

# **LEASE AGREEMENT**

**Between**

**LANDLORD:**

**K&S MARKET, INC.  
A California Corporation**

**And**

**TENANT:**

**County of San Benito  
Health & Human Services Agency  
Public Health Department**

**PREMISES:**

**351 Tres Pinos Road, Suite C-1  
Hollister, California 95023**

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**THIS LEASE AGREEMENT** (the "Lease") is made and entered into on the date hereafter set forth by and between K&S MARKET, INC., a California Corporation, and COUNTY OF SAN BENITO HEALTH & HUMAN SERVICES AGENCY PUBLIC HEALTH DEPARTMENT, hereinafter referred to as "Landlord" and "Tenant", respectively.

The parties hereto agree as follows:

1. **LEASE/USE.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, for the purposes of general office use, and for no other purposes, those certain Premises with appurtenances described as hereinafter set forth.

2. **PREMISES.** The premises leased to Tenant, together with appurtenances, consist of 1,400 square feet, more or less, known as Suite C-1, within the building (the "Building") located at 351 Tres Pinos Road, Hollister, California (the "Premises").

Tenant accepts the Premises "AS IS", in their present condition.

3. **TERM/POSSESSION.** The term of this Lease shall be for a period of four (4) years, commencing on July 1, 2016 (the "Commencement Date") and terminating on June 30, 2020 (the "Termination Date")(hereinafter "the Term"). Tenant shall be entitled to possession on June 1, 2016.

4. **RENT.** Monthly rent (hereinafter the "Base Rent") shall be paid by Tenant to Landlord in the following sums for each year of the four (4) year Term of this Lease:

<b>Term</b>	<b>Base Rent</b>	<b>Monthly Common Area Maintenance Expense ("CAM")</b>	<b>Total Monthly Rent</b>
July 1, 2016 through June 30, 2017	\$1,400.00	\$100.00	<b>\$1,500.00</b>
July 1, 2017 through June 30, 2018	\$1,442.00	\$100.00	<b>\$1,542.00</b>
July 1, 2018 through June 30, 2019	\$1,485.00	\$100.00	<b>\$1,585.00</b>
July 1, 2019 through June 30, 2020	\$1,530.00	\$100.00	<b>\$1,630.00</b>

Such Base Rent shall be paid, in advance, commencing on the date set forth herein and continuing on the same date of each month thereafter, or on the last day of each month thereafter, whichever date occurs first, during the Term of this Lease. All payments received by Landlord from Tenant shall be applied to the oldest payment obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing or on a check or money order, shall modify this clause or have any force or effect. All Base Rent or any other sum due hereunder shall be paid to Landlord's agent, A.G. Davi at 484-D Washington Street, Monterey, California 93942, and shall be paid in lawful money of the United States of America without deduction, offset, prior notice, or demand.

5. **OPTION TO EXTEND TERM.** Tenant is given four (4) successive one (1) year options to extend the Term of this Lease on all of the provisions contained herein, except for the monthly Base Rent and monthly common area management expense, the first of which options is for a term of one (1) year, commencing on July 1, 2020, the second of which options is for a term of one (1) year, commencing on July 1, 2021; the third of which options is for a term of one (1) year, commencing on July 1, 2022; and the fourth



of which options is for a term of one (1) year, commencing on July 1, 2023 provided, however, that the second option may not be exercised unless the first option has been exercised, the third option may not be exercised unless the second option has been exercised, and that the fourth option may not be exercised unless the third option has been exercised. Exercise of any options hereunder shall be by giving written notice of exercise of option to Landlord at least three (3) months, but not more than six (6) months, before expiration of the immediately preceding term of this Lease; provided, however, that if Tenant is in Default (as hereinafter defined) on the date of giving the option notice, said option notice shall be totally ineffective; or if Tenant is in Default on the date the extended term of the Lease is to commence, that extended term shall not commence, and this Lease shall expire at the end of the initial Term. If Tenant fails to exercise the option in the manner and within the times provided herein, then this Lease shall terminate at the end of the initial Term.

Monthly rent due during each year of the extended term of this Lease, if the option is exercised, shall be paid as provided for payment of monthly rent during the initial four (4) year Term in Paragraph 4 above, but in the following amounts:

<b>Term</b>	<b>Base Rent</b>	<b>Monthly Common Area Maintenance Expense ("CAM")</b>	<b>Total Monthly Rent</b>
July 1, 2020 through June 30, 2021	\$1,576.00	\$115.00	<b>\$1,691.00</b>
July 1, 2021 through June 30, 2022	\$1,576.00	\$115.00	<b>\$1,691.00</b>
July 1, 2022 through June 30, 2023	\$1,610.00	\$115.00	<b>\$1,725.00</b>
July 1, 2023 through June 30, 2024	\$1,610.00	\$115.00	<b>\$1,725.00</b>

**6. SECURITY DEPOSIT.** Prior to the commencement of the Term of this Lease, Tenant shall deposit with Landlord the sum of One Thousand Four Hundred Dollars (\$1,400.00) as a security deposit for the performance by Tenant of all the terms, covenants, conditions, agreements of this Lease. In the event Tenant breaches any term, covenant, condition or agreement of this Lease, Landlord may use the security deposit, or any portion of it, to cure the breach or to compensate Landlord for all costs, expenses and damages sustained by Landlord resulting from Tenant's breach. On written demand by Landlord, Tenant shall immediately deposit with Landlord a sum equal to the portion of the security deposit necessary to increase the same to the One Thousand Four Hundred Dollars (\$1,400.00) initially deposited with Landlord. In the event Tenant shall not then be in Default (as hereinafter defined) as to any of the terms, covenants, conditions or agreements of this Lease on expiration or termination of this Lease, Landlord shall return said security deposit to Tenant. Landlord's obligations with respect to this security deposit are those of a debtor and not a trustee. No interest shall accrue or be paid on the security deposit and Landlord may commingle it, use it in the ordinary course of business, or in any other way, and may assign or transfer the same.

