

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): May 4, 2004

Encore Capital Group, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

000-26489
(Commission File Number)

48-1090909
(I.R.S Employer
Identification No.)

5775 Roscoe Court San Diego, California 92123
(Address of Principal Executive Offices) (Zip Code)

(877) 445-4581
(Registrant's Telephone Number, Including Area Code)

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

(c) Exhibits:

- 10.1 Multi-Tenant Office Lease dated as of April 8, 2004 by and between LBA Realty Fund-Holding Co. I, LLC and Midland Credit Management, Inc. (the "Midland Lease").
- 10.2 Lease Guaranty by Encore Capital Group, Inc. in favor of LBA Realty Fund-Holding Co. I, LLC in connection with the Midland Lease.

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SIGNATURES

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

ENCORE CAPITAL GROUP, INC.

Date: May 4, 2004

By /s/ Barry R. Barkley

Barry R. Barkley
Executive Vice President,
Chief Financial Officer and Treasurer

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EXHIBIT INDEX

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MULTI-TENANT LEASE
(TRIPLE NET)

LANDLORD:

LBA REALTY FUND-HOLDING CO. I, LLC,
a Delaware limited liability company

TENANT:

MIDLAND CREDIT MANAGEMENT, INC.,
a Kansas corporation

8875 Aero Drive
Midland Credit Management, Inc.

SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS

This SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS ("Summary") is hereby incorporated into and made a part of the attached Multi-Tenant Lease which pertains to the Project described in Section 1.3 below. All references in the Lease to the "Lease" shall include this Summary. All references in the Lease to any term defined in this Summary shall have the meaning set forth in this Summary for such term. Any initially capitalized terms used in this Summary and any initially capitalized terms in the Lease which are not otherwise defined in this Summary shall have the meaning given to such terms in the Lease. If there is any inconsistency between this Summary and the Lease, the provisions of the Lease shall control.

- 1.1 Landlord's Address: LBA REALTY FUND - HOLDING CO., I, LLC
c/o Layton-Belling & Associates
4440 Von Karman Avenue, Suite 150
Newport Beach, California 92660
Attention: Mr. Steven R. Layton
- 1.2 Tenant's Address: (Before taking possession)
MIDLAND CREDIT MANAGEMENT, INC.
c/o Encore Capital Group, Inc.
5775 Roscoe Court
San Diego CA 92123
Attention: General Counsel
(After taking possession) At the Premises.
- 1.3 Project: The development in the City of San Diego, County of San Diego, State of California, as shown on the site plan attached hereto as Exhibit "A". The Project includes all buildings, improvements and facilities, now or subsequently located within such development from time to time, including, without limitation, the Building currently located within the Project, as depicted on the site plan attached hereto as Exhibit "A". The aggregate rentable square feet of all of the Project is approximately 101,590 rentable square feet. Landlord may, from time to time, expand or reduce the area comprising the Project.
- 1.4 Building: A multi-tenant building located in the Project, containing approximately 101,590 rentable square feet, the address of which is 8875 Aero Drive, San Diego, California 92123.
- 1.5 Premises: Those certain premises within the Building located on the second floor of the Building as shown on the floor plan attached hereto as Exhibit "B", containing approximately 50,549 rentable square feet, and not to exceed 52,500 rentable square feet. The Premises also includes Tenant's nonexclusive right to use parts of the roof for communications facilities and mechanical equipment in accordance with Section 36. Because the Premises include the primary telecommunications portals to the Building, Tenant shall permit other tenants of the Building access to such portals through an intermediate distribution frame; but no such tenant will have physical access to Tenant's telecommunications closet or such portals.
- 1.6 Tenant's Share: Tenant's Share is the percentage ratio that the rentable square footage of the Premises bears to the rentable square footage of the Building. Accordingly, as more particularly set forth in Section 4 of this Lease, Tenant shall pay to Landlord that percentage ratio of the Operating Expenses. See Section 6.2.3 concerning Tenant's Share for Operating Expenses for the New Parking Space Area and Section 4.12 for Tenant's Share for Operating Expenses for the HVAC System.
- 1.7 Commencement Date: The earlier to occur of (i) the date Tenant commences business operations in the Premises, or (ii) the later of (a) four (4) months following the Delivery Date, (b) the date on which Landlord gives Tenant accurate written notice that Landlord's Work has been Substantially Completed or (c) October 1, 2004. Landlord shall deliver the Premises to Tenant immediately following the date Landlord obtains possession of the Premises from the current tenant thereof. The date of Landlord's delivery of the Premises to Tenant is referred to herein as the "Delivery Date", which shall be deemed to have occurred on the date Landlord has obtained possession of the Premises from the current tenant thereof. The foregoing four (4) month period shall be subject to extension as provided in Section 7 of the Tenant Work Letter.

1.8 Term: One hundred twenty-six (126) months, as may be sooner terminated or extended in accordance with this Lease.

1.9 Basic Rent:

Months	Basic Rent
1-12*	\$62,900.00**
13-24	\$71,040.00***
25-48	\$1.55 x RSF****
49-72	\$1.63 x RSF
73-96	\$1.71 x RSF
97-120	\$1.80 x RSF
121-126	\$1.89 x RSF

*Including any partial month at the beginning of the Term if the Commencement Date is not the first day of the month.

**The Basic Rent during this period is calculated on 42,500 rentable square feet notwithstanding that the Premises contain approximately 50,000 rentable square feet.

***The Basic Rent during this period is calculated on 48,000 rentable square feet notwithstanding that the Premises contain approximately 50,000 rentable square feet.

****"RSF" means the number of rentable square feet of the Premises as determined in accordance with Section 1.3 of the Lease.

1.10 Parking: The greater of (i) three hundred fifty (350) parking spaces or (ii) seven (7) parking spaces per 1,000 rentable square feet of the Premises (and one space per 143 rentable square feet for the area above the nearest 1000 rentable square feet), as shown on Exhibit G" attached hereto, subject, however, to the provisions of Section 6.2 of the Lease. Parking will be provided at no additional cost to Tenant.

1.11 Security Deposit: \$62,900.00.

1.12 Permitted Use: A call center, general office, customer service center, engineering offices and, subject to Landlord's reasonable approval, any other use permitted under all applicable laws and zoning, and for no other purpose whatsoever.

1.13 Brokers: Burnham Real Estate Services representing Landlord and The Irving Hughes Group representing Tenant.

1.14 Interest Rate: The lesser of: (a) the prime rate announced from time to time by Wells Fargo Bank or, if Wells Fargo Bank ceases to exist or ceases to publish such rate, then the rate announced from time to time by the largest (as measured by deposits) chartered operating bank operating in California, as its "prime rate" or "reference rate", plus five percent (5%) per annum; or (b) the maximum rate permitted by law.

1.15 Tenant Improvements: The tenant improvements to be installed in the Premises, as described in the Tenant Work Letter attached hereto as Exhibit "C".

1.16 Guarantor: Encore Capital Group, Inc., a Delaware corporation.

MULTI-TENANT OFFICE LEASE

This LEASE ("Lease"), which includes the preceding Summary of Basic Lease Information and Definitions ("Summary") attached hereto and incorporated herein by this reference, is made as of the 8th day of April, 2004, by and between LBA REALTY FUND-HOLDING CO. I, LLC, a Delaware limited liability company, ("Landlord"), and MIDLAND CREDIT MANAGEMENT, INC., a Kansas corporation ("Tenant").

1. Premises.

1.1 Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises, on an exclusive basis, and the Common Area, on a nonexclusive basis (subject to Tenant's exclusive parking rights), upon and subject to the terms, covenants and conditions contained in this Lease to be performed by each party.

1.2 Landlord's Reservation of Rights. Provided Tenant's use of and access to the Premises is not interfered with in an unreasonable manner, Landlord reserves the right from time to time to install, use, maintain, repair, replace and relocate pipes, ducts, conduits, wires and appurtenant meters and equipment above the ceiling surfaces, below the floor surfaces and within the walls of the Building and the Premises.

1.3 Measurement. Rentable square footage shall be determined in accordance with the Standard Method for Measuring Floor Area in Office Buildings, ANSI/BOMA Z65.1-1996 (the "BOMA Standard"). Within 14 days after the Commencement Date, Landlord shall deliver to Tenant a certification by Pacific Cornerstone, or another architect reasonably acceptable to Tenant, establishing the number of rentable square feet for the Premises, the Building and the Project. Unless Tenant objects in writing to such measurement within two weeks after its receipt of certification, the measurements set forth in such certification will be deemed the rentable square feet for the Premises, Building, and Project and will not be subject to any adjustment unless the Building or Project is expanded to include additional rentable square feet of space or reduced to exclude rentable square feet of space (including converting the approximately 15,000 rentable square feet of the existing truck loading area for the tenant under the BofA Lease to Common Area). If Tenant objects to Landlord's architect's measurement, then within two weeks after the date of Tenant's objection, Landlord's architect and Tenant's architect shall attempt to agree on the rentable square feet of the Premises and Building. If they so agree within such two-week period, the agreed measurements constitute the rentable square feet of the Premises, Building, and Project and are not subject to adjustment except as described above. If Landlord and Tenant do not arrive at an agreed on measurement within such period, then they shall immediately submit to the American Arbitration Association for the binding determination of such measurements.

2. Term.

2.1 Term; Notice of Lease Dates. The Term of this Lease shall be for the period designated in Section 1.8 of the Summary commencing on the Commencement Date, and ending on the expiration of such period, unless the Term is sooner terminated or extended as provided in this Lease. Notwithstanding the foregoing, if the Commencement Date falls on any day other than the first day of a calendar month then the term of this Lease will be measured from the first day of the month following the month in which the Commencement Date occurs. Within ten (10) days after the Commencement Date, Landlord and Tenant shall execute a written confirmation of the Commencement Date and expiration date of the Term in the form of the Notice of Lease Term Dates attached hereto as Exhibit "D".

2.2 Early Occupancy. If Tenant occupies the Premises prior to the Commencement Date, such early occupancy shall be subject to all of the terms and conditions of this Lease, including, without limitation, the provisions of Sections 17, 20 and 22 except that provided Tenant does not commence the operation of business from the Premises, Tenant will not be obligated to pay rent during the period of such early occupancy.

2.3 Option to Extend. Tenant shall have two (2) options (each, an "Extension Option") to extend the Term for a period (each, an "Option Period") of five (5) years each, upon the same terms and conditions previously applicable, except for the grant of any previously exercised Extension Option and Basic Rent (which shall be determined as set forth below). An Extension Option may be validly exercised only by notice in writing received by Landlord not later than nine (9) months prior to commencement of the applicable Option Period; provided, however, that an Extension Option may be validly exercised only if no Tenant default exists after expiration of the applicable cure period, as of the date of exercise and, at Landlord's option, as of the commencement of the Option Period. If Tenant does not exercise an Extension Option during the exercise period set forth above in strict accordance with the provisions hereof, the Extension Option (and the subsequent Extension Option, as applicable) shall forever terminate and be of no further force or effect. Tenant shall not have the right to exercise an Extension Option if Tenant (or a Permitted Transferee) does not physically occupy at least half of the entire Premises, or if the Lease has been assigned or if more than half of the Premises have been sublet (other than to a Permitted Transferee).

Basic Rent during each Option Period shall be equal to ninety seven percent (97%) of the Fair Market Rental as of the commencement of the Option Period. For purposes hereof, "Fair Market Rental" shall mean the base rent payable during the Option Period to a willing landlord by a willing tenant having a similar financial responsibility, credit rating and capitalization as Tenant then has, taking into account all other relevant factors for like and comparable space, improved with tenant improvements of like and comparable quality to those then existing in the Premises in the Kearney Mesa area of San Diego. Fair Market Rental shall also take into consideration Tenant's parking rights under this Lease and all other terms and conditions of this Lease. At least four (4) months prior to the Option Period, Landlord shall notify Tenant of the Fair Market Rental as determined by Landlord. Any dispute between the parties hereto with respect to the amount so determined shall be resolved by arbitration, as set forth below; provided, however, that there shall be deemed not to be such a dispute unless Tenant notifies Landlord thereof in writing within 60 days after Landlord so notifies Tenant of the Fair Market Rental and Tenant sets forth in such notice Tenant's determination of Fair Market Rental. If, in the event of a dispute, the arbitrators have not determined the Fair Market Rental by the commencement of the Option Period, Tenant shall pay as Basic Rent the amount determined by Landlord until such time as the Fair Market Rental has been determined by arbitration, whereupon Tenant shall pay any additional amount due to Landlord based upon such subsequent determination of Fair Market Rental. If the Basic Rent so paid by Tenant is higher than that ultimately determined by the arbitration process, then Landlord shall reimburse such difference to Tenant within 10 days after such determination.

If Tenant timely notifies Landlord in writing of Tenant's dispute regarding Landlord's determination of the Fair Market Rental, then Fair Market Rental shall be determined as follows. Landlord and Tenant shall each appoint one arbitrator who shall by profession be a real estate appraiser active over the five (5) year period ending on the date of such appointment in the appraisal of commercial properties in the Kearney Mesa area of San Diego and who shall not have been employed or engaged by either party (or by any affiliate of such party or any of its owners) during said five (5) year period. Each such arbitrator shall be appointed within fifteen (15) days after Tenant notifies Landlord of Tenant's dispute of Landlord's determination of Fair Market Rental. The two arbitrators so appointed shall, within fifteen (15) days of the date of the appointment of the last appointed arbitrator, agree upon and appoint a third arbitrator who shall be qualified under the same criteria set forth above. The three arbitrators shall, within thirty (30) days of the appointment of the third arbitrator, reach a decision as to whether the parties shall use Landlord's or Tenant's submitted Fair Market Rental for the Premises, and shall notify Landlord and Tenant thereof. Such decision shall be based upon the criteria and variables set forth above. The new Basic Rent shall thereafter be equal to ninety seven percent (97%) of the Fair Market Rental of the Premises so selected by the arbitrators. The decision of the majority of the three arbitrators shall be binding upon Landlord and Tenant. If either Landlord or Tenant fails to appoint an arbitrator within the time period specified hereinabove, the arbitrator appointed by one of them shall reach a decision, notify Landlord and Tenant thereof, and such arbitrator's decision shall be binding upon Landlord and Tenant. If the two arbitrators fail to agree upon and appoint a third arbitrator, both arbitrators shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association in accordance with the method described above. The cost of arbitration shall be paid by Landlord and Tenant equally.

3. Rent.

3.1 Basic Rent. Tenant agrees to pay Landlord, as basic rent for the Premises, the Basic Rent designated in Section 1.9 of the Summary. The Basic Rent shall be paid by Tenant in advance on the first day of each and every calendar month during the Term, except that the first full month's Basic Rent shall be paid upon Tenant's execution and delivery of this Lease to Landlord. Basic Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month.

Notwithstanding anything to the contrary contained herein, Landlord hereby agrees to abate Tenant's obligation to pay Basic Rent and Operating Expenses for the first full calendar month of the initial Term. During such abatement period, Tenant shall still be responsible for all of its other obligations under this Lease.

3.2 Additional Rent. All amounts and charges payable by Tenant under this Lease in addition to the Basic Rent described in Section 3.1 above shall be considered additional rent for the purposes of this Lease, and the word "rent" in this Lease shall include such additional rent unless the context specifically or clearly implies that only the Basic Rent is referenced. The Basic Rent and additional rent shall be paid to Landlord as provided in Section 7, without any prior demand therefor and without any deduction or offset (except as otherwise provided herein), in lawful money of the United States of America.

3.3 Late Payments. Late payments of Basic Rent and/or any item of additional rent will be subject to interest and a late charge as provided in Section 23.7 below.

3.4 Triple-Net Lease. All rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord, the rent to be paid each month during the Term of this Lease. Accordingly, except as specifically set forth herein, all costs, expenses and obligations of every kind or nature whatsoever relating to Tenant's use of the Premises, and Tenant's Share of all costs, expenses and obligations of every kind or nature whatsoever relating to the remaining portion of the Project, which may arise or become due during the Term of this Lease shall be paid by Tenant. Nothing herein contained shall be deemed to require Tenant to pay or discharge any liens or mortgages of any character whatsoever which may exist or hereafter be placed upon the Project by an affirmative act or omission of Landlord.

4. Common Area; Operating Expenses.

4.1 Definition of Common Area. The term "Common Area" means all areas and the improvements thereon within the exterior boundaries of the Project now or later made available for the general use of Landlord, Tenant and other persons entitled to occupy floor area in the Project and their customers, including, without limitation, the parking facilities of the Project, loading and unloading areas, trash areas, roadways, sidewalks, walkways, parkways, driveways, landscaped areas, and similar areas and facilities situated within the Project which are not reserved for the exclusive use of any Project occupants. Common Area also shall include, without limitation, any common entrances, lobbies, restrooms on multi-tenant floors, stairways and accessways, loading docks, ramps, drives and platforms and any passageways and serviceways thereto to the extent not exclusively serving another tenant or contained within another tenant's premises, and the common pipes, conduits, wires and appurtenant equipment serving the Premises.

4.2 Maintenance and Use of Common Area. Landlord shall maintain the Common Area in good condition and repair. The use and occupancy by Tenant of the Premises shall include the right to use the Common Area (except to the extent such use would interfere with the maintenance or operation of the Project), in common with Landlord and other tenants of the Project and their customers and invitees, subject to (i) any covenants, conditions and restrictions now or hereafter of record (collectively the "Declaration"), and (ii) the Rules and Regulations attached hereto as Exhibit "E". Landlord shall enforce the Rules and Regulations in a reasonable and non-discriminatory manner and Tenant agrees to promptly comply with all such Rules and Regulations. Notwithstanding the foregoing, any Declaration that is recorded subsequent to the date hereof shall not diminish any rights of Tenant hereunder or increase any obligations of Tenant hereunder in any material respect.

4.3 Control of and Changes to Common Area. Landlord shall have the sole control of the Common Area, as well as the right to make reasonable changes to the Common Area. Provided Landlord does not materially interfere with Tenant's use of and access to the Premises as contemplated by this Lease, Landlord's rights shall include, but not be limited to, the right to (a) restrain the use of the Common Area by unauthorized persons; (b) cause Tenant to remove or restrain persons from any unauthorized use of the Common Area if they are using the Common Area by reason of Tenant's presence in the Project; (c) temporarily close any portion of the Common Area for repairs, improvements or alterations; and (d) reasonably change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area, including, without limitation, buildings, lighting, parking areas, landscaped areas, roadways, walkways, drive aisles and curb cuts.

