

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is made and entered into by and between K&S Market, Inc., a California corporation (hereinafter "Landlord") and San Benito County Behavioral Health (hereinafter "Tenant"). From time to time herein, Landlord and Tenant are referred to as "Parties" to this Second Amendment.

RECITALS

A. WHEREAS, the Parties executed that certain Lease by and between Landlord and Tenant, effective October 27, 2009 for the premises located at 544 San Benito Street, Suite 102, Hollister, California (hereinafter, the "Lease");

B. WHEREAS, the Parties executed that certain First Amendment to Lease by and between Landlord and Tenant, effective December 10, 2014 (hereinafter, the "First Amendment"); and,

C. WHEREAS, the Parties now desire to amend the terms and conditions of the Lease, as more fully set forth herein,

NOW, THEREFORE, the Parties hereto, incorporating the above Recitals as part of this Second Amendment, and in consideration of the mutual covenants, terms and conditions contained herein, do hereby agree as follows:

AGREEMENT

1. MODIFICATION OF PARAGRAPH 3, TERM. Paragraph 3 titled "Term." is hereby deleted in its entirety and replaced with the following:

"3. TERM. (a) The term of this Lease shall be extended for a period of five (5) years from its present end date of November 30, 2019 and shall commence on December 1, 2019 and end on November 30, 2024."

(b) Effective at any time after November 30, 2020, and upon ninety (90) days prior written notice to Landlord, Tenant, at its option, may terminate and cancel the remaining Term of this Lease in the event that Tenant elects to relocate to a County owned or leased facility.

2. MODIFICATION OF PARAGRAPH 4, RENT. Paragraph 4 titled "Rent." is hereby deleted in its entirety and replaced with the following:

"4. RENT. Monthly rent shall be paid by Tenant to Landlord in the following sums for each year of the extended five (5) year term of this Lease:

December 1, 2019 – November 30, 2020:	\$4,968.00 per month
December 1, 2020 – November 30, 2021:	\$5,117.00 per month
December 1, 2021 – November 30, 2022:	\$5,271.00 per month
December 1, 2022 – November 30, 2023:	\$5,429.00 per month
December 1, 2023 – November 30, 2024:	\$5,592.00 per month

Such rent shall be paid, in advance, commencing on the first date of the term of this Lease and continuing on the same date of each month thereafter. All rent shall be paid to Landlord or Landlord's authorized agent at

the following address: A.G. Davi Ltd., 484 Washington Street, Suite D, Monterey, CA 93940, or at such other places as may be designated by Landlord from time to time, and shall be paid in lawful money of the United States of America without deduction, offset, prior notice, or demand.

3. **REQUIRED ACCESSIBILITY DISCLOSURE.** Landlord hereby advises Tenant that the Premises have not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is hereby made pursuant to California Civil Code §1938(e):

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the building in which the Premises are located with regard to such inspections and shall be subject to Landlord's prior written consent.

4. **CONFIRMATION OF REMAINING PROVISIONS.** In all other respects, the terms and conditions of the Lease are hereby ratified and confirmed.

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

IN WITNESS WHEREOF, the Parties have executed and delivered this Second Amendment as of the _____ day of _____ 2019, at Hollister, California.

"LANDLORD"

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

By: 
Susan K. Rivera, Vice-President

"TENANT"

SAN BENITO COUNTY BEHAVIORAL
HEALTH,

By: _____

Its: _____


APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL
 10-23-19
DEPUTY COUNTY COUNSEL DATE

EXHIBIT 1

**REFER TO ATTACHED ORIGINAL
LEASE AGREEMENT AND
AMENDMENT #1**

ORIGINAL AGREEMENT

(Please attach the initial agreement and any prior amendments to this exhibit.)

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE ("First Amendment") is made and entered into by and between K&S Market, Inc., a California corporation (hereinafter "Landlord"), and San Benito County Behavioral Health (hereinafter "Tenant"). From time to time herein, Landlord and Tenant are referred to as "Parties" to this First Amendment.

RECITALS

A. WHEREAS, the Parties executed that certain Lease by and between Landlord and Tenant, effective October 27, 2009 for the premises located at 544 San Benito Street, Suite 102, Hollister, California (hereinafter, the "Lease"); and,

B. WHEREAS, the Parties now desire to amend the terms and conditions of the Lease, as more fully set forth herein,

NOW, THEREFORE, the Parties hereto, incorporating the above Recitals as part of their First Amendment, and in consideration of the mutual covenants, terms and conditions contained herein, do hereby agree as follows:

AGREEMENT

1. MODIFICATION OF PARAGRAPH 3, TERM. Paragraph 3 entitled "Term." is hereby deleted in its entirety and replaced with the following:

"3. **TERM.** (a) The term of this Lease shall be for a period of five (5) years. The term of this Lease shall commence on December 1, 2014 and end on November 30, 2019."

(b) Effective at any time after November 30, 2015, and upon ninety (90) days prior written notice to Landlord, Tenant, at its option, may terminate and cancel the remaining Term of this Lease in the event that Tenant elects to relocate to a County owned or leased facility.