**7. LATE CHARGE.** Tenant acknowledges that late payment to Landlord of Base Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Base Rent or any other sum due from Tenant is not received by Landlord within ten (10) days after such amount shall be due, Tenant shall pay to Landlord a charge equal to six percent (6%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of



Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

**8. RETURNED CHECKS.** Returned checks are considered as unpaid rent and as such Tenant will be charged a six percent (6%) late charge and a Forty Dollar (\$40.00) non-sufficient funds or NSF fee for all returned checks. In the event of a returned check, the amount in question will be due immediately, payable by money order or cashier's check only, including the late fee and returned check fee.

**9. REAL PROPERTY TAXES.** Landlord shall pay all real property taxes and general and special assessments levied or assessed during the Term of this Lease on the real property commonly known as 351 Tres Pinos Road, Hollister, California, including all buildings and improvements constructed thereon (collectively, the "Property").

**10. PERSONAL PROPERTY TAXES.** During the Term hereof, Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the Property. In the event any or all of the Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with the Property, the Tenant shall pay to Landlord any taxes levied or assessed against Tenant's personal property within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to the Tenant's property.

**11. PARKING AND COMMON FACILITIES.** Landlord covenants that the common areas of the Property, as shown on the attached Exhibit "A", a copy of which is attached hereto and incorporated herein by reference, which includes sidewalks, corridors, halls, stairways, balconies, and restrooms not included within any suite, as well as landscaping and parking areas surrounding the Building at 351 Tres Pinos Road, shall be available for the nonexclusive use of Tenant, its employees and invitees during the full Term of this Lease or any extension of the Term hereof, provided that the condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such common and parking areas shall not constitute a violation of this covenant. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of such parking area or areas.

(a) Landlord shall cause the common areas to be maintained in good condition and repair during the entire Term hereof.

(b) Landlord shall keep or cause to be kept said parking, landscaping and common areas in neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof, but all expenses in connection with the operation, maintenance and repair of such parking, landscaping and common areas shall be charged and prorated in the manner hereinafter set forth. It is understood and agreed that the phrase "expenses in connection with the operation, maintenance and repair of such parking, landscaping and common areas" as used herein shall be construed to include, but not be limited to, all sums expended by Landlord in connection with said parking, landscaping and common areas for all general maintenance and repairs, resurfacing, painting, re-striping, cleaning, sweeping and janitorial services; planting and landscaping; lighting and other utilities; directional signs and other markers and bumpers; personnel to implement such services and to police the parking, landscaping and common areas; and a reasonable allowance to Landlord for Landlord's supervision of said parking, landscaping and common areas (but said cost of supervision shall not exceed in any calendar year ten percent (10%) of the total of the aforementioned expenses for said calendar year).



Landlord agrees to furnish to Tenant a statement itemized in reasonable detail setting forth the total expenses for the parking, landscaping and common areas for the previous three (3) calendar months, said statement to be furnished as soon as reasonably possible following the expiration of said quarterly period (i.e., March 31, June 30, September 30, and December 31). Tenant agrees to pay to Landlord Tenant's pro rata share of such expenses within ten (10) days after the receipt of said statement. Tenant's pro rata share of the total expenses for the previous three month period shall be that portion of all of such expenses which is equal to the proportion thereof which the number of square feet of floor area in the Premises bears to the total number of square feet of the leased floor area of the Building within which the Premises are located, as of the commencement of each quarterly period. There shall be appropriate adjustment of Tenant's share of the parking, landscaping and common area expenses as of the commencement and expiration of the Term of this Lease. **Except as otherwise provided in Paragraph 5, Landlord and Tenant agree that Tenant shall pay Landlord an amount equal to \$100.00 per month for common area maintenance ("CAM") in addition to the monthly rent, as more fully outlined in Paragraph 4 above.**

(c) Tenant, for the use and benefit of Tenant, its agents, employees, customers, licensees and subtenant, shall have the nonexclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees, customers, licensees and subtenants, to use said common and parking areas during the entire Term of this Lease, or any extension thereof, for the uses for which they were designed, including but not limited to ingress and egress, roadway, sidewalk and automobile parking.

(d) The Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules and regulations as the Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas.

(e) Landlord shall have the right to close, if necessary, all or any portion of the common and parking areas to such extent as may in the opinion of Landlord's counsel be necessary or desirable in order to prevent a dedication thereof or the accrual or any rights of any person or of the public therein; to close temporarily all or any portion of the common and parking areas to discourage non-customer use; to use portions of the common and parking areas while engaged in making additional improvements or repairs or alterations to the center; and to do and perform such other acts in, to, or with respect to the common area as Landlord, in its sole judgment, shall determine to be appropriate for the center.

(f) Landlord shall have the right to increase or reduce the common area, and to rearrange the parking spaces, driveways, entrances, exits and improvements on and within the common and parking areas. Tenant shall not park in any parking spaces which are presently reserved for other Tenants at the Property, unless otherwise directed by Landlord.

(g) Landlord shall have the sole right to place vending or amusement devices and public telephones in the common areas.

**12. UTILITIES.** Tenant shall pay before delinquency all charges for water, gas, heat, electricity, power, telephone service, garbage collection, and all other services or utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the Term of this Lease, provided that such utilities are billed separately and directly to Tenant by the entities supplying the same. Any of such utilities which are not separately billed to Tenant (including water supplied to public restrooms) shall be paid for by Landlord and charged and prorated among Tenant of the building in which the Premises are situated as follows:



Landlord agrees to furnish to Tenant a statement itemizing the total charges for such utilities for the Premises for the previous three (3) calendar months, said statement to be furnished as soon as reasonably possible following the expiration of said quarterly period (i.e., March 31, June 30, September 30, and December 31). Tenant agrees to pay to Landlord Tenant's pro rata share of such charges within ten (10) days after the receipt of said statement. Tenant's pro rata share of such charges shall be that portion of all of such expenses which is equal to the ratio of the number of square feet of floor area in the Premises to the total number of square feet of the leased floor area of the Building within which the Premises are located, as of the commencement of each quarterly period. There shall be appropriate adjustment of Tenant's share of such charges (the parking, landscaping and common area expenses) as of the commencement and expiration of the Term of this Lease. **Except as otherwise provided in Paragraph 5, Landlord and Tenant agree that Tenant shall pay Landlord an amount equal to \$100.00 per month for common area maintenance ("CAM") in addition to the monthly rent, as more fully outlined in Paragraph 4 above.**

Landlord may discontinue, without notice to Tenant, any of the utilities furnished to the Premises for which Tenant fails to pay as provided in this paragraph, and no such discontinuance shall be deemed an actual or a constructive eviction.