4.4 Operating Expenses. Throughout the Term of this Lease, commencing on the Commencement Date, Tenant agrees to pay Landlord as additional rent in accordance with the terms of this Section 4, Tenant's Share of

Operating Expenses. As used in this Lease, the term "Operating Expenses" shall consist of all costs and expenses reasonably incurred by Landlord for the ownership, operation, maintenance, repair and replacement of the Project. Operating Expenses shall include the following costs by way of illustration but not limitation: (i) Real Property Taxes (but excluding any increases to Real Property Taxes resulting from any improvements to the Project constructed for the sole benefit of another tenant); (ii) any and all assessments under any covenants, conditions and restrictions affecting the Project; (iii) water, sewer and other utility charges on account of the Common Area; (iv) costs of insurance obtained by Landlord pursuant to Section 21 of this Lease (excluding any earthquake, flood, terrorism, rental loss in excess of six (6) months, business interruption, or any other extraordinary insurance coverage, except to the extent that such insurance is reasonably required by Landlord's lender); (v) waste disposal and janitorial services for the Common Area; (vi) security; (vii) labor; (viii) management fees and costs, including, without limitation: (A) wages, salaries, pension payments, fringe benefits, uniforms and dry-cleaning thereof (and payroll taxes, insurance and similar charges) of property management employees, (B) management office rental, supplies, equipment and related operating expenses and (C) management/administrative fees, provided that the sum of all such management fees and costs under this item (viii) may not exceed 3% of Basic Rent from the Project; (ix) supplies, materials, equipment and tools including rental of personal property; (x) repair and maintenance of all common portions of the buildings within the Project, including the plumbing, heating, ventilating, air-conditioning and electrical systems installed or furnished by Landlord as well as the HVAC equipment installed as part of the Tenant Improvements; (xi) maintenance, sweeping, repairs, resurfacing, and upkeep of all parking and other Common Areas; (xii) amortization on a straight line basis over the useful life (together with interest at the annual rate of six percent on the unamortized balance) of all capitalized expenditures which are: (A) reasonably intended to produce a reduction in operating charges or energy consumption (but only to the extent of such reduction); (B) required under any governmental law or regulation that was not applicable to the Project as of the date of this Lease; or (C) for replacement or restoration of any Project equipment and/or improvements needed to operate and/or maintain the Project at the same quality levels as prior to the replacement or restoration; (xiii) gardening and landscaping; (xiv) maintenance of signs (other than signs of tenants of the Project); and (xv) personal property taxes levied on or attributable to Landlord's personal property used exclusively in connection with the Common Areas (or, if not used exclusively, then a prorata share of such taxes based upon the ratio that at the time such personal property is devoted to the Common Area bears to the total amount of time such personal property is used). Notwithstanding the foregoing, the amount of any charges for any services provided by affiliates, related or designated parties of Landlord that are included in Operating Expenses, must be reasonable, customary and competitive with charges for similar services of independent contractors in the area where the Project is located.

Notwithstanding any implication to the contrary, Operating Expenses will not include any of the following: (a) legal fees, brokerage commissions, advertising costs or related expenses in connection with the sale, financing or development of any portion of the Project or the leasing of other premises within the Project; (b) costs incurred in connection with damage or repairs that are covered under any insurance policy carried or required to be carried by Landlord in connection with the Project; (c) expenses for repair or replacement paid by condemnation awards; (d) costs associated with damage or repairs to the Project necessitated by the negligence or misconduct of Landlord or Landlord's employees, agents, invitees, or contractors; (e) reserves or any kind; (f) salaries or overhead expenses of Landlord or any of its affiliates (other than the management fees and costs permitted in clause (viii) above); (g) any principal, interest, loan fees, or other carrying costs related to any mortgage or deed of trust encumbering the Project or Premises and all rental and other payment due under any ground or underlying lease; (h) legal fees, accountant fees and other expenses incurred in disputes regarding or associated with the Project, including enforcement or defense of Landlord's title to or interest in the Project or any part thereof or with respect to disputes with other tenants of the Project; (i) any fines, late charges, penalties or other similar costs incurred due to violations by Landlord of any governmental rule or authority, this Lease or any other lease, or due to Landlord's negligence or misconduct; (j) costs incurred to comply with laws relating to Hazardous Materials or to remove, remedy, contain, or treat such Hazardous Materials, to the extent such Hazardous Materials are (i) in existence as of the Commencement Date in violation of then existing Environmental Law or (ii) introduced after the Commencement Date by Landlord or Landlord's employees, agents, contractors, invitees or other tenants in violation of Environmental Law in effect as of the date of introduction and (k) the Landlord's Work.

4.5 Tenant's Monthly Operating Expense Charge. From and after the Commencement Date, Tenant shall pay to Landlord, on the first day of each calendar month during the Term of this Lease, Tenant's Share of an amount estimated by Landlord to be the Monthly Operating Expenses for the Project for that month ("Tenant's Monthly Operating Expense Charge") per the Estimate Statement.

4.6 Estimate Statement. Prior to the Commencement Date and on or about March 1st of each subsequent calendar year during the Term of this Lease, Landlord shall deliver to Tenant a statement ("Estimate Statement") wherein Landlord will reasonably estimate both the Operating Expenses and Tenant's Monthly Operating Expense Charge for the then current calendar year. Tenant agrees to pay Landlord, as additional rent, Tenant's estimated Monthly Operating Expense Charge each month thereafter, beginning with the next installment of rent due, until such time as Landlord issues a revised Estimate Statement or the Estimate Statement for the succeeding calendar year; except that, concurrently with the regular monthly rent payment next due following the receipt of each such Estimate Statement, Tenant agrees to pay Landlord an amount equal to one monthly installment of Tenant's estimated Monthly Operating Expense Charge multiplied by the number of months from January, in the current calendar year, to the month of such rent payment next due, all months inclusive (less any applicable Operating Expenses already paid). If at any time during the Term of this Lease, but not more often than semi-annually, Landlord reasonably determines that Tenant's Share of Operating Expenses for the current calendar year will be greater than the amount set forth in the then current Estimate Statement, Landlord may issue a revised Estimate Statement and Tenant agrees to pay Landlord, within 30 days of receipt of the revised Estimate Statement, the

difference between the amount owed by Tenant under such revised Estimate Statement and the amount owed by Tenant under the original Estimate Statement for the portion of the then current calendar year which has expired. Thereafter, Tenant agrees to pay Tenant's Monthly Operating Expense Charge based on such revised Estimate Statement until Tenant receives the next calendar year's Estimate Statement or a new revised Estimate Statement for the current calendar year.

4.7 Actual Statement. By March 1st of each calendar year during the Term of this Lease, Landlord shall also deliver to Tenant a statement ("Actual Statement") which states Tenant's Share of the actual Operating Expenses for the preceding calendar year, along with a detailed and categorized list of the expenditures on which the Actual Statement is based. If the Actual Statement reveals that Tenant's Share of the actual Operating Expenses is more than the total Additional Rent paid by Tenant for Operating Expenses on account of the preceding calendar year, Tenant agrees to pay Landlord the difference in a lump sum within ten (10) days of receipt of the Actual Statement. If the Actual Statement reveals that Tenant's Share of the actual Operating Expenses is less than the Additional Rent paid by Tenant for Operating Expenses on account of the preceding calendar year, Landlord will credit any overpayment toward the next monthly installment(s) of Tenant's Share of the Operating Expenses due under this Lease. Such obligation will be a continuing one which will survive the expiration or earlier termination of this Lease. Prior to the expiration or sooner termination of the Lease Term and Landlord's acceptance of Tenant's surrender of the Premises, Landlord will have the right to estimate the actual Operating Expenses for the then current calendar year and to collect from Tenant prior to Tenant's surrender of the Premises, Tenant's Share of any excess of such actual Operating Expenses over the estimated Operating Expenses paid by Tenant in such calendar year.

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8875 Aero Drive
Midland Credit Management, Inc.

4.8 Miscellaneous. Any delay or failure by Landlord in delivering any Estimate Statement or Actual Statement pursuant to this Section 4 will not constitute a waiver of its right to require an increase in additional rent for Operating Expenses nor will it relieve Tenant of its obligations pursuant to this Section 4, except that Tenant will not be obligated to make any payments based on such Estimate Statement or Actual Statement until ten (10) days after receipt of such Estimate Statement or Actual Statement. Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of the actual Operating Expenses for the year in which this Lease terminates, Tenant agrees to promptly pay any increase due over the estimated expenses paid and, conversely, any overpayment made in the event said expenses decrease shall promptly be rebated by Landlord to Tenant. Such obligation will be a continuing one which will survive the expiration or termination of this Lease. Prior to the expiration or sooner termination of the Lease Term and Landlord's acceptance of Tenant's surrender of the Premises, Landlord will have the right to estimate the actual Operating Expenses for the then current Lease Year and to collect from Tenant prior to Tenant's surrender of the Premises, Tenant's Share of any excess of such actual Operating Expenses over the estimated Operating Expenses paid by Tenant in such Lease Year.

4.9 Cap On Controllable Operating Expenses. Notwithstanding anything herein to the contrary, solely for purposes of calculating Tenant's Share of Operating Expenses during the initial Term only, the Controllable Operating Expenses for any calendar year following the first full calendar year of the Term shall not increase by more than five percent (5%) over the maximum permitted Controllable Operating Expenses for the immediately preceding calendar year (i.e., on a cumulative and compound basis and regardless of the actual Controllable Operating Expense incurred for such preceding calendar year); however, if the actual Controllable Operating Expenses for any calendar year are greater than the maximum amount permitted to be charged to Tenant hereunder, the difference shall be added to the actual Controllable Operating Expenses for succeeding calendar years until exhausted. The term "Controllable Operating Expenses" means all Operating Expenses other than Real Property Taxes, insurance and capital expenditures described in clause (xii) of Section 4.4 above.

4.10 Limited Proposition 13 Protection. Notwithstanding anything herein to the contrary, solely for purposes of calculating Tenant's Share of Operating Expenses during the first three (3) years of the initial Term only, Real Property Taxes shall not include the amount of any increase in Real Property Taxes directly attributable to Landlord's sale or transfer of the Project (or any transfer of ownership interests in Landlord) during the first three (3) years of the initial Term. After the expiration of the first three (3) years of the initial Term, the provisions of this Section 4.10 shall no longer apply.

4.11 Audit Right. Within one hundred twenty (120) days after receipt of an Actual Statement by Tenant ("Review Period"), if Tenant disputes the amount set forth in the Actual Statement, Tenant's employees or an independent certified public accountant (which accountant is a member of a nationally or regionally recognized accounting firm), designated by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records (pertaining to Landlord's calculation of Operating Expenses) at Landlord's offices, provided that Tenant is not then in default after expiration of all applicable cure periods and provided further that Tenant and such accountant or representative shall, and each of them shall use their commercially reasonable efforts to cause their respective agents and employees to, maintain all information contained in Landlord's records in strict confidence. Notwithstanding the foregoing, Tenant shall only have the right to review Landlord's records one (1) time during any twelve (12) month period. Tenant's failure to dispute the amounts set forth in any Actual Statement within the Review Period shall be deemed to be Tenant's approval of such Actual Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Actual Statement. If after such inspection, but within thirty (30) days after the Review Period, Tenant notifies Landlord in writing that Tenant still disputes such amounts, a certification as to the proper amount shall be made, at Tenant's expense, by an independent certified public accountant selected by Landlord and who is a member of a nationally or regionally recognized accounting firm (and who has not previously been retained by Landlord or any affiliate of Landlord or any of its owners). Landlord shall cooperate in good faith with Tenant and the accountant to provide Tenant and the accountant with the information upon which the certification is to be

based. However, if such certification by the accountant proves that the total amount of Operating Expenses set forth in the Actual Statement were overstated by more than three percent (3.0%), then the reasonable costs of the accountant originally retained by Tenant and the accountant selected by Landlord as described above and such certification shall be paid for by Landlord. Promptly following the parties receipt of such certification, the parties shall make such appropriate payments or reimbursements, as the case may be, to each other, as are determined to be owing pursuant to such certification. In no event shall Landlord or its property manager be required to (i) photocopy any accounting records or other items or contracts, (ii) create any ledgers or schedules not already in existence, (iii) incur any unreimbursed costs or expenses relative to such inspection (except as otherwise provided above), or (iv) perform any other tasks other than making available such accounting records as are described in this Section. Landlord shall not be liable for the payment of any contingency fee payments to any auditor or consultant of Tenant. The provisions of this Section shall be the sole method to be used by Tenant to dispute the amount of Operating Expenses payable by Tenant under this Lease and Tenant waives any other rights or remedies relating to the amount of Operating Expenses.

4.12 HVAC System Expenses. Landlord shall monitor and account for the following Operating Expenses separate from all other Operating Expenses:

- (a) The days and hours of usage by each occupant of the Building of the HVAC system serving the Building (the "HVAC System") and units of actual energy and other utilities consumed in connection with such usage and the cost of such consumption of energy and other utilities (the "Consumption Costs"); and
- (b) The cost of the maintenance, repair and, subject to the limitations of Section 4.4 above, replacement of the HVAC System or portions thereof, including separate accounting for all parts and labor (e.g., engineer's time) (the "Maintenance Costs").

The Consumption Costs and Maintenance Costs are collectively referred to herein as the "HVAC System Expenses." Tenant's Share of the HVAC System Expenses shall be the sum of (i) the product of the HVAC System Expenses multiplied by the fraction arrived at by dividing the electricity consumed by Tenant's usage of the HVAC System by the total electricity consumed by the operation of the HVAC System for all purposes, plus (ii) Tenant's Share (as calculated in accordance with the first sentence of Section 1.6 of the Summary) of (x) the Consumption Costs for the Common Area and (y) the product of the Maintenance Costs multiplied by the fraction arrived at by dividing the electricity consumed by the HVAC System for the Common Area by the total electricity consumed by all usage of the HVAC System.

5. Security Deposit. Concurrently with Tenant's execution and delivery of this Lease to Landlord, Tenant shall deposit with Landlord the Security Deposit designated in Section 1.11 of the Summary. The Security Deposit shall be held by Landlord as security for the full and faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be performed by Tenant during the Term. The Security Deposit is not, and may not be construed by Tenant to constitute, rent for the last month or any portion thereof. If Tenant defaults with respect to any of its obligations under this Lease, Landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any rent or any other sum in default, or for the payment of any other amount, loss or damage which Landlord may spend, incur or suffer by reason of Tenant's default. Tenant hereby waives the provisions of California Civil Code Section 1950.7 and any other provisions of any law, now or hereafter enforced, which provide that Landlord may claim from the Security Deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums reasonably necessary to compensate Landlord for any other loss or damage caused by the acts or omissions of Tenant or any Tenant's Parties. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant within two (2) weeks following the expiration of the Lease term, provided that Landlord may retain the Security Deposit until such time as any amount due from Tenant in accordance with this Lease has been determined and paid in full. If Landlord sells its interest in the Building during the Term and if Landlord deposits with the purchaser the Security Deposit (or balance thereof), then, upon such sale, Landlord shall be discharged from any further liability with respect to the Security Deposit.

Notwithstanding the foregoing, Landlord shall return the Security Deposit to Tenant immediately following the expiration of the twelfth (12th) full calendar month of the initial Term if, at such time, Tenant's is not in default under this Lease.

6. Use.

6.1 General. Tenant shall use the Premises solely for the Permitted Use specified in Section 1.12 of the Summary, and shall not use or permit the Premises to be used for any other use or purpose whatsoever. (But Tenant is not obligated to use or occupy the Premises at all.) Tenant shall observe and comply with the "Rules and Regulations" attached hereto as Exhibit "E". Landlord shall endeavor to enforce the Rules and Regulations, but shall have no liability to Tenant for the violation or non-performance by any other tenant or occupant of the Project of any such Rules and Regulations. Tenant shall, at its sole cost and expense, observe and comply with all requirements of any board of fire underwriters or similar body relating to the Premises, all recorded covenants, conditions and restrictions now or hereafter affecting the Premises and all laws, statutes, codes, rules and regulations now or hereafter in force relating to or affecting the condition, use, occupancy, alteration or improvement of the Premises (including, without limitation, the provisions of Title III of the Americans with Disabilities Act of 1990 as it pertains to Tenant's use, occupancy, improvement and alteration of the Premises), whether, except as otherwise provided herein, structural or nonstructural, including unforeseen and/or extraordinary alterations and/or improvements to the Premises and regardless of the period of time remaining in the Lease Term; provided, however, Tenant is not responsible for improvements to the Premises or Project resulting from either the failure of any portion of the Project or Landlord's Work to comply with any applicable laws or regulations existing as of the Commencement Date or from any portion of the Project other than the Premises requiring alteration because of any change in applicable law or regulation (except to the extent the same is triggered by Tenant's particular use of the Premises or Tenant's alterations to the Premises, in which event Tenant shall be responsible for such compliance), and Landlord shall cause such improvements to be made, subject to Tenant's obligation to contribute to its share of the improvement costs in accordance with the Operating Expense provisions of this Lease. Tenant shall not use or allow the Premises to be used (a) in violation of the Declaration or any other recorded covenants, conditions and restrictions affecting the Project or of any law or governmental rule or regulation, or of any certificate of occupancy issued for the Premises, the Building and/or the Project, or (b) for any unlawful purpose. Tenant shall not do or permit to be done anything which will obstruct or interfere with the rights of other tenants or occupants of the Project, or injure them. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, nor commit or suffer to be committed any waste in, on or about the Premises, nor cause any nuisance or voluntarily permit any of its invitees to cause any nuisance in the Building or the Project. Tenant and Tenant's employees and agents shall not solicit business in the Common Area, nor shall Tenant distribute any handbills or other advertising matter in the Common Area.

