

**August 7, 2018**  
**Regular Meeting**  
**Item # 5M**

**County Counsel**

**Estoppel Certificates /**  
**Exhibits**

## TENANT ESTOPPEL CERTIFICATE

To: THOROFARE ASSET BASED LENDING REIT FUND IV, LLC, its successors and/or assigns (“*Lender*”)

Re: Name of Tenant’s Business: \_\_\_ County of Mono \_\_\_\_\_  
Lease between \_452 OM RD LLC and Highmark Mammoth Investments LLC as successors to Doheny V LLC, as Landlord or its assignees (“*Landlord*”), and County of Mono, a government entity, as Tenant (“*Tenant*”), dated Aug. 1, 2006 for approximately 21645 square feet of space (the “*Premises*”) in Sierra Center, located in Mammoth Lakes, California (the “*Property*”)

Tenant understands that Lender has made or is contemplating making a loan that would be secured in part by a lien against the Property. Tenant, as the tenant under the above-referenced lease (as amended by the amendments, if any, listed below, the “*Lease*”) hereby certifies to and agrees with Lender as follows:

1. The Lease is in full force and effect and has not been modified, supplemented, or amended, except pursuant to the following documents: The First Amendment of June 26, 2007 and Second Amendment of April, 2015, *see attached*. The Lease represents the entire agreement between the parties as to the Property, and Tenant claims no rights with respect to the Property other than as set forth in the Lease. *See Lease attached*.
2. The Lease has been duly executed and delivered by, and is a binding obligation of, Tenant, and the Lease is in full force and effect.
3. Tenant has paid rent for the Premises up to and including August, 2018. The current amount of fixed monthly rent is \$51,830.98; the current monthly common area or other charges are \$.75 per square foot. The base year for operating expenses and real estate taxes, as defined in the Lease, is 2006. No rent has been or will be paid more than one (1) month in advance of its due date, except: *none*.
4. Tenant has paid a security deposit of \$\_none\_. Tenant waives collection of the deposit against Lender or any purchaser at a foreclosure sale, unless Lender or such purchaser actually receives the deposit from Landlord. There are amounts claimed due by Landlord for common area expenses not in excess of \$25,000, but Tenant has not yet completed its review of those billings, has not agreed to the accuracy and veracity of said billings, and said amounts are not delinquent.
5. The commencement date of the Lease was August, 2006. The current expiration date for the Lease is October 31, 2019, and Tenant has no option or right to terminate the Lease prior to the expiration date, except as may otherwise be specifically set forth in the Lease in connection with a casualty or condemnation of the Property. Tenant has no option(s) to renew or extend the Lease, except: \_\_\_two ten year options at market rate.
6. All work to be performed to the Premises for Tenant under the Lease has been performed in all material respects. All payments, free rent, or other credits, allowances or abatements required to be given under the Lease to Tenant with respect to work to be performed to the Premises have been received by Tenant, except: *none*. Tenant has unconditionally accepted the Premises, is in physical occupancy of the Premises and is operating its business in the Premises. Tenant has no right to “go dark” under the Lease.
7. As of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default by Tenant or Landlord under the Lease; and (ii) Tenant has no existing claims, defenses or offsets against rental due or to become due under the Lease.

8. Tenant has not assigned any of its rights under the Lease or sublet all or any portion of the Premises. Tenant does not hold the Premises under assignment or sublease.


9. Tenant has no right or option to purchase all or any part of the Premises or the building of which the Premises is a part. Tenant has no right to expand or occupy any additional space at the Property.

10. Since the date of the Lease, there has been no material adverse change in the financial condition of Tenant, and there are no actions, whether voluntary or otherwise, are pending against Tenant under the bankruptcy laws of the United States or any state.

11. Lender shall not be liable for or bound by any modification or amendment of the Lease, or any waiver of any terms of the Lease, that (i) materially modifies the economic terms of the Lease, or (ii) materially and adversely affects Landlord's obligations under the Lease or Lender's rights, duties or obligations, unless such modification, amendment, or waiver was consented to in writing by Lender.

The person executing this certificate on behalf of Tenant is duly authorized to execute this certificate.

Executed by Tenant on August 7, 2018.

	<p>TENANT:</p> <p><u>County of Mono</u></p> <p>a <u>political subdivision of the State of</u> <u>California</u></p> <p>By: <u></u></p> <p>Name: <u>Bob Gardner</u></p> <p>Title: <u>Chair, Board of Supervisors</u></p>
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## TENANT ESTOPPEL CERTIFICATE

To: OWS BCA Funding, LLC  
1290 Avenue of the Americas  
34<sup>th</sup> Floor  
New York, NY 10104

Re: Lease Dated: August 1, 2006 ([as amended,] the "Lease")  
Tenant: County of Mono (the "Tenant")  
Landlord: 452 OM RD, LLC and  
Highmark Mammoth Investments, LLC,  
as Tenants in Common,  
as successors to Doheny V LLC (the "Landlord")  
Sierra Center Mall  
452 Old Mammoth Road, Mammoth Lakes, CA (the "Building")  
Leased Premises within the Building: Suite 301 (the "Premises")

The Tenant acknowledges that (a) OWS BCA Funding, LLC, a Delaware limited liability company (together with its successors and assigns, the "Lender") has agreed, subject to the satisfaction of certain terms and conditions, to make a loan (the "Loan") to 452 OM RD, LLC and Highmark Mammoth Investments, LLC, as Tenants in Common DBA "Old Mammoth Highmark Associates" (the "Landlord"), secured by a mortgage lien on the Landlord's interest in the Building and the land on which the Building is located, and (b) the Lender is requiring this Certificate as a condition to its making the Loan. Accordingly, the Tenant hereby certifies and confirms to the Lender and acknowledges and agrees as follows:

1. The Tenant is in full and complete possession of the Premises demised under the Lease, such possession having been delivered by the Landlord pursuant to the Lease and having been accepted by the Tenant.

2. The improvements to the Premises that the Landlord is required to furnish under the Lease have been completed in all respects to the satisfaction of the Tenant, and the Premises are open for the use of the Tenant, its customers, employees and invitees. All contributions required to be paid by the Landlord to the Tenant in connection with improvements to the Premises have been paid in full.

3. All duties or obligations of the Landlord required under the Lease which were an inducement to the Tenant to enter into the Lease have been fully performed.

4. The Lease is in full force and effect. No default exists on the part of the Landlord or the Tenant under the Lease, nor does any circumstance currently exist that, but for the giving of notice or the passage of time, or both, would be such a default. The Lease constitutes the entire agreement between the Landlord and the Tenant with respect to the Premises and has not been amended, modified or supplemented, except as attached hereto, and has not been superseded. There are no oral agreements between the Landlord and the Tenant with respect to the Premises. A true and correct copy of the Lease (including all amendments thereto) is attached to this Certificate as Exhibit "A", and has not been amended, modified or supplemented except



as set forth in Exhibit "A". The Tenant agrees not to amend or modify the Lease without the prior written consent of the Lender.

5. No rents under the Lease have been prepaid, except the current month's rent. The Tenant agrees that it shall not prepay any rents under the Lease more than one month from the date when such rents are due. The Tenant does not now have or hold any claim or defense against the Landlord which might be set off or credited against future accruing rents or which might otherwise excuse the Tenant's performance under the Lease.

6. The Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease or of the rents secured therein.

7. The Tenant does not have any options or rights of first refusal to purchase the Premises, or any part thereof, or to purchase or lease any other part of the Building, except (state none, if applicable): None.

8. No actions, whether voluntary or involuntary, are pending against the Tenant or any guarantor of the Lease under any bankruptcy, insolvency or similar laws of the United States or any state thereof.

9. The term of the Lease commenced on: August 1, 2006 and ends on October 31, 2019, subject to the following options to renew, if any, set forth in the Lease: Two, 10 Year Options.

10. The current monthly base rental payable by Tenant under the Lease is \$51,830.98, Percentage rent is not payable, as provided in the Lease. The current estimated monthly payments made by the Tenant under the Lease in respect of common area maintenance costs and real estate taxes are collectively \$0.75 per square foot per month.

11. The security deposit under the Lease is currently \$ None

12. So long as the Loan is outstanding, the Tenant shall pay any termination fees payable for the early termination of the Lease to the Landlord and the Lender jointly.

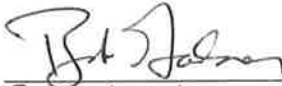
13. The Tenant has not assigned the Lease and has not subleased the Premises or any part thereof.

