of the Term of this Lease or the exercise by Landlord of any of Landlord's remedies under this Lease.

(2) Tenant shall promptly comply with the requirements of Section 25359.7(b) of the California Health and Safety Code and/or any successor or similar statute to provide Landlord with written notice that any Hazardous Material has come or will come to be located on or beneath the Premises, the Building or the Project if Tenant discovers or has reasonable cause to believe of the presence of such materials. Should Tenant fail to so notify Landlord, Landlord shall have all rights and remedies provided for such a failure by such Section 25359.7(b) in addition to all other rights and remedies which Landlord may have under this Lease or otherwise. Tenant shall not take any remedial action related to Hazardous Materials located in or about the Premises, the Building or the Project and shall not enter into a settlement, consent decree or compromise in response to any claim related to Hazardous Materials without the prior written consent of Landlord, which may be withheld by Landlord in its sole and absolute discretion. Tenant shall immediately notify Landlord in writing of: (i) any enforcement, clean-up, removal or other governmental action instituted, completed or threatened with regard to Hazardous Materials at the Premises, the Building or the Project of which Tenant is directly notified; (ii) any claim made or threatened by any person against Tenant, Landlord, the Premises, the Building or the Project related to damage, contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials of which Tenant is directly notified; and (iii) any reports made to any environmental agency arising out of or in connection with any Hazardous Materials at or removed from the Premises, the Building or the Project, including any complaints, notices, warnings or assertions of any violation in connection therewith of which Tenant is directly notified.

(3) In addition to any other indemnity contained in this Lease, Tenant shall defend, indemnify and hold Landlord and Landlord's Affiliates harmless from and against any and all losses, liabilities, general, special, consequential and/or incidental damages, injuries costs, expenses, claims of any and every kind whatsoever (including, without limitation, court costs, reasonable attorneys' fees, damages to any person, the Premises, the Building, the Project or loss of rents) which at any time or from time to time may be paid, incurred or suffered by or asserted against Landlord with respect to, or as a direct or indirect result of: (i) the breach by Tenant of any of the covenants set forth in this Section 6(e); or (ii) the presence on, under or the escape, seepage, leakage, spillage, discharge, emission, release from, onto or into the Premises,

the Building, or the Project, of any Hazardous Material to the extent directly or indirectly caused or allowed by Tenant, or any agent, employee, contractor, invitee or licensee of Tenant. Tenant's liability under this Section 6(e) shall extend to any and all Hazardous Materials whether or not such substance was defined, recognized, or known or suspected of being hazardous, toxic, dangerous or wasteful at the time of any act or omission giving rise to Tenant's liability. Tenant's indemnification obligations under this Section (6)(e)(3) shall survive the expiration or earlier termination of this Lease.

(f) Compliance With Americans With Disabilities Act and Other Disability, Health and Safety Requirements. Tenant shall comply with all requirements of the ADA, Title 24 and any other Applicable Laws, Covenants and Requirements relating to disabled access and facilities, upgraded fire safety equipment and seismic protection, and other disability and health and safety regulations (collectively, "Disability and Safety Laws") with respect to the Premises, including without limitation, any tenant improvement work performed by Tenant. Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against all liabilities, losses, demands, actions, expenses or claims, including attorneys' fees and court costs to the extent directly arising out of or in any manner connected with Tenant's failure to comply with Disability and Safety Laws, including without limitation, the costs of making any alterations, renovations or accommodations required by Disability and Safety Laws or any governmental enforcement agency, to the extent compliance is directly related to tenant improvement work performed by Tenant. Tenant's indemnification obligations under this Section 6(f) shall survive the expiration or earlier termination of this Lease.

(g) Additional Prohibited Actions of Tenant. Tenant shall not commit or permit the commission of any acts on the Premises or the Building, nor use or permit the use of the Premises or the Building in any way that: (i) increases the existing rates for, or causes cancellation of, any fire, casualty, liability, or other insurance policy insuring the Building or its contents; (ii) violates or conflicts with any law, statute, ordinance, or governmental rule or regulation, whether now in force or hereinafter enacted, governing the specific manner of Tenant's use of the Premises or the Building; (iii) obstructs or interferes with the rights of other tenants or occupants of the Building or injures or annoys them; or (iv) constitutes the commission of waste on the Premises or the commission or maintenance of a nuisance as defined by the laws of the State of California.

(h) Building Rules and Regulations. Tenant shall, and Tenant agrees to cause its agents, servants, employees, invitees, and licensees to, observe and comply fully and faithfully with the Building Rules and Regulations. Landlord shall not be responsible to Tenant for failure of any other tenant or occupant of the Building to observe or comply with any of the Building Rules and Regulations.

(i) Inspection of Premises. Landlord shall have the right to enter upon the Premises upon twenty-four (24) hours prior written notice for the purpose of inspecting the condition of the Premises and to determine whether Tenant is complying with its obligations hereunder, to supply any service to be provided by Landlord to Tenant hereunder, to exhibit the Premises to prospective purchasers, mortgagees or tenants, to post notices of nonresponsibility, and to repair the Premises and any other portion of the Building, without abatement of rent, and may for that

purpose erect scaffolding and other necessary structures that are reasonably required by the character of the work to be performed by Landlord, provided that the business of Tenant shall not be interfered with unreasonably. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Tenant shorter notice in any manner that is practicable under the circumstances. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, and Landlord shall have the right to use any and all means which Landlord may deem proper to open such doors in the event of an emergency. Any entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. Any such inspections shall be performed with as little disturbance and inconvenience to Tenant as reasonably possible.

(j) Tenant Acknowledgement of Trolley Easement and Fare Paid Zone. Tenant acknowledges that it has received, read and understood the terms of the Trolley Easement Agreement recorded October 8, 2004, as Instrument No. 2004-0958514, as amended by that certain Amendment to Trolley Easement Trolley Agreement recorded September 13, 2005, as Instrument No. 2005-0789899 and as amended by that certain Second Amendment to Trolley Easement Trolley Agreement recorded November 1, 2006 as Instrument No. 2006-0777942 (collectively, the "Trolley Easement"). Tenant acknowledges that the Trolley Easement may limit Tenant's rights and remedies and hereby consents to all provisions of the Trolley Easement. Tenant further acknowledges that the trolley platform located on the northeast side of the building is a "Fare Paid Zone," which requires all persons on the trolley platform to have a trolley ticket or to be in the process of purchasing a trolley ticket.

7. Services and Utilities.

(a) Utilities. Provided no default has occurred and is continuing, Landlord agrees to furnish to the Premises on the days and times set forth below, water suitable for use of the Premises as described herein, heat and air conditioning (hereinafter "HVAC") required in Landlord's judgment for the comfortable use and occupation of the Premises, all of which shall be subject to the Building Rules and Regulations, as well as any governmental requirements or standards relating to, among other things, energy conservation. Such utilities and services shall be furnished to the Premises between the hours of 8:00 a.m. and 6:00 p.m., Monday through Friday, (the "Normal Business Hours"). Tenant may request that Landlord provide HVAC to the Premises at any time outside of Normal Business Hours. In such event, Tenant shall pay to Landlord a flat per hour fee for each hour (or portion thereof) of HVAC usage that Tenant requests Landlord provide to the Premises, in an amount equal to Landlord's usual and customary charge for HVAC, which is \$20.00 hour as of the date first set forth above. Elevator service to the Building shall be provided twenty-four (24) hours a day, subject to any regulations reasonably enacted by Landlord. Tenant shall pay for all other utilities itself including, without limitation, all electrical, all cable and telephone costs.