Notwithstanding the foregoing, if any improvements to the Premises are required during the last two (2) years of the Term solely as a result of a change in any law, and the cost thereof exceeds six (6) months' Base Rent, Tenant may terminate this Lease unless Landlord notifies Tenant, in writing, within ten (10) business days after receipt of Tenant's Termination Notice that Landlord has elected to pay the difference between the actual cost thereof and the amount equal to six (6) months' Base Rent. If Tenant elects termination, Tenant shall immediately cease the use of the Premises which requires such improvement and deliver to Landlord written notice specifying a termination date at least thirty (30) days thereafter. Such termination date shall, however, in no event be earlier than the last day that Tenant could legally utilize the Premises without commencing such improvement.

Without limiting the foregoing, during the period of time that the lease between Landlord and Bank of America dated November 18, 2003, as it may be amended, renewed or extended from time to time, for the ground floor of the Building (the "BoFA Lease") is in effect, Tenant may not use or permit the Premises to be used for (i) any use which is reasonably likely to create a nuisance, (ii) any school, classroom or training facility, (iii) any medical or dental office, clinic, laboratory or similar use or (iv) any government office. Notwithstanding the foregoing, and subject to the satisfaction of the condition set forth in Section 37.2 below, (a) the operation of a call center, in and of itself, shall not violate clause (i) above and (b) the operation of a training facility

as a minor component of another primary use of the Premises shall not violate clause (ii) above.

6.2 Parking.

6.2.1 Tenant's Parking Privileges. During the Term of this Lease, Landlord shall lease to Tenant, and Tenant shall lease from Landlord (at no additional rent), the number of parking privileges specified in Section 1.10 of the Summary hereof for use by Tenant's employees and invitees in the location identified on Exhibit "G" attached hereto or such other location as Landlord may designate from time to time and which is reasonably acceptable to Tenant. Landlord shall at all times have the right to establish and modify the nature and extent of the parking areas for the Building and Project (including whether such areas shall be surface, underground and/or other structures) as long as Tenant is provided the number of parking privileges designated in Section 1.10 of the Summary; provided, however, no less than Tenant's Share of the parking spaces located in the initial Project (i.e., excluding the New Parking Space Area) shall be available for Tenant's use. Tenant's parking spaces shall be exclusive and Landlord shall cooperate with Tenant to facilitate Tenant's ability to have unauthorized vehicles removed from Tenant's parking spaces. Before the Commencement Date, as part of Landlord's Work, Landlord shall number the parking spaces. Tenant may, at its option, elect to label the parking spaces with Tenant's name, subject to Landlord's reasonable consent. All parking spaces provided to Tenant shall be "standard" parking spaces as determined by applicable governmental requirements.

6.2.2 Parking Rules. The use of the parking areas shall be subject to the Parking Rules and Regulations contained in Exhibit "E" attached hereto. Tenant shall not use more parking privileges than its allotment and shall not use any parking spaces not designated by Landlord for Tenant's use or any specifically assigned by Landlord to other tenants of the Building or Project or for such other uses as visitor parking. Tenant's parking privileges shall be used only for parking by vehicles no larger than normally sized passenger automobiles, sports utility vehicles, passenger vans, or pick-up trucks. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's employees, suppliers, shippers, customers or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. If Tenant permits or allows any of the prohibited activities described herein, then Landlord shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost thereof to Tenant, which cost shall be immediately payable by Tenant upon demand by Landlord.

6.2.3 New Parking Space Area. Landlord is currently in escrow to acquire the property depicted on Exhibit "A" as the "New Parking Space Area," which is a portion of Lot 7 of Research Park Subdivision Addition, City of San Diego, County of San Diego, State of California according to Map No. 6386, filed in the Office of the County Recorder of San Diego County ("Lot 7"). Landlord anticipates that the closing of Landlord's acquisition of the New Parking Space Area shall occur on or about April 5, 2004. If Landlord has not closed escrow on the New Parking Space Area by May 1, 2004, or if Landlord has not otherwise entered into an agreement, in form and substance reasonably acceptable to Tenant, with the owner of the New Parking Space Area by such date that provides the requisite number of parking spaces to satisfy Tenant's parking rights hereunder, then Tenant may terminate this Lease by giving Landlord written notice thereof within ten (10) business days following such date, in which event Landlord shall return to Tenant the advance rent and any other sums previously paid to Landlord, and Landlord and Tenant shall thereafter have no obligation under this Lease, except for those obligations that expressly survive termination. If Tenant does not elect to so terminate this Lease, then unless and until Landlord closes escrow on the New Parking Space Area or otherwise enters into a parking agreement with the owner thereof, the number of parking spaces to which Tenant is entitled as designated in Section 1.10 of the Summary shall be reduced by the number of spaces identified on Exhibit "G" as being located within the New Parking Space Area. In the event Landlord determines that escrow will not close on the New Parking Space Area by April 5, 2004, Landlord shall give Tenant written notice thereof promptly following the date Landlord first has such knowledge. Upon Landlord's acquisition of the New Parking Space Area or Landlord's acquisition of parking rights in the New Parking Space Area pursuant to a parking agreement with the owner thereof, as applicable, (i) the New Parking Space Area shall become a portion of the Project and (ii) Landlord shall improve the New Parking Space Area as a surface parking lot as part of Landlord's Work.

Tenant acknowledges that Landlord shall have the right, but not the obligation, to construct a parking structure on the New Parking Space Area in the future, and in such case, Tenant agrees to reasonably cooperate with Landlord (i) in connection with the construction of such parking structure (including, without limitation, utilizing valet or other parking attendant service [at no charge to Tenant or its employees or guests] in lieu of the parking spaces in the New Parking Space Area that have been displaced during construction) and (ii) locating Tenant's parking spaces in such new parking structure; provided, however, not more than three (3) spaces per 1,000 rentable square feet of the Premises shall be located on the top level of such parking structure and no less than Tenant's Share of the parking spaces located in the initial Project (i.e., excluding the New Parking Space Area) shall be available for Tenant's use.

Tenant's Share of Operating Expenses (other than Real Property Taxes) for the New Parking Space Area shall be determined by multiplying the Operating Expenses for the total parking area on Lot 7 by the percentage ratio that the number of Tenant's parking spaces located in the New Parking Space Area bears to the total number of parking spaces on Lot 7. During the period of time that the New Parking Space Area is a surface parking lot, Tenant's Share of Real Property Taxes for the New Parking Space Area shall be determined by multiplying the assessed land value of Lot 7 by the percentage ratio that Tenant's Parking Square Footage (as defined below) bears to the total square footage of land in Lot 7. During the period of time that the New Parking Space Area contains a parking structure, Tenant's Share of the Real Property Taxes for the New Parking Space Area shall be determined by multiplying the assessed land value underlying the parking structure and the assessed value of the parking structure by the percentage ratio that the number of Tenant's parking spaces in the parking structure bears to the total number of parking spaces in the parking structure. "Tenant's Parking Square Footage" means the product

obtained by multiplying the number of Tenant's parking spaces in the New Parking Space Area by 350 square feet.

6.3 Signs, Awnings and Canopies. Tenant will not place or suffer to be placed or maintained on the roof or on any exterior door, wall or window (or within 48 inches of any window) of the Premises any sign, awning or canopy, or advertising matter on the glass of any window or door of the Premises without Landlord's prior written consent. Tenant agrees to maintain any such sign, awning, canopy, decoration, lettering or advertising matter as may be approved by Landlord in good condition and repair at all times. At the expiration or earlier termination of this Lease, at Landlord's election, Tenant shall remove all signs, awnings, canopies, decorations, lettering and advertising and shall repair any damage to the Building, the Premises or the Project resulting therefrom all at Tenant's sole cost and expense. If Tenant fails to maintain any such approved sign, awning, decoration, lettering, or advertising, Landlord may do so and Tenant shall reimburse Landlord for such cost. If, without Landlord's prior written consent, Tenant installs any sign, awning, decoration, lettering or advertising, or fails to remove any such item(s) at the expiration or earlier termination of this Lease, Landlord may have such item(s) removed and stored and may repair any damage to the Building, the Premises or the Project at Tenant's expense. The removal, repair and/or storage costs shall bear interest until paid at the Interest Rate.

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8875 Aero Drive
Midland Credit Management, Inc.

6.3.1 Building and Monument Signs. Subject to this Section 6.3.1, Tenant shall have the non-exclusive right to install, at its sole cost and expense, signage identifying Tenant's (and/or Guarantor's or, subject to the last paragraph of this Section 6.3.1, any of their affiliate's or any assignee's or subtenant's) name and logotype on the exterior of the Building (limited to Building-top signage and signage adjacent to Tenant's main entrance) and on the main monument sign for the Project when such a monument sign is built ("Signage"). Landlord shall, subject to Force Majeure Delays, construct a main monument sign for the Project within six (6) months following the Commencement Date. The graphics, materials, color, design, lettering, lighting (if any), specifications and exact location of the Signage (collectively, the "Signage Specifications") shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld. The size of Tenant's signage may not exceed Tenant's Share of the gross signage permitted for the Project under applicable laws and regulations. In addition, the Signage and all Signage Specifications therefor shall be subject to Tenant's receipt of all required governmental permits and approvals, shall be subject to all applicable governmental laws and ordinances, and all covenants, conditions and restrictions affecting the Project. Tenant hereby acknowledges that, notwithstanding Landlord's approval of the Signage and/or the Signage Specifications therefor, Landlord has made no representations or warranty to Tenant with respect to the probability of obtaining such approvals and permits. In the event Tenant does not receive the necessary permits and approvals for the Signage, Tenant's and Landlord's rights and obligations under the remaining provisions of this Lease shall not be affected. The cost of installation of the Signage, as well as all costs of design and construction of such Signage and all other costs associated with such Signage, including, without limitation, permits, maintenance and repair, shall be the sole responsibility of Tenant. Should the Signage require maintenance or repairs as determined in Landlord's reasonable judgment, Landlord shall have the right to provide written notice thereof to Tenant and Tenant shall cause such repairs and/or maintenance to be performed within thirty (30) days after receipt of such notice from Landlord at Tenant's sole cost and expense. Should Tenant fail to perform such maintenance and repairs within the period described in the immediately preceding sentence, Landlord shall have the right to cause such work to be performed and to charge Tenant, as Additional Rent, for the cost of such work. Upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's sole cost and expense, cause the Signage to be removed and shall restore the affected areas to the condition existing prior to the placement of such Signage. If Tenant fails to remove such Signage and to restore the exterior of the Project as provided in the immediately preceding sentence within thirty (30) days following the expiration or early termination of this Lease, then Landlord may perform such work, and all costs and expenses incurred by Landlord in so performing such work shall be reimbursed by Tenant to Landlord within ten (10) days after Tenant's receipt of invoice therefor. The immediately preceding sentence shall survive the expiration or earlier termination of this Lease.

Should the name and/or logo of Tenant, or Guarantor change, or should the Lease be assigned or the Premises be sublet, or should Tenant or Guarantor desire to identify an affiliate's name or logo on the Signage, then the Signage may be modified at Tenant's sole cost and expense to reflect the new name and/or logo of Tenant or the name and/or logo of an assignee or a sublessee, or the name and/or logo of an affiliate, but only if the new name and/or logo does not (i) relate to an entity that is of a character or reputation, or associate with a political orientation or a faction, that is inconsistent with the quality of the Project or would otherwise reasonably offend an institutional Landlord of a project comparable to the Project, taking into consideration the level and visibility of such Signage or (ii) cause Landlord to be in default under any lease or other agreement to which Landlord is bound.

Notwithstanding the foregoing, during the time that the BofA Lease is in effect, the Signage may not contain the name or logo, or advertise the services or products, of any bank or other financial institution; provided, however, subject to the satisfaction of the condition set forth in Section 37.2 below, the name or logo of the original Tenant and Guarantor shall not violate the provisions of this sentence.

6.4 Hazardous Materials.

6.4.1 Tenant's Obligations. Tenant will (i) obtain and maintain in full force and effect all Environmental Permits (as defined below) that may be required from time to time under any Environmental Laws (as defined below) applicable to Tenant or its use of the Premises and (ii) be and remain in compliance with all terms and conditions of all such Environmental Permits and with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in all Environmental Laws applicable to Tenant, and (iii) not violate any Environmental Law governing the Premises. As used in this Lease, the term "Environmental Law" means any past, present or future federal, state or local statutory or common law, or any regulation, ordinance, code, plan, order, permit, grant, franchise, concession, restriction or agreement issued, entered, promulgated or approved thereunder, relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials. "Environmental Permits" means, collectively, any and all permits, consents, licenses, approvals and registrations of any nature at any time required pursuant to, or in order to comply with, any Environmental Law. Except for ordinary and general office supplies, such as copier toner, liquid paper, glue, ink and common cleaning materials used and stored in compliance with all Environmental Laws (some or all of which may constitute Hazardous Materials as defined below), and ordinary parking lot residue and run-off, Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises, the Building, the Common Areas or any other portion of the Project by Tenant, its agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "Tenant's Parties"), without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, the Building and the Project, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises, the Building and/or the Project or any portion thereof by Tenant or any of Tenant's Parties. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's members, shareholders, partners, officers, directors, employees, agents, successors and assigns (collectively, "Landlord Indemnified Parties") from and against any and all claims, defense costs, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises, the Building or any other portion of the Project that are caused or knowingly permitted by Tenant or any of Tenant's Parties. Tenant agrees to promptly notify Landlord of any release of Hazardous Materials in violation of Environmental Law in the Premises, the Building or any other portion of the Project which Tenant becomes aware of during the Term of this Lease, whether caused by Tenant, Tenant's Parties or any other persons or entities. In the event of any release of Hazardous Materials in violation of Environmental Law caused or permitted by Tenant or any of Tenant's Parties, Landlord shall have the right, but not the obligation, to cause Tenant to immediately take all steps Landlord reasonably deems necessary or appropriate to remediate such release and prevent any similar future release to the reasonable satisfaction of Landlord and Landlord's mortgagee(s). At all times during the Term of this Lease, Landlord will have the right, but not the obligation, to enter upon the Premises to inspect, investigate, sample and/or monitor the Premises to determine if Tenant is in compliance with the terms of this Lease regarding Hazardous Materials. Such inspections, investigations, and sampling are to be at Landlord's sole cost and will not be included in Operating Expenses; however, if any such inspections, investigations or sampling establish that Tenant has violated provisions of this Section 6.4.1, then the costs thereof shall be the responsibility of Tenant. Tenant will, upon the request of Landlord at any time during which Tenant is not in compliance with this Section 6.4.1, cause to be performed an environmental audit of the Premises at Tenant's expense by an established environmental consulting firm reasonably acceptable to Landlord. As used in this Lease, the term "Hazardous Materials" shall mean and include any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any law, statute, ordinance, rule, regulation, order or ruling of any agency of the State, the United States Government or any local governmental authority, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("PCBs"), and freon and other chlorofluorocarbons. The provisions of this Section 6.4.1 and Section 6.4.2 below will survive the expiration or earlier termination of this Lease.

6.4.2 Landlord's Environmental Representations and Indemnification. Landlord represents and warrants to Tenant that as of the date of this Lease and to Landlord's actual knowledge and except as disclosed in that certain Phase 1 Environmental Site Assessment dated July 21, 2003, prepared by ATC Associates Inc. (the "Environmental Report") (i) there are no Hazardous Materials in, on, under, below or otherwise located on or about the Project in violation of Environmental Law, and (ii) there has been no release or migration of any Hazardous Materials in violation of Environmental Law onto, beneath, upon or about the Project. Landlord shall indemnify, protect, defend and hold Tenant and Tenant's members, shareholders, partners, officers, directors, employees, agents, successors and assigns (collectively, "Tenant Indemnified Parties") harmless from and against any and all claims, defense costs, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs, (including, without limitation, clean-up, removal, remediation and restoration costs, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees and court costs) (collectively, "Claims"): (i) which arise or result from the presence of Hazardous Materials on, in, under or about any portion of the Project, except to the extent the presence of such Hazardous Materials was caused or knowingly permitted by Tenant or any of the Tenant's Parties or (ii) due to Landlord's breach of its foregoing representation. Notwithstanding the foregoing, Landlord's obligations under clause (i) of the preceding sentence shall apply only to Claims asserted against Tenant by third parties if the Hazardous Materials giving rise to such Claims were not caused or knowingly permitted by Landlord or any of the Landlord Indemnified Parties (for purposes of this sentence, "third parties" means persons or entities other than the Tenant's Parties or the Tenant Indemnified Parties). The provisions of this Section 6.4.2 will survive the expiration or earlier termination of this Lease. Landlord's actual knowledge means the actual knowledge of the following individual, without inquiry: David C. Thomas, Robert K. Worrell and Melanie Colbert, whom Landlord represents are the only agents or employees of Landlord who have or have had significant managerial responsibility for the Project. Landlord agrees to promptly notify Tenant of any release of Hazardous Materials in the Premises, the Building or any other portion of the Project in violation of Environmental Law which Landlord becomes aware of during the Term of this Lease, whether caused by Landlord, its agents, employees, tenants (other than Tenant), successors, assigns, licensees, contractors, or invitees or any other persons or entities. In the event of any release of Hazardous Materials in violation of Environmental Law caused or permitted by anyone other than Tenant or a Tenant's Party, Tenant shall have the right, but not the obligation, to cause Landlord to immediately take all steps required by Environmental Law to remediate such release.

6.4.3 Landlord's Termination Option for Certain Environmental Problems. If Hazardous Materials are present at the Premises that are required by Environmental Law to be remediated and Tenant is not responsible therefor pursuant to Section 6.4.1, Landlord shall either (i) remediate such Hazardous Materials to the extent required by Environmental Law (at no cost to Tenant but subject to inclusion in Operating Expenses to the extent permitted by Section 4.4), in which event this Lease shall continue in full force and effect or (ii) if the estimated cost to remediate such Hazardous Materials exceeds twelve (12) times the then Basic Rent, give written notice to Tenant, within thirty (30) days after receipt by Landlord of knowledge of the existence of such Hazardous Materials, of Landlord's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Landlord elects to give such a termination notice, Tenant may, within ten (10) days thereafter, give written notice to Landlord of Tenant's commitment to pay the amount by which the cost of the remediation of such Hazardous Materials exceeds an amount equal to twelve (12) times the then Basic Rent, in which case Tenant shall provide Landlord with such funds or satisfactory assurance thereof within thirty (30) days following such commitment. In such event, this Lease shall continue in full force and effect, and Landlord shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Tenant does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as the date specified in Landlord's termination notice. Notwithstanding the foregoing, if the remediation or the existence of the Hazardous Materials not caused or permitted by Tenant or Tenant Parties will prevent the conduct of Tenant's business within the Premises for more than one hundred eighty (180) days, Tenant may terminate this Lease by giving Landlord 60 days prior written notice.