14. The Lender will rely on the representations and agreements made by the Tenant herein in connection with the Lender's agreement to make the Loan and the Tenant agrees that the Lender may so rely on such representations and agreements.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Tenant has executed this Tenant Estoppel Certificate as of July 25, 2018

TENANT, County of Mono, a political subdivision of the State of California

By:   
Name: Bob Gardner  
Title: Chair, Board of Supervisors

## FIRST AMENDMENT OF LEASE AGREEMENT

THIS FIRST AMENDMENT OF LEASE AGREEMENT (the "First Amendment"), is made this 26 day of June 2007 by and between DOHENY V LLC, a California limited liability company (hereinafter referred to as "Landlord"), and the COUNTY OF MONO, a political subdivision of the State of California (hereinafter referred to as "Tenant"), at the Town of Mammoth Lakes, County of Mono, State of California, with regards to the following recitals:

A. Landlord and Tenant entered into a written lease dated August 1, 2006 (the "Lease") pursuant to which Landlord leased to Tenant, and Tenant leased from Landlord, space within a commercial shopping center commonly known as The Sierra Center, located at 452 Old Mammoth Road, Mammoth Lakes, Mono County, California (the "Property") initially described as approximately 20,695 useable square feet (the "Initial Square Footage") on the second and third floor in the building located within the Property (collectively, the "Leased Premises").

B. Pursuant to Section 1.1 of said Lease, Woodward Architecture (the "Architect") has completed a revised measurement of Tenant's Leased Premises square footage (the "Revised Square Footage") and floor plan showing the same.

C. Landlord and Tenant desire to replace the Initial Square Footage as stated in the Lease with the Revised Square Footage for purposes of prospectively calculating Base Minimum Rent and Common Area Expenses to be paid by Tenant to Landlord.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Landlord and Tenant agree as follows:

1. Revised Square Footage. The Revised Square Footage of the Leased Premises, as calculated by the Architect and more specifically defined in Exhibit "A", shall equal 20,719 square feet.

2. Amendment.

2.1 Section 1.1. Section 1.1 of the Lease shall be deleted in its entirety and replaced with the following:

"Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, an amount of square footage totaling 20,719 square feet of space (the "Leased Premises") on the second and third floor of the commercial shopping center commonly known as The Sierra Center (the "Building") located on the property commonly referred to as 452 Old Mammoth Road, Mammoth Lakes, Mono County, California (the "Property"). Said square footage and floor plan showing the same shall be attached to this Lease as Exhibit "A" and incorporated herein by this reference. The square footage and floor plan as set forth in Exhibit "A" shall be final and binding on the parties and shall apply for all purposes within this Agreement, commencing on July 1, 2007, including but not limited to determination of Base Minimum Rent, description of the Leased Premises, and Tenant's proportionate share of any Common Area Expenses. With respect to said

Leased Premises, approximately 14, 946 square feet were leased and occupied by Tenant prior to August 1, 2006, (the "Existing Space") and the remaining square footage, approximately 5,773 square feet, corresponding to Suites 208 and 306, is new leased space (the "New Space"). As of August 1, 2006, this Agreement shall prospectively supersede any and all other lease agreements existing between Tenant and Landlord."

2.2 Exhibit "A". Exhibit "A" of the Lease shall be deleted in its entirety and replaced with the square footage and floor plans as set forth in Exhibit "A" of this First Amendment.

3. Defined Terms. All capitalized terms not defined in this First Amendment shall have the meaning they are given in the Lease.

4. Full Force and Effect. Except as herein provided, the Lease and all of its terms, covenants and conditions shall remain in full force and effect.

5. Representations of the Parties. Each party represents to the other that it has not made any assignment, sublease, transfer, conveyance or other disposition of the Lease, or any interest in the Lease, or any claim, demand, obligation, liability, action, or cause of action arising from the Lease.

6. Miscellaneous.

6.1 Voluntary Agreement. The parties have read this First Amendment and on advice of counsel they have freely and voluntarily entered into said First Amendment.

6.2 Successors. This First Amendment shall be binding on and inure to the benefit of the parties and their successors.

6.3 Entire Agreement. This First Amendment contains the entire agreement of the parties with respect to the matters which are the subject of this First Amendment and supersedes all prior and contemporaneous written or oral agreements, statements, understandings, terms, conditions, representations and warranties made by Landlord or Tenant concerning the matters which are the subject of this First Amendment.

6.4 Counterparts. This First Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

7. Exhibits. Any attached exhibits are expressly made a part hereof:

Exhibit "A": Revised Square Footage and Floor Plan.

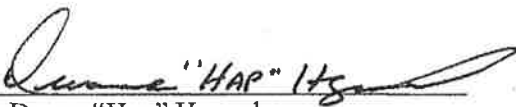
[Signatures on following page.]

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

LANDLORD: DOHENY V LLC,  
a California limited liability company

  
By: Jerry L. Preston  
Its: Managing Member

TENANT: COUNTY OF MONO,  
a political subdivision of the State of California

  
By: Duane "Hap" Hazard  
Its: Chair, Mono County Board of Supervisors

APPROVED AS TO FORM:

  
Mono County Counsel Office

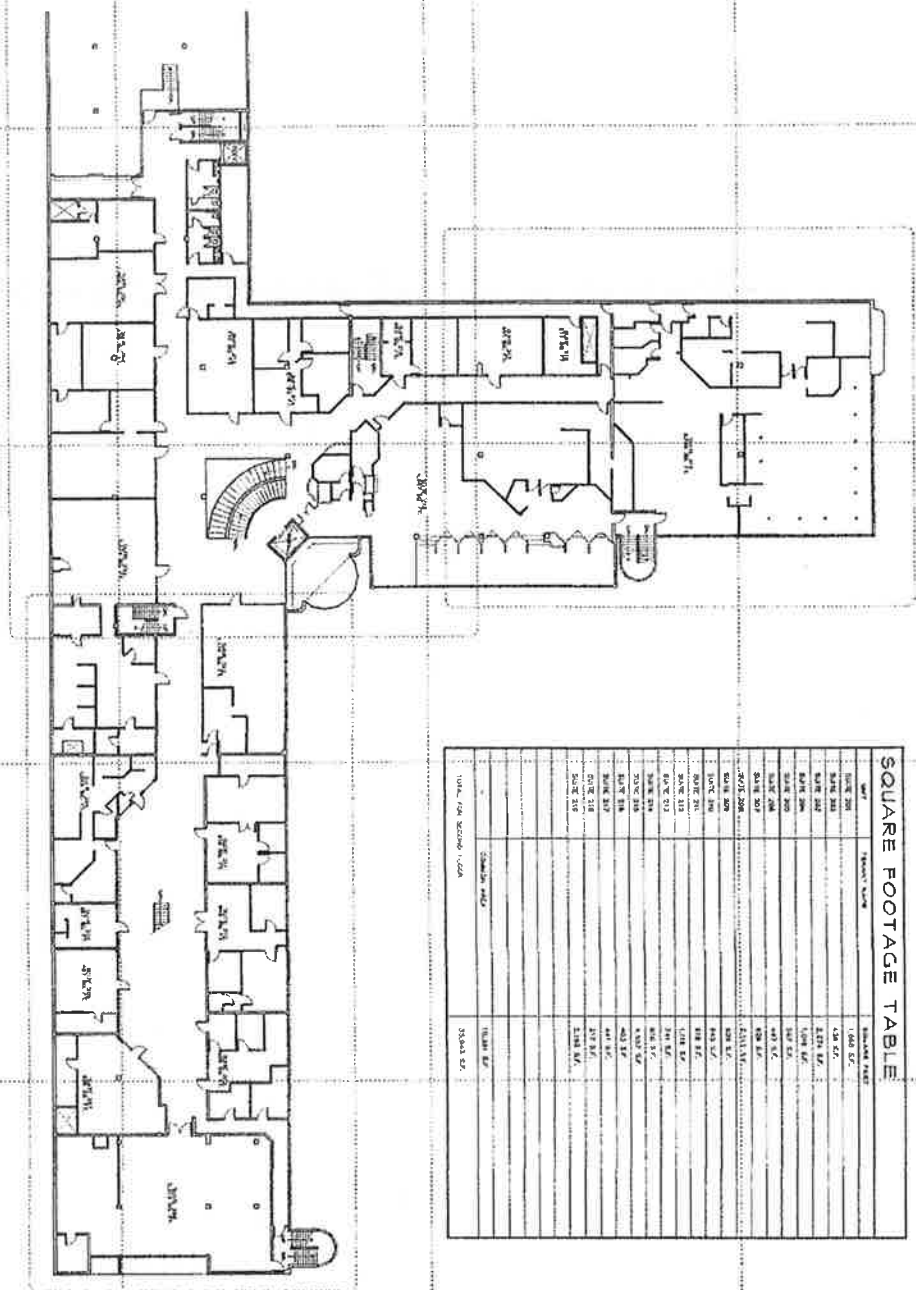
Dated: 6/28/07

Exhibit "A"

Revised Square Footage and Floor Plan.