(b) Energy Provider. Tenant acknowledges and agrees that the decision whether to change the provider of electricity to the Building and the selection of the provider of electricity to the Building shall be made by Landlord's in its sole and absolute discretion. Tenant shall cooperate with Landlord (including providing Landlord upon request at no charge with information regarding Tenant's electrical consumption) to facilitate Landlord's decision making process. Tenant shall cooperate with Landlord in any present or future government-mandated conservation requirements. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of rent by reason of any interruption, stoppage or failure in such service arising from any change in the provider of electricity to the Building.

(c) Breaks In Utility Services. Landlord shall not be liable for and Tenant shall not be entitled to any abatement or reduction of rent by reason of Landlord's failure to furnish any utilities and services, including, without limitation, electricity, water and HVAC, when such failure is caused by any of the following, to the extent beyond the reasonable control of Landlord: (i) accidents, breakage or repairs, (ii) strikes, brownouts, blackouts, riots, civil disturbances, lockouts or other labor disturbances or labor disputes of any character, (iii) governmental regulation, moratorium or other governmental action, (iv) limitation, rationing, curtailment or restriction on the use of water, electricity, gas heating, cooling or other forms of service or utility provided to the Premises, or (v) by any other cause, similar or dissimilar, beyond the reasonable control of Landlord, nor shall such failure under such circumstances be construed as a constructive or actual eviction of Tenant. Landlord shall not be liable under any circumstances for loss or injury to property or business, however occurring, through or in connection with or incidental to Landlord's failure to furnish any of said service or utilities.

8. Taxes. Tenant shall be liable for and agrees to pay all taxes levied upon its personal property, leasehold improvements, additions, alterations and fixtures, including trade fixtures and inventory, located on the Premises or elsewhere. Tenant shall pay directly to the respective taxing authorities and/or reimburse Landlord for all non-exempt real estate taxes and assessments, if any, levied against the Premises during the Term after presentation to Tenant by Landlord of tax statements and receipts evidencing payment thereof from the taxing jurisdiction(s) in which the Premises are located and Landlord agrees to promptly provide any such tax statements to Tenant. Non-exempt taxes, if any, with respect to Tenant's possessory interest in the Premises for the first and final years of the Term shall be prorated between Landlord and Tenant based upon the commencement and expiration of the Term. Landlord will not be required to pay any penalty, interest or cost resulting from Tenant's failure to pay non-exempt taxes with respect to Premises, Tenant's personal property, leasehold improvements, additions, alteration and fixtures and/or the delinquent payment of such taxes by Tenant. If a separate tax statement is not available for the Premises, the amount of non-exempt taxes, if any, for which Tenant shall be liable under this Lease shall be a percentage of the total amount of such taxes levied against the Building, which percentage shall be determined by dividing the amount of square feet in the Premises by the total amount of square feet in the Building subject to such taxes. Tenant shall pay and be liable for any tax or fee (now or hereafter imposed by any governmental entity) applicable to or measured by or on the Rents or any other charges payable by Tenant under this Lease, including, without limitation, any gross income tax, gross receipts tax or excise tax with respect to the receipt of such Rent or other charges on the possession, leasing, operation, use or occupancy of the Premises, and specifically including any commercial

rental tax of the City of San Diego, if any, that may now or hereafter be imposed. Tenant acknowledges that Landlord is a public entity and that possessory interest taxes, if any, will be assessed against the Tenant for its space and for the Initial Improvements and other improvements to the Building made by the Tenant under the terms of this Lease. Tenant shall pay all such taxes in addition to its Base Rent and Additional Rent.

9. Maintenance.

(a) Landlord's Maintenance and Repair of the Building. At all times during the Term, Landlord agrees: (i) to maintain the foundation and structural soundness of the Building; and (ii) to keep in good repair plumbing and electrical wiring servicing to the Premises.

(b) Tenant's Maintenance of the Premises. Tenant shall keep the Premises in a neat, clean and orderly condition at all times during the Term, and shall not permit rubbish, waste or garbage, to accumulate at any time. Tenant shall not commit or permit any waste of the Premises or any acts to be done in violation of any laws or ordinances. Tenant shall not use or permit the use of the Premises for any illegal purposes.

(c) Repair of the Premises. Except as provided in Section 9(a) above, during the Term, Tenant shall make all repairs and replacements to the Premises, as and when necessary to preserve in a first class order, condition and repair (less normal wear and tear) the Premises and every part thereof, including, without limitation, all fixtures, interior walls, interior surfaces of exterior walls, ceilings, windows, doors, cabinets, draperies, window coverings, carpeting and other floor coverings and plate glass located within the Premises, and all utility systems and facilities.

(d) Landlord's Right to Make Repairs. In the event that Tenant fails to maintain the Premises in a first-class order, condition and repair as required by this Lease or fails to comply with any applicable laws, regulations or requirements as required by this Lease, then within a reasonable time following written notification to Tenant (except in the case of an emergency, in which case no prior notification shall be required), Landlord shall have the right, but not the obligation, to enter the Premises and to do such acts and expend such funds at the expense of Tenant as are required to place the Premises in the condition required by this Lease. Any amount so expended by Landlord shall be paid by Tenant within thirty (30) days after demand. Landlord shall have no liability to Tenant for any reasonable inconvenience or interference with the use of the Premises by Tenant resulting from Landlord's performance of such maintenance or repair work.

(e) Janitorial Service. Tenant shall provide its own janitorial service to the Premises at its own cost and expense in addition to the Base Rent and Additional Rent paid by Tenant under the terms of the Lease.

10. Casualty Damage and Casualty Insurance.

(a) Insured Casualties. In the event the Premises, or any portion thereof, is damaged or destroyed by any casualty that is covered by the insurance maintained by Landlord, then Landlord shall rebuild and restore the Premises, as the case may be, and repair the damaged

portion thereof, provided that (i) the amount of insurance proceeds available to Landlord equals or exceeds the cost of such rebuilding, restoration and repair; (ii) such rebuilding, restoration and repair can be completed within one hundred eighty (180) days after the work commences in the opinion of a registered architect or engineer appointed by Landlord; (iii) the damage or destruction has occurred more than twelve (12) months before the expiration of the Term; and (iv) such rebuilding, restoration, or repair is then permitted, under applicable governmental laws, rules and regulations, to be done in such a manner as to return the Premises to substantially its condition immediately prior to the damage or destruction, including, without limitation, the same net rentable floor area. If any of the circumstances described in (i) through (iv) above cannot be satisfied, Landlord may, at its option, either (1) rebuild or restore the Premises or Building, as the case may be, and repair the damaged portion thereof, or (2) elect not to rebuild or restore and this Lease shall then terminate. To the extent that insurance proceeds must be paid to a mortgagee or beneficiary under, or must be applied to reduce any indebtedness secured by, a mortgage or deed of trust encumbering the Premises, or the Building, such proceeds, for the purposes of this Section 10(a), shall be deemed not available to Landlord unless such mortgagee or beneficiary permits Landlord to use such proceeds for the rebuilding, restoration, and repair of the Premises or Building. Notwithstanding the foregoing, Landlord shall have no obligation to repair any damage to, or to replace any of, Tenant's personal property, furnishings, fixtures, equipment or other such property or effects of Tenant.