2. MODIFICATION OF PARAGRAPH 4, RENT. Paragraph 4 entitled "Rent." is hereby deleted in its entirety and replaced with the following:

"4. **RENT.** Monthly rent shall be paid by Tenant to Landlord in the following sums for each year of the five (5) year term of this Lease:

December 1, 2014 – November 30, 2015:	\$4,285.00 per month
December 1, 2015 – November 30, 2016:	\$4,414.00 per month
December 1, 2016 – November 30, 2017:	\$4,546.00 per month
December 1, 2017 – November 30, 2018:	\$4,682.00 per month
December 1, 2018 – November 30, 2019:	\$4,823.00 per month

Such rent shall be paid, in advance, commencing on the first date of the term of this Lease and continuing on the same date of each month thereafter. All rent shall be paid to Landlord or Landlord's authorized agent at the following address: A.G. Davi Ltd., 484 Washington Street, Suite D, Monterey, CA 93940, or at such other places as may be designated by Landlord from time to time, and shall be paid in lawful money of the United States of America without deduction, offset, prior notice, or demand.

3. **ACCESSIBILITY DISCLOSURE.** 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).

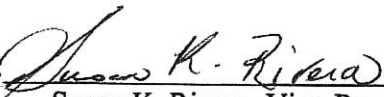
4. **CONFIRMATION OF REMAINING PROVISIONS.** In all other respects, the terms and conditions of the Lease are hereby ratified and confirmed.

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

IN WITNESS WHEREOF, the Parties have executed and delivered this First Amendment as of the 20th day of November, 2014, at Hollister, California.

"LANDLORD"

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

By: 
Susan K. Rivera, Vice-President

"TENANT"

SAN BENITO COUNTY BEHAVIORAL
HEALTH,

By: _____

Its: _____

By: _____

Its: _____

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL


DEPUTY COUNTY COUNSEL

11-20-14
DATE

AMENDMENT TO AGREEMENT

1

The County of San Benito ("COUNTY") and K&S MARKET, INC. ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Existing Agreement.

a. Initial Agreement.

COUNTY and CONTRACTOR acknowledge that the parties entered into an agreement which agreement is dated December 1, 2014.

b. Prior Amendments. (Check one.)

☒ The initial agreement previously has not been amended.

☐ The initial agreement previously has been amended. The date(s) of prior amendments are as follows: _____

c. Incorporation of Original Agreement.

This initial agreement and any prior amendments to the initial agreement (hereafter collectively referred to as the "original agreement") are attached to this amendment as Exhibit 1 and made a part of this amended agreement.

2. Purpose of this Agreement.

The purpose of this amendment is to change the agreement between the parties in the following particulars.

a. Scope of Services. (Check one.)

☐ The services that CONTRACTOR agreed to perform as specified in the original agreement (Exhibit 1) are modified as specified in Exhibit 2 which is made a part of this amended agreement.

☐ The services that CONTRACTOR agreed to perform as specified in the original agreement (Exhibit 1) are not modified.

b. Payment Terms. (Check one.)

☒ The payment terms that COUNTY agreed to in the original agreement (Exhibit 1) are modified as specified on Exhibit 3 which is made a part of this amended agreement.

☐ The payment terms that COUNTY agreed to in the original agreement (Exhibit 1) are not modified.

c. **Term of the Agreement.** (Check one.)

- ☒ The term of the original agreement (Exhibit 1) is extended from the current expiration date of December 1, 2014, to a new expiration date of November 30, 2019.
- ☐ The term of the original agreement is not modified.

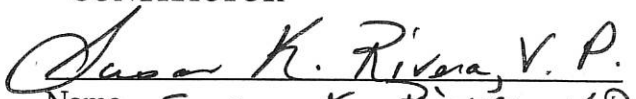
d. **Other Terms.** (Check one.)

- ☒ Other terms of the original contract are modified as specified on Exhibit 4.
- ☐ There are no other terms of the original contract that are modified.

4. **Other Terms.**

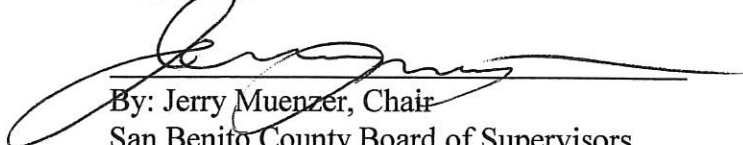
All terms and conditions of the original agreement (Exhibit 1) which are not changed by this amendment shall remain the same.

"CONTRACTOR"


Name Susan K. Rivera, V.P.

12-10-14
Date

"COUNTY"


By: Jerry Muenzer, Chair
San Benito County Board of Supervisors

12/2/14
Date

Approved as to Legal Form:


Mathew Granger, County Counsel

11-18-14
Date

EXHIBIT 1

ORIGINAL AGREEMENT

(Please attach the initial agreement and any prior amendments to this exhibit.)