<u>Unit Number</u>	<u>(Old Unit Number)</u>	<u>Square Footage</u>
208	2P	2,513 sq ft
211	2R1	919 sq ft
301	3J1	1,564 sq ft
302	3K	413 sq ft
303	--	3,924 sq ft
304	3MNQ	740 sq ft
305	--	1,346 sq ft
306	3O	3,260 sq ft
307	3R1	135 sq ft
308	3R	1,158 sq ft
310	--	1,274 sq ft
311	3L	1,545 sq ft
314	3C1	591 sq ft
319	3DEFG	1,129 sq ft
320	320	208 sq ft
	<b><i>TOTAL SQ FT</i></b>	<b>20,719 sq ft</b>

SECOND FLOOR PLAN



SQUARE FOOTAGE TABLE

UNIT	TYPICAL ROOM	SQUARE FEET	TOTAL
R. 201	6,000 S.F.	6,000	6,000
R. 202	6,000 S.F.	6,000	12,000
R. 203	6,000 S.F.	6,000	18,000
R. 204	6,000 S.F.	6,000	24,000
R. 205	6,000 S.F.	6,000	30,000
R. 206	6,000 S.F.	6,000	36,000
R. 207	6,000 S.F.	6,000	42,000
R. 208	6,000 S.F.	6,000	48,000
R. 209	6,000 S.F.	6,000	54,000
R. 210	6,000 S.F.	6,000	60,000
R. 211	6,000 S.F.	6,000	66,000
R. 212	6,000 S.F.	6,000	72,000
R. 213	6,000 S.F.	6,000	78,000
R. 214	6,000 S.F.	6,000	84,000
R. 215	6,000 S.F.	6,000	90,000
R. 216	6,000 S.F.	6,000	96,000
R. 217	6,000 S.F.	6,000	102,000
R. 218	6,000 S.F.	6,000	108,000
R. 219	6,000 S.F.	6,000	114,000
R. 220	6,000 S.F.	6,000	120,000
R. 221	6,000 S.F.	6,000	126,000
R. 222	6,000 S.F.	6,000	132,000
R. 223	6,000 S.F.	6,000	138,000
R. 224	6,000 S.F.	6,000	144,000
R. 225	6,000 S.F.	6,000	150,000
R. 226	6,000 S.F.	6,000	156,000
R. 227	6,000 S.F.	6,000	162,000
R. 228	6,000 S.F.	6,000	168,000
R. 229	6,000 S.F.	6,000	174,000
R. 230	6,000 S.F.	6,000	180,000
R. 231	6,000 S.F.	6,000	186,000
R. 232	6,000 S.F.	6,000	192,000
R. 233	6,000 S.F.	6,000	198,000
R. 234	6,000 S.F.	6,000	204,000
R. 235	6,000 S.F.	6,000	210,000
R. 236	6,000 S.F.	6,000	216,000
R. 237	6,000 S.F.	6,000	222,000
R. 238	6,000 S.F.	6,000	228,000
R. 239	6,000 S.F.	6,000	234,000
R. 240	6,000 S.F.	6,000	240,000
R. 241	6,000 S.F.	6,000	246,000
R. 242	6,000 S.F.	6,000	252,000
R. 243	6,000 S.F.	6,000	258,000
R. 244	6,000 S.F.	6,000	264,000
R. 245	6,000 S.F.	6,000	270,000
R. 246	6,000 S.F.	6,000	276,000
R. 247	6,000 S.F.	6,000	282,000
R. 248	6,000 S.F.	6,000	288,000
R. 249	6,000 S.F.	6,000	294,000
R. 250	6,000 S.F.	6,000	300,000
R. 251	6,000 S.F.	6,000	306,000
R. 252	6,000 S.F.	6,000	312,000
R. 253	6,000 S.F.	6,000	318,000
R. 254	6,000 S.F.	6,000	324,000
R. 255	6,000 S.F.	6,000	330,000
R. 256	6,000 S.F.	6,000	336,000
R. 257	6,000 S.F.	6,000	342,000
R. 258	6,000 S.F.	6,000	348,000
R. 259	6,000 S.F.	6,000	354,000
R. 260	6,000 S.F.	6,000	360,000
R. 261	6,000 S.F.	6,000	366,000
R. 262	6,000 S.F.	6,000	372,000
R. 263	6,000 S.F.	6,000	378,000
R. 264	6,000 S.F.	6,000	384,000
R. 265	6,000 S.F.	6,000	390,000
R. 266	6,000 S.F.	6,000	396,000
R. 267	6,000 S.F.	6,000	402,000
R. 268	6,000 S.F.	6,000	408,000
R. 269	6,000 S.F.	6,000	414,000
R. 270	6,000 S.F.	6,000	420,000
R. 271	6,000 S.F.	6,000	426,000
R. 272	6,000 S.F.	6,000	432,000
R. 273	6,000 S.F.	6,000	438,000
R. 274	6,000 S.F.	6,000	444,000
R. 275	6,000 S.F.	6,000	450,000
R. 276	6,000 S.F.	6,000	456,000
R. 277	6,000 S.F.	6,000	462,000
R. 278	6,000 S.F.	6,000	468,000
R. 279	6,000 S.F.	6,000	474,000
R. 280	6,000 S.F.	6,000	480,000
R. 281	6,000 S.F.	6,000	486,000
R. 282	6,000 S.F.	6,000	492,000
R. 283	6,000 S.F.	6,000	498,000
R. 284	6,000 S.F.	6,000	504,000
R. 285	6,000 S.F.	6,000	510,000
R. 286	6,000 S.F.	6,000	516,000
R. 287	6,000 S.F.	6,000	522,000
R. 288	6,000 S.F.	6,000	528,000
R. 289	6,000 S.F.	6,000	534,000
R. 290	6,000 S.F.	6,000	540,000
R. 291	6,000 S.F.	6,000	546,000
R. 292	6,000 S.F.	6,000	552,000
R. 293	6,000 S.F.	6,000	558,000
R. 294	6,000 S.F.	6,000	564,000
R. 295	6,000 S.F.	6,000	570,000
R. 296	6,000 S.F.	6,000	576,000
R. 297	6,000 S.F.	6,000	582,000
R. 298	6,000 S.F.	6,000	588,000
R. 299	6,000 S.F.	6,000	594,000
R. 300	6,000 S.F.	6,000	600,000
MECH.	10,000 S.F.	10,000	610,000
STAIR	10,000 S.F.	10,000	620,000
TOTAL	100,000 S.F.	100,000	720,000

NOTE:  
SEE ARCHITECTURAL  
DRAWINGS FOR  
DETAILED  
CONSTRUCTION  
AND MATERIAL  
SPECIFICATIONS.

A-13

SIERRA CENTER MALL  
545 OLD MAMMOTH ROAD  
MAMMOTH LAKES, CA  
ARCHITECT: BRUCE P. WOODWARD ARCHITECT  
SCALE: AS SHOWN

**SIERRA CENTER MALL**  
452 OLD MAMMOTH ROAD, MAMMOTH LAKES, CA

**WOODWARD ARCHITECTS**  
BRUCE P. WOODWARD ARCHITECT C-16915  
POST OFFICE BOX 1568  
126 OLD MAMMOTH ROAD #217  
MAMMOTH LAKES, CA 93546  
VOICE: 760.934.1860  
FAX: 760.934.1860  
e-mail: bruce@mammoth-design-group.com

NO.	REVISIONS	DATE
1	ISSUED FOR PERMIT	11/17/01
2	AS SHOWN	11/17/01
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SECOND AMENDMENT OF LEASE AGREEMENT  
Addition of Suite 207 to Mono County Lease

THIS SECOND AMENDMENT TO THE LEASE AGREEMENT ENTERED INTO BY AND BETWEEN THE PARTIES ON AUGUST 1, 2006, (the "Second Amendment"), is made this \_\_\_ day of April, 2015 by and between 452 OM RD, LLC and Highmark Mammoth Investments, LLC, as Tenants in Common DBA "Old Mammoth Highmark Associates" (hereinafter referred to as "Landlord"), and the COUNTY OF MONO, a political subdivision of the State of California (hereinafter referred to as "Tenant"), at the Town of Mammoth Lakes, County of Mono, State of California, with regards to the following recitals:

A. Landlord and Tenant entered into a written Lease dated August 1, 2006 (the "Lease") and a First Amendment to that Lease dated June 26, 2007 (the "First Amendment") pursuant to which Landlord leased to Tenant, and Tenant leased from Landlord, space within a commercial shopping center commonly known as The Sierra Center Mall, located at 452 Old Mammoth Road, Mammoth Lakes, Mono County, California (the "Property"). The Lease and First Amendment are collectively referred to herein as the "Lease."

B. Landlord and Tenant desire to amend the Lease for the purpose of adding 926 additional square feet located on the second floor of the Property and known as Suite 207 ("Suite 207"), to the Leased Premises.

C. Landlord and Tenant additionally desire to amend the Revised Square Footage as stated in the Lease by adding Suite 207's useable square footage to that Revised Square Footage for the purposes of calculation of Tenant's "Proportionate Share" of Common Area Expenses to be paid by Tenant to Landlord.

D. Landlord and Tenant agree that the portion of the Base Minimum Rental, which shall be allocated for Suite 207, shall be calculated as set forth in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Landlord and Tenant mutually agree as follows:

1. Revised Square Footage. The Revised Square Footage of the Leased Premises, as described in the Lease shall be further amended by this Second Amendment to provide for the addition of 926 square feet located on the second floor of the Sierra Center Mall and known as Suite 207. This square footage shall be used to calculate Tenant's Proportionate Share as defined in section 3.4 of the Lease for payment of Common Area Expenses.