(b) Non-Insured Casualties. In the event the Premises, or any portion thereof, is materially damaged or destroyed by any casualty not covered by the insurance maintained or requested to be maintained by Landlord, then Landlord may, at its option, either (i) rebuild or restore the Premises and repair the damaged portions thereof at Landlord's own expense; or (ii) terminate this Lease effective as of the date the damage or destruction occurred. If Landlord does not give Tenant written notice within sixty (60) days after the material damage or destruction occurs of its election to rebuild or restore the Premises and repair the damaged portions thereof, Landlord shall be deemed to have elected to terminate this Lease. Notwithstanding the foregoing, Tenant may terminate this Lease upon thirty (30) days' prior written notice if Landlord elects to perform such repair or restoration and either (1) such repair or restoration cannot be completed within one hundred and eighty (180) days or (2) the damage or destruction occurs within the last twelve (12) months of the Term, unless Tenant's actions or omissions are the cause of the damage, in such event Tenant shall be liable to and shall reimburse Landlord for any and all damages caused thereby.

(c) Minor Casualties. If the Premises are not rendered substantially unfit for the occupancy or use herein contemplated as the result of any insured casualty, Landlord shall promptly and diligently restore the Premises at Landlord's expense to the condition existing prior to the occurrence of the casualty and the Rent shall not abate during such restoration period, provided the Landlord is prompt and diligent in connection with the restoration.

(d) Abatement of Rent. Provided this Lease is not terminated as provided in Sections 10(a) or (b), above, Tenant shall be entitled to an abatement of Rent by reason of the damage to or destruction of the Premises, only to the extent that either: (i) Landlord actually receives insurance proceeds for loss of rental income attributable to the Premises (Landlord shall not be required to maintain such insurance, but may in its sole and absolute discretion elect to do so);

(ii) the floor area of the Premises cannot be reasonably used by Tenant for the conduct of its business, or (iii) Tenant does not have reasonable access to the Premises, in which event the Rent shall abate in the proportion which the approximate area of the damaged or destroyed portion of the Premises bears to the total area of the Premises commencing upon the date of the damage to or destruction of the Premises or Building has occurred until substantial completion of the repair of such damage or destruction.

(e) Tenant's Waiver of Civil Code Sections 1932 and 1933. Tenant's right to terminate this Lease in the event of any damage or destruction to the Premises is governed by the terms of this Section 10 and therefore Tenant hereby expressly waives the provisions of Section 1932, Subdivision 2, and Section 1933, Subdivision 4, of the California Civil Code, and any and all laws, whether now or hereafter in force, whether created by ordinance, statute, judicial decision, administrative rules or regulations, or otherwise, that would cause this Lease to be terminated, or give Tenant a right to terminate this Lease, upon any damage to or destruction of the Project that occurs.

11. Waiver of Subrogation. If either party sustains loss or damage to the Premises or the fixtures, goods, wares, merchandise or any other property located thereon, from which it is protected by an insurance policy, then, to the extent that such party is so protected, it waives any right of recovery from the other party. Each party agrees immediately to give to each insurance company which has issued to it a policy of fire and extended coverage property insurance written notice of the terms of such mutual waivers, and to cause such insurance policy to be properly endorsed, if necessary, to prevent the invalidation of such insurance coverage by reason of such waivers.

12. Insurance.

(a) Tenant Insurance Requirements. Tenant agrees, at Tenant's sole cost and expense, to maintain in force continuously throughout the Term:

(1) Commercial general public liability and property damage insurance covering the Premises with limits of not less than \$1,000,000.00 for injury to or death of one or more persons and/or property damage arising out of a single accident or occurrence and \$2,000,000.00 in the aggregate. All such insurance shall name the Metropolitan Transit Development Board, Landlord and the Housing Authority of the City of San Diego as additional insureds (with cross liability endorsements and an endorsement providing contractual liability for work performed near a railroad). Upon receipt of written request therefor, Tenant shall furnish Landlord a certificate from the insurer evidencing such coverage as required by this Section 12(a)(1);

(2) Worker's compensation insurance, with coverage as required by the State of California;

(3) Fire, extended coverage, and vandalism and malicious mischief insurance, insuring the personal property, furniture, furnishings and fixtures belonging to Tenant located on

the Premises for not less than one hundred percent (100%) of the actual replacement value thereof; and

(4) Such other insurance as Landlord or Landlord's lender deems reasonably necessary to carry in connection with the ownership and operation of a first-class building.

(b) Additional Insurance Requirements. Each insurance policy obtained by Tenant pursuant to this Lease shall contain a clause that the insurer will provide to Landlord at least thirty (30) days' prior written notice of any material change, non-renewal or cancellation of the policy and shall be in a form satisfactory to the Landlord and shall be taken out with an insurance company authorized to do business in the State of California and rated not less than Financial Class XIII and Policy Holder Rating "A" in the current issue of Best's Insurance Code. Except for worker's compensation insurance, each insurance certificate for casualty insurance shall indicate that the insurer waives its rights of subrogation against the other party. In addition, all insurance policies obtained by Tenant shall be written as primary policies, non-contributing with or in excess of any coverage which Landlord may carry, with loss payable clauses satisfactory to the President and CEO of Landlord and in favor of Landlord and naming Landlord and any management agent from time to time designated by Landlord and any lender of Landlord as additional insureds. The liability limits of the above-described insurance policies shall in no way limit the liability of any party under the terms of this Lease. Not more frequently than every two (2) years, if, in the reasonable opinion of Landlord, the amount of liability insurance specified in Section 12(a) is not adequate, such limits of coverage shall be adjusted by Landlord, by written notification to Tenant, in order to maintain insurance protection at least equal to the protection afforded on the date the Term commences. If Tenant fails to maintain and secure the insurance coverage required under this Section 12, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to procure and maintain such insurance, the cost of which shall be due and payable to Landlord by Tenant on demand. No policy of insurance required pursuant to this Lease shall contain a deductible exceeding Ten Thousand Dollars (\$10,000) per occurrence. Tenant shall be solely responsible for the payment of any deductible.

(c) Landlord Insurance Requirements.

(1) Liability Insurance. Landlord agrees, at Landlord's expense, to maintain in force continuously throughout the Term, commercial general public liability insurance covering the Building (including the Premises) with combined single limit coverage of \$2,000,000 or its equivalent, and shall upon Tenant's written request, furnish Tenant a certificate from the insurer evidencing such coverage.

(2) Property Insurance. Landlord shall maintain all-risk property insurance covering the Project, Premises and the Building against loss or damage resulting from fire and other insurable casualties.