6.5 Refuse and Sewage. Tenant agrees not to keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and agrees to regularly and frequently remove same from the Premises. Tenant shall keep all containers or other equipment used for storage of such materials in a clean and sanitary condition. Tenant shall properly dispose of all sanitary sewage and shall not use the sewage disposal system for the disposal of anything except sanitary sewage. Landlord shall keep the sewage disposal system free of all obstructions and in good operating condition (however, Tenant shall be responsible for any repair work necessitated by Tenant's misuse of the sewage disposal system). If the volume of Tenant's trash becomes excessive in Landlord's judgment, Landlord shall have the right to charge Tenant for additional trash disposal services and/or to require that Tenant contract directly for additional trash disposal services at Tenant's sole cost and expense.

6.6 Pest Control. Tenant shall, at its own cost, retain a licensed, bonded professional pest and sanitation control service to perform inspections of the Premises not less frequently than once every ninety (90) days for the purpose of eliminating infestation by and controlling the presence of insects, rodents and vermin and shall promptly cause any corrective or extermination work recommended by such service to be performed (except that Landlord shall, at its sole cost, promptly cause any corrective or extermination work recommended by such service

to be performed if such recommendation is made before the Commencement Date). Such work shall be performed pursuant to a written contract, a copy of which shall be delivered to Landlord by Tenant upon request.

6.7 Extraordinary Services. If Landlord incurs Operating Expenses or other costs for any increase in services provided to or for the benefit of Tenant above those services normally provided by Landlord to the other tenants in the Project and such increased services or costs result from any act, conduct, extraordinary use and/or special request by Tenant or its employees or customers, Tenant agrees to reimburse Landlord for the costs of such extraordinary services, within thirty (30) days of delivery to Tenant of written invoice for such extraordinary services. By way of example only, if Tenant should request extraordinary security services, lighting, cleaning and/or repair, such extraordinary services may be billed directly to Tenant as provided in this Section 6.7 and shall be reimbursed by Tenant to Landlord as provided herein.

7. Payments and Notices. All rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in Section 1.1 of the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and may be given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service), or by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at the address(es) designated in Section 1.2 of the Summary, or to Landlord at the address(es) designated in Section 1.1 of the Summary. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (ii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs. For purposes of this Section 7, a "business day" is Monday through Friday, excluding holidays observed by the United States Postal Service.

8. Brokers. Landlord has entered into an agreement with the real estate broker specified in Section 1.13 of the Summary as representing Landlord ("Landlord's Broker"), and Landlord shall pay any commissions or fees that are payable to Landlord's Broker with respect to this Lease in accordance with the provisions of a separate commission contract. Landlord shall have no further or separate obligation for payment of commissions or fees to any other real estate broker, finder or intermediary. Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Lease, other than Landlord's Broker and the broker specified in Section 1.13 of the Summary as representing Tenant ("Tenant's Broker"). Any commissions or fees payable to Tenant's Broker with respect to this Lease shall be paid exclusively by Landlord's Broker. Each party represents and warrants to the other, that, to its knowledge, no other broker, agent or finder (a) negotiated or was instrumental in negotiating or consummating this Lease on its behalf, or (b) is or might be entitled to a commission or compensation in connection with this Lease. Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Tenant of the foregoing representation, including, without limitation, any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by Tenant herein. Landlord shall indemnify, protect, defend (by counsel reasonably approved in writing by Tenant) and hold Tenant harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Landlord of the foregoing representation, including, without limitation, any claims that may be asserted against Tenant by any broker, agent or finder undisclosed by Landlord herein. The foregoing indemnities shall survive the expiration or earlier termination of this Lease.

9. Surrender; Holding Over.

9.1 Surrender of Premises. Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises to Landlord, and Tenant shall deliver exclusive possession of the Premises to Landlord broom clean and good condition and repair, reasonable wear and tear excepted (and casualty damage excepted if this Lease is terminated as a result thereof pursuant to Section 18), with all of Tenant's personal property (and those items, if any, of Tenant Improvements and Tenant Changes identified by Landlord pursuant to Section 12.2 below) removed therefrom and all damage caused by such removal repaired, as required pursuant to Sections 12.2 and 12.3 below. If, for any reason, Tenant fails to surrender the Premises on the expiration or earlier termination of this Lease (including upon the expiration of any subsequent month-to-month tenancy consented to by Landlord pursuant to Section 9.2 below), with such removal and repair obligations completed, then, in addition to the provisions of Section 9.3 below and Landlord's rights and remedies under Section 12.4 and the other provisions of this Lease, Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from such failure to surrender, including, without limitation, any claim made by any succeeding tenant based thereon. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

9.2 Holding Over. If Tenant holds over after the expiration or earlier termination of the Lease Term, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all Common Area Expenses and any other additional rent under this Lease), but at a Basic Rent equal to: (a) one hundred ten percent (110%) of the Basic Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination with respect to the first two (2) months of such holdover and (b) one hundred fifty percent (150%) of the Basic Rent applicable to the Premises immediately prior to the date of such expiration or termination with respect to subsequent months of such holdover. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a consent to a hold over hereunder or result in an extension of this Lease. Tenant shall pay an entire month's Basic Rent calculated in accordance with this Section 9.2 for any portion of a month it holds over and remains in

possession of the Premises pursuant to this Section 9.2.

9.3 No Effect on Landlord's Rights. The foregoing provisions of this Section 9 are in addition to, and do not affect, Landlord's right of re-entry or any other rights of Landlord hereunder or otherwise provided at law or in equity.

10. Taxes.

10.1 Real Property Taxes. Tenant shall pay Tenant's Share of Real Property Taxes in accordance with the provisions of Section 4. "Real Property Taxes" mean, collectively, all general and special real property taxes, assessments, and any similar impositions in-lieu of other impositions now or previously within the definition of real property taxes or assessments which may be levied or assessed by any lawful authority against the Project applicable to the period from the Commencement Date until the expiration or sooner termination of this Lease. Real Property Taxes are included within Operating Expenses, as set forth in Section 4.4. "Real Estate Taxes" does not include Landlord's federal or state income, franchise, gross receipts, inheritance or estate taxes, capital, stock, succession, gift, estate tax; any item to the extent otherwise included in Operating Expenses, or reserves for future Real Estate Taxes. Landlord shall reimburse Tenant for any amount paid by Tenant for Real Estate Taxes that is later refunded to Landlord or otherwise reduced after first deducting Landlord's reasonable costs of prosecution (which obligation survives termination of this Lease). During the Term, Tenant may contest, in good faith, the existence, amount or validity thereof, the amount of the damages caused thereby, or the extent of its or Landlord's liability related to Real Estate Taxes by appropriate proceedings, and Landlord shall use reasonable efforts to cooperate with Tenant's efforts related to same. Such contest will not excuse Tenant's obligations to continue to pay all Real Estate Taxes to Landlord as required under this Lease. Each such contest shall be promptly and diligently prosecuted by Tenant to a final conclusion, except that Tenant, so long as the conditions of this Section are at all times complied with, has the right to attempt to settle or compromise such contest through negotiations. Tenant shall pay any and all losses, judgments, decrees and costs in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein or in connection therewith, together with all penalties, fines, interest and costs thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof. No such contest shall subject Landlord to the risk of any civil or criminal liability or to any potential increases in Real Estate Taxes.

10.2 Personal Property Taxes. Tenant shall be liable for, and shall pay before delinquency, all taxes and assessments (real and personal) levied against (a) any personal property or trade fixtures placed by Tenant in or about the Premises (including any increase in the assessed value of the Premises based upon the value of any such personal property or trade fixtures), (b) any Tenant Improvements or alterations in the Premises (whether installed and/or paid for by Landlord or Tenant) and (c) this transaction or any document to which Tenant is a party creating or transferring an interest in the Premises. If any such taxes or assessments are levied against Landlord or Landlord's property, Landlord may, after written notice to Tenant (and under proper protest if requested by Tenant) pay such taxes and assessments, and Tenant shall reimburse Landlord therefor within ten (10) business days after demand by Landlord; provided, however, Tenant, at its sole cost and expense, shall have the right, with Landlord's cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes and assessments so paid under protest.

11. Possession; Condition of Premises; Repairs.

11.1 Delivery of Possession. Landlord will deliver possession of the Premises to Tenant on the date set forth in Section 1.7 of the Summary; however, if Landlord cannot deliver possession of the Premises to Tenant by such date because of Tenant-caused delays or Force Majeure Delays, this Lease will not be void or voidable, nor will Landlord be liable to Tenant for any loss or damage resulting from such delay. If the delay in possession is caused by Tenant (including delays caused by Tenant's failure to supply any item referred to in the following sentence), then the Term and Tenant's obligation to pay rent will commence as of the date the Commencement Date would have occurred but for Tenant's delay, even though Tenant does not yet have possession. Notwithstanding the foregoing, Landlord will not be obligated to deliver possession of the Premises to Tenant until Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant; (ii) the Security Deposit and the first installment of Basic Rent; and (iii) copies of policies of insurance or certificates thereof as required under Section 20 of this Lease. Further, notwithstanding the foregoing, if Landlord shall fail to deliver the Premises by June 1, 2004, for any reason other than a Force Majeure Delay or delays caused by Tenant's failure to supply any item referred to in the preceding sentence, and provided Tenant has obtained all building permits required for the Tenant Improvement Work, then Tenant shall be entitled to one and one-half (1½) days of free rent for each day that Landlord is late in so delivering the Premises (which is in addition to the rent abatement provided elsewhere in this Lease), and if such delivery has not occurred by July 1, 2004, for any reason other than a Force Majeure Delay or delays caused by Tenant's failure to supply any item referred to in the preceding sentence, and provided Tenant has obtained all building permits required for the Tenant Improvement Work, then Tenant may terminate this Lease by delivering written notice to Landlord prior to Landlord's delivery of the Premises, in which event Landlord shall return to Tenant advance rent and any other sums previously paid to Landlord, and Landlord and Tenant shall thereafter have no obligation under this Lease, except for those obligations that expressly survive termination. If Landlord shall fail to perform Landlord's Work in accordance with Landlord's Work Schedule for any reason other than a Force Majeure Delay or delays caused by an act or omission of Tenant or any of Tenant's Parties, and as the result thereof Tenant has been unable to substantially complete the Tenant Improvements by the date that is four (4) months following the Delivery Date, then Tenant shall be entitled to one and one-half (1½) days of free rent for each day that substantial completion of the Tenant Improvements is so delayed beyond four (4) months following the Delivery Date. The foregoing abatement

and termination rights shall be Tenant's sole remedy for a delay in delivery of possession, unless such delay arises from the intentional acts or omissions of Landlord.

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11.2 Condition of Premises. Tenant acknowledges that, except as otherwise expressly set forth in this Lease, neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Building or the Project or their condition, or with respect to the suitability thereof for the conduct of Tenant's business and Tenant shall accept the Premises in their as-is condition. Notwithstanding the forgoing, Landlord shall complete Landlord's Work (as defined in Schedule 2 to the attached Exhibit "C") at Landlord's sole cost, which is not part of the Tenant Improvements contemplated by the attached Exhibit "C". Landlord will warrant Landlord's Work to be free from construction or design defects for a period of one (1) year following Substantial Completion of Landlord's Work.

11.3 Landlord's Repair Obligations. Landlord shall, at Landlord's sole cost and expense (and not as part of Operating Expenses), repair, maintain and replace, as necessary, the shell and other structural portions of the Building and other structures on the Project (including the structural components of the roof, exterior walls and interior structural walls, concrete subflooring, and foundations) and underground utility facilities. Subject to Section 11.5, Landlord shall, as part of the Operating Expenses, repair, maintain and replace, as necessary, (a) the basic plumbing, heating, ventilating, air conditioning, sprinkler and electrical systems within the Building core, and for the first two (2) years of the initial Term the HVAC equipment installed as part of the Tenant Improvements, and (b) the Common Areas of the Project; provided, however, to the extent such maintenance, repairs or replacements are required as a result of any act, neglect, fault or omission of Tenant or any of Tenant's agents, employees, contractors, licensees or invitees, Tenant shall pay to Landlord, as additional rent, the costs of such maintenance, repairs or replacements. Landlord shall not be liable to Tenant for failure to perform any such repairs, maintenance or replacements, unless Landlord shall fail to make such repairs, maintenance or replacements and such failure shall continue for an unreasonable time following written notice from Tenant to Landlord of the need therefor. Without limiting the foregoing, but subject to Section 11.7 below, Tenant waives the right to make repairs at Landlord's expense or terminate this Lease under any law, statute or ordinance now or hereafter in effect (including the provisions of California Civil Code Sections 1932(1) or 1942 and any successor sections or statutes of a similar nature).

11.4 Tenant's Repair Obligations. Except for Landlord's obligations specifically set forth in this Lease, Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair and preserve and replace, as necessary, the Premises and all parts thereof including, without limitation, all Tenant Improvements (except that Tenant is not responsible for the repair or replacement of the HVAC equipment included in the Tenant Improvements during the first two (2) years of the initial Term), Tenant Changes, utility meters, pipes and conduits, all fixtures, furniture and equipment, locks, closing devices, security devices, windows, window sashes, casements and frames, floors and floor coverings, shelving, restrooms, if any, and any alterations, additions and other property located within the Premises in good condition and repair, reasonable wear and tear excepted. Tenant shall replace, at its expense, any and all plate and other glass in the Premises which is damaged or broken from any cause whatsoever except due to the gross negligence or willful misconduct of Landlord, its agents or employees. Such maintenance and repairs shall be performed with due diligence, lien-free and in a good and workmanlike manner, by licensed contractor(s) which are selected by Tenant and approved by Landlord, which approval Landlord shall not unreasonably withhold or delay. Except as otherwise expressly provided in this Lease, Landlord shall have no obligation to alter, remodel, improve, repair, renovate, redecorate or paint all or any part of the Premises.

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11.5 Landlord's Warranty. For a period of five (5) years following the Commencement Date, Landlord warrants the roof to be free from leaks and defects, and Landlord shall (as Tenant's sole and exclusive remedy for a breach of such warranty) repair or replace, at Landlord's cost and not as part of Operating Expenses, any such defect arising during such five (5) year period. In addition, Landlord warrants that, as of Substantial Completion of Landlord's Work, Landlord's Work and the Common Area shall be in compliance with all laws applicable thereto (including the ADA), and Landlord shall (as Tenant's sole and exclusive remedy therefor), correct any breach of such warranty, at Landlord's cost and not as part of Operating Expenses, promptly following receipt of written notice thereof from Tenant.

11.6 Building Repainting. Landlord shall, promptly following the expiration of the fifth (5th) year of the initial Term, repaint the exterior of the Building using Project standard paint and colors, the cost of which shall not be included in Operating Expenses.

11.7 Self-Help by Tenant. Notwithstanding any provision set forth herein to the contrary, if Tenant provides written notice to Landlord and any mortgagee of Landlord (of whom Tenant is notified), of an event or circumstance which requires the action of Landlord pursuant to Section 11.3 or 11.5 and which if not performed will materially and adversely interfere with Tenant's occupancy and Landlord fails to provide such action within a reasonable period of time, given the circumstances, after the receipt of such notice (but in any event not later than thirty (30) days after receipt of such notice, unless such repair would normally take longer and Landlord has commenced said repair work within said thirty (30) day period and continued to diligently complete the repair), then Tenant may proceed to take the required action upon delivery of an additional five (5) business days notice to Landlord and any mortgagee of Landlord (of whom Tenant is notified) (which additional notice must clearly specify that Tenant is taking such required action), and if such action was required under the terms of the Lease to be taken by Landlord and was not taken or commenced by Landlord within such five (5) business day period, then Tenant shall be entitled to prompt reimbursement by Landlord of Tenant's actual reasonable costs in taking such action. In the event Tenant takes such action, and such work will affect the Systems or the structural integrity of the Building, Tenant shall use only those contractors used by Landlord in the Building for work on such Systems or structural components unless such contractors are unwilling or unable to perform, or timely perform, such work (or Landlord fails to identify such contractors within five (5) days after Tenant's written request), in which event Tenant may utilize the services of any other qualified contractor which normally and regularly performs similar work in similar buildings. Within thirty (30) days after receipt of a reasonably particularized invoice from Tenant of its costs of taking action which Tenant claims should have been taken by Landlord, Landlord shall reimburse Tenant the amount set forth in such invoice. If, however, Landlord delivers to Tenant within thirty (30) days after receipt of Tenant's invoice, a written objection to the payment of such invoice, setting forth with reasonable particularity Landlord's reasons for its claim that such action did not have to be taken by Landlord pursuant to the terms of this Lease or that the charges are excessive (in which case Landlord shall pay the amount it contends would not have been excessive), then Tenant shall not be entitled to such reimbursement, but as Tenant's sole remedy, Tenant may proceed to claim a default by Landlord under this Lease

12. Alterations.

12.1 Tenant Changes; Conditions.

(a) Tenant shall not make any alterations, additions, improvements or decorations to the Premises (collectively, "Tenant Changes," and individually, a "Tenant Change") unless Tenant first obtains Landlord's prior written approval thereof, which approval Landlord shall not unreasonably withhold. Tenant's request for approval may also include Tenant's request that Landlord identify which, if any, of the Tenant Changes Landlord will require to be removed before the termination of this Lease (as contemplated under Section 12.2 below). Notwithstanding the foregoing, Landlord's prior approval shall not be required for any Tenant Change which satisfies all of the following conditions (hereinafter a "Pre-Approved Change"): (i) the costs of such Tenant Change does not exceed Five Thousand Dollars (\$5,000.00) individually; (ii) the costs of such Tenant Change when aggregated with the costs of all other Tenant Changes made by Tenant during the prior 12 months does not exceed Fifteen Thousand Dollars (\$15,000.00); (iii) Tenant delivers to Landlord final plans, specifications and working drawings for such Tenant Change at least ten (10) days prior to commencement of the work thereof; (iv) the Tenant Change does not affect the mechanical, electrical, plumbing or life safety systems of the Premises, the Building and/or the Project (collectively, the "Systems"), the roof or structural components of the Premises or the exterior of the Premises; (v) the Tenant Change does not trigger any legal requirement which would require Landlord to make any alteration or improvement to the Premises, Building or Project; and (vi) Tenant and such Tenant Change otherwise satisfy all other conditions set forth in this Section 12.1.