2. Amendment.

2.1 Additional Leased Premises. The following is added after the existing language of Section 1.1 of the Lease:

"In addition to the foregoing 20,917 square feet of space, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, 926 square feet located on the second floor of the Sierra Center Mall and known as Suite 207. Suite 207 is more specifically described in Exhibit "A1," which is attached hereto and incorporated by this reference. Accordingly, the total square footage shall be increased from 20,719 square feet to 21,645 square feet in order to reflect the addition of 926 square feet of Suite 207.

2.2 Commencement and Term. The following is added to the Lease after existing section 2.2:

"2.2.1 Suite 207. The Term for Suite 207 shall commence upon delivery by Landlord of Suite 207 in a condition acceptable to Tenant and usable as office space for Tenant's intended purposes. To be acceptable and usable for Tenant's intended purposes, Suite 207 must provide at a minimum professionally constructed offices and work areas as described in the attached plan, and be accepted by Tenant in writing. Finish work shall be consistent with the design of Suite 208 with respect to the paint color, carpet color and the door and baseboard trim. Landlord will deliver Suite 207 to Tenant in an acceptable and usable condition as soon as reasonably practicable. In the event that Landlord suffers any losses or damages of any type or kind, arising out of any action brought by a third party with respect to this Second Amendment on the grounds that the Second Amendment, the manner of its execution, or any action taken by Landlord pursuant hereto, has violated the statutory rights of third parties, then Landlord shall not seek indemnity or recompense for such losses or damages from Tenant. The Termination of the Lease Term for Suite 207 shall be coterminous with the expiration of this Lease, including any extensions hereto that include Suite 207."

2.3 Additional Base Rent. The following is added as a new paragraph at the end of section 3.1 of the Lease:

"The Base Minimum Rent for Suite 207 shall be \$2,974.35 per month. Payment shall commence upon delivery of Suite 207 to Tenant as set forth in section 2.2.1. The Base Minimum Rent shall increase once each year that the Lease is in effect, at the same time that the Base Minimum Rent for the remaining Leased Premises increases, as follows: the first increase shall be to \$2,996.57 per month; the second increase shall be to \$3,019.13 per month; the third increase shall be to \$3,042.03 per month; and the fourth increase shall be to \$3,065.27 per month. The provisions of section 3.2 of the Lease shall not apply to Suite 207."

2.4 Exhibit "A1". Exhibit "A1" is hereby added to the Lease following Exhibit "A". Exhibit "A1" shall supplement Exhibit "A" for the purpose of depicting the additional premises leased pursuant to this Second Amendment, and shall not supersede or replace Exhibit "A".

3. Defined Terms. All capitalized terms not defined in this Second Amendment shall have the meaning they are given in the Lease.

4. Full Force and Effect. Except as herein provided, the Lease (including the First Amendment thereto) and all of its terms, covenants and conditions shall remain in full force and effect.

5. Representations of the Parties. Each party represents to the other that it has not made any assignment, sublease, transfer, conveyance or other disposition of the Lease, or any interest in the Lease, or any claim, demand, obligation, liability, action, or cause of action arising from the Lease.

6. Miscellaneous.

6.1. Voluntary Agreement. The parties have read this Second Amendment and on advice of counsel they have freely and voluntarily entered into said Second Amendment.

6.2. Successors. This Second Amendment shall be binding on and inure to the benefit of the parties and their successors.

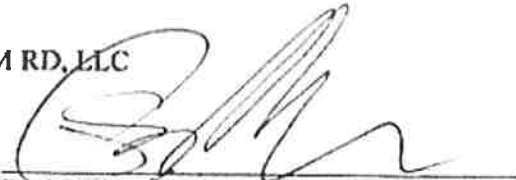
6.3. Entire Agreement. This Second Amendment contains the entire agreement of the parties with respect to the matters which are the subject of this Second Amendment and supersedes all prior and contemporaneous written or oral agreements, statements, understandings, terms, conditions, representations and warranties made by Landlord or Tenant concerning the matters which are the subject of this Second Amendment.

6.4. Counterparts. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument.

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

LANDLORD: 452 OM RD, LLC

By:

  
Paul Rudder, its Manager

HIGHMARK MAMMOTH INVESTMENTS, I.L.C

By: \_\_\_\_\_

Drew Hild, its Manager

TENANT:

THE COUNTY OF MONO

By:

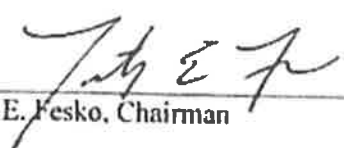
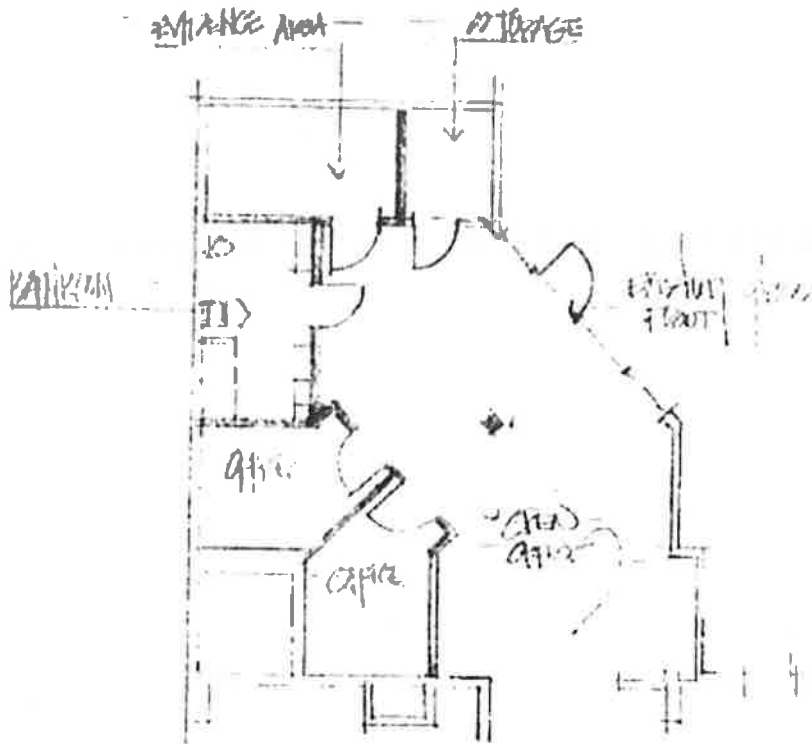
  
\_\_\_\_\_  
Timothy E. Fesko, Chairman

Exhibit A1



PROBATION SUITE #10  
12-10-05

# Exhibit A

## OFFICE LEASE

THIS OFFICE LEASE AGREEMENT ("Lease") is made as of the 1st day of August, 2006, by and between Doheny V LLC, a California limited liability company (hereinafter referred to as "Landlord") and the County of Mono, a political subdivision of the State of California ("Tenant").

### 1. Leased Premises.

1.1 Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, an amount of square footage which for initial reference purposes only shall be described as approximately 20,695 useable square feet of space (the "Leased Premises") on the second and third floor of the commercial shopping center commonly known as The Mammoth Sierra Center Mall (the "Building") located on the property commonly referred to as 452 Old Mammoth Road, Mammoth Lakes, Mono County, California, (the "Property"). As soon as reasonably practicable after entry into this Agreement, Landlord shall at its own expense arrange for Woodward Architecture (the "Architect") to determine the actual useable square footage comprising the Leased Premises and to produce a floor plan showing same. Said actual square footage and floor plan shall be attached to this Lease as Exhibit "A" and incorporated herein by this reference. The square footage and floor plan shown in Exhibit "A" shall be final and binding on the parties and shall apply for all purposes within this Agreement, retroactive to August 1, 2006, including but not limited to determination of Base Minimum Rent, description of the Leased Premises, and Tenant's proportionate share of any Common Area Expenses. In the event that the actual square footage is more than the initial reference amount of 20,695, any additional amount owing by Tenant shall be due and payable to Landlord within 30 days after Landlord has notified Tenant of the additional amount allegedly owing. In the event that the actual square footage is less than the initial reference amount of 20,695, the amount of any overpayment by Tenant shall be a credit applied toward the next month's Base Minimum Rent. With respect to said Leased Premises, approximately 15,129 square feet are already presently leased and occupied by Tenant prior to entry into this Agreement (the "Existing Space") and the remaining square footage, approximately 5,566 square feet, corresponding to Suites 2-P and 3-O, is new leased space (the "New Space"). As of August 1, 2006, this Agreement shall prospectively supersede any and all other lease agreements existing between Tenant and Landlord (by virtue of its recent purchase of the Building and the Property).