**13. WASTE.** Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant in or around the buildings in which the Premises may be located.

**14. USES PROHIBITED.** Tenant shall not use, or permit said Premises, or any part thereof, to be used for any other purpose or purposes other than the purpose or purposes for which said Premises are hereby leased, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. No use shall be made or permitted to be made of said Premises nor acts done, which will increase the existing rate of insurance upon the Building in which said Premises may be located (once said rate is established), or cause a cancellation of any insurance policy covering said Building or any part thereof, nor shall Tenant sell or permit to be kept, used or sold in or about said Premises any article which may be prohibited by standard form of fire insurance policies. Tenant shall, at its sole cost, comply with any and all requirements, pertaining to the use of said Premises, of any insurance organization or company necessary for the maintenance or reasonable fire and public liability insurance, covering said Building and appurtenances. In the event Tenant's use of the Premises, as recited in Paragraph 1 hereof, results in a rate increase for the Building of which the Premises are a part, Tenant shall pay annually on the anniversary date of this Lease, as additional rent, a sum equal to that of the additional premium occasioned by said rate increase.

**15. HAZARDOUS SUBSTANCES.** The term "Hazardous Substances," as used in this Paragraph 15, shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

**15.1 Environmental Prohibitions.** Tenant shall not cause or permit to occur:

(a) Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the Premises, or arising from Tenant's use or occupancy of the Premises, including, but not limited to, soil and groundwater conditions; or



(b) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under, or about the Premises, or the transportation to or from the Premises of any Hazardous Substance arising from Tenant's use or occupancy of the Premises.

#### 15.2 Environmental Compliance.

(a) Tenant shall, at Tenant's expense, comply with all laws regulating Tenant's use, generation, storage, transportation, or disposal of Hazardous Substances (the "Laws").

(b) Tenant shall, at Tenant's expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Authorities") under the Laws to the extent required in connection with any Hazardous Substances used, stored or disposed of in, on or about the Premises by Tenant, its agents, employees or invitees.

(c) If any Authority demands that a clean-up plan be prepared and that a clean-up be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the Term, at or from the Premises which arises from Tenant's use or occupancy of the Premises, then Tenant shall, at Tenant's expense, prepare and submit the required plans and all related bonds and other financial assurances and Tenant shall carry out all work required by such clean-up plans.

(d) Tenant shall promptly provide all information regarding any use, generation, storage, transportation or disposal of Hazardous Substances at, on or from the Premises that is requested by Landlord. If Tenant fails to fulfill any duty imposed under this Paragraph 15.2, within a reasonable time, Landlord may do so; and reasonably in such case, Tenant shall cooperate with Landlord in order to prepare all documents Landlord reasonably deems necessary or appropriate to determine the applicability of the Laws to the Premises and Tenant's use thereof, and for compliance therewith, and, Tenant shall execute all documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages, under any Law shall constitute a waiver of any of Tenant's obligations under this Paragraph 15.2.

(e) Tenant's obligations and liabilities under this Paragraph 15.2 shall survive the expiration or termination of this Lease.

#### 15.3 Environmental Indemnity.

Tenant shall indemnify, defend, and hold harmless Landlord, its officers, directors, employees and agents from all fines, suits, procedures, claims, and actions of every kind and all costs associated therewith (including attorneys' and consultants' fees) arising from (i) any deposit, spill, discharge, or other release of Hazardous Substances that occurs at or from the Premises during the Lease term that arises from Tenant's use or occupancy of the Premises, or (ii) Tenant's failure to provide all information, make all submissions, and take all actions required by all Authorities under the Laws in connection with any such Hazardous Substances. Tenant's obligations and liabilities under this Paragraph 15.3 shall survive the expiration or termination of this Lease.

Landlord shall provide the same indemnity to Tenant, its officers, directors, employees and agents, for any release of Hazardous Substances prior to the Lease Term.

**16. ALTERATIONS AND ADDITIONS.** Tenant shall not make any structural or exterior alterations to the Premises without Landlord's written consent, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, Tenant is granted permission to make those improvements to the Premises in conformity with Tenant's use of the Premises as described in Paragraph 1.



Tenant, at its cost, shall have the right to make, without Landlord's consent, nonstructural alterations to the interior of the Premises that Tenant requires in order to conduct its business on the Premises if the cost of such nonstructural alterations does not exceed Five Thousand Dollars (\$5,000.00) ("Permitted Alterations").

In making any alterations that Tenant has the right to make, Tenant shall comply with the following:

(a) Tenant shall submit for Landlord's approval reasonably detailed final plans and specifications and working drawings of the proposed alterations and the name of its contractor at least fifteen (15) days before the date it intends to commence the alterations.

(b) The alterations shall not be commenced until five (5) days after Landlord has received notice from Tenant stating the date that the installation of the alterations is to commence so that Landlord can post and record an appropriate notice of nonresponsibility.

(c) The alterations shall be approved by all appropriate government agencies and all applicable permits and authorizations shall be obtained by Tenant before commencement of the alterations.

(d) All alterations shall be completed with due diligence in compliance with the plans and specifications and working drawings and all applicable laws.