13. Indemnity. Tenant agrees to indemnify, defend and hold Landlord and Landlord's Affiliates entirely harmless from and against all liabilities, losses, demands, actions, expenses or claims, including attorneys' fees, fees of experts and accountants and court costs, for injury to or

death of any person or for damages to any property arising out of or in any manner connected with (i) the use, occupancy or enjoyment of the Project, Building or Premises by Tenant and/or any sublessee and their agents, employees, invitees, licensees or contractors (the "Tenant's Agents") or any work, activity or other things allowed or suffered by Tenant or Tenant's Agents to be done in or about the Project, Building or Premises; (ii) any breach or default in the performance of any obligation of Tenant under this Lease; and (iii) any act or failure to act, whether negligent or otherwise tortious, by Tenant or Tenant's Agents on or about the Project, Building or Premises; provided, however, that Tenant shall not be obligated to so indemnify Landlord to the extent any such matters arise from or are caused by the willful misconduct or gross negligence of Landlord. If Tenant is required to defend Landlord, then Landlord shall be entitled to select its own defense counsel, and Tenant shall pay on behalf of, or to, Landlord all defense expenses incurred by Landlord. Except to the extent such matters arise from or are caused by Landlord's gross negligence or willful misconduct, Tenant agrees that Landlord and Landlord's Affiliates shall not be liable for injury to Tenant's business or loss of income therefrom. Tenant further agrees that Landlord and Landlord's Affiliates shall not be liable in any event for injury to the person or property of Tenant or Tenant's Agents, whether such damage or injury is caused by or results from criminal acts, fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, heating, ventilation, air conditioning or lighting fixtures, or from any other cause, whether damage or injury results from conditions arising upon the Premises or upon other portions of the Building or the Project, or from other sources or places appurtenant to the Premises and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, and Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Building or the Project. All property of Tenant kept or stored on the Premises or in the Building shall be so kept or stored at the risk of Tenant only, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers. The indemnifications contained herein shall survive the expiration or early termination of this Lease.

14. Assignment and Sublease. Tenant shall not directly or indirectly, voluntarily or by operation of law, sublease, sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of the Premises or this Lease, without the written consent of Landlord, which may be withheld by Landlord in its sole and absolute discretion. A change in the shareholders, partners or members of Tenant shall be considered a transfer of this Lease, requiring Landlord consent, as provided in this Section 14. Any assignment or sublease shall be subject to all of the terms, covenants and conditions of this Lease. Provided, however, that in no event shall any sublease, sale, assignment, encumbrances, pledge, transfer or hypothecation, relieve Tenant of its obligations hereunder. Tenant shall remain primarily liable for the terms, covenants and conditions to be complied with by Tenant hereunder whether this Lease is assigned, sublet and/or otherwise transferred, including without limitation the payment of rent and the performance of the terms, covenants and conditions of this Lease. No withholding of consent by Landlord shall give rise to any claim by Tenant or any proposed assignee or entitle Tenant to terminate this Lease, to recover contract damages or to any abatement of rent. In connection with any assignment or sublease of the Premises, as a condition to Landlord's consent, Tenant shall pay to Landlord as additional rent as and when received by Tenant an amount equal to all "Profit" (as hereinafter defined) derived from such assignment or sublease. "Profit" shall mean the

difference between (i) the sum of any and all amounts payable by the proposed assignee or sublessee under the terms of the proposed assignment or sublease, and (ii) the sum of the Rent and other payment obligations payable to Landlord by Tenant under the terms of this Lease. For all purposes under this paragraph, a sub-sublease, assignment of sublease or any similar arrangement shall be considered a sublease. Tenant understands and acknowledges that the intent of the parties in negotiating this Lease was not to create any bonus value or allow Tenant to profit as a result of any favorable terms contained herein or any future changes in the market for the Premises. Tenant further acknowledges that any such value shall be paid to Landlord as set forth in this paragraph. Landlord reserves the right to review and approve financial statements for all prospective assignees and to approve the form of the assignment and/or sublease involved in each transaction, as a condition to the approval of any and all assignments and subletting.

Notwithstanding anything contained herein, Tenant shall be permitted, without obtaining the consent of Landlord, to assign or sublease the Premises to any Affiliate of Tenant, as that term is defined hereunder. For purposes of this Section 14, Affiliate shall be defined as any person or entity operating the same business as Tenant and subject to the oversight and control of Tenant. Nothing contained herein shall serve to release the Tenant of liability under this Lease unless such release shall be given in writing, signed by Landlord.

15. Eminent Domain.

(a) Total Taking. If all or substantially all of the Premises is condemned or taken in any manner for public or quasi-public use, including, but not limited to, a conveyance or assignment in lieu of the condemnation or taking, or if so much of the Premises is so taken or condemned so as to render the remaining portion of the Premises unusable by Tenant for the conduct of Tenant's business, as determined by the condemning authority, this Lease shall automatically terminate on the earlier of the date on which actual physical possession is taken by the condemnor or the date of dispossession of Tenant as a result of such condemnation or other taking.

(b) Partial Taking. If less than all or substantially all of the Premises is so condemned or taken, rendering the remaining portion of the Premises usable by Tenant for the conduct of its business, as determined by the condemning authority, this Lease shall automatically terminate only as to the portion of the Premises so taken as of the earlier of the date on which actual physical possession is taken by the condemnor or the date of dispossession of Tenant as a result of such condemnation or taking. If such portion of the Building is condemned or otherwise taken so as to require, in the opinion of Landlord, a substantial alteration or reconstruction of the remaining portions thereof, this Lease may be terminated by Landlord, as of the date on which actual physical possession is taken by the condemnor or dispossession of Tenant as a result of such condemnation or taking, by written notice to Tenant within sixty (60) days following notice to Landlord of the date on which such physical possession is taken or dispossession will occur.

(c) Award. Landlord shall be entitled to the entire award in any condemnation proceeding or other proceeding for taking for public or quasi-public use, including, without

limitation, any award made for the value of the leasehold estate created by this Lease. No award for any partial or total taking shall be apportioned, and Tenant hereby assigns to Landlord any award that may be made in such condemnation or other taking, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof. Although all damages in the event of any condemnation shall belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, Tenant shall have the right to claim and recover from the condemnor, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of damages to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might incur to remove Tenant's merchandise, furniture and other personal property, fixtures, and equipment or for the interruption of or damage to Tenant's business.

(d) Rent Abatement. In the event of a partial condemnation or other taking that does not result in a termination of this Lease as to the entire Premises, the rent and all other charges shall abate in proportion to the portion of the Premises taken by such condemnation or other taking. If this Lease is terminated, in whole or in part, pursuant to any of the provisions of this Section 15, all rent and other charges payable by Tenant to Landlord hereunder and attributable to the Premises taken shall be paid up to the date upon which actual physical possession shall be taken by the condemnor. Landlord shall be entitled to retain the entire Security Deposit until such time as this Lease is terminated as to all of the Premises.

(e) Temporary Taking. If all or any portion of the Premises is condemned or otherwise taken for public or quasi-public use for a limited period of time, this Lease shall remain in full force and effect and Tenant shall continue to perform all terms, conditions and covenants of this Lease; provided, however, the rent and all other charges payable by Tenant to Landlord hereunder shall abate during such limited period in proportion to the portion of the Premises that is rendered unusable as a result of such condemnation or other taking. Landlord shall be entitled to receive the entire award made in connection with any such temporary condemnation or other taking.

(f) Transfer of Landlord's Interest to Condemnor. Landlord may, without any obligation to Tenant, agree to sell and/or convey to the condemnor the Premises, the Project, or any portion thereof, sought by the condemnor, subject to this Lease and the rights of Tenant hereunder, without first requiring that any action or proceeding be instituted or, if instituted, pursued to a judgment.

16. Attorneys' Fees. Tenant shall pay to Landlord all amounts for costs, including, but not limited to, attorneys' fees and amounts paid to any collection agency, incurred by Landlord in connection with any breach or default by Tenant under this Lease or incurred in order to enforce or interpret the terms or provisions of this Lease. Such amounts shall be payable upon demand. In addition, if any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in or under this Lease, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys' fees and court costs to be fixed by the court therein.