1.2 Condition of Leased Premises. The portion of the Leased Premises consisting of Existing Space shall be delivered to Tenant in its current "AS IS" condition. Any existing improvements in the New-Space portion of the Leased Premises that are not desired by Tenant shall be demolished by Landlord at its own expense and said space delivered to Tenant in gray shell, broom clean condition. Landlord shall provide Tenant with an allowance of four hundred thousand dollars (\$400,000) for Tenant's use in installing fixtures, trade fixtures and making any and all tenant improvements necessary to finish the Leased Premises to meet Tenant's needs, in accordance with the terms of Exhibit "E" attached hereto and incorporated by reference. To the extent said allowance is not sufficient to cover all of Tenant's associated costs and expenses, Tenant shall bear said additional costs and expenses. To the extent said allowance is more than sufficient, Tenant may apply the remaining amount of the allowance toward

payment of Rent or purchase of any furniture or other personal property for use in the Leased Premises. Nothing in this Section regarding the condition of the Leased Premises shall be construed as relieving Landlord of any obligation it may otherwise have under this lease to properly repair and maintain the Building and the Property in good order, condition and repair.

1.3 Appurtenances to Leased Premises. During the term and any extended term of this Lease, Tenant shall be entitled to all appurtenances to the Leased Premises, including the reasonable, non-exclusive rights of ingress and egress to and from the Leased Premises for Tenant and Tenant's contractors, agents, employees, invitees, and other persons transacting business with Tenant, the reasonable, non-exclusive right to use the public or common entrances, lobbies, corridors, driveways, footways, passageways and stairs, and the right to maintain and use existing access to the Leased Premises through corridors, stairs, passageways, entrances, driveways and footways. The exterior walls and the roof of the Leased Premises and the area above and beneath said Leased Premises are not leased hereunder, and the use thereof, together with the right to locate, both vertically and horizontally, install, maintain, use, repair and replace pipes, utility lines, ducts, conduits, flues, refrigerant lines, drains, sprinkler mains and valves, access panels, wires and structural elements leading through the Leased Premises in locations which will not materially interfere with Tenant's use thereof and serving other parts of the building, are hereby reserved unto Landlord. Notwithstanding the foregoing, Landlord acknowledges that as of the date that this Lease is entered into, Tenant has certain telecommunications equipment (e.g., microwave dishes, wiring, and cables) installed on the roof of and within the Building for the purpose of providing Tenant with telecommunications and computer service. Landlord also acknowledges that as of the date this Agreement is entered into, certain portions of the Leased Premises are served by heating and air-conditioning equipment that may have ventilation ducts, pipes, and other associated equipment installed in areas outside of the Leased Premises, including but not limited to the Building roof. Landlord shall allow Tenant to leave such equipment in place for such purposes during the Term of this Lease, subject to Landlord's right to reasonably relocate such equipment in order to repair and maintain such areas of the Building or to install other equipment in such areas. Tenant shall be entitled to reasonable access to such areas of the Building outside of the Leased Premises where Tenant maintains equipment upon reasonable advanced notice to Landlord and with a Landlord escort so that Tenant may maintain and repair such equipment.

2. Term and Right to Possession.

2.1 Commencement. The term of this Lease shall commence on August 1, 2006 ("the Commencement Date"). Tenant's obligation to pay all sums and charges reserved unto Landlord in this Lease shall commence on the Commencement Date, except that so long as Tenant is not in default of any of its obligations to be performed hereunder, Tenant's obligation to pay Base Minimum Rent shall commence upon November 1, 2006 (the "Rent Commencement Date").

2.2 Term. The term of this Lease shall be for thirteen (13) years and three (3) months (the "Lease Term"). The term "Lease Year" as used herein shall mean a period of twelve (12) consecutive full calendar months. The first Lease Year shall begin on the Commencement Date, if the Commencement Date shall occur on the first day of a calendar month. If not, then

the first Lease Year shall commence upon the first day of the calendar month next following the Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

2.3 Possession. Tenant shall have the right of entry into and shall be entitled to possess and occupy the Leased Premises pursuant to provisions of this Lease, provided however that, with respect to the New Space Tenant shall have first submitted all insurance policies and/or Certificates of Insurance as required by Section 16 of this Lease and, with respect to the Existing Space Tenant shall submit all insurance policies and/or Certificates of Insurance as required by section 16 of this Lease by August 14, 2006.

2.4 Failure to Deliver Possession. If Landlord is unable to deliver possession of all or any part of the Leased Premises to Tenant on or before the Commencement Date Landlord shall not be liable for any resulting damage. In such event, and in the event that Landlord is unable to deliver possession of all or any part of the Leased Premises for one hundred and eighty (180) after the Commencement Date, Tenant may elect to remove the undelivered portion of the Leased Premises from the Lease prior to the date upon which Landlord delivers possession of the undelivered portion of the Leased Premises to Tenant, with all parties thereafter having no further obligation or liability hereunder. Such removal rights shall be the exclusive remedy available to Tenant as a result of Landlord's failure to deliver possession of the Leased Premises to Tenant as set forth herein. In no event shall Tenant be obligated to pay Rent on any portion of the Leased Premises which has not been delivered by Landlord to Tenant until three (3) calendar months after the date upon which such portion of the Leased Premises is delivered by Landlord to Tenant. In turn, Tenant shall be obligated to pay Rent, as provided for herein, for all portions of the Leased Premises delivered to Tenant by Landlord commencing upon the later to occur of (a) three (3) months after the date such portions of the Leased Premises are delivered to Tenant or (b) November 1, 2006. To the extent that Tenant is already occupying any portion of the Leased Premises, Landlord shall have no further obligation to deliver such portion of the Leased Premises to Tenant, such portions of the Leased Premises being deemed delivered upon the Commencement Date of this Lease.

2.5 Options to Extend. Landlord grants to Tenant two ten (10) year option(s) to extend the term of this Lease. SUCH OPTION MUST BE EXERCISED BY TENANT BY GIVING WRITTEN NOTIFICATION TO LANDLORD NOT LESS THAN ONE HUNDRED AND EIGHTY (180) DAYS PRIOR TO THE EXPIRATION OF THE CURRENT TERM AND PROVIDED THAT TENANT IS NOT IN DEFAULT UNDER ANY TERM OF THIS LEASE. During the option period, rent shall be reestablished at the then-current market rate, subject to adjustments as are common in the market at the time the option is exercised. For purposes of this Section, "market rent" shall be defined to mean the average rent paid by tenants under commercial and retail leases for terms in excess of five (5) years within comparable commercial shopping centers and areas located in Mammoth Lakes, California entered into during the six-month period immediately preceding the exercise of such option(s). The initial determination of market rent shall be made by Landlord, who shall be required to make such determination in good faith and notify Tenant thereof no less than thirty (30) days after Tenant has notified Landlord of its exercise of any option to extend. Upon receipt of Landlord's determination of market rent, Tenant shall have thirty (30) days notify Landlord of any dispute it may have



regarding said determination. In that event, determination of market rent shall be referred to a mutually-acceptable neutral third party for resolution, which determination shall be final. Or, in lieu of and prior to such a third-party determination, Tenant may in its sole discretion opt to cancel and rescind its exercise of the option without incurring any liability therefor. The grant of such option(s) described herein is personal to Tenant, and Tenant shall not assign or transfer Tenant's interest in such option(s). Any attempted or purported assignment of such option(s) by Tenant shall be null and void and of no force and effect.

3. Rent.

3.1 Base Minimum Rent. Tenant shall pay to Landlord at the address of Landlord (400 South Beverly Drive, Suite 412, Beverly Hills, CA 90212), or at such other place as may be designated by Landlord, without prior demand therefor, and without any deduction or offset whatsoever, and as initial Base Minimum Rent (subject to adjustment as set forth in Section 3.2. hereof) the amount set forth and designated as Base Minimum Annual Rent, each calendar year, payable monthly, in advance, in the amount as set forth as Base Minimum Monthly Rent (subject to adjustment as set forth in Section 3.2. hereof).

If the Rent Commencement Date shall occur upon a day other than the first day of a calendar month, then Tenant shall pay, upon the Rent Commencement Date, a pro rata portion of the Base Minimum Monthly Rent described in the foregoing Section prorated on a per diem basis with respect to the fractional calendar month preceding the commencement of the first Lease Year hereof.

<u>Year</u>	<u>Base Minimum Monthly Rent</u>
1	\$2.00 per useable square foot

The Base Minimum Annual Rent shall be \$24.00 per useable square foot.

It is intended by the parties that all rent calculations be on a per square foot basis and not on a gross basis. The Base Minimum Annual Rent shall be equal to twelve (12) months of Base Minimum Monthly Rent.

3.2 Base Rent Increases. Upon the expiration of twelve (12) calendar months after the Commencement Date, and upon the expiration of each twelve (12) calendar month period thereafter, the Base Minimum Annual Rent shall be adjusted by multiplying the Base Minimum Annual Rent by one hundred and one and one-half percent (101.5%).