AGENDA ITEM TRANSFER		Agenda Time Estimates: <input type="checkbox"/> Regular or <input checked="" type="checkbox"/> Consent		Leave Blank: 810	Date/Time Rec'd: 10/19/09
TO: BOARD OF SUPERVISORS FROM: Alan Yamamoto, LCSW, Director County Behavioral Health Department		CONTACT FOR INFORMATION: Name: Alan Yamamoto Phone: (831) 636-4020		NUMBER OF CERTIFIED COPIES REQUIRED:	
MEETING DATE: 10/27/09		(1) SUBJECT: Esperanza Drop-In Center, New Facility Agreement for the Term of December 1, 2009 to November 30, 2014			
(2) BACKGROUND INFORMATION: As part of the fulfillment of our responsibilities to implement our State DMH approved MHSA (Mental Health Services Act), CSS (Community Services and Supports) Plan the Board of Supervisors previously approved a three (3) year lease for a building to house the Esperanza Drop-In-Center (MHSA Drop-In-Center). The facility lease for this building located at 321 Fifth Street in downtown Hollister will end on December 1, 2009. The Behavioral Health Department has located a significantly larger building (4,800 sq.ft. versus present location of 2,300 sq. ft.) and within the desired location of central downtown Hollister. The rent rate for the new space is \$3,784 (.79 per sq. ft.) per month, a minor monthly increase from the rent of \$3,481 (\$1.51 per sq. ft.) at the present location. The actual cost per square foot cost at the proposed new location, however, is substantially less.					
(3) SUPPORTIVE DOCUMENTS RELATIVE TO THIS ITEM: Memorandum, Lease Agreement			(4) PREVIOUS RELEVANT BOARD ACTIONS ON THIS SPECIFIC ITEM: Similar Lease Approved		
(5) FUNDING SOURCE(S): MHSA, CSS Funds		(6) CURRENT YEAR COST: \$3,784		(7) ANNUAL COST: \$ 3,784	
(8) BUDGETED: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
(9) WILL PROPOSAL REQUIRE ADDITIONAL PERSONNEL? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, STATE NUMBER: <div style="display: flex; justify-content: space-between;"> Permanent Limited Term </div>					
(10) RECOMMENDED ACTION(S): <ol style="list-style-type: none"> 1. Approve the attached facility Lease Agreement for 544 San Benito Street, Suite 102, Hollister CA 95023, for the term of December 1, 2009 to November 30 2014 and; 2. Authorize the Chair of the Board to sign said Lease Agreement 					
Signature of Agency or Department Authorized Representative			10/14/2009 DATE		
(11) ADMINISTRATIVE REVIEW:					

RECEIVED
 OCT 14 2009
 A09--2336
 SAN BENITO COUNTY COUNSEL

CLERK'S USE ONLY			
<input checked="" type="checkbox"/> APPROVED	<input type="checkbox"/> DENIED	<input type="checkbox"/> ADOPTED	<input type="checkbox"/> CONTINUED TO
<input type="checkbox"/> ACKNOWLEDGED	<input type="checkbox"/> ACCEPTED	<input type="checkbox"/> RESOLUTION NO. _____	<input type="checkbox"/> OTHER _____
<input type="checkbox"/> SET PUBLIC HEARING	<input type="checkbox"/> APPOINTED	<input type="checkbox"/> ORDINANCE NO. _____	<input type="checkbox"/> NO ACTION TAKEN

BY: <u>Linda Churchill</u> Clerk of the Board DATE: <u>10-27-09</u>	
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2

SAN BENITO COUNTY

BEHAVIORAL-HEALTH-SERVICES

MEMORANDUM

1131 San Felipe Rd., HOLLISTER, CA 95023

(831) 636-4020/636-4025FAX

DATE: October 14, 2009

TO: Board of Supervisors

FROM: Alan Yamamoto, Behavioral Health Director

SUBJECT: Esperanza Drop-In Center, New Facility Agreement for the Term of December 1, 2009 to November 30, 2014

Summary:

As part of the fulfillment of our responsibilities to implement our State DMH approved MHSA (Mental Health Services Act), CSS (Community Services and Supports) Plan the Board of Supervisors previously approved a three (3) year lease for a building to house the Esperanza Drop-In-Center (MHSA Drop-In-Center). The facility lease for this building located at 321 Fifth Street in downtown Hollister will end on December 1, 2009.

Additionally The Board of Supervisors during their December 16, 2008 closed session meeting authorized the County Behavioral Health Department Director and Susan Thompson CAO, to enter into negotiation discussion for the purchase of 327 Fifth Street. The purchase negotiation discussions between the County and the property owners have not resulted in acceptance of agreeable terms. Consequently negotiations for the purchase of 327 Fifth Street, Hollister, CA. 95023 are no longer a viable option.

The Esperanza Center program could benefit through the acquisition of a larger building and due to the economic downturn rent rates on building space have experienced significant reductions. The Behavioral Health Department has located a significantly larger building (4,800 sq.ft. versus present location of 2,300 sq. ft.) and within the desired location of central downtown Hollister. The rent rate for the new space is \$3,784 (.79 per sq. ft.) per month, a minor monthly increase from the rent of \$3,481 (\$1.51 per sq. ft.) at the present location. The actual cost per square foot cost at the proposed new location, however, is substantially less.