17. Default.

(a) Tenant's Default. The occurrence of any one or more of the following shall constitute a default hereunder by Tenant:

(1) Tenant abandons the Premises or vacates the Premises for a period of ten (10) or more consecutive days;

(2) Tenant fails to pay any rent or other charges required to be paid by Tenant under this Lease and such failure continues for five (5) days after it is due (subject to the grace periods described in Sections 4(d)(1) and (2), above); provided, however, that the obligation of Tenant to pay interest and late charges pursuant to Sections 4(d)(1) and (2), above, shall commence as of the due date of the rent or such other monetary obligation and not on the expiration of such five (5) day grace period (subject to the grace periods described in Sections 4(d)(1) and (2), above);

(3) Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days (or such shorter time provided herein) after written notice thereof from Landlord, provided, however, that if the term, condition, covenant or obligation to be performed by Tenant is of such nature that the same cannot reasonably be cured within thirty (30) days and if Tenant commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same, then such failure shall not be a default hereunder. Such thirty (30) day notice shall be in lieu of and not in addition to any notice required under California Code of Civil Procedure Section 1161;

(4) A trustee, disbursing agent or receiver is appointed to take possession of all or substantially all of Tenant's assets or of Tenant's interest in this Lease and Tenant or any guarantor of Tenant's obligations under this Lease does not regain possession within sixty (60) days after such appointment; Tenant makes an assignment for the benefit of creditors; or all or substantially all of Tenant's assets in, on or about the Premises or Tenant's interest in this Lease are attached or levied upon under execution (and Tenant does not discharge the same within sixty (60) days thereafter);

(5) A petition in bankruptcy, insolvency or for reorganization or arrangement is filed by or against Tenant or any guarantor of Tenant's obligations under this Lease pursuant to any federal or state statute and, with respect to any such petition filed against it, Tenant or such guarantor fails to secure a stay or discharge thereof within sixty (60) days after the filing of the same;

(6) Immediately, in the event of any assignment, subletting or other transfer for which the prior written consent of the Landlord has not been obtained;

(7) Immediately, in the event of discovery of any false or misleading statement concerning financial information submitted by Tenant and/or any guarantor of

Tenant's obligations to Landlord in connection with obtaining this Lease or any other consent or agreement by Landlord;

(8) Immediately, in the event Tenant admits in writing its inability to pay its debts as they mature; or

(9) Immediately, upon the suspension of Tenant's right to conduct its business, caused by the order, judgment, decree, decision or other act of any court or governmental agency.

(b) Landlord's Remedies. Upon the occurrence of a default by Tenant that is not cured by Tenant within any applicable grace period, Landlord shall have the following rights and remedies in addition to all other rights and remedies available to Landlord at law or in equity:

(1) The rights and remedies provided by California Civil Code Section 1951.4, which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover rent and any other additional monetary charges as they become due, for as long as Landlord does not terminate Tenant's right to possession; provided, however, if Landlord elects to exercise its remedies described in this Section 17(b)(1) and Landlord does not terminate this Lease, and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises at such time as Tenant is in default, Landlord shall not unreasonably withhold its consent to such assignment or sublease. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's right to possession;

(2) The right to terminate this Lease by giving notice to Tenant in accordance with applicable law;

(3) The right and power to enter the Premises and remove therefrom all persons and property, to store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant. Before retaking of any such property from storage, Tenant shall pay to Landlord, upon demand, all expenses incurred in such removal and all storage charges against such property. Any such property of Tenant not so retaken from storage by Tenant within thirty (30) days after such property is removed from the Premises shall be deemed abandoned and may be either disposed of by Landlord pursuant to Section 1988 of the California Civil Code or retained by Landlord as its own property. Landlord may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and such other terms as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, Tenant shall be immediately liable for payment to Landlord of the cost of such subletting and such alterations and repairs incurred by Landlord, if any. Any amounts received by Landlord from such subletting shall be applied first toward the cost of any alterations or repairs made to the Premises in connection with such subletting; second, to payment of Rent and other monetary obligations due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future Rent and other monetary obligations as the same become due hereunder. If

Tenant has been credited with any rent to be received by such subletting and such rent shall not be promptly paid to Landlord by the subtenant(s), or if such rents received from such subletting during any month are less than those to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless written notice of such intention is given to Tenant. Notwithstanding any such subletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach;

(4) The right to have a receiver appointed for Tenant, upon application by Landlord, to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Landlord for Tenant pursuant to this Section 17; and

(5) The rights and remedies provided by California Civil Code Section 1951.2 to recover from Tenant upon termination of this Lease, including:

(A) the worth at the time of the award of the unpaid rent which had been earned at the time of termination;

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

(C) subject to subdivision (c) of California Civil Code Section 1951.2, the worth at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of the award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and

(D) 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, including, but not limited to, any attorneys' fees, broker's commissions or finder's fees (not only in connection with the reletting of the Premises, but also that portion of any leasing commission paid by Landlord in connection with this Lease which is applicable to that portion of the Lease Term which is unexpired as of the date on which this Lease is terminated), any costs for repairs, cleanup, refurbishing, removal (including the repair of any damage caused by such removal) and storage or disposal of Tenant's personal property, equipment, fixtures, and anything else that Tenant is required under this Lease to remove but does not remove, and any costs for alterations, additions and renovations and any other costs and expenses incurred by Landlord in regaining possession of and reletting or attempting to relet the Premises.

(c) Worth at the Time of the Award. The "worth at the time of award" of the amounts referred to in Section 17(b)(5)(A) and (B), above, shall be computed by allowing interest at ten percent (10%) per annum. The "worth at the time of award" of the amount referred to in Section 17(b)(5)(C), above, shall be computed by discounting such amount at the

discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

(d) Mitigation of Damages. Landlord and Tenant hereby agree that Landlord's obligation to mitigate damages after a default by Tenant under this Lease that results in Landlord regaining possession of all or part of the Premises shall be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria:

(1) Landlord shall have 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;

(2) Landlord shall not be obligated to offer the Premises to any prospective tenant when other premises in the Building suitable for that prospective tenant's use are currently available, or will be available within three (3) months;

(3) Landlord shall not be obligated to lease the Premises to a substitute tenant for a rent less than the current fair market rent then prevailing for similar retail space in comparable building in the same market area as the Building;

(4) Landlord shall not be obligated to enter into a new lease under terms and conditions that are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Building;

(5) Landlord shall not be obligated to enter into a lease with any proposed Substitute Tenant that does not have, in Landlord's reasonable opinion, sufficient financial resources or operating experience to operate the Premises in a first-class manner;

(6) Landlord shall not be required to accept any substitute tenant offered by Tenant or to observe any instructions given by Tenant regarding such reletting;

(7) Landlord shall not be obligated to enter into a lease with any substitute tenant whose use would conflict with the uses allowed hereunder; and

(8) Landlord shall not be required to expend any amount of money to alter, remodel, or otherwise make the Premises suitable for use by a substitute tenant, unless:

(A) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with such substitute tenant (which payment shall not be in lieu of any damages or other sums to which Landlord may be entitled to as a result of Tenant's default under this Lease); or

(B) Landlord, in Landlord's sole and absolute discretion, determines that any such expenditure is financially justified in connection with entering into any lease with such substitute tenant.