(b) After Landlord has approved the Tenant Changes and the plans, specifications and working drawings therefor (or is deemed to have approved the Pre-Approved Changes as set forth in Section 12.1(a) above), Tenant shall: (i) enter into an agreement for the performance of such Tenant Changes with licensed and bondable contractors and subcontractors selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld; (ii) before proceeding with any Tenant Change, provide Landlord with ten (10) days' prior written notice thereof; and (iii) pay to Landlord, within ten (10) days after written demand, the costs of any increased insurance premiums incurred by Landlord to include such Tenant Changes in the fire and extended coverage insurance obtained by Landlord pursuant to Section 21 below, if Landlord elects in writing to insure such Tenant Changes; provided, however, that Landlord

shall not be required to include the Tenant Changes under such insurance. If such Tenant Changes are not included in Landlord's insurance, Tenant shall insure the Tenant Changes under its casualty insurance pursuant to Section 20.1(a) below. In addition, before proceeding with any Tenant Change, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such Tenant Change; and (B) at Landlord's request, if the cost of work exceeds Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), a completion and lien indemnity bond, or other surety, satisfactory to Landlord for such Tenant Change. Landlord's approval of any contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability for any conduct or acts of such contractor(s) and/or subcontractor(s). Further, Landlord's approval of Tenant Changes and the plans therefor will create no liability or responsibility on Landlord's part concerning the completeness of same or their design sufficiency or compliance with laws.

- (c) All Tenant Changes shall be performed: (i) in accordance with the approved plans, specifications and working drawings; (ii) lien-free and in a good and workmanlike manner; (iii) in compliance with all laws, rules and regulations of all governmental agencies and authorities including, without limitation, applicable building permit requirements and the provisions of Title III of the Americans with Disabilities Act of 1990; (iv) in such a manner so as not to unreasonably interfere with the occupancy of any other tenant in the Building or any other building located within the Project, nor impose any additional expense upon nor delay Landlord in the maintenance and operation of the Building or any other building located within the Project; and (v) at such times, in such manner and subject to such rules and regulations as Landlord may from time to time reasonably designate.
- (d) Throughout the performance of the Tenant Changes, Tenant shall obtain, or cause its contractors to obtain, workers compensation insurance and commercial general liability insurance in compliance with the provisions of Section 20 of this Lease.

12.2 Removal of Tenant Changes and Tenant Improvements. All Tenant Changes and the initial Tenant Improvements in the Premises (whether installed or paid for by Landlord or Tenant), shall become the property of Landlord and shall remain upon and be surrendered with the Premises at the end of the Term of this Lease; provided, however, Landlord may, by written notice delivered on or before the expiration of the Lease Term (or upon any sooner termination of this Lease, identify those items of the Tenant Changes which Landlord shall require Tenant to remove at the end of the Term of this Lease; provided, however, if at the time of Tenant's request for Landlord's approval to a Tenant Change, Tenant also requests Landlord to identify whether or not Landlord will require the removal thereof, Landlord will make such identification at the time of Landlord's consent (and Landlord's failure to do so shall constitute Landlord's election not to require such removal). If Landlord requires Tenant to remove any such items as described above, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal.

12.3 Removal of Personal Property. All articles of personal property owned by Tenant or installed by Tenant at its expense in the Premises (including business and trade fixtures, furniture and movable partitions) shall be, and remain, the property of Tenant, and shall be removed by Tenant from the Premises, at Tenant's sole cost and expense, on or before the expiration or sooner termination of this Lease. Tenant shall repair any damage caused by such removal.

12.4 Tenant's Failure to Remove. If Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property, or any items of Tenant Improvements or Tenant Changes identified by Landlord for removal pursuant to Section 12.2 above, Landlord may, (without liability to Tenant for loss thereof), at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items in accordance with applicable law; and/or (b) upon ten (10) days' prior notice to Tenant, sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under applicable law. Landlord shall apply the proceeds of any such sale to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

12.5 Elevator and Fire Exit Stairways. Subject to coordination with the tenant under the BofA Lease, Tenant shall have access to the Building's freight elevator during normal business hours and for moving into or out of the Premises. Subject to compliance with the provisions of Section 12.1 above, Tenant may install an access control system in the freight elevator in order to secure the Premises from the remainder of the Building. In addition, Tenant may also use the fire exit stairways of the Building for employee ingress and egress to the Premises which, subject to compliance with the provisions of Section 12.1 above, may be integrated into Tenant's access control card reader system.

12.6 Battery Cabinet. Tenant desires to install a battery cabinet that provides DC power for Tenant's telephone system, which is approximately thirty-six inches (36") by thirty inches (30") with a heavy weight load. If Landlord or Tenant determines that, due to the weight load of the battery cabinet, it is inadvisable to install the battery cabinet in the Premises, Landlord will locate space on a ground floor of the Building within which Tenant may install the battery cabinet. For purposes of Sections 11.4, 17 and 20, the battery cabinet will be deemed to constitute a portion of the Premises although it is not located within the Premises, and the same shall constitute a Tenant Change.

12.7 Telecommunications Conduit and Cabling. Subject to compliance with Section 12.1 above, Tenant may install underground conduit and cabling from the street to the Building, and conduit and cabling within the risers of the Building to the Premises, for purposes of providing telecommunications service to the Premises.

13. Liens. Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Project, the Building or the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any other act or omission of Tenant or Tenant's agents, employees, contractors, licensees or invitees. Tenant shall, at Landlord's request, provide Landlord with enforceable, conditional and final lien releases (and other reasonable evidence reasonably requested by Landlord to demonstrate protection from liens) from all persons furnishing labor and/or materials with respect to the Premises. Landlord shall have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Tenant shall, at its sole cost, immediately cause such lien to be released of record or bonded so that it no longer affects title to the Project, the Building or the Premises. If Tenant fails to cause such lien to be so released or bonded within twenty (20) days after filing thereof, Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord within five (5) days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord. Notice is hereby given that Landlord shall not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Premises through or under Tenant, and that no mechanics' or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in the Premises.

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14. Assignment and Subletting.

14.1 Restriction on Transfer. Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises (collectively and individually, a "Transfer"), without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold. In no event may Tenant encumber or hypothecate this Lease. The consent by Landlord to any Transfer shall not constitute a waiver of the necessity for such consent to any subsequent Transfer. This prohibition against Transfers shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease is transferred by Tenant, or if the Premises or any part thereof are transferred or occupied by any person or entity other than Tenant or its Permitted Transferee, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such Transfer, occupancy or collection shall be deemed a waiver on the part of Landlord, or the acceptance of the assignee, subtenant or occupant as Tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained unless expressly made in writing by Landlord. Irrespective of any Transfer, Tenant shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Without limiting in any way Landlord's right to withhold its consent on any reasonable grounds, it is agreed that Landlord will not be acting unreasonably in refusing to consent to a Transfer if, in Landlord's opinion, (i) the proposed assignee or subtenant does not have the financial capability to fulfill the obligations imposed by the Transfer, (ii) the proposed Transfer involves a change of use of the Premises from that specified herein or would violate any exclusive use covenant to which Landlord is bound, or (iii) the proposed assignee or subtenant is not, in Landlord's reasonable opinion, of reputable or good character.

14.2 Transfer Notice. If Tenant desires to effect a Transfer, then at least fourteen (14) days prior to the date when Tenant desires the Transfer to be effective (the "Transfer Date"), Tenant agrees to give Landlord a notice (the "Transfer Notice"), stating the name, address and business of the proposed assignee, sublessee or other transferee (sometimes referred to hereinafter as "Transferee"), reasonable information (including references) concerning the character, ownership, and financial condition of the proposed Transferee, the Transfer Date, any ownership or commercial relationship between Tenant and the proposed Transferee, and the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord may reasonably require. The Transfer Notice may include a reminder to Landlord that Landlord's failure to respond within seven (7) business days of Landlord's receipt of the Transfer Notice constitutes Landlord's consent to the proposed Transfer (as contemplated under Section 14.3 below).

14.3 Landlord's Options. Within seven (7) business days of Landlord's receipt of any Transfer Notice, and any additional information requested by Landlord concerning the proposed Transferee's financial responsibility, Landlord will notify Tenant of its election to do one of the following: (i) consent to the proposed Transfer subject to such reasonable conditions as Landlord may impose in providing such consent; or (ii) refuse such consent with an explanation, which refusal shall be on reasonable grounds. Landlord's failure to respond in writing within the seven (7) day period constitutes Landlord's consent to the proposed Transfer, provided that the Transfer Notice informs Landlord that Landlord's failure to respond within such period will constitute Landlord's consent.

14.4 Additional Conditions. A condition to Landlord's consent to any Transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer or hypothecation, in form and substance reasonably satisfactory to Landlord. Tenant agrees to pay to Landlord, as additional rent, fifty percent (50%) of all sums and other consideration payable to and for the benefit of Tenant by the Transferee (other than a Permitted Transferee) in excess of the rent payable under this Lease for the same period and portion of the Premises. In calculating excess rent or other consideration which may be payable to Landlord under this Section 14.4, Tenant will be entitled to deduct commercially reasonable third party brokerage commissions, tenant improvement costs, and attorneys' fees and other amounts reasonably and actually expended by Tenant in connection with such assignment or subletting if acceptable written evidence of such expenditures is provided to Landlord. Except as otherwise provided in Section 14.6, no Transfer will release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. Landlord may require that any Transferee remit directly to Landlord on a monthly basis, all monies due Tenant by said Transferee, and each sublease shall provide that if Landlord gives the sublessee written notice that Tenant is in default under this Lease, the sublessee will thereafter make all payments due under the sublease directly to or as directed by Landlord, which payments will be credited against any payments due under this Lease. Tenant hereby irrevocably and unconditionally assigns to Landlord as security for Tenant's obligations under this Lease all rents and other sums payable under any sublease of the Premises; provided, however, that Landlord hereby grants Tenant a license to collect all such rents and other sums so long as Tenant is not in default under this Lease. Tenant shall, within ten (10) days after the execution and delivery of any assignment or sublease, deliver a duplicate original copy thereof to Landlord. Consent by Landlord to one Transfer will not be deemed consent to any subsequent Transfer. In the event of default by any Transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor. If Tenant effects a Transfer or requests the consent of Landlord to any Transfer (whether or not such Transfer is consummated), then, upon demand, and as a condition precedent to Landlord's consideration of the proposed assignment or sublease, Tenant agrees to pay Landlord a non-refundable administrative fee of Five Hundred Dollars (\$500.00), plus Landlord's reasonable attorneys' fees and other costs incurred by Landlord in reviewing such proposed assignment or sublease (whether attributable to Landlord's in-house attorneys or paralegals or otherwise), but not to exceed One Thousand Dollars and No/100 (\$1,000). Acceptance of the Five Hundred Dollar (\$500.00) administrative fee and/or reimbursement of Landlord's attorneys' and/or paralegal fees shall in no event obligate Landlord to consent to any proposed Transfer. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed Transfer or otherwise has breached its obligations under this Section 14, Tenant's and such Transferee's only remedy shall be to seek a declaratory judgment and/or injunctive relief, and Tenant, on behalf of itself and, to the extent permitted by law, such proposed Transferee waives all other remedies against Landlord, including without limitation, the right to seek monetary damages or to terminate this Lease; provided, however, (i) the foregoing waiver shall not apply if Landlord's conduct has been in bad faith and (ii) if such injunctive or declaratory relief is not available within thirty (30) days after Tenant files the appropriate legal action, Tenant may seek monetary damages against Landlord.

14.5 Permitted Transfers. Notwithstanding the provisions of this Section 14 to the contrary, Tenant may assign this Lease or sublet the Premises or any portion thereof (herein, a "Permitted Transfer"), without Landlord's consent to any entity that controls, is controlled by or is under common control with Tenant or Guarantor, or to any entity resulting from a merger or consolidation with Tenant or Guarantor, or to any person or entity which acquires all the assets of Tenant's business as a going concern (each, a "Permitted Transferee"), provided that: (a) at least twenty (20) days prior to such assignment or sublease, Tenant delivers to Landlord the financial statements and other financial and background information of the assignee or sublessee as described in Section 14.2 above; (b) in the case of an assignment, the assignee assumes, in full, the obligations of Tenant under this Lease (or if a sublease, the sublessee of a portion of the Premises or Term assumes, in full, the obligations of Tenant with respect to such portion, other than the payment of rent) pursuant to a commercially reasonable assumption agreement, a fully executed copy of which is delivered to Landlord within twenty (20) days following the effective date of such assignment or subletting; (c) Tenant remains fully liable under this Lease; and (d) such transaction is not entered into as a subterfuge to avoid the restrictions and provisions of this Section 14. The parties acknowledge that Tenant intends for Guarantor to occupy a portion of the Premises, and such arrangement requires no further consent or documentation for so long as Guarantor agrees to be bound by the provisions of Section 17, 20 and 22 as if Guarantor were Tenant.

14.6 Release of Tenant and Guarantor. In the event of an assignment and assumption of this Lease that is consented to by Landlord or that satisfies the requirements of Section 14.5, and provided that as of the effective date of such assignment and assumption (i) the Minimum Financial Criteria (as defined below) are satisfied, (ii) no default exists under this Lease and (iii) no circumstance exists that would, with the giving of notice, the passage of time, or both, constitute a default under this Lease, then the original Tenant and Guarantor shall be released from all obligations first arising under this Lease from and after the effective date of such assignment and assumption. The "Minimum Financial Criteria" means (a) the assuming assignee has the same or greater tangible net worth and EBITDA as of the effective date of such assignment and assumption as the original Tenant and Guarantor collectively had as of the date hereof and a debt-to-equity ratio not exceeding 3-to-1 as of the effective date of such assignment and assumption and (b) Landlord has determined, in Landlord's sole and absolute discretion, that the assuming assignee's tangible net worth and EBITDA for the reasonably foreseeable future after the effective date of such assignment and assumption will continue to be no less than its tangible net worth and EBITDA as of the effective date of such assignment and assumption and that its debt-to-equity ratio will not exceed 3-to-1 for the reasonably foreseeable future after the effective date of such assignment and assumption. Tangible net worth, EBITDA and the debt-to-equity ratio under this Section 14.6 shall be determined in accordance with generally accepted accounting principles, consistently applied, as disclosed by audited financial statements reasonably acceptable to Landlord. "EBITDA" means earnings before interest, taxes, depreciation and amortization.

15. Entry by Landlord. Landlord and its employees and agents shall at all reasonable times have the right to enter the Premises to inspect the same, to supply any service required to be provided by Landlord to Tenant under this Lease, to exhibit the Premises to prospective lenders or purchasers (or during the last year of the Term, to prospective tenants), to post notices of non-responsibility, and/or to alter, improve or repair the Premises or any other portion of the Building, all without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and without abatement of rent. In exercising such entry rights, Landlord shall endeavor to minimize, to the extent reasonably practicable, the interference with Tenant's business, and shall provide Tenant with reasonable advance written notice of such entry (except in emergency situations and for providing scheduled services, if any). Landlord shall have the means which Landlord may deem proper to open Tenant's doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises in accordance with this Section 15 obtained by Landlord by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, or grounds for any abatement or reduction of rent and Landlord shall not have any liability to Tenant for any damages or losses on account of any such entry by Landlord except, subject to the provisions of Section 22.1, to the extent of Landlord's gross negligence or willful misconduct.

16. Utilities and Services.

16.1 Tenant Responsibilities. Tenant shall be solely responsible for and shall promptly pay all charges for heat, air conditioning, water, gas, electricity or any other utility used, consumed or provided in, furnished to or attributable to the Premises at the rates charged by the supplying utility companies and/or Landlord. Should Landlord elect to supply any or all of such utilities, Tenant agrees to purchase and pay for the same as additional rent as apportioned by Landlord. The rate to be charged to Landlord to Tenant shall not exceed the rate charged to Landlord by any supplying utility. Tenant shall reimburse Landlord within ten (10) days of billing for fixture charges and/or water tariffs, if applicable, which are charged to Landlord by local utility companies. Landlord will notify Tenant of this charge as soon as it becomes known. This charge will increase or decrease with current charges being levied against Landlord, the Premises or the Building by the local utility company, and will be due as additional rent. Except as provided below, in no event shall Landlord be liable for any interruption or failure in the supply of any such utility services to Tenant.

An "Abatement Event" shall be defined as an event that prevents Tenant from using the Premises or any portion thereof, as a result of any failure of utility service to the Premises provided by Landlord, where (i) Tenant's occupancy of the Premises is materially and adversely affected and (ii) such failure is caused by a circumstance within the reasonable control of Landlord or the negligence or willful misconduct of Landlord, its agents, employees or contractors. Tenant shall give Landlord and any mortgagee of Landlord (of whom Tenant is notified) notice ("Abatement Notice") of any such Abatement Event, and if such Abatement Event continues beyond the "Eligibility Period" (as that term is defined below), then the Basic Rent and Tenant's Share of Operating Expenses shall be abated entirely or reduced, as the case may be, after expiration of the Eligibility Period for such time that Tenant's occupancy is so affected, in the proportion that the rentable area of the affected portion of the Premises bears to the total rentable area of the Premises. The term "Eligibility Period" shall mean a period of forty-eight (48) hours after Landlord's receipt of the applicable Abatement Notice. Such right to abate Basic Rent and Tenant's Share of Operating Expenses shall be Tenant's sole and exclusive remedy at law or in equity for an Abatement Event, except if the Abatement Event continues for more than sixty (60) consecutive days after the Eligibility Period and affects a material portion of the Premises, in which case Tenant may terminate this Lease by written notice to Landlord at any time the Abatement Event continues to exist. The provisions of this Section 16.1 shall not apply in the event of a casualty, as Section 18.1 governs Tenant's

rights in the event of a casualty.