3.3 Useable Versus Rentable Square Feet. Notwithstanding any statement of square footage set forth in this Lease to the contrary, Landlord reserves the right to remeasure the Premises and the Building to convert all tenants to the "Rentable Square Feet Measurement" system. This method measures each tenant's pro rata portion of the Building, excluding elements of the Building that penetrate through the floor to areas below. The load factor shall be set by Landlord in its commercially reasonable discretion. This method of measurement would cause the square footage of the Premises to be increased but Landlord agrees that the Base Minimum Annual Rent would not

be increased. In the event Landlord does convert to the "Rentable Square Feet Measurement" system, then the Base Minimum Annual Rent per foot would be reduced to reflect the same total Rent due under the current "Useable Square Feet Measurement" system. Furthermore, said change shall in no event increase any Common Area Expenses paid by Tenant.

3.4 Common Area Expenses. Tenant shall pay without demand therefore and without deduction or offset, Tenant's proportionate share of expenses and charges as set forth in this Section 3.4 (collectively "Common Area Expenses"). All payments that Tenant is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts and all damages, costs and expenses which Landlord may incur by reason of any default of Tenant or failure on Tenant's part to comply with the terms of this Lease shall be deemed to be additional rent, and in the event of nonpayment by Tenant, Landlord shall have all the rights and remedies with respect thereto as Landlord has for the nonpayment of any rent. As used in this Lease, Tenant's "Proportionate Share" shall mean the percentage obtained by dividing the useable square footage of the Leased Premises (as determined by the Architect) by the total useable square footage of all leasable space within the Building (exclusive of Common Areas).

3.4.1 Taxes.

(a) Tenant shall pay its Proportionate Share of all taxes, assessments, levies, and charges, whether special, extraordinary, or otherwise, whether foreseen or unforeseen, which may be levied, assessed, or imposed upon, on account of or with respect to: (i) the ownership of and/or all other taxable interests in all land situated in the premises; (ii) all buildings, structures, and other improvements situated thereon; (iii) rents or rental sales tax on commercial leases, whether such tax be levied on Landlord or Tenant. The terms "taxes, assessments, levies, and charges" shall include, but shall not be limited to, any expenses, taxes, charges, or penalties imposed by the Federal Department of Energy, Federal Environmental Protection Agency, the Federal Clean Air Act, or any regulations promulgated by these entities, or any other local, state, or federal governmental agency or entity now or later vested with the power to impose taxes, assessments, or other types of surcharges as a means of controlling or abating environmental pollution or the use of energy in regard to the use, operation, or occupancy of the Property attributable to use of the Leased Premises by Tenant.

(b) The amount of real estate taxes upon which such payment is based shall be the most current notices(s) of assessment or tax bill(s) concerning the entire premises or, if there are none, such amount as Landlord may reasonably estimate, subject to adjustment as provided in subsection 3.4.3. A tax bill submitted by Landlord to Tenant shall be conclusive evidence of the amount of taxes assessed or levied, as well as the items taxed. Any tax payable by Tenant pursuant to this Section and billed to Landlord which would not otherwise be due until after the date of termination of this Lease, but which relates to any period of the term hereof, shall be paid by Tenant to Landlord upon such termination date. In the event that Landlord is successful at any time in obtaining any reduction in real property taxes or assessments levied or assessed against the premises, Landlord shall be entitled to reimbursement of all costs incurred in obtaining such reduction; provided however, that such reimbursement shall under no circumstances exceed the saving to Tenant resulting from such reduction.

3.4.2 Operating Expenses. Tenant shall pay to Landlord its Proportionate Share of the operating expenses of the Property (the "Operating Expenses"). Without limiting the generality of the foregoing, Operating Expenses shall specifically include any and all of the following: (i) the cost of supplying all utilities, the cost of operating, repairing and maintaining the utility, telephone, mechanical, sanitary, storm drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections and the cost of contesting any governmental enactments which may affect Operating Expenses; (iii) the cost of all insurance carried by Landlord in connection with the Property and the amounts of insurance deductibles; (iv) the cost of landscaping, relamping, and all supplies, tools, equipment and materials used in the operation, repair and maintenance of the Property, or any portion thereof, unless those costs are incurred in connection with a portion of the Property used solely by or for the benefit of a specific tenant of the Building and are performed at the request or on behalf of that tenant; (v) costs incurred in connection with the parking areas servicing the Property; (vi) management fees (which shall be 15% of the sum total of all items in this Section 3.4); (vii) payments under any equipment rental agreements; (viii) wages, salaries and other compensation and benefits, including taxes levied thereon, of all persons engaged in the operation, maintenance and security of the Property; (ix) costs under any instrument pertaining to the sharing of costs by the Property allocated proportionately to the Property; (x) operation, repair, maintenance and replacement of all systems and equipment and components thereof of the Property, unless those costs are incurred in connection with a portion of the Property used solely by or for the benefit of a specific tenant of the building and are performed at the request or on behalf of that tenant; (xi) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in the Common Areas, maintenance and replacement of curbs and walkways, repair to roofs and re-roofing; (xii) amortization (including interest on the unamortized cost) of the cost of acquiring or the rental expense of personal property used in the maintenance, operation and repair of the Property, or any portion thereof; (xiii) the cost of Capital Improvements or other costs incurred in connection with the Property (A) which actually reduce the cost to operate or maintain the Project, or any portion thereof, (B) that are required to comply with conservation programs mandated or enforced subsequent to the Commencement Date, (C) which are replacements or modifications of items located in or servicing the Common Areas required to keep the Common Areas in good order or condition, (D) that are required under any governmental law or regulation or (E) commercially reasonable reserves for any of the foregoing capital expenses which can be reasonably anticipated; provided, however, that any allowed expenditure for Capital Improvements shall be amortized with interest over its useful life; (xiv) costs, fees, charges or assessments imposed by, or resulting from any mandate imposed on Landlord by, any federal, state or local government for fire and police protection, trash removal, community services, or other services; and (xv) payments under any easement, license, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs by the Property. Landlord acknowledges and agrees that the 15% management fee set forth above shall constitute the sole charge to Tenant for management expenses under this Lease and that no other management costs shall be charged to Tenant as a part of Operating Expenses or otherwise. "Common Areas" means all areas, space equipment and special services provided for the common or joint use and benefit of the lessees or occupants of the premises, or portions thereof, their employees, agents, servants, customers, and other invitees, including without limitation,

parking areas, driveways, roofs, landscaped areas, truck serviceways, loading docks, ramps and sidewalks, and restrooms. "Capital Improvement" means capital improvement as defined by Internal Revenue Service rules related to property depreciation.

3.4.3 Payment of Common Area Expenses. Concurrent with the payment of the Base Minimum Monthly Rental Payment as provided for herein, Tenant shall pay to Landlord on account estimated common area expenses at the rate of seventy-five cents (\$0.75) per each square foot of the square footage floor area of the Leased Premises. In no event shall the total amount of Common Area Expenses or estimated Common Area Expenses paid by Tenant increase due to a change in the method of calculating square footage as allowed by paragraph 3.3. In the event Landlord does convert to the "Rentable Square Feet Measurement" system, then estimated and actual Common Area Expenses would be reduced to reflect the same total amount due under the current "Useable Square Feet Measurement" system. Common Area Expenses includes Taxes, as described in subparagraph 3.4.1 and Operating Expenses, as described in subparagraph 3.4.2. Within ninety (90) days after the expiration of each calendar year, Landlord shall calculate the actual amount of Tenant's Proportionate Share of such Common Area Expenses and shall provide Tenant with a written statement showing: (1) the total Common Area Expenses for the Property for the calendar year; (2) Tenant's Proportionate Share of the Common Area Expenses for the calendar year; (3) a summary of Common Area Expenses for the calendar year by category, if otherwise available; and (4) a detailed listing of the expenses supporting those amounts, including the amount and date of payments, the payee, and the nature of the expense, and such other information as may be reasonably requested by Tenant (the "Annual CAM Statement"). Landlord shall maintain books and records supporting the information set forth in the Annual CAM Statement in accordance with generally accepted accounting principles. In the event Tenant's Proportionate Share as shown on the Annual CAM Statement is greater than the estimated payments on account hereunder, Tenant shall pay the deficiency within thirty (30) days of being billed therefor. In the event Tenant's Proportionate Share as shown on the Annual CAM Statement is less than the amount of the estimated payments, Tenant shall receive a credit against Rent in the amount of its overpayment. After each adjustment, Tenant's monthly contribution on account of Common Area Expenses shall be adjusted to reflect Landlord's good faith reasonable estimate of such expenses for the then-current calendar year. Tenant shall continue to pay the estimated Common Area Expenses from the prior calendar year until it receives written notice from Landlord setting forth a new estimated Common Area Expenses. If the new estimated Common Area Expenses exceed the actual Common Area Expenses for the prior calendar year by more than five percent (5%), then Landlord shall additionally provide Tenant with a written explanation for the increase.

3.4.4. Tenant and its authorized representatives may examine, inspect, audit, and/or copy the records of Landlord supporting the Annual CAM Statement as described in subparagraph 3.4.3. Tenant shall provide Landlord with no less than ten (10) days' prior written notice of Tenant's intent to exercise its rights pursuant to this paragraph during Landlord's normal business hours. Landlord shall keep its books and records applicable to the Annual CAM Statement for two years after the calendar year in which they are incurred. Tenant shall bear all fees and costs of the audit unless the audit determines that the charges were overstated by four percent (4%) or more. In that event, Landlord shall pay for the reasonable costs of the audit.