The opportunity to acquire this new space at 544 San Benito Street, Suite 102 requires a five (5) year lease with a reasonable rent rate escalator applied annually through the progression of the lease term. It appears prudent at this time for the Behavioral Health Department to move to the larger building and to enter into the lease agreement which would guarantee a foreseeable rent cost for five (5) years and allow adequate space for continued program growth in a highly describable location.

Recommendation:

It is recommended that the Board:

1. Approve the attached facility Lease Agreement for 544 San Benito Street, Suite 102, Hollister CA 95023, for the term of December 1, 2009 to November 30 2014 and;
2. Authorize the Chair of the Board to sign said Lease Agreement

Discussion:

In January of 2006 the Board of Supervisors authorized the submission of the San Benito County 3 Year Mental Health Services Act (MHSA), Community Services and Supports Plan to the State DMH (The MHSA, CSS Plan). This triggered a lengthy and rigorous review process of our Plan by the State DMH which culminated in the DMH's approval of our plan in June, 2006.

Submission and authorization of a State DMH approved MHSA, CSS plan was required to access the MHSA, CSS funds available to our County. Those funds have been arriving to the Behavioral Health Department and will continue on a quarterly payment basis through the State DMH. One of the approved MHSA program expansions was the development and operation of a community based drop-in center. We sourced a location in the downtown area of Hollister for this facility and opened the Esperanza Drop-In-Center at 321 Fifth Street. The facility was available on a (3) three year lease basis. That lease term is due to end on December 1, 2009.

The Esperanza Center program could benefit through the acquisition of a larger building and due to the economic downturn rent rates on building space have been reduced. The Behavioral Health Department has located a significantly larger building (4,800 sq.ft. versus present location of 2,300 sq. ft.) and within the desired location of central downtown Hollister. The rent rate for the new space would be comparable to the monthly rent of the present location of Esperanza. There is, however, a significant reduction in the amount per square foot charge, signified by the increased space gained for a relatively small increase to the monthly rent.

The opportunity to acquire this new space at 544 San Benito Street, Suite 102 requires a five (5) year lease with a reasonable rent rate escalator applied annually through the progression of the lease term. It appears prudent at this time for the Behavioral Health Department to move to the larger building and to enter into the lease agreement which would guarantee a foreseeable rent cost for five (5) years and allow adequate space for continued program growth in a highly describable location.

Other Agency Involvement:

There are no other parties involved in this agreement although the client populations that this facility serves are often multiple service users involved with the services of other County Departments and community agencies. The services of both our Mental Health and Substance Abuse Treatment Services Divisions of our Behavioral Health Department are involved in meeting the needs of clients who use the center who have both mental health and substance abuse treatment needs.

The Behavioral Health Department also has permitted use of the Esperanza Facility for the functions of other County Departments and Community based organizations subject to department approval of the activities implemented being congruent with the efforts of the MHSA.

Financial Implications:

The funds to cover the expense of this Lease Agreement are derived from our State DMH, MHSA, CSS funds.

The monthly rent due during the term of this lease are as follows;

Year 1-\$3,784

Year 2-\$3,874

Year 3-\$3,967

Year 4-\$4,062

Year 5-\$4,160

No General Funds are involved in this project.

LEASE AGREEMENT

Between

LANDLORD:

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

And

TENANT:

SAN BENITO COUNTY BEHAVIORAL HEALTH

PREMISES:

**544 San Benito Street, Suite 102
Hollister, CA 95023**

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LEASE

THIS LEASE is made and entered into in duplicate on the date hereafter set forth by and between **K&S MARKET, INC., A California Corporation, and, SAN BENITO COUNTY BEHAVIORAL HEALTH**, 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 hires from Landlord, for the purposes of conducting therein a County behavioral health facility, general office use, counseling and other activities related to such business, and for no other purposes, those certain premises described in Paragraph 2.

2. **PREMISES.** The premises leased to Tenant, together with appurtenances, are hereinafter referred to as "Demised Premises" and are situated at the building located at 544 San Benito Street, Hollister, California and consist of Suite 102, being the southerly of the two (2) sections of said building, comprising approximately 3,800 square feet on the ground floor and 1,000 square feet on the second floor, more or less.

Tenant, by entry under this Lease, accepts the premises AS IS, in its present condition and acknowledges that Landlord makes no warranties of any kind concerning the physical condition of the demised premises. Except for improvements identified in section 15.

3. **TERM/POSSESSION.** The term of this Lease shall be for a period of five (5) years commencing on December 1, 2009 and ending on November 30, 2014.

4. **RENT.** Tenant shall pay to Landlord rent during the leasehold term in the amounts hereafter set forth, on the first day of each month of the term of this Lease, commencing on the first day of the term hereof, provided, however, that monthly rent for any partial month shall be prorated at the rate of 1/30th of the monthly rent per day. Such monthly rent shall be paid in lawful money of the United States to Landlord, in advance, without deduction, offset, prior notice or demand, at the address to which notices to Landlord are given, as prescribed herein below.