Any alterations made shall remain on or be surrendered with the Premises at the expiration or termination of the Term, or any extended term, unless specific agreement to the contrary is entered into in writing. Alterations and additions that are not to be deemed as trade fixtures shall include heating, lighting, electrical systems, air-conditioning, partitioning, carpeting, or any other installation that has become an integral part of the Premises. However, Landlord can elect within thirty (30) days before expiration of the Term, or within ten (10) days after the termination of the Term, to require Tenant to remove any alterations that Tenant has made to the Premises. If Landlord so elects, Tenant at its costs shall restore the Premises to the condition designated by Landlord in its election before the last day of the Term or within thirty (30) days after notice of election is given, whichever is later.

Tenant shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted by this Paragraph 16, whether done as part of the maintenance provisions of Paragraph 17 herein or the alteration provisions herein. Tenant shall keep the building, other improvements and land of which the Premises are a part, free and clear of all mechanic's liens resulting from the construction done by or for Tenant

**17. MAINTENANCE AND REPAIR.** Tenant shall, at Tenant's sole cost and expense, keep, maintain, and repair the Premises and that portion of the building in which they are situated in good and sanitary order and condition (except as hereinafter provided with respect to Landlord's obligation) including without limitation, the maintenance, repair and/or replacement of any store front, doors, windows, window casements, glazing, heating and air-conditioning system ("HVAC"), water heaters, plumbing, pipes, electrical wiring and conduit, lighting, interior painted surfaces, floor coverings, any damage caused by trespassers or vandals, and all damage or deterioration caused by any acts of Tenant or Tenant's employees, agents, invitees, licensees, or contractors.

If Tenant maintains the HVAC system under this Paragraph, Tenant is required to maintain, at its expense, a regularly scheduled maintenance and service contract for the HVAC system. The maintenance and service contract must be purchased from a HVAC maintenance company that regularly provides such contracts to similar properties. If Tenant fails to maintain a required HVAC maintenance and service



contract in effect at all times during the Term of this Lease, Landlord may do so and charge Tenant the expense of such maintenance and service contract or exercise Landlord's remedies under Paragraph 29.

Tenant hereby waives all right to make repairs at the expense of Landlord as provided in §1942 of the Civil Code of the State of California and Tenant hereby waives all rights provided for by §1941 of said Civil Code. By entering into the Premises, Tenant shall be deemed to have accepted the Premises as being in good and sanitary order, condition and repair and Tenant agrees on the last day of said Term or sooner termination of this Lease to surrender the Premises with appurtenances, in the same condition as when received, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted.

Landlord shall, at its sole cost and expense, keep and maintain in good repair the exterior walls, roof and foundation of the Building, provided, however, that anything to the contrary notwithstanding contained in this Lease, the Landlord shall not be required to make any repairs to the exterior walls, roof and foundation of the Building unless and until Tenant has notified Landlord in writing of the need for such repairs and Landlord shall have had a reasonable period of time thereafter within which to commence and complete said repairs. Landlord agrees to use due diligence in the making of said repairs upon receipt of Tenant's notice with regards thereto.

**18. FREE FROM LIENS.** Tenant shall keep the Premises and the Property free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant.

**19. COMPLIANCE WITH LAWS.** Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to Tenant's use of the Premises, and shall faithfully observe in said use all municipal ordinances and state and federal statutes now in force or shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between the Landlord and Tenant. In accordance with Civil Code §1938, Landlord advises Tenant that the Premises being leased or rented to Tenant have not undergone an inspection by a Certified Access Specialist (CASP).

Tenant agrees to comply with all requirements of the Americans with Disabilities Act (Public Law (July 26, 1990)) ("ADA") applicable to the Premises and such other current acts or other subsequent acts, (whether federal or state) addressing like issues as are enacted or amended. Tenant agrees to indemnify, defend and hold Landlord harmless from any and all expenses, liabilities, costs or damages suffered by Landlord as a result of additional obligations which may be imposed on the Premises or the Building by virtue of Tenant's operations and/or occupancy, including the alleged negligence of the Landlord. Tenant acknowledges that it will be wholly responsible for any provision of the Lease which could arguably be construed as authorizing a violation of the ADA. Any such provision shall be interpreted in a manner which permits compliance with the ADA and is hereby amended to permit such compliance.

**20. INDEMNITY AND EXCULPATION/INSURANCE.**

**(a) Exculpation of Landlord.** Landlord, Landlord's employees, agents, contractors, or invitees shall not be liable for any loss, injury or damage to any property upon the Premises, whether the same be Tenant's property or any other person's property, nor to any person upon said Premises or the adjoining sidewalks. Unless such loss, injury, or damage is caused by the act or neglect of Landlord, Tenant, as a material part of the consideration to be rendered to Landlord, hereby waives all claims against Landlord, Landlord's employees, agents, contractors, or invitees for damage to goods, wares and merchandise in, upon



or about the Premises, and for injuries to Tenant; Tenant's agents or other persons in or about the Premises or sidewalks adjoining the Premises from any cause arising at any time.

**(b) Indemnification.** Tenant shall indemnify, defend and hold Landlord, its shareholders, officers, directors, employees, and agents harmless from and against any and all claims of liability for any injury or damage to any person or property arising from Tenant's use of the Premises, or from the conduct of Tenant's business, or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or elsewhere.

Landlord shall indemnify, defend and hold Tenant, its officers, directors, employees and agents harmless from and against any and all claims of liability for any injury or damage to any person or property to the extent caused by the negligent act or omission or willful misconduct of Landlord relating to the Premises or arising from its condition.

**(c) Liability Insurance.** Tenant, at its cost and expense, shall maintain commercial general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) per occurrence, insuring against all liability of Tenant and its authorized representatives arising out of and in connection with Tenant's use or occupancy of the Premises.

Tenant's commercial general liability insurance shall insure performance by Tenant of the indemnification provisions of subparagraph (b) of this paragraph above.

Landlord shall be named as an additional insured on the policy identified in this subparagraph (c) or (e), as the case may be.