Pending resolution of any disputes over Common Area Expenses, Tenant shall pay to Landlord the estimated Common Area Expenses as directed by Landlord.

3.5 Tax on Rentals. Tenant shall further pay to Landlord, within seven (7) business days of billing therefor, any and all excise, privilege, rent in lieu of, ad valorem, and other tax(es) (for the purposes of this subsection "Tax") levied or assessed by any governmental authority upon or measured by any rent or any other sums payable by Tenant to, or on behalf of the tenancy created by this Lease. Such Tax shall be paid by Tenant whether or not it comprises a portion of any real property tax or taxes or real property tax bills, and such Tax shall include, without limitation, any new tax of a nature not presently in effect but which may be hereafter levied, assessed or imposed upon the Landlord, or the Leased Premises, if such new tax shall be based on or arise out of the ownership, use, or operation of the Leased Premises, or any portion thereof or right thereto. Nothing contained herein shall be construed to require Tenant to pay any estate, gift, inheritance or net income tax of Landlord.

3.6 Late Charges. Tenant hereby acknowledges that late payment by tenant to Landlord of the Base Minimum Monthly Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Leased Premises. Accordingly, if any installment of Base Minimum Monthly Rent or any sum due from Tenant hereunder shall not be received by Landlord or Landlord's designee on or before the 10th day after the time set forth herein for the payment thereof, then said amount shall be deemed past due, and Tenant shall pay to Landlord a late charge equal to 10% of the amount due, plus any attorney's fees incurred by Landlord by reason of Tenant's failure to pay such Base Minimum Monthly rent or other charges when due hereunder. Landlord and Tenant hereby agree that such late charge represents a fair and reasonable estimate of the cost that Landlord will incur by reason of any such late payment by Tenant. Acceptance of any such late charge by Landlord with respect to such overdue amount, shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

4. Personal Property Taxes and Assessments.

During the term hereof, Tenant shall cause all taxes, assessments and other charges levied upon or against any fixtures or personal property situated in, on or about the Leased Premises to be levied and assessed separately from the Leased Premises and to be paid before the same becomes a lien upon said Leased Premises; provided, however, if for any reason any of such taxes, assessments, or other charges shall not be so separately assessed, Tenant shall nevertheless pay the same as set forth herein, or reimburse Landlord therefor, all within ten (10) business days of receipt of billing therefor.

5. Utilities.

5.1 Landlord's Obligation. Unless the Premises are separately metered, in which case Tenant shall pay such charges directly and not as a part of the Operating Expenses,

Landlord shall pay or cause to be paid, prior to delinquency, all charges for water, gas, sewer, electricity, light, heat, air conditioning and power used, rendered, or supplied in connection with the Leased Premises, together with any assessments or surcharges with respect thereto, and shall contract for the same in Landlord's own name, and shall protect Tenant and the Leased Premises from any such charges. Landlord's obligations hereunder shall commence as of the date of possession as referenced in Section 2 hereof. Notwithstanding the foregoing, Landlord does not make any warranty or representation as to the quantity, quality, availability, amount, or duration of any such utilities or services. Landlord's failure to furnish, or any interruption, diminishment or termination of services due to the application of Laws, the failure of any equipment, the performance of repairs, improvements or alterations, utility interruptions or the occurrence of an event of force majeure (collectively a "Service Failure") shall not render Landlord liable to Tenant, constitute a constructive eviction of Tenant, give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement, unless the Service Failure is caused by the gross negligence or willful misconduct of Landlord. However, if the Premises, or a material portion of the Premises, are made untenable for the Permitted Use for a period in excess of three (3) business days in any one month as a result of a Service Failure that is reasonably within the control of Landlord to correct, then Tenant, as its sole remedy, shall be entitled to receive an abatement of Rent payable hereunder during the period beginning on the 4<sup>th</sup> business day of the Service Failure and ending on the day the service has been restored. If the entire Premises have not been rendered untenable by the Service Failure, the amount of abatement shall be equitably prorated.

Notwithstanding the foregoing, Tenant may elect to have separate meters installed at Tenant's sole cost and expense for the Leased Premises, or a portion thereof, and to contract for gas and/or electricity in Tenant's own name. In the event that Tenant so elects, Tenant shall pay those charges directly to the provider and Landlord shall recalculate Tenant's contribution to Operating Expenses as it relates to those services to reflect Tenant's direct payments. Tenant shall protect Landlord and the Leased Premises from any such charges for utilities billed to Tenant pursuant to this Section.

5.2 Tenant's Obligation. Tenant shall pay or cause to be paid, prior to delinquency, all charges for telecommunications services and satellite/cable service (if any) rendered, or supplied in connection with the Leased Premises, together with any assessments or surcharges with respect thereto, and including, without limitation, charges for installation and connecting such service to the Leased Premises, and shall contract for the same in Tenant's own name, and shall protect Landlord and the Leased Premises from any such charges. Tenant's obligations hereunder shall commence as of the date of possession as referenced in Section 2 hereof and as of the date such service is installed and/or connected to the Leased Premises.

6. Alterations, Improvements, Signs, Restrictions Re Exterior, Parking.

6.1 Alterations and Improvements. Tenant shall not make or cause to be made any alterations, additions, or improvements to the building within which the Leased Premises are located, or install or cause to be installed or used, any exterior signs, floor covering, exterior lighting, plumbing fixtures, shades or awnings, radio or television antennae, loud speakers, sound amplifiers or similar devices, or make any changes to the storefront or exterior of the said

building without first obtaining Landlord's written approval. Tenant shall present to the Landlord plans and specifications for such work at the time approval is sought. Except as expressly provided and authorized by Section 1.3, Tenant shall make no use of the roof and all fixtures installed by Tenant shall be new or completely reconditioned. Landlord shall provide Tenant with a tenant improvement allowance as more fully described in Exhibit "E" (entitled "Tenant Improvement Allowance") attached hereto and incorporated herein by this reference, for the improvement of the Leased Premises at the commencement of the Term.

6.2 Signs. Tenant will not place or suffer to be placed or maintained on any exterior door, roof, wall or window of the building within which the Leased Premises are located any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain or permit, or suffer to be placed or maintained, any decoration, lettering or advertising matter on the glass of any window or door of the said building within which the Leased Premises are located without first obtaining Landlord's written approval, which may be withheld in Landlord's reasonable discretion. In no event shall any (1) neon, flashing or moving sign(s), or (b) signs which shall interfere with the visibility of any sign, awning, canopy, advertising matter, or decoration of any kind of any other business or occupant of the building within which the Leased Premises are located, be permitted hereunder. Tenant further agrees to maintain any such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times. Tenant shall not place or suffer to be placed any merchandise, equipment or other items outside the building within which the Leased Premises are located. Landlord, without liability therefor, at Tenant's cost, may remove, without notice, any item placed, constructed, or maintained, upon or outside of any roof, wall or window of the building within which the Leased Premises are located that does not comply with the provisions of this Section.

6.3 Signage in Compliance with Laws. Any and all signage of Tenant (including any signage required by any franchisor of Tenant) shall be in full compliance with local rules, regulations, and ordinances, including without limitation, all sign ordinances adopted and as may be amended from time to time by the Town of Mammoth Lakes.

6.4 Parking. Vehicles of Tenant and Tenant's employees and agents shall not be parked immediately or directly in front of any ground-floor retail or commercial space within the building on the Property, except that Tenant's employees and agents may park in said spaces to the same extent as the general public when they are visiting and patronizing ground-floor businesses. Landlord shall have the right to cause to be removed at Tenant's expense any vehicle of Tenant or Tenant's employees and agents that may be parked in such areas in violation of this Section without liability of any kind to Tenant or Tenant's employees or agents for any claims, losses, damages, and demands asserted or arising in respect to or in connection with the removal of any vehicle. All parking not otherwise designated shall be on an unreserved, first-come, first-served basis. Landlord shall not be responsible for money, jewelry, automobiles or other personal property lost in or stolen from the parking area. Except as caused by the gross negligence or willful misconduct of Landlord and without limiting the terms of the preceding sentence, Landlord shall not be liable for any loss, injury or damage to persons using the parking area or automobiles or other property therein, it being agreed that, to the fullest extent permitted by law, the use of the spaces shall be at the sole risk of Tenant and its employees. Landlord shall

have the right from time to time to designate the location of the spaces in the parking area and to promulgate reasonable, non-discriminatory rules and regulations regarding the parking area and the use thereof, including, but not limited to, rules and regulations controlling the flow of traffic to and from various parking areas, the angle and direction of parking and the like. Tenant shall comply with and cause its employees to comply with all such rules and regulations as well as all reasonable additions and amendments thereto. Tenant may store any Tenant-owned automobiles in the underground parking area overnight (such overnight use shall not to exceed 25 parking spaces and shall be at Tenant's sole risk); Tenant shall not store or permit its employees to store any personal automobiles in the parking area overnight without the prior written consent of Landlord. Except for emergency repairs, Tenant and its employees shall not perform any work on any automobiles while located in the parking area or on the Property. Landlord shall have the right to temporarily close the parking area or certain areas therein in order to perform necessary repairs, maintenance and improvements to the parking area.