The monthly rent due during the term hereof is as follows:

Year 1:	\$3,784.00	(December 1, 2009 – November 30, 2010)
Year 2:	\$3,874.00	(December 1, 2010 – November 30, 2011)
Year 3:	\$3,967.00	(December 1, 2011 – November 30, 2012)
Year 4:	\$4,062.00	(December 1, 2012 – November 30, 2013)
Year 5:	\$4,160.00	(December 1, 2013 – November 30, 2014)

5. **SECURITY DEPOSIT.** Prior to the commencement of the term of this Lease, Tenant shall deposit with Landlord the sum of \$3,000.00 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 \$3,000.00 initially deposited with Landlord. In the event Tenant shall not then be in default 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.

6. LATE CHARGE. Tenant acknowledges that late payment to Landlord of 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 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%) plus any costs and attorneys' fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. 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.

7. RETURNED CHECKS. Returned checks are considered as unpaid rent and as such Tenant will be charged a 6% (percent) late charge and a \$25.00 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.

8. UTILITIES. Tenant shall pay before delinquency all charges for gas, heat, electricity, power, telephone service, garbage collection, and all other services or utilities used in, upon, or about the demised 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.

Landlord shall pay all water and sewer services to the building and to the subject premises.

9. OCCUPANCY AND USE OF PREMISES / TENANT'S OBLIGATIONS. Tenant agrees to keep the premises and the sidewalk adjacent to them in a clean and sanitary condition. Tenant further agrees to comply with all applicable ordinances, laws, regulations and orders of governmental authorities and agree not to cause or permit (1) any waste of the property, (2) any public or private nuisance thereon, or (3) any condition which violates any standard form policy of fire insurance covering the property. If Tenant fails to comply with such ordinance, law, regulation, rule or use, Landlord reserves the right to terminate this Lease or take any other necessary remedial measures at Tenant's expense, for which Tenant agrees to reimburse Landlord on demand.

10. TAXES AND ASSESSMENTS.

a. Personal Property Taxes. Tenant shall pay before delinquency all taxes, assessment, license fees and other charges that are levied and assessed against personal property installed or located in or on the premises and become payable during the term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

b. 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 demised premises, and during any extension thereof against all of the land and improvements of Landlord.

11. HAZARDOUS MATERIALS CLAUSES.

a. USE OF HAZARDOUS MATERIAL. Tenant shall not cause or permit any hazardous material, which Tenant has reasonable cause to know is a hazardous material, as defined in Subparagraph (e) below, to be generated brought onto, used, stored or disposed of in or about the premises or the building by Tenant or its agents, employees, contractors, subtenants or invitees, except for such substances that are required in the ordinary course of Tenant's business conducted on the premises or are otherwise approved by Landlord. Tenant shall:

(i) Use, store and dispose of all such hazardous materials in strict compliance with all applicable statutes, ordinances and regulations in effect during the lease term that relate to public health and safety and protection of the environment (environmental laws), including those environmental laws identified in subparagraph (e) below; and

(ii) Comply at all times during the lease term with all environmental laws.

b. NOTICE OF RELEASE OR INVESTIGATION. If during the lease term (including extensions), Tenant becomes aware of (a) any actual or threatened release of any hazardous material on, under or about the premises or the building, or (b) any inquiry, investigation, proceeding or claim by any government agency or other person regarding the presence of hazardous materials on, under or about the premises or the building, Tenant shall give Landlord written notice of the release or investigation within (5) days after learning of it and shall simultaneously furnish to Landlord copies of any claims, notice of violation, reports or other writings received by Tenant that concern the release or investigation.

c. INDEMNIFICATION. Tenant shall, at Tenant's sole expense and with counsel reasonably acceptable to Landlord, indemnify, defend and hold harmless Landlord and Landlord's shareholder, directors, officers, employees, partners, affiliates and agents with respect to all losses arising out of or resulting from the release of any hazardous material in or about the premises or the building, or the violation of any environmental law, by Tenant or Tenant's agents, contractors, or invitees. This indemnification includes:

(i) Losses attributable to diminution in value of the premises or the building;

(ii) Loss or restriction of use of rentable space in the building;

(iii) Adverse effect on the marketing of any space in the building; and

(iv) All other liabilities, obligations, penalties, fines claims actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, orders or judgments), damages (including consequential and punitive), and costs (including attorney, consultant and expert fees and expenses) resulting from the release or violation.

d. REMEDIATION OBLIGATIONS. If the presence of any hazardous material brought onto the premises or the building by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination of the building, Tenant shall promptly take all necessary actions, at Tenant's sole expense, to return the premises or the building to the condition that existed before the introduction of such hazardous material. Tenant shall first obtain Landlord's approval of the proposed remedial action. This provision does not limit the indemnification obligation set forth in subparagraph C above.