**(d) Other Insurance Matters.** All the insurance required under this Lease shall:

1. Be issued by insurance companies authorized to do business in the State of California, with a financial rating of at least an A status as rated in the most recent edition of *Best's Insurance Reports*.
2. Be issued as a primary policy.
3. Contain an endorsement requiring thirty (30) days written notice from the insurance company to both parties and to Landlord's lender before cancellation or change in the coverage, scope or amount of any policy.

Each policy, or a certificate of the policy, together with evidence of payment of premiums, shall be deposited with the other party at the commencement of the Term and on renewal of the policy not less than twenty (20) days before expiration of the term of the policy.

**(e) Right to Self-Insure.** Tenant shall have the right to self-insure for the insurance required above, subject to:

(i) "Self-insure" shall mean that Tenant is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and Tenant shall pay any amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease.

(ii) In the event that Tenant elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from the insurance company, Tenant shall:



- (a) undertake the defense of any such claim, including a defense of Landlord, at Tenant's sole cost and expense, and
- (b) use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Tenant to self-insure.

In the event that Tenant elects to self-insure, Tenant shall provide Landlord with a letter of self-insurance specifying the extent of self-insurance coverage hereunder.

(f) Landlord, at Landlord's expense, shall at all times during the Term keep in force a policy of commercial general liability insurance, insuring against bodily injury, property damage and personal injury occurring in, on or about the Premises, in the minimum amount of Five Million Dollars (\$5,000,000.00) combined single limit, on an occurrence basis.

(g) Landlord shall at all times during the Term keep in force a Special Causes of Loss ("all risk") policy at least as broad as the coverage afforded by ISO Form CP 1030, insuring all improvements (including the Building and all tenant improvements and alterations within the Building) located on the Premises. Such insurance shall be in the amount of the full replacement cost (excluding foundations). The policy shall include coverage for additional costs resulting from debris removal and reasonable amounts for the enforcement of any laws, regulations, rules, or ordinances. The policy shall also contain an agreed valuation provision in lieu of any co-insurance clause and inflation guard protection. If such insurance coverage has a deductible clause, the deductible amount shall not exceed Ten Thousand Dollars (\$10,000.00) per occurrence.

(h) Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby release each other and their respective agents, employees, successors, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk that is actually insured against, that is required to be insured against under this Lease, or that would normally be covered by Special Causes of Loss or "all risk" property insurance, without regard to the negligence or willful misconduct of the person or entity so released. All of Landlord's and Tenant's repair and indemnity obligations under this Lease shall be subject to the waiver and release contained in this paragraph. Each party shall cause each insurance policy it obtains to provide that the insurer thereunder waives all recovery by way of subrogation as required herein in connection with any injury or damage covered by such policy.

## **21. DAMAGE AND DESTRUCTION OF PREMISES.**

(a) If, during the Term, the Premises or the Building or other improvements in which the Premises are located are totally or partially destroyed from a risk covered by insurance rendering the Premises totally or partially inaccessible or unusable, Landlord shall restore the Premises or the Building or other improvements in which the Premises are located to substantially the same condition they were in immediately before destruction. Such destruction will not terminate this Lease and all sums due hereunder shall continue to be paid, subject to reduction under subparagraph (c) of this paragraph. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party.

However, if the cost of the restoration exceeds the amount of proceeds received from insurance, Landlord may elect to terminate this Lease by giving notice to Tenant within thirty (30) days after determining that the restoration costs will exceed the insurance proceeds. In the case of destruction to the Premises only, if Landlord elects to terminate this Lease, Tenant, within fifteen (15) days after receiving Landlord's notice to terminate, can elect to pay Landlord, at the time Tenant notifies Landlord of its election,



the difference between the amount of insurance proceeds and the costs of restoration in which case Landlord shall restore the Premises. Landlord shall give Tenant satisfactory evidence that all sums contributed by Tenant as provided in this paragraph have been expended by Landlord in paying the costs of restoration. If Landlord elects to terminate this Lease and Tenant does not elect to contribute toward the costs of restoration as provided herein, this Lease shall terminate.

(b) If, during the Term, the Premises or the Building or other improvements in which the Premises are located are totally or partially destroyed from a risk not covered by insurance rendering the Premises totally or partially inaccessible or unusable, then Landlord may, by notice to Tenant given within fifteen (15) days after determining restoration costs, elect either to terminate this Lease or to restore the Premises, the Building or such other improvements. Any alterations made by Tenant, Tenant's Work, Tenant's trade fixtures, or Tenant's personal property shall be the sole responsibility of Tenant to restore.

(c) In the event the Premises are to be restored by Landlord under the provision of subparagraphs (a) and (b) above, the Base Rent due hereunder shall be reduced in proportion to the loss of use of the Premises by Tenant, commencing with the first rental payment due after damage or destruction.

(d) If the Premises or the Building are damaged or destroyed during the Term, Landlord shall notify Tenant in writing, within thirty (30) days after the date of such damage or destruction, of the estimated time required to complete the repair and restoration of the Premises and/or the Building as determined by a licensed general contractor. If the licensed general contractor determines that the Premises and/or such portion of the Building as is required for Tenant's use and occupancy of the Premises cannot be fully restored within ninety (90) days from the date of such damage or destruction, then Tenant shall have the right to terminate this Lease by delivery of written notice to Landlord no later than sixty (60) days from Tenant's receipt of Landlord's notice of the estimated repair and restoration period.

**22. CONDEMNATION.** If, during the Term or during the period of time between the execution of this Lease and the date the Term commences, there is any taking of all or any part of the Premises or any interest in this Lease by condemnation, the rights and obligations of the parties shall be determined as hereinafter provided.

(a) If the Premises are totally taken by condemnation, this Lease shall terminate on the date of taking.