(e) Waiver by Tenant. Upon compliance with the criteria set forth in Section 17(d), above, regarding reletting of the Premises after a default by Tenant, Landlord shall be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease; and Tenant waives, to the fullest extent legally permissible, any right to assert in any action by Landlord to enforce the terms of this Lease, any defense, counterclaim, or rights of setoff or recoupment respecting the mitigation of damages by Landlord, unless and to the extent Landlord maliciously or in bad faith fails to act in accordance with the requirements of this clause.

(f) No Waiver of Indemnification. Neither the termination of this Lease nor the exercise of any remedy under this Lease or otherwise available at law or in equity shall affect the right of Landlord to any right of indemnification set forth in this Lease or otherwise available at law or in equity for any act or omission of Tenant, and all rights to indemnification or other obligations of Tenant which are intended to be performed after termination of this Lease shall survive termination of this Lease and termination of Tenant's right to possession under this Lease.

(g) Landlord's Default.

(1) Default. It shall be a default and breach of this Lease by Landlord if Landlord materially fails to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Lease for a period of thirty (30) days after receipt of written notice thereof from Tenant; provided, however, that if the term, condition, covenant or obligation to be performed by Landlord is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such default shall be deemed to have been cured if Landlord commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.

(2) Tenant's Remedies. Tenant shall not have the right based upon a default of Landlord to terminate this Lease or to withhold, offset or abate rent, Tenant's sole recourse for Landlord's default shall be an action for damages against Landlord for diminution in the rental value of the Premises for the period of Landlord's default, which is proximately caused by Landlord's default. Tenant shall not have the right to terminate this Lease or to withhold, offset or abate the payment of rent based upon the unreasonable or arbitrary withholding by Landlord of its consent or approval of any matter requiring Landlord's consent or approval, including, but not limited to, any proposed assignment or subletting, Tenant's remedies in such instance being limited to a declaratory relief action, specific performance, injunctive relief or an action for actual damages. Tenant shall not in any case be entitled to any consequential (including lost profits) or punitive damages based upon any Landlord default or withholding of consent or approval.

(3) Non-Recourse. Notwithstanding anything to the contrary contained in this Lease, Tenant agrees and understands that Tenant shall look solely to the estate and property of

Landlord in the Project for the enforcement of any judgment (or other judicial decree) requiring the payment of money by Landlord to Tenant by reason of any default or breach by Landlord in the performance of its obligations under this Lease, it being intended hereby that no other assets of Landlord or any of Landlord's Affiliates shall be subject to levy, execution, attachment or any other legal process for the enforcement or satisfaction of the remedies pursued by Tenant in the event of such default or breach.

(4) Limitation of Liability. In the event of a sale or transfer of the Premises by Landlord, the Landlord named herein or, in the case of a subsequent transfer, the transferor, shall, after the date of such transfer, be automatically released from all personal liability for the performance or observance of any term, condition, covenant or obligation required to be performed or observed after the date of such transfer by Landlord hereunder; and the transferee shall be deemed to have assumed all of such terms, conditions, covenants and obligations, it being intended hereby that such terms, conditions, covenants and obligations shall be binding upon Landlord, its successors and assigns only during and in respect of their successive periods of ownership during the Term.

18. Signage. Tenant, at its own expense, shall have the right to place signage on the exterior of the Premises for maximum visibility consistent with the balance of the tenants in the Building, consistent with Landlord's signage plan (a copy of which is attached hereto as Exhibit C) and to the extent allowable by the City of San Diego and Civic San Diego. The exact location, design and colors of such signage shall be submitted by Tenant to Landlord as part of the Plans and Specifications and shall be subject to approval of the Landlord. Landlord's approval shall not be unreasonably withheld. The wiring and installation of such signage shall be done at Tenant's expense, subject to inspection and approval of Landlord. Any and all signage shall be subject to applicable sign ordinances and regulations, and appropriate City of San Diego and Civic San Diego approvals regarding number, size, and color. If Landlord revises the signage plan, after Tenant has erected a sign to which Landlord has granted consent, Tenant agrees, at Landlord's expense, to make the necessary changes to its sign in order to conform the sign to Landlord's signage plan, as enacted or revised.

19. Quiet Enjoyment. Upon payment by Tenant of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to the terms and conditions of this Lease, and any mortgage and/or deed of trust to which this Lease is subordinate and subject to Landlord's right from time to time to perform tenant improvement work in other space in the Project, which will involve, among other things, construction noise, the use of scaffolding, delays in the use of the Building's elevators, the presence of work crews and the use of the Building's elevators by work crews, provided, however, that such work does not materially interfere with Tenant's use of the Premises.

20. Landlord Exclusive Control.

(a) Building Alterations. Landlord shall have the sole and exclusive control of the Project, as well as the right to make changes to the Project so long as the same does not negatively impact the Project or Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease. Landlord has the right, but not the obligation, to (i) restrain the use of the Project and/or common areas by unauthorized persons, (ii) utilize from time to time any portion of the Project and/or common areas for promotional and related matters, (iii) temporarily close any portion of the Project and/or common areas for repairs, improvements or alterations, or (iv) change the shape and size of the Project and/or common areas or change the location of improvements within the Project and/or common areas, including, without limitation, parking structures and other parking facilities, roadways and curb cuts. Landlord may determine the nature, size and extent of the common areas as well as make changes to the common areas from time to time which, in Landlord's opinion, are deemed desirable so long as the same does not negatively impact the Project or Premises or Tenant's use, occupancy and enjoyment thereof or Tenant's rights under this Lease.

(b) Landlord's Rights. Landlord reserves the right to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises or outside the Premises, change the boundary lines of the Project and install, use, maintain, repair, alter or relocate, expand and replace any common areas. Such rights of Landlord shall include, but are not limited to, designating from time to time certain portions of the common areas as exclusively for the benefit of certain tenants in the Project.

21. Parking.

(a) Parking Spaces. Tenant and Tenant's customers shall have the right to purchase 15-minute parking validations at "market" rates throughout the Term and shall have the same access to and shall pay the same rate for the subterranean parking garage ("Garage") as are afforded by Landlord to the general public.

(b) Use of Parking Spaces. Tenant shall reasonably cooperate with Landlord to ensure that Tenant and its employees observe all parking regulations. Nothing contained in this Lease shall be deemed to impose liability upon Landlord for personal injury or theft, for damage to any motor vehicle, or for loss of property from within any motor vehicle, which is suffered by Tenant or any of its employees, customers, service suppliers or other invitees in connection with their use of the Parking Spaces or the Garage or elsewhere.

(c) Landlord Control of Garage. Landlord shall at all times have the sole and exclusive control of the Garage, and may at any time exclude and restrain any person from use or occupancy thereof. The rights of Tenant and its employees shall at all times be subject to (i) the rights of Landlord and other tenants in the Building to use the same in common with Tenant and its employees, (ii) the availability of parking spaces in the Garage, and (iii) Landlord's right to change the location of any assigned reserved parking spaces in the sole discretion of the President/CEO of Landlord.

22. Subordination. Tenant agrees that its leasehold interest hereunder is subordinate to any mortgages now on, or hereafter to be placed on, the Premises. Tenant shall comply with requests

of Landlord's lender(s), for execution of documentation to effect this subordination of its leasehold interest, including without limitation, subordination, nondisturbance and attornment agreements. Tenant shall obtain any and all non-disturbance agreements in favor of Tenant from the holders of all mortgages, deeds of trust, ground leases and other encumbrances ("Encumbrances") against the Project that Tenant in its sole discretions deems necessary.