Landlord warrants that it has no knowledge of any contamination or the presence of any hazardous material upon the premises. Landlord further warrants that it has no knowledge of any release onto the premises of any building on the premises of any hazardous material and further, that Landlord

has received no notice that the premises or the building in which the premises are situated is in violation of any environmental law.

e. **DEFINITION OF “HAZARDOUS MATERIAL”.** As used in this Paragraph 11, the term “hazardous material” shall mean any hazardous or toxic substance, material or waste that is or becomes regulated by the United States, State of California, or any local government authority having jurisdiction over the building. Hazardous materials include:

(i) Any “hazardous substance” as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)(42 United States Code §§ 9601-9675);

(ii) “Hazardous waste” as that term is defined in the Resource Conservation and Recovery Act of 1976 (RCRA)(42 United States Code §§ 6901-6992k);

(iii) Any pollutant, contaminant or hazardous, dangerous or toxic chemical, material or substance, within the meaning of any other applicable federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative order imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance or material, now or hereafter in effect);

(iv) Petroleum products;

(v) Radioactive material, including any source, special nuclear or byproduct material as defined 42 United States Code §§ 2011-22798g-4;

(vi) Asbestos in any form or condition; and

(vii) Polychlorinated biphenyls (PCBs) and substances or compounds containing PCBs.

12. 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 demised premises may be located.

13. 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; and 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 his 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 demised 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.

14. ALTERATIONS AND ADDITIONS. Tenant shall not make any structural or exterior alterations to the demised premises without Landlord written consent, which consent shall not be unreasonably withheld.

Tenant, at its costs, 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.

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, 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 leased 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 Lease, whether done as part of the maintenance provisions 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.

15. LANDLORD IMPROVEMENTS. Prior to the commencement of the term of this Lease, by following execution of it, Landlord shall commence the improvements of the building in which the demised premises are to be situated, and shall improve the demised premises at Landlord's expense. Landlord shall diligently attempt to complete the improvements, subject to delays on the account of plan changes approved by Tenant, strikes, or acts of God, processing delays of government agencies, contractors and subcontractors delays, and other causes beyond Landlord's control. Landlord shall pay for the total costs of improvements of the building and of the premises which are situated within the building, limited to installing in the unfinished room near the front of the suite, a new door, floor coverings, and painting. Also the removal of four walls located near the front of said suite. In addition, Landlord will install a working kitchen in the rear of the suite to include new VCT floor coverings, kitchen cabinets, counters, kitchen sink, dishwasher, an oven/stove, garbage disposal, and a tankless water heater. Washer and dryer hook-ups will be provided at a location to be determined by the Landlord.

16. MAINTENANCE AND REPAIR. Tenant shall, at Tenant's sole cost and expense, keep, maintain, and repair the demised 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 and repair of any store front, doors, windows, window casements, glazing, lighting, interior painted surfaces, floor coverings, heating and air-

conditioning system, water heaters, plumbing, pipes, electrical wiring and conduits. 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 demised premises Tenant shall be deemed to have accepted the demised 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 demised 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, foundation, 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 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.

17. FREE FROM LIENS. Tenant shall keep the demised premises and the property in which the demised premises are situated free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant.

18. 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 the use of said 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.

19. 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 demised 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, Landlord's employees, agents, contractors, or invitees 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 harmless from and against any and all claims of liability for any injury or damage to any person or property arising from any act or omission of Landlord relating to the premises or arising from its condition.

The obligation of each party hereto under this paragraph to indemnify and hold the other party harmless shall be limited to any sum that exceeds the amount of insurance proceeds, if any, received on account of said damage claims.

(c) **Liability and Property Damage Insurance.** Tenant at its cost shall maintain public liability and property damage insurance with a single combined liability limit of One Million Dollars (\$1,000,000.00), 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.

All public liability insurance and property damage insurance shall insure performance by Tenant of the indemnification provisions of subparagraph (b) of this paragraph above.

Both Landlord and Tenant shall be named as additional insureds and the policy shall contain cross-liability endorsements.

(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.

20. 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 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 alterations made by Tenant, Tenant's improvements, Tenant's trade fixtures, or Tenant's personal property, such excluded items being 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 rent due hereunder shall be reduced in proportion to the loss of use of the leased premises by Tenant, commencing with the first rental payment due after damage or destruction.

21. 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 minimum monthly 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 minimum monthly rent shall be reduced by an amount that is in the same ratio to minimum monthly 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 improvements or alterations made to the premises by Tenant in accordance with this Lease, which improvements or alterations 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.

22. ABANDONMENT. If Tenant shall abandon, vacate or surrender said premises, or be dispossessed by process of law, or otherwise, and shall also be in default of any financial obligation of Tenant under this lease, or otherwise be in default under this lease, any personal property belonging to Tenant and left on the premises shall be deemed to be abandoned, at the option of Landlord. Landlord may dispose of such abandoned property in any manner Landlord shall deem proper, and is hereby relieved of all liability for doing so.

23. 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 demised 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, permit fees and the costs of preparing an erection of such signs shall be at Tenant's sole cost and expense.

Tenant shall also be responsible for all costs of removal of signs upon termination or expiration of the Lease term. 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 demised premises.

Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the demised 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.

24. 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.

The above requirements of this Paragraph 24 making Landlord's entry into the premises 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 and 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.

25. ASSIGNMENT AND SUBLETTING.

(a) Landlord's Consent Required. Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber this lease or any interest therein. Tenant shall not 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 assignees or sublessees; (ii) the nature of the proposed assignee's or sublessee's business to be carried on in the premises; (iii) terms and provisions of the proposed assignee or sublessee; (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.