(b) If any portion of the Premises is taken by condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if the remaining portion of the Building or other improvements or the parking areas that are a part of the Premises is rendered unsuitable for Tenant's continued use of the Premises, in Tenant's sole discretion. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate pursuant to this paragraph by giving notice to Landlord within thirty (30) days after the nature and the extent of the taking has been finally determined. If Tenant elects to terminate this Lease as provided for in this paragraph, Tenant shall also notify Landlord of the date of termination, which date shall not be earlier than thirty (30) days nor later than ninety (90) days after Tenant has notified Landlord of its election to terminate. If Tenant does not elect to terminate this Lease within said period, this Lease shall continue in full force and effect as otherwise provided herein. However, if within thirty (30) days after the date that the nature and extent of the taking are finally determined, Landlord notifies Tenant that Landlord at its cost will add on to the remaining Premises and parking area so that the area and the approximate layout of the Premises and parking area will be substantially the same after the date of taking as they were before the date of taking, and Landlord commences the restoration immediately and completes the restoration within ninety (90) days after Landlord notifies Tenant, this Lease shall continue in full force and effect without any reduction in Base Rent, except the reduction made pursuant to the following paragraph.



(c) If any portion of the Premises is taken by condemnation and this Lease remains in full force and effect, on the date of taking the Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the value of the area of the portion of the Premises taken bears to the total value of the Premises immediately before the date of taking.

(d) Each party hereto waives the provision of Code of Civil Procedure §1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a partial taken of the Premises.

(e) If there is a partial taking of the Premises and this Lease remains in full force and effect, Tenant at its cost shall accomplish all necessary restoration.

(f) The award shall belong to and be paid to Landlord, except that Tenant shall receive from the award the following:

(1) The sum attributable to Tenant's Work or any other improvements or alterations made to the Premises by Tenant in accordance with this Lease, which Tenant has the right to remove from the Premises pursuant to the provisions of this Lease but elects not to remove. However, if Tenant elects to remove any of such improvements or alterations, a sum for reasonable removal and relocation costs not to exceed the market value of such improvements or alterations.

(2) A sum attributable to that portion of the award constituting severance damages for the restoration of the Premises, but only if Tenant undertakes such restoration at its sole cost.

(3) A sum paid to Tenant from the entity undertaking condemnation for loss of good will of Tenant.

**23. ABANDONMENT.** The Premises shall be deemed abandoned by Tenant, if, after failure by Tenant to pay an installment of Base Rent pursuant to Paragraph 4 of this Lease, or any portion thereof, for any rental month, and after the date of service of a written notice on Tenant pursuant to California Code of Civil Procedure §§1161 and 1162, demanding that Tenant either pay the amount of Base Rent then due or quit the Premises, (a) Tenant has been absent from the Premises for a period of fourteen (14) consecutive days, and (b) Tenant has neither contacted Landlord in person nor cured said rent default.

Upon such abandonment by Tenant:

(a) Landlord has the remedy described in California Civil Code §1951.4 (Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has right to sublet or assign, subject only to reasonable limitations); or

(b) Landlord the right to invoke the remedy described in California Civil Code §1951.2 (suit for damages).

**24. PERSONAL PROPERTY REMAINING ON PREMISES.** After Tenant vacates the Premises, either by (a) expiration of this tenancy term, (b) termination of the tenancy pursuant to the terms of this Lease, or (c) abandonment or surrender, Landlord may reenter and retake possession of the Premises. Any personal property remaining on the Premises shall be returned to Tenant, placed in storage or disposed of as provided in Civil Code §§1993 et seq.

**25. SIGNS AND AUCTIONS.** Tenant shall not place or permit to be placed any sign, advertisement, awning, banner, exterior light, pennant, flag, door lettering, placard, or other exterior



decoration, or any interior sign visible from the outside of the Building, without Landlord's written consent. Any sign placed on the Premises shall comply with all laws, and Tenant shall obtain an approval required by such laws. Landlord makes no representation with respect to Tenant's ability to obtain such approval. Approval fees and the costs of preparing an erection of such signs shall be at Tenant's sole cost and expense.

Tenant shall remove all of its signs at its sole cost and expense, and restore the Premises to its condition existing at the commencement of the Lease Term (reasonable wear and tear excepted) at the expiration or earlier termination of this Lease.

No "sandwich" folding type signs are permitted by Landlord. Tenant shall not display or sell merchandise outside the defined exterior walls and permanent doorways of the Premises.

Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other solvency proceedings.

**26. ENTRY.** Landlord and its authorized representatives shall have the right to enter the Premises at all reasonable times for any of the following purposes:

(a) To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease.

(b) To do any necessary maintenance and to make any restoration to the Premises that Landlord has the right or obligation to perform.

(c) To serve, post or keep posted any notices required or allowed under the provisions of this Lease or by law.

(d) To post "for sale" signs at any time during the Term, to post "for rent" or "for lease" signs during the last ninety (90) days of the Term of this Lease or during any period while Tenant is in Default.

(e) To show the Premises to prospective brokers, agents, buyers, tenants or persons interested in an exchange at any time during the Term.

Landlord's entry into the Premises shall be subject to Tenant's reasonable security requirements and subject to reasonable prior notice to Tenant, and entry without unreasonably interfering with Tenant's business shall not apply to entry by Landlord or its authorized representatives in the event of any emergency which reasonably requires entry without compliance with said conditions of entry.

Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Landlord's entry on the Premises as provided in this paragraph, except damage resulting from the acts or omissions of Landlord or its authorized representatives.

## **27. ASSIGNMENT AND SUBLETTING.**

(a) Landlord's Consent Required. Tenant shall not mortgage, pledge, hypothecate or encumber this Lease or any interest therein. Tenant shall not assign this Lease or sublet the Premises or any part thereof, without the prior written consent of Landlord and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this Lease.



(b) Reasonable Consent. If Tenant complies with the following conditions, Landlord shall not unreasonably withhold, condition or delay its consent to an assignment of this Lease or the subletting of the Premises or any portion thereof. Tenant shall submit in writing to Landlord: (i) the name and legal composition of the proposed assignee or subtenant; (ii) the nature of the proposed assignee's or subtenant's business to be carried on in the Premises; (iii) the terms and provisions of the proposed assignment or sublease; (iv) such reasonable financial information as Landlord may request concerning the proposed assignee or subtenant. Landlord may conduct reasonable investigations (including, without limitation, a background check and completed application) of Tenant's proposed subtenant or assignee at Tenant's sole cost.