23. Estoppel Certificates. Tenant, at any time and from time to time, upon not less than five (5) days' prior written notice from Landlord, agrees to execute and deliver to Landlord a statement (a) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if they are claimed evidencing the status of this Lease. Tenant's failure to deliver an estoppel certificate within such time shall be conclusive upon Tenant that (i) this Lease is in full force and effect without modification except as may be represented by Landlord, (ii) to Tenant's knowledge there are no uncured defaults in Landlord's performance, and (iii) no rent has been paid in advance except as set forth in this Lease.

24. Financial Statements. Landlord has reviewed financial statements if so requested of the Tenant and has relied upon the truth and accuracy thereof with Tenant's knowledge and representations of the truth and accuracy of such statements and that said statements accurately and fairly depict the financial condition of Tenant as of the date of this Lease. Said financial statements are an inducing factor and consideration for the entering into of this Lease by Landlord with this particular Tenant. Tenant shall, at any time and from time to time upon not less than ten (10) days' prior written notice from Landlord, furnish Landlord with current financial statements, which accurately reflect Tenant's then financial condition.

25. Notices. Any notices required or permitted hereunder shall be in writing and delivered in person to the other party or by a nationally recognized overnight courier such as FedEx, or United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses set forth below or to such other address as either party may designate in writing and deliver as provided in this Section.

Landlord: San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, CA 92101

Copy to: Christensen & Spath LLP
550 West C Street, Suite 1660
San Diego, CA 92101

Tenant: TAL Store 828, LLC.
1075 11th Avenue
San Diego, CA 92101

Copy to: Talk A Lot Wireless
31455 Northwestern Highway, Suite C
Farmington Hills, MI 48334

26. Brokers. Landlord and Tenant covenant, warrant and represent that no broker has been involved in the negotiation or consummation of this Lease, who shall be compensated by Landlord pursuant to a separate agreement.

27. Force Majeure and Landlord Delay. Neither party shall be required to perform any term, covenant or condition of this Lease so long as such performance is delayed or prevented by force majeure, which shall mean any acts of God, material restriction by any governmental authority, civil riot, and any other cause not reasonably within the control of such party and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

28. Holdover. Any holding over after the expiration of the Term, with or without the consent of Landlord, shall be construed to be a tenancy at sufferance at two hundred percent (200%) of the rent applicable immediately prior to the holdover period (prorated on a monthly basis) unless Landlord shall specify a lesser amount for rent in its sole discretion, and shall otherwise be on the terms and conditions herein specified as far as applicable. Any holding over without Landlord's consent shall constitute a default by Tenant and shall entitle Landlord to re-enter the Premises. Tenant shall indemnify, defend and hold Landlord harmless from any and all loss, damage, claim, cost, expense or liability (including, without limitation, attorneys' fees and costs) resulting from such holdover.

29. Binding On Landlord. Regardless of any written or verbal representation of any agent, manager or other employee of Landlord to the contrary, this Lease shall not be binding upon Landlord, its successor and assigns, until the last to occur of: (i) execution by Landlord and Landlord's General Counsel; and (ii) approval of this Lease by resolution of the Housing Authority of the City of San Diego.

30. General Conditions.

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

(b) Captions. The captions in this Lease are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Lease or any of the provisions of this Lease.

(c) Partial Invalidity. Any provision of this Lease which is unenforceable, invalid, or the inclusion of which would adversely affect the validity, legality, or enforcement of this Lease shall have no effect, but all the remaining provisions of this Lease shall remain in full effect.

(d) No Third-Party Rights. Nothing in this Lease, express or implied, is intended to confer upon any person, other than the parties to this Lease and their respective successors and assigns, any rights or remedies.

(e) Time Of Essence. Time is of the essence in this Lease.

(f) Relationship. Nothing contained in this Lease shall be deemed or construed by the parties or by any third person to create a relationship of principal and agent or partnership or a joint venture between Landlord and Tenant or between either or both of them and any third party.

(g) Landlord Approval. Where this Lease refers to an action or approval of the Landlord, it shall mean the approval of the President/CEO of the San Diego Housing Commission, or designee, unless otherwise provided.

(h) Exhibits Incorporated. All exhibits referred to in and attached to this Lease are hereby incorporated in this Lease by this reference.

(i) Further Assurances. Landlord and Tenant agree to execute all such instruments and documents and to take all actions which are reasonably necessary to carry out this Lease or accomplish its intent.

(j) Incorporation of Prior Agreements. This Lease contains all agreements of Landlord and Tenant with respect to any matter mentioned, or dealt with, herein. No prior agreement or understanding pertaining to any such matter shall be binding upon Landlord or Tenant.

(k) Amendment. This Lease may only be amended by written agreement signed by Landlord and by Tenant.

(l) No Waiver. No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. Landlord's consent to or approval of any act shall not be deemed to render unnecessary obtaining such Landlord's consent to or approval of any subsequent act. No waiver by either party shall be effective unless it is in writing, executed on behalf of such party.

(m) Consents. All consents to be given by either party shall be reasonably and timely given.

(n) No Leasehold Mortgages. Tenant shall not encumber its leasehold interest in the Premises, without the prior written approval of the Landlord.

(o) Nondiscrimination. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall Tenant itself, or any person claiming


under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises.

(p) Signature Authority. All individuals signing this Lease for a party which is a corporation, limited liability company, partnership or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the each other party hereto that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

IN WITNESS WHEREOF, the parties have executed this Lease.

TENANT:

TAL Store 828, LLC, a California limited liability company

By: 
Print Name: Evan Shina
Its: Managing member

[SIGNATURES CONTINUED ON THE FOLLOWING PAGE]

LANDLORD:

San Diego Housing Commission

By: 
Richard C. Gentry
President & CEO

Approved as to form:

Christensen & Spath LLP


By: 
Charles B. Christensen, General Counsel
San Diego Housing Commission

Exhibit A

Premises Floor Plan

Exhibit B

Use Exclusions

Section 6(b) of the attached Retail Lease provides, *inter alia*, that "Tenant shall not use the Premises in any manner that conflicts with the written exclusive uses presently granted to 7-Eleven, Inc. which are set forth in Exhibit B attached hereto."

Attached hereto are the written exclusive uses presently granted to 7-Eleven, Inc.

Exhibit C

Signage Plan

PERSONAL GUARANTY

THIS PERSONAL GUARANTY ("Guaranty"), dated as of the 1st day of December, 2014, is made by TAL SD Warehouse, LLC, a California limited liability company ("Guarantor"), for the benefit of San Diego Housing Commission, a public agency ("Landlord").

RECITALS

A. Concurrently herewith the Landlord and TAL Store 828, LLC, a California limited liability company ("Tenant") are entering into that certain Retail Lease ("Lease Agreement") with respect to retail space commonly known as 1075 11th Avenue, San Diego, California at the building owned by Landlord generally located at 1122 Broadway, San Diego, California.