26. DEFAULT. The occurrence of any of the following shall constitute a default by Tenant:

- (a) Failure to pay rent or any other monies due and payable within ten (10) days after the day of any month on which it is due.
- (b) Abandonment and vacation of the premises.
- (c) Failure to perform any other provision of this Lease if the failure to perform is not cured within ten (10) days after notice has been given to Tenant. If the default cannot reasonably be cured within ten (10) days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the ten (10) day period and diligently and in good faith continues to cure the default.

No notice hereby given shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the said notice. The purpose of the notice requirement set forth herein is to extend the notice requirement of the unlawful detainer statutes of California.

27. 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.

(a) Landlord can continue this Lease in full force and effect and the Lease will continue in effect as long as Landlord does not terminate Tenant's right to possession, and Landlord shall have the right to collect rent when due. During the period Tenant is in default, Landlord can enter the premises and relet them, or any part of them to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurred in reletting the premises, including without limitation, broker's commissions, expenses of remodeling the premises required by the reletting and like costs. Reletting can be for a period shorter or longer than the remaining term of this Lease. Tenant shall pay to Landlord the rent due under this Lease on the date when the rent is due, plus the rent Landlord receives from any reletting period. No act by Landlord allowed by this paragraph shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease after Tenant's default and for as long as Landlord does not terminate Tenant's right to possession of the premises, if Tenant obtains Landlord's consent, Tenant shall have the right to assign or sublet his interest in this Lease, but Tenant shall not be released from any liability. Landlord's consent to the proposed assignment or subletting shall not be unreasonably withheld.

If Landlord elects to relet the premises as provided hereinabove, rent that Landlord receives from reletting shall be applied to the payment of:

- (1) First, any indebtedness from Tenant to Landlord other than rent due from Tenant.
- (2) Second, all costs, including maintenance incurred by Landlord in reletting, and
- (3) Third, rent due and unpaid under this Lease. After deducting the payments referred to in this paragraph, any sum remaining from the rent Landlord receives from the reletting shall be held by Landlord and applied in payment of future rent as rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date rent is due under this Lease, the rent received from the reletting is less than the rent due on the date, Tenant shall pay to Landlord, in addition to the remaining rent due, all costs, including for maintenance, Landlord incurred in reletting that remain after applying the rent received from the reletting as provided hereinabove.

(b) Landlord can terminate Tenant's right to possession of the premises at any time. No act by Landlord other than giving notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

(1) The worth, at the time of the award, of the unpaid rent that had been earned at the time of the termination of this Lease.

(2) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided.

(3) 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 award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided.

(4) Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth at the time of the award," as used in (1) and (2) of this paragraph is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth at the time of the award" as referred to in (3) is to be computed by discounting the amount of the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(c) Landlord, at any time after Tenant commits a default, can cure the default at Tenant's cost. If Landlord at any time by reason of Tenant's default pays any sum or does any acts that require the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date, shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest thereon, shall be additional rent.

28. SUBORDINATION/ATTORNMEN. 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 demised premises are a part, and upon any buildings hereafter placed upon the land of which demised 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 demised premises, the Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

29. 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, 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 leased 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.

30. SURRENDER OF PREMISES. On expiration of the term, Tenant shall surrender to Landlord the premises and all Tenant's 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 20, 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.

Landlord may elect to retain or dispose of in any manner any alterations or Tenant's personal property that Tenant does not remove from the premises on expiration or termination of the term of this Lease by giving at least ten (10) days notice, either written or oral, to Tenant. Title to any such alteration or to Tenant's personal property that Landlord elects to retain or dispose of on the expiration of the ten (10) day period shall vest in Landlord. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any such alterations or Tenant's personal property. Tenant shall be liable to Landlord for Landlord's cost for storing, removing and disposing 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.

31. 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.

32. 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 costs and expenses incurred by the other party on account of such default and/or 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 32(a) above, if Landlord utilizes the services of an attorney for the purpose of collecting any 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.

33. HOLDING OVER. Any holding over after the expiration of the said term, with consent of Landlord, 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 rent shall equal to 125% of the rent payable during the last month of the term preceding expiration or termination hereof.

34. 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 & Realty, a division of K&S Market, Inc.
P.O. Box 499
Hollister, California 95024
(831) 637-5821

Tenant: San Benito County Behavioral Health
544 San Benito Street, suite 102
Hollister, CA 95023

35. 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 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.

36. 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 the Exhibits and any 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.

37. **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 Agents 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 or the Project 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.

38. **JOINT AND SEVERAL LIABILITY.** If more than one person or entity is named as tenant, the obligations imposed upon each shall be joint and several and the act of or notice from, or notice or refund to, or the signature of, any one or more of them shall be binding on all of them with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, termination or modification of this Lease.

39. **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.

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

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

42. **CORPORATE AUTHORITY.** Each individual executing this Lease on behalf of the Landlord or on behalf of a Tenant represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the corporation for whom he/she executes it, in accordance with a duly adopted resolution of the Board of Directors of said corporation, or in accordance with the By Laws of said corporation, and that such Lease is binding upon said corporation in accordance with its terms.