16.2 Electrical Capacity and Demising Walls. Landlord represents and warrants to Tenant that, as of the Commencement Date, the electrical systems serving the Premises shall have the capacity to provide three-phase four-wire 480-volt 1,000-amp service to the Premises and that such capacity shall not be utilized by Landlord to service the Building's central HVAC system or other general Building systems. Landlord represents and warrants to Tenant that the existing demising walls within the Premises are non-structural and can be demolished to accommodate Tenant's space plan for the Premises.

16.3 Emergency Generator. Tenant acknowledges that the existing 750 KW emergency diesel powered electrical generator services the entire Building and that Tenant's use thereof shall be in common with the other tenants of the Building throughout the entire Term. Notwithstanding the existence of such emergency generator, except as expressly provided in Section 16.1 above, Landlord shall not be liable for any failure of the emergency generator to provide emergency power to the Premises.

17. Indemnification and Exculpation.

17.1 Tenant's Assumption of Risk and Waiver. Except to the extent such matter is not covered by the insurance required to be maintained by Tenant under this Lease and such matter is attributable to the gross negligence or willful misconduct or breach of this Lease by Landlord or any of the Landlord Indemnified Parties, Landlord shall not be liable to Tenant, Tenant's employees, agents or invitees for: (i) any damage to property of Tenant, or of others, located in, on or about the Premises, (ii) the loss of or damage to any property of Tenant or of others by theft or otherwise, (iii) any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance of plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature, or (iv) any such damage caused by other tenants or persons in the Premises, occupants of adjacent property of the Project, or the public, or caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Premises shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, unless such damage shall be caused by the gross negligence or willful misconduct of Landlord. Landlord or its agents shall not be liable for interference with the light or other intangible rights. Similarly, Tenant shall not be liable to Landlord for any matter that is covered Landlord's insurance, or would be covered by insurance required to be maintained by Landlord under this Lease.

17.2 Indemnification. Tenant shall be liable for, and shall indemnify, defend, protect and hold the Landlord Indemnified Parties harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including attorneys' fees and court costs (collectively, "Indemnified Claims"), arising or resulting from (a) any occurrence at the Premises following the date Landlord delivers possession of the Premises to Tenant, unless caused by the gross negligence or willful misconduct of Landlord or its agents, employees or contractors, (b) any negligent or willful act or omission of Tenant or any of Tenant's Parties; (c) the use of the Premises and Common Areas and conduct of Tenant's business by Tenant or any Tenant's Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any Tenant's Parties, in or about the Premises, the Building or elsewhere on the Project; and/or (d) any default by Tenant of any obligations on Tenant's part to be performed under the terms of this Lease. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel approved in writing by Landlord, which approval shall not be unreasonably withheld. Conversely, Landlord shall indemnify, defend, protect and hold Tenant and the Tenant Indemnified Parties harmless from and against all Indemnified Claims arising or resulting from any negligent or willful act or omission of Landlord or any of the Landlord Indemnified Parties or any of their agents, employees, contractors, or invitees or any default by Landlord of any obligations on Landlord's part to be performed under the terms of this Lease. In case any action or proceeding is brought against Tenant or any Tenant Indemnified Parties by reason of any such Indemnified Claims, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel approved in writing by Tenant, which approval shall not be unreasonably withheld. The parties' indemnification obligations under this Section 17.2 are subject to the waivers contained in Section 22.

17.3 Survival; No Release of Insurers. The parties' indemnification obligation under Section 17.2, shall survive the expiration or earlier termination of this Lease. The parties' covenants, agreements and indemnification in Sections 17.1 and 17.2 above, are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Tenant or Landlord, pursuant to the provisions of this Lease.

18. Damage or Destruction.

18.1 Landlord's Rights and Obligations. In the event the Premises are damaged by fire or other casualty to an extent not exceeding twenty-five percent (25%) of the full replacement cost thereof, and Landlord's contractor estimates in a writing delivered to the parties that the damage thereto is such that the Premises may be repaired, reconstructed or restored to substantially its condition immediately prior to such damage within one hundred eighty (180) days from the date of such casualty, and Landlord will receive insurance proceeds sufficient

to cover the costs of such repairs, reconstruction and restoration (including proceeds from Tenant and/or Tenant's insurance which Tenant is required to deliver to Landlord pursuant to Section 18.2 below), then Landlord shall commence and proceed diligently with the work of repair, reconstruction and restoration and this Lease shall continue in full force and effect. If, however, the Premises are damaged to an extent exceeding twenty-five percent (25%) of the full replacement cost thereof, or Landlord's contractor estimates that such work of repair, reconstruction and restoration will require longer than one hundred eighty (180) days to complete, or Landlord will not receive insurance proceeds (and/or proceeds from Tenant, as applicable) sufficient to cover the costs of such repairs, reconstruction and restoration, then Landlord may elect to either:

- (a) repair, reconstruct and restore the portion of the Premises damaged by such casualty (including the Tenant Improvements, the Tenant Changes that Landlord elects to insure pursuant to Section 12.1(b) and, to the extent of insurance proceeds received from Tenant, the Tenant Changes that Tenant insures pursuant to Section 12.1(b) and/or 20.1(a)), in which case this Lease shall continue in full force and effect; or
- (b) terminate this Lease effective as of the date which is thirty (30) days after Tenant's receipt of Landlord's election to so terminate.

For purposes of determining whether Landlord will receive insurance proceeds sufficient to cover the cost of such repairs, reconstruction and restoration, any deductible amounts carried by Landlord will be deemed insurance proceeds, and if Landlord has failed to maintain the insurance required of Landlord under this Lease, Landlord will be deemed to have received sufficient insurance proceeds.

Under any of the conditions of this Section 18.1, Landlord shall give written notice to Tenant of its intention to repair or terminate within thirty (30) days after the occurrence of such casualty. Notwithstanding the foregoing, if the expected period of completion of the restoration exceeds one hundred eighty (180) days from the date of the casualty, Tenant may terminate this Lease by giving Landlord notice of termination within thirty (30) days after Tenant learns of the expected period of re-construction.

18.2 Tenant's Costs and Insurance Proceeds. In the event of any damage or destruction of all or any part of the Premises, Tenant shall immediately: (a) notify Landlord thereof; and (b) deliver to Landlord all insurance proceeds received by Tenant with respect to the Tenant Improvements and Tenant Changes in the Premises to the extent such items are not covered by Landlord's casualty insurance obtained by Landlord pursuant to Section 21 below (excluding proceeds for Tenant's furniture and other personal property) and Landlord is reconstructing the Tenant Improvements and Tenant Changes, whether or not this Lease is terminated as permitted in this Section 18, and Tenant hereby assigns to Landlord all rights to receive such insurance proceeds; provided, however, if this Lease is terminated as the result of the casualty, Tenant will be entitled to all insurance proceeds from Tenant's insurance on account of Tenant Changes and any portion of the Tenant Improvements funded from Tenant's own funds (rather than from the Improvement Allowance).

18.3 Abatement of Rent. In the event that as a result of any such damage, repair, reconstruction and/or restoration of the Premises, Tenant's use of any portion of the Premises is substantially impaired, and Tenant does not use the Premises or the portion thereof, then the rent shall be abated or reduced, as the case may be, during the period that Tenant continues to be so affected and does not use the Premises or portion thereof, in the proportion that the rentable square feet of the affected portion of the Premises that Tenant does not use bears to the total rentable square feet of the Premises. Notwithstanding the foregoing to the contrary, if the damage is due to the willful misconduct of Tenant or any Tenant's Parties, there shall be no abatement of rent. Except for abatement of rent as provided hereinabove, Tenant shall not be entitled to any compensation or damages for loss of, or interference with, Tenant's business or use or access of all or any part of the Premises resulting from any such damage, repair, reconstruction or restoration.

18.4 Inability to Complete. Notwithstanding anything to the contrary contained in this Section 18, if Landlord is obligated or elects to repair, reconstruct and/or restore the damaged portion of the Premises pursuant to Section 18.1 above, but is delayed from completing such repair, reconstruction and/or restoration beyond the date which is the forty-five (45) days after later to occur of the date estimated by Landlord's contractor for completion thereof pursuant to Section 18.1 or one hundred eighty (180) days after the casualty, by reason of any causes beyond the reasonable control of Landlord (including, without limitation, any delay due to Force Majeure Delays as defined in Section 32.16, and delays caused by Tenant or any Tenant's Parties), then either party may elect to terminate this Lease upon thirty (30) days' prior written notice to the other; provided, however, Tenant may not so elect to terminate this Lease if the reason for such delay was caused by Tenant or any of Tenant's Parties.

18.5 Damage to the Project. If there is a total destruction of the Project or a partial destruction of the Project, the cost of restoration of which would exceed one-third (1/3) of the then replacement value of the Project, by any cause whatsoever, whether or not insured against and whether or not the Premises are partially or totally destroyed, Landlord may within a period of thirty (30) days after the occurrence of such destruction, notify Tenant in writing that it elects not to so reconstruct or restore the Project, in which event this Lease shall cease and terminate as of the date of such destruction.

18.6 Damage Near End of Term. In addition to their termination rights in Sections 18.1 and 18.4 above, Landlord and Tenant shall have the right to terminate this Lease if any damage to the Building or Premises occurs during the last twelve (12) months of the Term of this Lease (as it may have been extended) and Landlord's contractor estimates in a writing delivered to the parties that the repair, reconstruction or restoration of such damage cannot be completed within the earlier of (a) the scheduled expiration date of the Lease Term, or

(b) thirty (30) days after the date of such casualty.

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18.7 Waiver of Termination Right. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, the parties hereby waive the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 (and any successor statutes thereof permitting the parties to terminate this Lease as a result of any damage or destruction).

19. Eminent Domain.

19.1 Substantial Taking. Subject to the provisions of Section 19.4 below, in case the whole of the Premises, or such part thereof as shall substantially interfere with Tenant's use and occupancy of the Premises as reasonably determined by Tenant, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, either party shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority.

19.2 Partial Taking; Abatement of Rent. In the event of a taking of a portion of the Premises which does not substantially interfere with the conduct of Tenant's business, then neither party shall have the right to terminate this Lease and Landlord shall thereafter proceed to make a functional unit of the remaining portion of the Premises (but only to the extent Landlord receives proceeds therefor from the condemning authority), and rent shall be abated with respect to the part of the Premises which Tenant shall be so deprived on account of such taking.

19.3 Condemnation Award. Subject to the provisions of Section 19.4 below, in connection with any taking of the Premises or the Building, Landlord shall be entitled to receive the entire amount of any award which may be made or given in such taking or condemnation, and Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking; provided, however, if any portion of the Premises is taken, Tenant shall be granted the right to recover from the condemning authority (but not from Landlord) any compensation as may be separately awarded or recoverable by Tenant for the taking of Tenant's furniture, fixtures, equipment and other personal property within the Premises, for Tenant's relocation expenses, and for any loss of goodwill or other damage to Tenant's business by reason of such taking. Landlord and Tenant shall equally share that portion of the condemnation award attributable to any bonus or excess value of this Lease.

19.4 Temporary Taking. In the event of a taking of the Premises or any part thereof for temporary use, (a) this Lease shall be and remain unaffected thereby and rent shall not abate, and (b) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Term, provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, Tenant shall perform its obligations under Section 9 with respect to surrender of the Premises and shall pay to Landlord the portion of any award which is attributable to any period of time beyond the Term expiration date. For purpose of this Section 19.4, a temporary taking shall be defined as a taking for a period of one hundred eighty (180) days or less.

19.5 Waiver of Termination Right. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of a taking. Accordingly, the parties waive the provisions of the California Code of Civil Procedure Section 1265.130 and any successor or similar statutes permitting the parties to terminate this Lease as a result of a taking.

20. Tenant's Insurance.

20.1 Types of Insurance. On or before the earlier of the Commencement Date or the date Landlord delivers possession of the Premises to Tenant, and continuing thereafter until the expiration of the Term, Tenant shall obtain and keep in full force and effect, the following insurance:

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- (a) Special Form (fka All Risk) insurance, including fire and extended coverage, sprinkler leakage, vandalism, malicious mischief upon property of every description and kind owned by Tenant and located in the Premises or the Building, or for which Tenant is legally liable or installed by or on behalf of Tenant including, without limitation, furniture, equipment and any other personal property, and any Tenant Changes (but excluding the Tenant Improvements and any Tenant Changes that Landlord elects to insure pursuant to Section 12.1(b) above), in an amount not less than the full replacement cost thereof. In the event that there shall be a dispute as to the amount which comprises full replacement cost, the decision of Landlord or the mortgagees of Landlord shall be presumptive.
- (b) Commercial general liability insurance coverage, on an occurrence basis, including personal injury, bodily injury (including wrongful death), broad form property damage, operations hazard, owner's protective coverage, contractual liability (including Tenant's indemnification obligations under this Lease, including Section 17 hereof), liquor liability (if Tenant serves alcohol on the Premises), products and completed operations liability, and owned/non-owned auto liability, with a general aggregate of not less than Two Million Dollars (\$2,000,000) and with "umbrella" or "excess liability" coverage of not less than Seven Million Dollars (\$7,000,000). The limits of such commercial general liability insurance shall be increased every five (5) years during the Term of this Lease to an amount reasonably required by Landlord.
- (c) Worker's compensation and employer's liability insurance, in statutory amounts and limits, covering all persons employed in connection with any work done in, on or about the Premises for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Premises.
- (d) Loss of income, extra expense and business interruption insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises, Tenant's parking areas or to the Building as a result of such perils. Tenant may elect to self-insure the risks described in this Section 20.1(d), in which event the provisions of Section 20.2 below shall not apply to such insurance but the waivers provided in Section 22 shall apply as if Tenant obtained such insurance from a third-party.

Notwithstanding the foregoing, if Tenant provides evidence reasonably satisfactory to Landlord that any of the insurance required in this Section 20.1 is no longer generally available in the marketplace, the parties shall cooperate with each other to modify the requirements of this Section 20.1 in order to provide reasonable substitute insurance coverage that is generally available in the marketplace.

20.2 Requirements. Each policy required to be obtained by Tenant hereunder shall: (a) be issued by insurers which are approved by Landlord and/or Landlord's mortgagees and are authorized to do business in the state in which the Building is located and rated not less than financial class VII, and not less than policyholder rating A- in the most recent version of Best's Key Rating Guide; (b) be in form reasonably satisfactory from time to time to Landlord; (c) name Tenant as named insured thereunder and shall name Landlord and, at Landlord's request, such other persons or entities of which Tenant has been informed in writing, as additional insureds thereunder, all as their respective interests may appear; (d) not have a deductible amount exceeding that which is commercially reasonable, which deductible amount shall be deemed self-insured with full waiver of subrogation; (e) specifically provide that the insurance afforded by such policy for the benefit of additional insureds shall be primary, and any insurance carried by the additional insureds shall be excess and non-contributing; (f) contain an endorsement that the insurer waives its right to subrogation as described in Section 22 below; (g) require the insurer to notify Landlord and the other additional insureds in writing not less than thirty (30) days prior to any material change, reduction in coverage, cancellation or other termination thereof; (h) contain a cross liability or severability of interest endorsement; (i) be in amounts sufficient at all times to satisfy any coinsurance requirements thereof and (j) provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or omission of Landlord or Tenant which might, absent such provision, result in a forfeiture of all or a part of such insurance payment. Tenant agrees to deliver to Landlord, as soon as practicable after the placing of the required insurance, but in no event later than the date Tenant is required to obtain such insurance as set forth in Section 20.1 above, certificates from the insurance company evidencing the existence of such insurance and Tenant's compliance with the foregoing provisions of this Section 20. Tenant shall cause replacement certificates to be delivered to Landlord not less than thirty (30) days prior to the expiration of any such policy or policies. If any such initial or replacement certificates are not furnished within the time(s) specified herein, and such failure is not cured within ten (10) days following written notice thereof to Tenant, Tenant shall be deemed to be in material default under this Lease, without the benefit of any additional notice or cure period provided in Section 23.1 below, and Landlord shall have the right, but not the obligation, to procure such policies and certificates at Tenant's expense.

20.3 Effect on Insurance. Tenant shall not do or permit to be done anything which will (a) violate or invalidate any insurance policy maintained by Landlord or Tenant hereunder, or (b) increase the costs of any insurance policy maintained by Landlord pursuant to Section 21 or otherwise with respect to the Building or the Project. If Tenant's conduct of its business in or on the Premises (as opposed to the mere occupancy of the Premises) results in any increase in premiums for any insurance carried by Landlord with respect to the Building or the Project, Tenant shall pay such increase as additional rent within ten (10) days after being billed therefor by Landlord. If any insurance coverage carried by Landlord pursuant to Section 21 or otherwise with respect to the Building or the Project shall be cancelled or reduced (or cancellation or reduction thereof shall be threatened) by reason of the conduct of Tenant's business or the conduct by anyone permitted by Tenant to be upon the Premises, and if Tenant fails to remedy such condition within ten (10) business days after notice thereof, Tenant shall be deemed to be in default under this Lease, without the benefit of any additional notice or cure period specified in Section 23.1 below, and Landlord shall have all remedies provided in this Lease, at law or in equity, including, without limitation, the right (but not the obligation) to enter upon the Premises and attempt to remedy such condition at Tenant's cost.

21. Landlord's Insurance. During the Term, Landlord shall insure the Common Area improvements, the Building, the Premises, Landlord's Work, and the Tenant Improvements (excluding, however, Tenant's furniture, equipment and other personal property and Tenant Changes, unless Landlord otherwise elects to insure the Tenant Changes pursuant to Section 12.1(b) above) against damage by fire and standard extended coverage perils and with vandalism and malicious mischief endorsements, and up to one year's rental loss coverage. At Landlord's option, Landlord may procure, earthquake damage coverage, and such additional coverage as Landlord reasonably deems appropriate. Landlord shall also carry commercial general liability insurance, in such reasonable amounts and with such reasonable deductibles as would be carried by a prudent owner of a similar building in the state in which the Building is located. At Landlord's option, all such insurance may be carried under any blanket or umbrella policies which Landlord has in force for other buildings and projects. Landlord may, but shall not be obligated to, carry at Landlord's sole cost any other form or forms of insurance as Landlord or the mortgagees or ground lessors of Landlord may reasonably determine is advisable. The cost of insurance obtained by Landlord pursuant to this Section 21 (including commercially reasonable deductibles) shall be included in Operating Expenses.