B. The execution and delivery of this Guaranty is a condition of Landlord's agreement to make the Lease Agreement. Guarantor's execution and delivery of this Guaranty is as material inducement to and is made in consideration of the Lease Agreement attached.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Landlord to enter into the Lease Agreement, the parties hereto agree as follows:

1. Guarantee of Obligations. Guarantor irrevocably, absolutely and unconditionally warrants, guarantees and promises to Landlord that Tenant will completely perform all of the provisions and covenants of the Lease Agreement that Tenant is to perform. Guarantor agrees that Guarantor shall be primarily bound, jointly and severally liable with Tenant under the Lease Agreement as though Guarantor were Tenant under the Lease Agreement. This Guaranty is a continuing guaranty and shall apply to all of the obligations guaranteed hereunder. The obligations of Guarantor hereunder are independent of the obligations of Tenant or any other person. Landlord may enforce any of Landlord's rights under this Guaranty and/or the Lease Agreement independently of any other right or remedy that Landlord may at any time hold with respect to this Guaranty and/or the Lease Agreement.

2. Obligations of Guarantor Upon Default. Guarantor hereby covenants and agrees that if Tenant shall at any time default under, or fail to perform any term or condition of, the Lease Agreement, Guarantor shall, immediately cure such failure, including without limitation: (a) immediately perform the applicable part of the Lease Agreement; (b) immediately pay all sums required to be paid by Tenant under the Lease Agreement to Landlord; (c) provide all defenses and indemnifications required of Tenant under the Lease Agreement; (d) fully satisfy all the conditions and covenants of the Lease Agreements to be performed by Tenant; and (e) pay all damages that may arise out of, relate to, and occur by reason of Tenant's nonperformance and/or breach of any conditions or covenants of the Lease Agreements. Guarantor agrees that Landlord may proceed against Guarantor directly and independently from Tenant.

3. Guarantor Consent Not Required to Amend Lease Agreement. Guarantor agrees and acknowledges that Guarantor's consent will not be required for any modification, renewal or amendment of the Lease Agreement or for the exercise by Tenant of any extensions under the Lease Agreement. Guarantor agrees and acknowledges that none of the actions described in this Section 3 will cancel or alter this Guaranty in any way.

4. Representations and Warranties of Gurantor. Guarantor represents and warrants to Landlord that: (a) Guarantor has read understood and agrees to the terms of the Lease Agreement; (b) Guarantor has all requisite power and authority to execute, deliver and perform all of Guarantor's obligations under this Guaranty; (c) there are no conditions precedent to the effectiveness of this Guaranty; (d) this Guaranty constitutes a valid and binding obligation of Guarantor, enforceable in accordance with its terms; and (e) Guarantor acknowledges that Landlord would not enter into the Lease Agreement without this Guaranty.

5. Financial and Other Information. Guarantor further represents and warrants to Landlord that all financial information furnished to Landlord with respect to Guarantor or Tenant: (a) is complete, true and correct in all material respects; (b) accurately and fairly presents the financial condition of Guarantor or Tenant (as applicable) as of the date of such financial statement; and (c) has been prepared in accordance with generally accepted accounting principles consistently applied. All other reports, papers, data and information furnished to Landlord with respect to Guarantor or Tenant in connection with this Guaranty are accurate, complete and correct in all material respects. Without limiting the generality of the foregoing, there has been no material adverse change in the condition, financial or otherwise, of Guarantor or Tenant since the date of the information furnished to Landlord.

6. Reasonableness and Effect of Waivers. Guarantor hereby waives: (a) any defense based upon any legal disability or other defense of Guarantor, Tenant or other person, or by reason of the cessation or limitation of the liability of Guarantor or Tenant; (b) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Tenant or any principal of Tenant or any defect in the formation of Tenant; (c) any and all rights and defenses arising out of an election of remedies by Landlord, even though that election of remedies may destroy Guarantor's rights of subrogation and reimbursement; and (d) any defense based upon Landlord's failure to disclose to Guarantor any information concerning Tenant's financial condition or any other circumstances bearing on Tenant's ability to perform its obligations under the Lease Agreement. Guarantor agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Lease Agreement shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder. Guarantor warrants and agrees that each of the waivers set forth in this Guaranty is made with full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any of such waivers are determined to be contrary to any applicable law or public policy, such waivers shall be effective only to the maximum extent permitted by law.

7. Additional, Independent and Unsecured Obligations. The obligations of Guarantor hereunder shall be in addition to and shall not limit or in any way affect the obligations of Guarantor under any other existing or future guarantees unless said other guarantees are expressly modified or revoked in writing. This Guaranty is independent of the obligations of Tenant under the Lease Agreement. Landlord may bring a separate action to enforce the provisions hereof against Guarantor without taking action against Tenant or any other party or joining Tenant or any other party as a party to such action. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not be deemed to be secured by any security instrument unless such security instrument expressly recites that it secures this Guaranty.

8. General Conditions.

(a) Attorneys' Fees. Guarantor shall pay to Landlord all amounts for costs, including, but not limited to, attorneys' fees and amounts paid to any collection agency, incurred by Landlord in connection with any breach or default by Tenant under the Lease Agreement or by Guarantor under this Guaranty. Such amounts shall be payable upon demand. In addition, if any action shall be instituted by either Landlord or Guarantor for the enforcement or interpretation of any of its rights or remedies in or under this Guaranty Agreement, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys' fees and court costs to be fixed by the court therein.

(b) Binding Effect. This Guaranty and all the terms, provisions and conditions hereof shall be binding upon Guarantor and Guarantor's heirs, legal representatives, successors and assigns, and this Guaranty shall inure to the benefit of Landlord and its successors and assigns.

(c) Financial Information. Guarantor agrees to provide Landlord such other information regarding its assets, liabilities and financial conditions generally as Landlord may from time to time reasonably require.

(d) Governing Law. This Guaranty shall be governed by, and construed in accordance with, the Laws of the State of California.

(e) Notices. Any notices required or permitted hereunder shall be in writing and delivered in person to the other party or by a nationally recognized overnight courier such as FedEx, or United States Certified Mail, Return Receipt Requested, postage fully prepaid, to the addresses set forth below or to such other address as either party may designate in writing and deliver as provided in this Section.

Landlord: San Diego Housing Commission
1122 Broadway, Suite 300
San Diego, CA 92101

Copy to: Christensen & Spath LLP
550 West C Street, Suite 1660
San Diego, CA 92101

Guarantor: TAL SD Warehouse, LLC
9410 Jamacha Blvd.
Spring Valley, CA 91977

(f) No Waiver. Any failure by Landlord to insist, or any election by Landlord not to insist, upon strict performance by Guarantor of any of the terms, provisions or conditions of this Guaranty shall not be deemed to be a waiver of the same or of any other terms, provisions or conditions thereof.


(g) Severability. This Guaranty is intended to be performed in accordance with, and only to the extent permitted by, applicable law. If any provision of this Guaranty or the application thereof to any person or circumstance shall be invalid or unenforceable, then neither the remainder of this instrument nor the application of such provision to other persons or circumstances shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

(h) Entire Agreement and Modification. This Guaranty contains the entire agreement between Guarantor and Landlord relating to the subject matter hereof, and all proper agreements relative thereto are hereby terminated. This Guaranty may not be amended, revised, waived, discharged, released or terminated orally, but only by a written amendment, revision, waiver, discharge, release or termination. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

(i) Counterparts. This Guaranty may be executed in one or more counterparts which shall be construed together as one document.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

GUARANTOR:

By: 
Print Name: Evan Shing
Its: Managing Member