(c) No Release of Tenant. No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by the Tenant under this Lease, whether occurring before or after such consent or assignment or subletting. The consent by Landlord to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other assignment or subletting. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment or subletting or other transfer. Consent to one assignment or subletting or other transfer shall not be deemed to constitute consent to any subsequent subletting or other transfer.

(d) Assignment of Rent. Tenant shall immediately and irrevocably assign to Landlord as security for Tenant's obligations under this Lease, all rent from any subletting of all or any part of the Premises as permitted by this Lease, and Landlord, as assignee and as attorney-in-fact for Tenant, or a receiver for Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this Lease; except that, until the occurrence of act of default by Tenant, Tenant shall have the right to collect such rent.

(e) Excess Rent. All rent received by Tenant from Tenant's subtenants in excess of the rent payable by Tenant to Landlord under this Lease, as determined on a rent per square foot basis, shall be paid to Landlord, and any sums paid by an assignee to Tenant in consideration of assignment of this Lease shall be paid to Landlord.

(f) Fees. If Tenant requests Landlord to consent to a proposed assignment or subletting, Tenant shall pay to Landlord, whether or not consent is ultimately given, Landlord's reasonable administrative fees or attorney's fees incurred in connection with each such request.

No interests of Tenant in this Lease shall be assignable by operation of law. Each of the following acts shall be considered an involuntary assignment by operation of law:

(a) If Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors or institutes a proceeding under the Bankruptcy Act in which Tenant is the bankrupt.

(b) If a writ of attachment or execution is levied on this Lease.

(c) If, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises.

An involuntary assignment shall constitute a Default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall be treated as an asset of Tenant.



**28. DEFAULT.** The occurrence of any of the following shall constitute a default ("Default") by Tenant:

(a) Failure to pay Base Rent or any other monies due and payable within ten (10) days after the receipt of notice that the same is overdue.

(b) Abandonment of the Premises (as set forth in Paragraph 23 above).

(c) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, when that failure continues for ten (10) days after written notice of Tenant's failure is given by Landlord to Tenant; provided, however, that if the nature of that default is such that it cannot reasonably be cured within ten (10) days, Tenant shall not be deemed to be in default if Tenant commences that cure within the ten (10) day period and thereafter diligently prosecutes it to completion.

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

**28.1 Replacement of Statutory Notice Requirements.** When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by Code of Civil Procedure §1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Section 36 shall replace and satisfy the statutory service-of-notice procedures, including those required by Code of Civil Procedure §1162 or any similar or successor statute.

**29. REMEDIES UPON DEFAULT.** Landlord shall have the following remedies if Tenant commits a Default. These remedies are not exclusive, but are cumulative in addition to any remedies now or later allowed by law.

Landlord has the remedy described in California Civil Code §1951.4 (Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Base Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations); or

Landlord has the right to invoke the remedy described in California Civil Code §1951.2 (lease termination and suit for damages). If Landlord elects to terminate this Lease, Landlord may recover from Tenant: (1) the worth at the time of award of the unpaid Base Rent which had been earned at the time of termination; (2) the worth at the time of award of the amount by which the unpaid Base Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could reasonably have been avoided; (3) the worth at the time of award of the amount by which the unpaid Base Rent for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (4) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. The "worth at the time of award" of the amount referred to in clauses (1) and (2) above is computed by allowing interest at the legal rate, as contemplated by California Civil Code §1951.2. The "worth at the time of award" of the



amount referred to in clause (3) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

**30. SUBORDINATION/ATTORNMENMENT.** Upon request of the Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any first mortgage, or first deed of trust, to any bank, insurance company or other lending institution, now or hereafter in force against the land and Building of which the Premises are a part, and upon any buildings hereafter placed upon the land of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof.

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the Premises, the Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

**31. ESTOPPEL CERTIFICATE.** Tenant shall at any time upon not less than ten (10) days prior to written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that such Lease is unmodified and in full force and effect (or if modified, stating in reasonable detail the nature of such modifications), and the date to which the rent or other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

Tenant's failure to deliver such statement 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 and (ii) that there are no uncured defaults in Landlord's performance, and (iii) not more than thirty-five (35) days rent has been paid in advance.

**32. SURRENDER OF PREMISES.** On expiration of the Term, Tenant shall surrender to Landlord the Premises, including Tenant's Work and all other improvements and alterations in good condition (except for ordinary wear and tear occurring after the last necessary maintenance made by Tenant and destruction to the Premises covered by Paragraph 21, and except for alterations and fixtures that Tenant has the right to remove). Tenant shall remove all its personal property by the date of such termination of the Term, and shall perform restoration made necessary by removal of any alterations or Tenant's personal property.

If Tenant fails to surrender the Premises to Landlord on expiration or termination of the Term as required under this paragraph, Tenant shall defend Landlord and hold Landlord harmless from all damages resulting from Tenant's failure to surrender the Premises, including, without limitation, claims made by a succeeding tenant resulting from Tenant's failure to surrender the Premises.

**33. SALE OF PREMISES BY LANDLORD.** The term "Landlord" as used in this Lease, means only the owner for the time being of the land and Building containing the Premises, so that, in the event of any sale of said land or Building, or in the event of a lease of said Building, the Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the Landlord hereunder, and it shall be deemed and construed, without further agreement between the parties and the purchaser at any such sale, or the Tenant of the Building, which the purchaser or Tenant of the Building has assumed and agreed to carry out any and all covenants and obligations of the Landlord hereunder.



**34. ATTORNEY'S FEES.**

(a) If either party hereto fails to perform any of its obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all reasonable costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

(b) Without limiting the generality of Paragraph 34(a) above, if Landlord utilizes the services of an attorney for the purpose of collecting any Base Rent due and unpaid by Tenant or in connection with any other breach of this Lease by Tenant, Tenant agrees to pay Landlord's actual attorneys' fees for such services, regardless of the fact that no legal action may be filed by Landlord or whether or not such matter proceeds to judgment.