22. Waivers of Subrogation.

22.1 Mutual Waiver of Parties. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant hereby waive their rights against each other with respect to any claims or damages or losses which are caused by or result from (a) occurrences insured against under any insurance policy (other than commercial general liability insurance) carried by Landlord or Tenant (as the case may be) pursuant to the provisions of this Lease and enforceable at the time of such damage or loss, or (b) occurrences which would have been covered under any insurance (other than commercial general liability insurance) required to be obtained and maintained by Landlord or Tenant (as the case may be) under Sections 20 and 21 of this Lease (as applicable) had such insurance been obtained and maintained as required therein. The foregoing waivers shall be in addition to, and not a limitation of, any other waivers or releases contained in this Lease, and shall include deductibles and self-insured retentions.

22.2 Waiver of Insurers. Each party shall cause each insurance policy (other than commercial general liability insurance) required to be obtained by it pursuant to Sections 20 and 21 to provide, that the insurer waives all rights of recovery by way of subrogation against either Landlord or Tenant, as the case may be, in connection with any claims, losses and damages covered by such policy. If either party fails to maintain any such insurance required hereunder, such insurance shall be deemed to be self-insured with a deemed full waiver of subrogation as set forth in the immediately preceding sentence.

23. Tenant's Default and Landlord's Remedies.

23.1 Tenant's Default. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

- (a) the failure by Tenant to make any payment of rent or additional rent or any other payment required to be made by Tenant hereunder, where such failure continues for three (3) days after written notice thereof from Landlord that such payment was not received;
- (b) the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 23.1(a) or (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it may be cured but more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion;
- (c) (i) the making by Tenant of any general assignment for the benefit of creditors, (ii) the filing by or against Tenant of a petition to have Tenant or any guarantor hereof adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant or any guarantor hereof, the same is dismissed within sixty (60) days), (iii) 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 or of substantially all of guarantor's assets, where possession is not restored to Tenant or guarantor within sixty (60) days, or

(iv) 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 where such seizure is not discharged within sixty (60) days;

- (d) any material representation or warranty made by Tenant in this Lease or any other document delivered in connection with the execution and delivery of this Lease or pursuant to this Lease proves to be incorrect in any material respect; or
- (e) Tenant shall be liquidated or dissolved or shall begin proceedings towards its liquidation or dissolution.

Any notice sent by Landlord to Tenant pursuant to this Section 23.1 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161.

23.2 Landlord's Remedies; Termination. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

- (a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

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- (b) the worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus
- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus
- (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: unamortized Tenant Improvement costs; attorneys' fees; unamortized brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Tenant Changes, Tenant Improvements and any other items which Tenant is required under this Lease to remove but does not remove.

As used in Sections 23.2(a) and 23.2(b) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate set forth in Section 1.14 of the Summary. As used in Section 23.2(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

23.3 Landlord's Remedies; Re-Entry Rights. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to Section 12.4 of this Lease or any other procedures permitted by applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 23.3, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

23.4 Landlord's Remedies; Continuation of Lease. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the right to continue this Lease in full force and effect, whether or not Tenant shall have abandoned the Premises. The foregoing remedy shall also be available to Landlord pursuant to California Civil Code Section 1951.4 and any successor statute thereof in the event Tenant has abandoned the Premises. In the event Landlord elects to continue this Lease in full force and effect pursuant to this Section 23.4, then Landlord shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due. Landlord's election not to terminate this Lease pursuant to this Section 23.4 or pursuant to any other provision of this Lease, at law or in equity, shall not preclude Landlord from subsequently electing to terminate this Lease or pursuing any of its other remedies.

23.5 Landlord's Right to Perform. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of rent. If Tenant shall fail to pay any sum of money (other than Basic Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for three (3) days with respect to monetary obligations (or ten (10) days with respect to non-monetary obligations (except in case of emergencies, in which such case, such shorter period of time as is reasonable under the circumstances)) after Tenant's receipt of written notice thereof from Landlord, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as additional rent.

23.6 Interest. If any monthly installment of Basic Rent or Common Area Expenses, or any other amount payable by Tenant hereunder is not received by Landlord by the date when due, it shall bear interest at the Interest Rate set forth in Section 1.14 of the Summary from the date due until paid. All interest, and any late charges imposed pursuant to Section 23.7 below, shall be considered additional rent due from Tenant to Landlord under the terms of this Lease.

23.7 Late Charges. Tenant acknowledges that, in addition to interest costs, the late payments by Tenant to Landlord of any rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage, deed of trust or related loan documents encumbering the Premises, the Building or the Project. Accordingly, if any rent or any other amount payable by Tenant hereunder is not received by Landlord by the due date thereof, Tenant shall pay to Landlord an additional sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) as a late charge, but in no event more than the maximum late charge allowed by law; provided, however, with respect to the first late payment during any consecutive 12-month period, Tenant shall not be obligated to pay the foregoing late charge unless Landlord fails to receive such sums within five (5) business days following Landlord's delivery to Tenant of written notice that such sums are delinquent. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment as hereinabove referred to by Tenant, and the payment of late charges and interest are distinct and separate in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of a late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or at law or in equity now or hereafter in effect.

23.8 Intentionally Omitted.

23.9 Rights and Remedies Cumulative. All rights, options and remedies of Landlord contained in this Section 23 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Section 23 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

23.10 Tenant's Waiver of Redemption. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof, and (ii) the benefits of any present or future law which exempts property from liability for debt or for distress for rent.

23.11 Costs Upon Default and Litigation. Tenant shall pay to Landlord and its mortgagees as additional rent all the expenses incurred by Landlord or its mortgagees in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses. If Landlord or its mortgagees shall be made a party to any litigation commenced against Tenant or any litigation pertaining to this Lease or the Premises, at the option of Landlord and/or its mortgagees, Tenant, at its expense, shall provide Landlord and/or its mortgagees with counsel approved by Landlord and/or its mortgagees and shall pay all costs incurred or paid by Landlord and/or its mortgagees in connection with such litigation.

24. Landlord's Default. Landlord shall not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Upon any such uncured default by Landlord, Tenant may exercise any of its rights provided in law or at equity; provided, however: (a) Tenant shall have no right to offset or abate rent in the event of any default by Landlord under this Lease, except to the extent offset rights are specifically provided to Tenant in this Lease or Tenant is awarded a judgment against Landlord (in which event Tenant may offset the amount of such judgment against rent if Landlord fails to pay the same within thirty (30) days after such judgment is no longer subject to appeal); (b) Tenant shall have no right to terminate this Lease; and (c) Tenant's rights and remedies hereunder shall be limited to the extent (i) Tenant has expressly waived in this Lease any of such rights or remedies and/or (ii) this Lease otherwise expressly limits Tenant's rights or remedies, including the limitation on Landlord's liability contained in Section 31 hereof.

Notwithstanding the foregoing, in the event (i) a court of competent jurisdiction has determined (and such determination is no longer subject to appeal) that Landlord is in default, (ii) such default materially affects Tenant's use and enjoyment of the Premises, and (iii) Landlord fails, within a reasonable period time following such determination, to remedy such default, Tenant may terminate this Lease upon written notice to Landlord.

25. Subordination. At the election of Landlord or any mortgagee of a mortgage or a beneficiary of a deed of trust now or hereafter encumbering all or any portion of the Building or the Project, or any lessor of any ground or master lease now or hereafter affecting all or any portion of the Building or the Project, this Lease shall be subject and subordinate at all times to such ground or master leases (and such extensions and modifications thereof), and to the lien of such mortgages and deeds of trust (as well as to any advances made thereunder and to all renewals, replacements, modifications and extensions thereof); provided, however, as a condition precedent to such subordination to a future mortgage, deed of trust or ground or master lease, Tenant shall have received a commercially reasonable non-disturbance agreement from the holder of such instrument. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any or all ground or master leases or the lien of any or all mortgages or deeds of trust to this Lease. In the event that any ground or master lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, at the election of Landlord's successor in interest, Tenant shall attorn to and become the tenant of such successor. Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate this Lease and the obligations of Tenant hereunder as the consequence of any such foreclosure proceeding or sale. Tenant covenants and agrees to execute and deliver to Landlord within ten (10) days after receipt of written demand by Landlord and in the form reasonably required by Landlord, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground or master lease or the lien of any such mortgage or deed of trust or Tenant's agreement to attorn. Should Tenant fail to sign and return any such documents within said ten (10) day period, and if such failure is not cured within an additional ten (10) days following written notice thereof, Tenant shall be in default hereunder without the benefit of any additional notice or cure periods specified in Section 23.1 above.

26. Estoppel Certificate.

26.1 Obligations. Within ten (10) days following Landlord's or Tenant's written request, the other party shall execute and deliver to the requesting party an estoppel certificate, in a form substantially similar to the form of Exhibit "F" attached hereto (modified as appropriate if Landlord is the certifying party), certifying: (a) the Commencement Date of this Lease; (b) that this Lease is unmodified and in full force and effect (or, if modified, that this Lease is in full force and effect as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) that there are not, to the best of the certifying party's knowledge, any defaults under this Lease by either Landlord or Tenant, except as specified in such certificate; and (e) such other matters as are reasonably requested by the requesting party. Any such estoppel certificate delivered pursuant to this Section 26.1 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Project, or any beneficiary designated by Tenant, as well as their assignees.

26.2 Failure to Deliver. If Tenant or Landlord fails to deliver such estoppel certificate within such time, and such failure is not cured within ten (10) days following written notice thereof, then such failure shall constitute a default hereunder, without the applicability of the notice and cure periods specified in Section 23.1 above, and shall be conclusive upon the defaulting party that: (a) this Lease is in full force and effect without modification, except as may be represented by the non-defaulting party; (b) there are no uncured defaults in Landlord's or Tenant's performance (other than the defaulting party's failure to deliver the estoppel certificate); and (c) not more than one (1) month's rental has been paid in advance.

27. Intentionally Omitted.

28. Modification and Cure Rights of Landlord's Mortgagees and Lessors.

28.1 Modifications. If, in connection with Landlord's obtaining or entering into any financing or ground lease for any portion of the Building or the Project, the lender or ground lessor shall request modifications to this Lease, Tenant shall, within ten (10) days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder, all as determined in Tenant's reasonable judgment.

28.2 Cure Rights. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee covering the Premises or ground lessor of Landlord whose address shall have been furnished to Tenant, and shall offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default as Landlord.

29. Quiet Enjoyment. Landlord covenants and agrees with Tenant that, upon Tenant performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of rent hereunder), Tenant shall and may peaceably and quietly have, hold and enjoy the Premises in accordance with and subject to the terms and conditions of this Lease as against all persons claiming by, through or under Landlord.

30. Transfer of Landlord's Interest. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease of, the Project. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only), the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Project, the Building, the Premises and/or this Lease without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

31. Limitation on Landlord's Liability. Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual partners, directors, officers or shareholders of Landlord or Landlord's partners, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or Landlord's partners, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Project, and no other assets of Landlord.

32. Miscellaneous.

32.1 Governing Law. This Lease shall be governed by, and construed pursuant to, the laws of the state in which the Premises are located.

32.2 Successors and Assigns. Subject to the provisions of Section 30 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no rights shall inure to the benefit of any Transferee of Tenant unless the Transfer to such Transferee is made in compliance with the provisions of Section 14.

32.3 No Merger. The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

32.4 Professional Fees. If either Landlord or Tenant should bring suit or arbitration against the other with respect to this Lease, including for unlawful detainer or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees, expenses and court costs), shall be paid by the other party.

32.5 Waiver. The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The subsequent acceptance of rent hereunder by Landlord shall

not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

32.6 Terms and Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language. Whenever the consent or approval of a party is required under this Lease, such party may not unreasonably withhold, delay, or condition its approval or consent, unless a different standard is specified.

32.7 Time. Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor. All references in this Lease to "days" shall mean calendar days unless specifically modified herein to be "business" days.

32.8 Prior Agreements; Amendments. This Lease, including the Summary and all Exhibits and Riders attached hereto contains all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

32.9 Separability. The invalidity or unenforceability of any provision of this Lease (except for Tenant's obligation to pay Basic Rent and Operating Expenses under Sections 3 and 4 hereof) shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

32.10 Recording. Neither Landlord nor Tenant shall record this Lease, but Tenant and Landlord shall, at either party's request, cause a Memorandum of this Lease to be promptly executed and recorded in the real property records of San Diego County, California. The party requesting recordation of a Memorandum shall be responsible for all recording fees incurred in connection therewith. If a Memorandum is recorded, Tenant shall, upon the expiration or earlier termination of this Lease, execute, acknowledge and deliver to Landlord such instruments as Landlord may require in order to release the Memorandum of record, which obligation shall survive the expiration or termination of this Lease.

32.11 Exhibits and Riders. All Exhibits and Riders attached to this Lease are hereby incorporated in this Lease for all purposes as though set forth at length herein.

32.12 Auctions. Tenant shall have no right to conduct any auction in, on or about the Premises, the Building or the Project.

32.13 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rent payment herein stipulated shall be deemed to be other than on account of the rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

32.14 Financial Statements. Upon thirty (30) days prior written request from Landlord (which Landlord may make at any time during the Term but no more often than once in any calendar year), Tenant shall deliver to Landlord a current financial statement of Tenant. Such statements shall be prepared in accordance with generally acceptable accounting principles. Notwithstanding the foregoing, Tenant shall not be required to provide any such financial statements so long as its financial statements are publicly available.

32.15 No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

32.16 Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, "Force Majeure Delays"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 32.16 shall not apply to nor operate to excuse Tenant from the payment of Basic Rent, Operating Expenses, percentage rent, if any, additional rent or any other payments strictly in accordance with the terms of this Lease. Force Majeure

Delays shall not include any delay resulting from the failure of the existing tenant of the Premises to vacate the Premises by June 1, 2004.

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32.17 Counterparts. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

32.18 Non-Discrimination. Tenant acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, assignment, occupancy, tenure, use, or enjoyment of the Premises, or any portion thereof.

33. Lease Execution.

33.1 Tenant's Authority. If Tenant or Landlord executes this Lease as a limited liability company, partnership or corporation, then Tenant or Landlord, as applicable, represents and warrants that: (a) it is a duly organized and validly existing limited liability company, partnership or corporation, as the case may be, and is qualified to do business in the state in which the Premises are located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's or Landlord's behalf in accordance with the Tenant's or Landlord's operating agreement (if a limited liability company), Tenant's or Landlord's partnership agreement (if a partnership), or a duly adopted resolution of Tenant's board of directors and Tenant's or Landlord's by-laws (if a corporation); and (c) this Lease is binding upon Tenant or Landlord in accordance with its terms. Concurrently with the mutual execution of this Lease, the parties shall provide each other with a copy of any documents reasonably requested by the other party evidencing such qualification, organization, existence and authorization.

33.2 Joint and Several Liability. If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

33.3 No Option. The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until it has been executed by Landlord and delivered to Tenant.

33.4 Guaranty. Concurrently with Tenant's execution of this Lease, Tenant shall cause Guarantor to execute and deliver to Landlord a Lease Guaranty in the form and substance of Exhibit "H" attached hereto.

34. Waiver of Jury Trial. Each Party hereby waives any right to a trial by jury in any action seeking specific performance of any provision of this Lease, for damages for any breach under this Lease, or otherwise for enforcement of any right or remedy hereunder.

35. Tenant's Exclusive Right. Except as provided in this Section 35, from and after the date hereof, Landlord agrees not to enter into any lease for space in the Project, or sell any building in the Project, to a Competitor. A "Competitor" means any entity whose primary business at the Project is consumer debt collection. The foregoing restriction will not apply to a lease or sale to a Competitor who has been permitted to do so based upon or as a result of an action or order by a court or a subletting or assignment of an existing lease that does not give Landlord the right to disapprove of the subletting or assignment based on this provision or the sale of any building in the Project subsequent to its sale by Landlord or a renewal, extension or amendment of the BofA Lease. The exclusive right granted under this Section 35 shall automatically terminate and become void and of no further force or effect (a) upon the occurrence of a default by Tenant under this Lease that is not cured within the applicable notice and cure period, (b) if Tenant or a Permitted Transferee ceases to conduct a consumer debt collection business within the entire Premises, excluding cessations due to Force Majeure Delays or (c) if there is an assignment or subletting other than pursuant to Section 14.5.

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36. Communication Equipment. Subject to all governmental laws, rules and regulations, Tenant and Tenant's contractors (which shall first be reasonably approved by Landlord) shall have the right and access to install, repair, replace, remove, operate and maintain satellite dishes or other similar devices, such as antennae or similar devices, together with all cable, wiring, conduits and related equipment (collectively, "Communication Equipment"), for the purpose of receiving and sending radio, television, computer, telephone or other communication signals to and from the Premises in connection with Tenant's use of the Premises, at a location on the roof of the Building designated by Landlord and reasonably acceptable to Tenant. Such use of the roof for Communication Equipment shall be at no additional charge to Tenant during the Lease Term and any extensions thereof. Tenant shall ensure that any Communication Equipment installed by Tenant does not interfere with any equipment installed on the roof of the Building prior to Tenant's installation of its Communication Equipment. Tenant shall retain Landlord's designated roofing contractor to make any necessary penetrations and associated repairs to the roof in order to preserve Landlord's roof warranty. Tenant's installation and operation of the Communication Equipment shall be governed by the following terms and conditions:

36.1 Tenant's right to install, replace, repair, remove, operate and maintain the Communication Equipment shall be subject to all governmental laws, rules and regulations and Landlord makes no representation that such laws, rules and regulations permit such installation and operation. Further, Tenant's Communication Equipment shall not cause the Building rooftop to violate any laws, rules and/or regulations and Tenant shall be responsible for ensuring that its use does not cause such a violation.

36.2 All plans and specifications for the Communication Equipment shall be subject to Landlord's reasonable approval.

36.3 All costs of installation, operation and maintenance of the Communication Equipment and any necessary related equipment (including, without limitation, costs of obtaining any necessary permits and connections to the Building's electrical system) shall be borne by Tenant. Landlord agrees to cooperate (at no expense to Landlord) with Tenant in obtaining such permits and connections.