Executed in duplicate at Hollister, California, this 27th day of October, 2009.

LANDLORD:

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

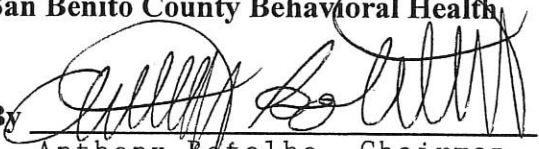
By


John F. Klauer, President & CEO

TENANT:

San Benito County Behavioral Health

By


Anthony Botelho, Chairman
San Benito County Board
of Supervisors

Its _____

By _____

Its _____

**APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL**


DEPUTY COUNTY COUNSEL

10-16-09
DATE

EXHIBIT 2

MODIFICATIONS TO SCOPE OF SERVICES

(Check One.)

- ☒ [X] The services that CONTRACTOR agreed to perform as specified in the original agreement (Exhibit 1) are not modified.
- ☐ [] The services that CONTRACTOR agreed to perform as specified in the original agreement (Exhibit 1) are modified only as indicated below.
- ☐ [] The scope of services to be performed by CONTRACTOR as specified in the original agreement (Exhibit 1) are deleted in their entirety. CONTRACTOR agrees to perform the newly-specified services indicated below.

Modified or New Scope of Services:

EXHIBIT 3

MODIFICATIONS TO PAYMENT SCHEDULE

(Check One.)

- ☐ The payment terms that COUNTY agreed to in the original agreement (Exhibit 1) are not modified.
- ☒ The payment terms that COUNTY agreed to in the original agreement (Exhibit 1) are deleted in their entirety. COUNTY agrees to the following new payment terms:

Modified Payment Terms:

3-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☐ One month in arrears.
- ☐ Upon the complete performance of the services to be performed by CONTRACTOR.
- ☒ The basis specified in paragraph 3-4.

3-2. PAYMENT

Payment shall be made by COUNTY to CONTRACTOR at the address specified in the original agreement, net thirty (30) days from the invoice date.

3-3. COMPENSATION

COUNTY shall pay to CONTRACTOR: (check one)

☐ a total lump sum payment of \$ _____, or

☒ a total sum not to exceed \$ Refer to Month to Month Fee Schedule,

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this exhibit.

3-4. SPECIAL COMPENSATION TERMS: (Check one.)

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply: (Specify.)

December 1, 2014 – November 30, 2015:	\$4,285.00 per month
December 1, 2015 – November 30, 2016:	\$4,414.00 per month
December 1, 2016 – November 30, 2017:	\$4,546.00 per month
December 1, 2017– November 30, 2018:	\$4,682.00 per month
December 1, 2018 – November 30, 2019:	\$4,823.00 per month

EXHIBIT 4 OTHER TERMS

(Check one.)

- ☐ There are no other terms of the original contract that are modified.
☒ Other terms of the original contract are modified as follows:

As per First Amendment to lease agreement form, paragraph 1 modification of paragraph 3, term, Effective at any time after November 30, 2015 and upon 90 days prior written notice to landlord, tenant at its option, may terminate and cancel the remaining term of this lease in the event that tenant elects to relocate to a County owned or leased facility.

EXHIBIT 2

MODIFICATIONS TO SCOPE OF SERVICES

(Check One.)

- ☒ [X] The services that CONTRACTOR agreed to perform as specified in the original agreement (Exhibit 1) are not modified.
- ☐ [] The services that CONTRACTOR agreed to perform as specified in the original agreement (Exhibit 1) are modified only as indicated below.
- ☐ [] The scope of services to be performed by CONTRACTOR as specified in the original agreement (Exhibit 1) are deleted in their entirety. CONTRACTOR agrees to perform the newly-specified services indicated below.

Modified or New Scope of Services:

EXHIBIT 3

MODIFICATIONS TO PAYMENT SCHEDULE

(Check One.)

- ☐ The payment terms that COUNTY agreed to in the original agreement (Exhibit 1) are not modified.
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- ☐ One month in arrears.
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- ☐ a total lump sum payment of \$ _____, or
- ☒ a total sum not to exceed \$ Refer to Month to Month Fee Schedule,

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this exhibit.

3-4. SPECIAL COMPENSATION TERMS: (Check one.)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply: (Specify.)

December 1, 2019 – November 30, 2020:	\$4,968.00 per month
December 1, 2020 – November 30, 2021:	\$5,117.00 per month
December 1, 2021 – November 30, 2022:	\$5,271.00 per month
December 1, 2022– November 30, 2023:	\$5,429.00 per month
December 1, 2023 – November 30, 2024:	5,5922.00 per month

EXHIBIT 4 OTHER TERMS

(Check one.)

- ☐ There are no other terms of the original contract that are modified.
☒ Other terms of the original contract are modified as follows:

As per the First Amendment to Original Lease agreement form and to remain in Second Amendment is the paragraph 1 modification of paragraph 3, term, Effective at any time after November 30, 2019 and upon 90 days prior written notice to landlord, tenant at its option, may terminate and cancel the remaining term of this lease in the event that tenant elects to relocate to a County owned or leased facility.