**35. HOLDING OVER.** Any holding over after the expiration of the Term shall be construed to be a tenancy from month to month, subject to all of the same terms, covenants and conditions as are set forth in this Lease, including the payment of additional rent, except that Tenant's Base Rent shall equal to One Hundred Twenty Five Percent (125%) of the Base Rent payable during the last month of the term preceding expiration or termination hereof.

**36. NOTICES.** Any notice, demand, consent, approval or communication that either party desires or is required to give to the other party or any other person shall be in writing and either personally served or sent by prepaid first class mail. Any such notice shall be addressed to the other party as follows, except that either party may change its address by notifying the other of such a change of address. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this paragraph.

Landlord: K&S Properties C/O  
A.G. Davi Ltd.  
484 Washington Street, #D  
Monterey, California 93940

Tenant: County of San Benito  
Health & Human Services Agency  
Public Health Department  
ATTN: Financial Services  
1111 San Felipe Road #206  
Hollister, California 95023

**37. WAIVER.** No delay or omission in the exercise of any right or remedy of Landlord on any Default by Tenant shall impair such right or remedy, or be construed as a waiver.

The receipt and acceptance by Landlord of delinquent Base Rent shall not constitute a waiver of any other Default. It shall constitute only a waiver of timely payment for the particular rental payment involved. No act or conduct of Landlord, including but not limited to the acceptance of the keys to the Premises shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the Term. Only



a notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of the lease.

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessarily Landlord's consent to or approval of any subsequent act by Tenant.

Any waiver by Landlord of any Default must be in writing and shall not be a waiver of any other Default concerning the same or any other provision of this Lease.

**38. CONSTRUCTION.** This Lease shall be construed and interpreted in accordance with the laws of the State of California. The parties acknowledge and agree that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Lease, including any exhibits and addenda attached hereto. All captions in this Lease are for reference only and shall not be used in the interpretation of this Lease. Whenever required by the context of this Lease, the singular shall include the plural, the masculine shall include the feminine, and vice versa. If any provision of this Lease shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect.

**39. ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties, and there are no binding agreements or representations between the parties except as expressed herein. Tenant acknowledges that neither Landlord nor Landlord's agent(s) has made any legally binding representation or warranty as to any matter except those expressly set forth herein, including any warranty as to (i) whether the Premises may be used for Tenant's intended use under existing law; (ii) the suitability of the Premises for the conduct of Tenant's business; or (iii) the condition of any improvements. There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between Landlord and Tenant or displayed by Landlord to Tenant with respect to the subject matter of this Lease.

**40. LEASE SQUARE FOOTAGE AGREEMENT.** Tenant hereby acknowledges that it is leasing the Premises it has viewed. The square footage referenced in this Lease is an approximate figure and may not be the sole basis for the monthly Base Rent. Tenant should measure the Premises to verify square footage prior to signing the Lease, and must communicate any discrepancy to Landlord prior to signing this Lease. If Tenant elects not to measure the Premises and/or not communicate any discrepancy to Landlord and signs this Lease, Tenant will have no recourse if, during the Term of this Lease, or later, a discovery of inaccurate square footage is made to Landlord. Tenant hereby acknowledges that it physically visited and viewed the Premises and acknowledges that regardless of square footage, it is accepting and renting the Premises as viewed. Upon mutual execution of this Lease by Landlord and Tenant, Tenant will not thereafter challenge the square footage and/or determination of the square footage as contained in this Lease.

**41. AMENDMENTS.** This Lease may be modified only in writing, signed by the parties in interest at the time of modification.

**42. CONFIDENTIALITY.** This Lease document, the terms of this Lease, and the covenants, obligations, and conditions contained in this Lease shall remain strictly confidential. Tenant agrees to keep such terms, covenants, obligations and conditions strictly confidential and not to disclose such matters to any other landlord, tenant, prospective tenant, or broker; provided, however, Tenant may provide a copy of this Lease to a non-party solely in conjunction with Tenant's reasonable and good faith effort to secure an assignee or subtenant for the Premises.



**43. LOCKS AND KEYS.** Locks may not be changed or added by Tenant without the prior written permission of Landlord. Locks must be left in place upon vacating the Premises and Landlord must have keys to all changed locks. Tenant shall not make or permit to be made any duplicate key without the prior written permission of Landlord. All keys to the Premises shall remain the property of Landlord and must be returned to Landlord or its agent upon the termination of this Lease. If Tenant fails to return all keys to the Premises at the termination of this Lease, then Landlord will have a locksmith re-key the locks at Tenant's expense.

**44. SUCCESSORS AND ASSIGNS.** The terms, covenants and conditions of this Lease shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all parties hereto.

**45. TIME.** Time is of the essence of this Lease and each and every term, condition and provision herein.

**46. CONSENT OR APPROVAL.** Whenever consent or approval of either party is required, that party shall not unreasonably withhold such consent or approval.

**47. COUNTERPART COPIES.** This Lease may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

**48. RECORDING.** Tenant shall not record this Lease or a memorandum of this Lease in the public records of the county where the Premises are located.

**49. INDEPENDENT LEGAL COUNSEL.** Tenant acknowledges that it has been urged to seek independent legal counsel with respect to the meaning and effect of this Lease.

IN WITNESS WHEREOF, the parties have signed this Lease on this \_\_\_\_ day of \_\_\_\_\_, 2016.

LANDLORD:

K&S MARKET, INC.,  
a California Corporation,

TENANT:

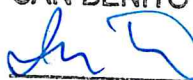
County of San Benito  
Health & Human Services Agency  
Public Health Department

By \_\_\_\_\_  
Susan K. Rivera, Vice-President

By \_\_\_\_\_

Its \_\_\_\_\_

APPROVED AS TO LEGAL FORM  
SAN BENITO COUNTY COUNSEL

 5-20-16  
DEPUTY COUNTY COUNSEL DATE



# EXHIBIT "A"

## Common Area