36.4 It is expressly understood that Landlord retains the right to use the roof of the Building for any purpose whatsoever provided that Landlord shall not unduly interfere with Tenant's use of the Communication Equipment.

36.5 Tenant shall use the Communication Equipment so as not to cause any interference or danger to other tenants in the Building or with any other tenant's or licensee's communication equipment installed on the roof prior to Tenant's installation of its Communication Equipment, and not to damage the Building or interfere with the normal operation of the Building.

36.6 Landlord shall not have any obligations with respect to the Communication Equipment. Landlord makes no representation that the Communication Equipment will be able to receive or transmit communication signals without interference or disturbance (whether or not by reason of the installation or use of similar equipment by others on the roof of the Building) and Tenant agrees that Landlord shall not be liable to Tenant therefor.

36.7 Tenant shall (i) be solely responsible for any damage caused as a result of the Communication Equipment, (ii) promptly pay any tax, license or permit fees charged pursuant to any laws or regulations in connection with the installation, maintenance or use of the Communication Equipment and comply with all precautions and safeguards recommended by all governmental authorities, and (iii) be responsible for any necessary repairs, replacements to or maintenance of the Communication Equipment.

36.8 The Communication Equipment shall remain the sole property of Tenant. Tenant shall remove the Communication Equipment and related equipment at Tenant's sole cost and expense upon the expiration or sooner termination of this Lease or upon the imposition of any governmental law or regulation which may require removal, and shall repair the Building upon such removal to the extent required by such work of removal. If Tenant fails to remove the Communication Equipment and repair the Building within thirty (30) days after the expiration or earlier termination of this Lease, Landlord may do so at Tenant's expense. The provisions of this Section 36.8 shall survive the expiration or earlier termination of this Lease.

36.9 The Communication Equipment shall be deemed to constitute a portion of the Premises for purposes of Sections 17 and 20 of this Lease.

36.10 Tenant shall be entitled, at no additional charge, to use its pro rata share of the existing risers of the Building to install its Communications Equipment; provided that Landlord makes no representation regarding

the capacity of such risers. In the event additional capacity is needed, Tenant shall have the right to provide such additional capacity, subject to Landlord's prior written approval of the methods and manner of providing such additional capacity, which consent may be withheld in Landlord's reasonable discretion.

36.11 Tenant hereby agrees to comply with all regulations, laws and codes applicable to the use of its Communications Equipment, including, without limitation, FCC and OSHA regulations relating to radio frequency ("RF") emissions. Further, Tenant represents and warrants that the operation of the Communications Equipment will not cause the Building rooftop to violate the maximum permissible exposure rules established by OSHA. At Landlord's option based on reasonable evidence of Tenant's violation of this paragraph, Tenant shall (i) pay the cost of a study of the Building rooftop to ensure that Tenant's use pursuant to this Section 36 will not cause the rooftop to be in violation of any RF emissions requirements, which study shall be performed by a contractor reasonably approved by Landlord, and (ii) take any steps required by any applicable laws to cause the use of the Communications Equipment to comply with such laws, including implementation of an RF safety program which complies with all OSHA and FCC regulations.

37. Tenant's Conditions Precedent. Tenant's obligations under this Lease are subject to the satisfaction of the following conditions by the following dates:

37.1 Title Policy. Tenant's receipt, within five (5) business days following the full execution and delivery of this Lease and a memorandum thereof, of a standard coverage title insurance policy from First American Title Insurance Company insuring Tenant's leasehold interest in the Premises subject only to the exceptions identified on Exhibit "I" attached hereto and such other matters that are reasonably acceptable to Tenant. Tenant shall exercise its best efforts to cause the satisfaction of this condition by such date.

37.2 BofA Consent. Landlord shall have delivered to Tenant, by April 16, 2004, evidence that the tenant under the BofA Lease has confirmed that the following will not violate the provisions of the BofA Lease: (i) the use of the Premises as a call center, and the operation of a training facility as a minor component of another primary use of the Premises and (ii) exterior signage using the name or logo of Tenant or Guarantor.

If either of the foregoing conditions is not satisfied by the applicable date, Tenant may terminate this Lease by giving Landlord written notice thereof within five (5) business days following such date, but prior to the satisfaction of the applicable condition.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

"TENANT"

MIDLAND CREDIT MANAGEMENT, INC.,
a Kansas corporation

* By: /s/ Carl C. Gregory, III
Print Name: Carl C. Gregory, III
Print Title: President

By: /s/ Robin R. Pruitt
Print Name: Robin R. Pruitt
Print Title: Sr. V.P. and General Counsel

"LANDLORD"

LBA REALTY FUND-HOLDING CO. I., LLC,
a Delaware limited liability company

By: /s/ Phil A. Belling
Print Name: Phil A. Belling
Print Title: Authorized Signatory

* NOTE:

If Tenant is a California corporation, then one of the following alternative requirements must be satisfied:

(A) This Lease must be signed by two (2) officers of such corporation: one being the chairman of the board, the president or a vice president, and the other being the secretary, an assistant secretary, the chief financial officer or an assistant treasurer. If one (1) individual is signing in two (2) of the

foregoing capacities, that individual must indicate the two (2) capacities.

- (B) If the requirements of (A) above are not satisfied, then Tenant shall deliver to Landlord a certified copy of a corporate resolution in the form reasonably acceptable to Landlord authorizing the signatory(ies) to execute this Lease.

If Tenant is a corporation incorporated in a state other than California, then Tenant shall deliver to Landlord a certified copy of a corporate resolution in the form reasonably acceptable to Landlord authorizing the signatory(ies) to execute this Lease.

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ACKNOWLEDGMENT BY GUARANTOR

By its execution hereof, the undersigned agrees that, with respect to the periods during which the undersigned occupies the Premises, the provisions of Sections 17, 20 and 22 of this Lease shall be binding upon the undersigned as if the undersigned were Tenant.

ENCORE CAPITAL GROUP, INC.,
a Delaware corporation

By: /s/ Carl C. Gregory, III
Print Name: Carl C. Gregory, III
Print Title: CEO and President

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8875 Aero Drive
Midland Credit Management, Inc.

LEASE GUARANTY

THIS LEASE GUARANTY ("Guaranty") is made by Encore Capital Group, Inc., a Delaware corporation ("Guarantor") in favor of LBA -Realty Fund-Holding Co. I, LLC, a Delaware limited liability company ("Landlord") in connection with that certain lease dated April 8, 2004 (the "Lease") pursuant to which Landlord is to lease to Midland Credit Management, Inc., a Kansas corporation ("Tenant") certain premises located in the Building at 8875 Aero Drive in San Diego, California 92123 (the "Premises").

A. Landlord requires this Guaranty as a condition to its execution of the Lease and the performance of the obligations to be performed under the Lease by Landlord.

B. Guarantor has agreed to provide this Guaranty to induce Landlord to enter into the Lease with Tenant and perform its obligations under the Lease.

In consideration of Landlord's agreement to execute the Lease and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor does hereby agree with Landlord as follows:

1. The Lease is hereby incorporated into and made a part of this Guaranty by this reference.

2. Guarantor hereby unconditionally guarantees, as a primary obligor and not as a surety, without deduction by reason of setoff, defense or counterclaim, the full and punctual payment of all sums of rent and other amounts payable under the Lease and the full and punctual performance of all terms, covenants and conditions in the Lease to be kept, performed and/or observed by Tenant. Guarantor's obligations under this Guaranty are continuing and unconditional.

3. Guarantor hereby agrees that, without the consent of or notice to Guarantor and without affecting any of the obligations of Guarantor hereunder: (a) the Lease may be extended and any other term, covenant or condition of the Lease may be amended, compromised, released or otherwise altered by Landlord and Tenant, and Guarantor does guarantee and promise to perform all the obligations of Tenant under the Lease as so extended, amended, compromised, released or altered; (b) any guarantor of or party to the Lease may be released, substituted or added; (c) any right or remedy under the Lease may be exercised, not exercised, impaired, modified, limited, destroyed, or suspended; (d) Landlord or any other person may deal in any manner with Tenant, any guarantor, any party to the Lease or any other person; (e) Landlord may permit Tenant to holdover the Premises beyond the Lease Term; and (f) all or any part of the Premises or of Tenant's rights or liabilities under the Lease may be sublet, assigned or assumed. Without in any way limiting the foregoing, Guarantor agrees not to unreasonably withhold its consent to any sublease, assignment of the Lease or other modification of the Lease which is agreed to by Landlord and Tenant.

4. Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require Landlord to proceed against Tenant, or any other guarantor or person or to pursue any other security or remedy before proceeding against Guarantor; (b) any defense based on the genuineness, validity, regularity or enforceability of the Lease; (c) any right or defense that may arise by reason of the incapacity, lack of authority, death or disability of Tenant or any other person; and (d) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Tenant, of the subrogation rights of Guarantor or of the right of Guarantor to proceed against Tenant for reimbursement. Without limiting the generality of the foregoing, Guarantor hereby waives any and all benefits of the provisions of Sections 2809, 2810 and 2845 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

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5. Guarantor hereby waives and agrees not to assert or take advantage of (a) any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of any adverse change in the financial status of Tenant, notices of any other facts which increase the risk to Guarantor, notices of non-performance and notices of acceptance of this Guaranty) and protests of each and every kind; (b) the defense of any statute of limitations in any action under or related to this Guaranty or the Lease; (c) any right or defense based on a lack of diligence or failure or delay by Landlord in enforcing its rights under this Guaranty or the Lease; and (d) any other rights and defenses that are or may become available to Guarantor by reason of Sections 2787 through 2855, inclusive, of the California Civil Code (however with respect to Guarantor's rights under Sections 2847, 2848 and 2849, the foregoing waiver shall be applicable only until all of Tenant's obligations under this Lease are fully performed).

6. Guarantor hereby waives and agrees not to assert or take advantage of any right to (a) exoneration if Landlord's actions shall impair any security or collateral of Guarantor; (b) until all of Tenant's obligations under the Lease are fully satisfied, any security or collateral held by Landlord; (c) require Landlord to proceed against or exhaust any security or collateral before proceeding against Guarantor; (d) require Landlord to pursue any right or remedy for the benefit of Guarantor. Without limiting the generality of the foregoing, Guarantor hereby waives any and all benefits of the provisions of Sections 2819, 2849 (until all of Tenant's obligations under the Lease as satisfied) and 2850 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

7. Guarantor shall not, without the prior written consent of Landlord, commence, or join with any other person in commencing, any bankruptcy, reorganization or insolvency proceeding against Tenant. Guarantor's obligations under this Guaranty shall in no way be affected by any bankruptcy, reorganization or insolvency of Tenant or any successor or assignee of Tenant or by any disaffirmance or abandonment of the Lease or any payment under this Guaranty by a trustee of Tenant in any bankruptcy proceeding including, without limitation, any impairment, limitation, or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease resulting from the operation of any present or future provision of any federal or state bankruptcy or insolvency law or other statute or from the decision of any court. Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims which Guarantor may have against Tenant relating to any indebtedness of Tenant to Guarantor and will assign to Landlord all rights of Guarantor thereunder. Landlord shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Landlord the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Landlord all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Landlord receives cash by reason of any such payment or distribution. If Landlord receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

8. Until all the Tenant's obligations under the Lease are fully performed, Guarantor: (a) shall have no right of subrogation or reimbursement against the Tenant by reason of any payments or acts of performance by Guarantor under this Guaranty; (b) subordinates any liability or indebtedness of the Tenant now or hereafter held by Guarantor to the obligations of the Tenant under, arising out of or related to the Lease or Tenant's use of the Premises; and (c) acknowledges that the actions of Landlord may

affect or eliminate any rights of subrogation or reimbursement of Guarantor as against Tenant without any liability or recourse against Landlord. Without limiting the generality of the foregoing, until all of Tenant's obligations under the Lease are fully satisfied, Guarantor hereby waives any and all benefits of the provisions of Section 2848 of the California Civil Code and any similar or analogous statutes of California or any other jurisdiction.

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9. Prior to the execution of this Guaranty and at any time during the Term of the Lease upon thirty (30) days prior written notice from Landlord (but no more often than once in any calendar year), Guarantor agrees to provide Landlord with a current financial statement for Guarantor. Guarantor's financial statements are to be prepared in accordance with generally accepted accounting principles. Guarantor represents and warrants that all such financial statements shall be true and correct statements of Guarantor's financial condition. Notwithstanding the foregoing, Guarantor shall not be required to provide any such financial statements so long as its financial statements are publicly available.

10. The liability of Guarantor and all rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor relating to the Lease shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord by law.

11. This Guaranty applies to, inures to the benefit of and binds all parties hereto, their heirs, devisees, legatees, executors, administrators, representatives, successors and assigns. This Guaranty may be assigned by Landlord voluntarily or by operation of law.

12. This Guaranty shall constitute the entire agreement between Guarantor and the Landlord with respect to the subject matter hereof. No provision of this Guaranty or right of Landlord hereunder may be waived nor may any guarantor be released from any obligation hereunder except by a writing duly executed by an authorized officer, director or trustee of Landlord. The waiver or failure to enforce any provision of this Guaranty shall not operate as a waiver of any other breach of such provision or any other provisions hereof. No course of dealing between Landlord and Tenant shall alter or affect the enforceability of this Guaranty or Guarantor's obligations hereunder.

13. Guarantor hereby agrees to indemnify, protect, defend and hold Landlord harmless from and against, all losses, costs and expenses including, without limitation, all interest, default interest, post-petition bankruptcy interest and other post-petition obligations, late charges, court costs and attorneys' fees, which may be suffered or incurred by Landlord in enforcing or compromising any rights under this Guaranty or in enforcing or compromising the performance of Tenant's obligations under the Lease.

14. The term "Landlord" whenever hereinabove used refers to and means the Landlord in the foregoing Lease specifically named and also any assignee of said Landlord, whether by outright assignment or by assignment for security, and also any successor to the interest of said Landlord or of any assignee of such Lease or any part thereof, whether by assignment or otherwise. The term "Tenant" whenever hereinabove used refers to and means the Tenant in the foregoing Lease specifically named and also any assignee or subtenant of said Lease and also any successor to the interests of said Tenant, assignee or sublessee of such Lease or any part thereof, whether by assignment, sublease or otherwise including, without limitation, any trustee in bankruptcy and any bankruptcy estate of Tenant, Tenant's assignee or sublessee.

15. If any or all Guarantors shall become bankrupt or insolvent, or any application shall be made to have any or all Guarantors declared bankrupt or insolvent, or any or all Guarantors shall make an assignment for the benefit of creditors, or any or all Guarantors shall enter into a proceeding for the dissolution of marriage, or in the event of death of any or all Guarantors, notice of such occurrence or event shall be promptly furnished to Landlord by such Guarantor or such Guarantor's fiduciary. This Guarantee shall extend to and be binding upon each Guarantor's successors and assigns, including, but not limited to, trustees in bankruptcy and Guarantor's estate.

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16. Any notice, request, demand, instruction or other communication to be given to any party hereunder shall be in writing and sent by registered or certified mail, return receipt requested in accordance with the notice provisions of the Lease. The Tenant shall be deemed Guarantor's agent for service of process and notice to Guarantor delivered to the Tenant at the address set forth in the Lease shall constitute proper notice to Guarantor for all purposes. Notices to Landlord shall be delivered to Landlord's address set forth in the Lease. Landlord, at its election, may provide an additional notice to Guarantor at the address provided under Guarantor's signature below.

17. If either party hereto participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party shall be entitled to have and recover from the other party reasonable attorneys' fees, collection costs and other costs incurred in and in preparation for the action. Guarantor hereby waives any right to trial by jury and further waives and agrees not to assert or take advantage of any defense based on any claim that any arbitration decision binding upon Landlord and Tenant is not binding upon Guarantor.

18. Guarantor agrees that all questions with respect to this Guaranty shall be governed by, and decided in accordance with, the laws of the State of California.

19. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

20. Time is strictly of the essence under this Guaranty and any amendment, modification or revision hereof.

21. If more than one person signs this Guaranty, each such person shall be deemed a guarantor and the obligation of all such guarantors shall be joint and several. When the context and construction so requires, all words used in the singular herein shall be deemed to have been used in the plural. The word "person" as used herein shall include an individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

22. If Guarantor is a corporation, each individual executing this Guaranty on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Guaranty on behalf of said corporation, 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 this Guaranty is binding upon said corporation in accordance with its terms. If Guarantor is a corporation, Landlord, at its option, may require Guarantor to concurrently, with the execution of this Guaranty, deliver to Landlord a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Guaranty.

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THE UNDERSIGNED HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS CONTAINED IN THIS GUARANTY INCLUDING, WITHOUT LIMITATION, ALL WAIVERS CONTAINED IN THIS GUARANTY.

Executed as of the date of the Lease.

ENCORE CAPITAL GROUP, INC.,
a Delaware corporation

* By: /s/ Carl C. Gregory, III
Print Name: Carl C. Gregory, III
Print Title: CEO and President

* By: /s/ Robin R. Pruitt
Print Name: Robin R. Pruitt
Print Title: Sr. V.P. and General Counsel

Address of Guarantor:
Before Tenant's occupancy of the Premises:
Encore Capital Group, Inc.
5775 Roscoe Court
San Diego, CA 92123
Attention: General Counsel

After Tenant's occupancy of the Premises:
Encore Capital Group, Inc.
8875 Aero Drive
San Diego, CA 92123
Attention: General Counsel

**NOTE:

- If Guarantor is a California corporation, then one of the following alternative requirements must be satisfied:
- (A) This Guaranty must be signed by two (2) officers of such corporation: one being the chairman of the board, the president or a vice president, and the other being the secretary, an assistant secretary, the chief financial officer or an assistant treasurer. If one (1) individual is signing in two (2) of the foregoing capacities, that individual must so indicate.
 - (B) If the requirements of (A) above are not satisfied, then Guarantor shall deliver to Landlord evidence reasonably acceptable to Landlord that the signatory(ies) is (are) authorized to execute this Guaranty.
- If Guarantor is a corporation incorporated in a state other than California, then Guarantor shall deliver to Landlord evidence reasonably acceptable to Landlord that the signatory(ies) is (are) authorized to execute this Guaranty.

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