7. Use of Leased Premises.

The Leased Premises shall be used for the operation of County of Mono offices only. No other use shall occur within the Leased Premises without the prior written consent of Landlord; provided, however, that in the event of a proposed sublease or assignment of the Leased Premises, any use of the Leased Premises may occur that is consistent and compatible with other uses of the Building, as determined by Landlord in its commercially reasonable discretion.

8. Conduct of Business.

During all usual business hours, and on all such days as comparable businesses of like nature in the area are open for business, and in any event, during such business hours at the majority of tenants of the premises are open for business, Tenant shall occupy, use, and operate the entire Leased Premises for the purposes specified herein. This requirement shall not apply during times when the Leased Premises are untenable by reason of fire or other casualty; provided, however, Tenant shall continue operation of its business to the extent reasonably practicable from the standpoint of good business during any period of reconstruction or repair. In general, Tenant shall operate the business conducted by it on the Leased Premises in a manner calculated to produce the maximum profitable and practical volume of sales and transactions obtainable and to enhance the reputation and attractiveness of the Leased Premises. Notwithstanding the foregoing to the contrary, so long as Tenant is a government agency, Tenant may operate its public business at such times and days as it sees fit in its sole discretion.

9. Assignment and Subletting.

Tenant shall not sublet or assign this Lease, whether in whole or in part, or any interest therein, without first obtaining Landlord's written consent, which said consent shall not be unreasonably withheld. If Tenant desires at any time to assign this Lease or to sublet the Premises or any portion thereof, it shall first notify Landlord of its desire to do so and shall submit in writing to Landlord:



- a. the name of the proposed subtenant or assignee;
- b. the nature of the proposed subtenant's or assignee's business to be carried on in the Leased Premises; and
- c. an application fee of \$1500.00.

Landlord shall not unreasonably withhold its consent provided:

- a. Use of the Leased Premises remains the same as stated in Section 7 above;
- b. Proposed subtenant or assignee demonstrates that it is financially responsible by submission to Landlord of such reasonable information as Landlord may request concerning the proposed subtenant or assignee;
- c. For assignments only, proposed assignee demonstrates a record of successful experience in operating a business by submission to Landlord of such reasonable information as Landlord may request concerning the proposed assignee, including, but not limited to, a written statement in reasonable detail as to the business and retail merchandising experience of the proposed assignee during the two (2) years preceding the request for Landlord's consent; and
- d. Proposed subtenant or assignee has a reputation for honesty and is of good moral character.

In the event Landlord's withholding of consent is found to be unreasonable by any court of competent jurisdiction, Tenant's sole remedy shall be to have the proposed assignment or subletting declared valid as if Landlord's consent had been given.

Notwithstanding any such subletting or assignment, Tenant shall remain fully and primarily liable for the payment of all rental and other sums due, or to become due hereunder, and for the full performance of all other terms, conditions, and covenants to be kept and performed by Tenant. The acceptance of rent or any other sum due hereunder, or the acceptance of performance of any other term, covenant, or condition hereof, from any other person or entity shall not be deemed to be a waiver of any of the provisions of this Lease or a consent to any subletting or assignment of the Leased Premises. Each subtenant or assignee acquiring this Lease by acceptance of any sublease, assignment, or transfer by operation of law shall assume, be bound by, and be obligated to perform the terms and conditions of its sublessor or assignor under this Lease. This Lease shall not, nor shall any interest therein, be assignable as to Tenant's interest by operation of law, assignment for the benefit of creditors, voluntary or involuntary bankruptcy or reorganization, or otherwise, without the prior written consent of Landlord.

If Tenant is a corporation, and if at any time during the term of this Lease any part or all of the corporate shares of Tenant shall be transferred by sale, assignment, operation of law or other disposition (except where shares are transferred on death by bequest or inheritance) so as to result in a change in the present effect voting control of Tenant by the person or persons

owning a majority of said corporate shares on the date of this Lease, Tenant shall promptly notify Landlord in writing of such change, and such change shall, if not previously consented to in writing by Landlord, which consent shall not be unreasonably withheld, be deemed an assignment without consent of Landlord in violation of the first paragraph of this Section 9.

Any assignment or sublease in violation of this Lease shall, at the option of the Landlord, be void. Tenant further agrees to reimburse Landlord for all reasonable expenses incurred with respect to any such assignment or subletting, such expenses in no event to be less than Fifteen Hundred Dollars (\$1500.00).

As set forth in Section 2.5, Tenant shall not sublet or assign Tenant's interest in any option(s) to extend the term of this Lease granted by Landlord to Tenant. In the event that Tenant has sublet or assigned more than twenty-five percent of the Leased Premises at the time Tenant must exercise or commence an option to extend the Lease Term, whether in one transaction or cumulatively, Tenant shall not have the right to exercise such option and all additional options to extend the Term of this Lease shall be null and void.

10. Security Deposit. Tenant shall not be required to submit a security deposit to Landlord as security for this Lease agreement.

11. Financing.

It is mutually understood and acknowledged that Landlord may, from time-to-time, finance the construction of, and/or improvements within, and/or refinancing of, the premises, and that a mortgage company, or companies, must approve this Lease, and, in order to receive such approval, this Lease may have to be amended or modified. Provided that the term hereof shall not be altered nor Tenant's obligation to pay (a) rent, or (b) its share of taxes, insurance, and common facilities proration charges be increased thereby, Tenant agrees that it shall in good faith consider and, if acceptable, shall execute any reasonable amendment or modification of this Lease as may be requested by said mortgage company or companies within seven (7) days of Landlord's request therefor.

12. Leasehold Priority, Subordination and Estoppels.

Tenant agrees, that upon written request of Landlord, Tenant will execute, acknowledge, and deliver any and all instruments required by Landlord which are necessary or proper to effect the subordination of this Lease to any mortgage or deed of trust, including, but not limited to a Subordination Agreement in the form attached hereto as Exhibit "C" or in another similar form as requested by Landlord. Should the Leased Premises be acquired by any person or entity in connection with any proceeding under the terms of any such mortgage or deed of trust, this Lease shall, at the option of such person, continue in full force and effect for so long as Tenant is not in default hereunder and Tenant hereby attorns and agrees to attorn to such person or entity. Further, Tenant agrees that, upon the written request of Landlord, Tenant will execute, acknowledge and deliver an estoppel in the form attached hereto as Exhibit "D" or in another similar form as requested by Landlord, to the extent that Tenant may truthfully make any

statement set forth in said form; any matters that may not be truthfully stated may be listed as exceptions in the signed estoppel.

13. Compliance with Laws.

Tenant shall promptly comply with all statutes, codes, ordinances, orders, rules and regulations of any municipal or governmental entity whether in effect now or later, including the Americans with Disabilities Act laws (collectively "Laws") affecting the Leased Premises, regarding the operation of Tenant's business and the use, condition, configuration and occupancy of the Premises. In addition, Tenant shall, at its sole cost and expense, promptly comply with any Laws that relate to the Base Building (defined below), but only to the extent such obligations are triggered by Tenant's use of the Leased Premises or alterations, improvements or fixtures in the Leased Premises performed or requested by Tenant. "Base Building" shall include the structural portions of the Building, the public restrooms and the Building mechanical, electrical and plumbing systems and equipment located in the internal core of the Building on the floor or floors on which the Premises are located. Tenant shall promptly provide Landlord with copies of any notices it receives regarding an alleged violation of Law. Tenant shall not do or permit anything to be done in or about the Leased Premises or the building in which the Leased Premises are situated or on any other building within the premises that may injure adjoining buildings or be a nuisance or menace to other persons or businesses in the area or disturb the quiet enjoyment of any person. Tenant shall not conduct or, with knowledge, permit to be conducted any waste or public or private nuisance on the Leased Premises or any portion of the Property within which the same are located. It is further agreed between Landlord and Tenant that Tenant will protect, indemnify, defend, and save and keep Landlord, its agents, servants, employees, and/or its successors or assigns forever harmless and indemnified from and against any and all liability, penalties, damages, costs, expenses and attorneys' fees arising out of or by reason of (a) any accident or other occurrence on or about the Leased Premises causing injury to persons or property whomsoever or whatsoever, except in the event and to the extent that said accident or occurrence arises from active negligent or willful misconduct of the Landlord, its agents, servants, employees, and/or its successors or assigns. Tenant will also protect, indemnify, and save and keep harmless Landlord against and from any and all claim, loss, damage, or expense arising out of any failure of Tenant in any respect to comply with the performance of all of the requirements and provisions of this Lease, and (b) Tenant's failure to prevent any employee, or any other person, from entering upon, or remaining in, any employment or place of employment upon the Leased Premises which is not safe, or which does not comply with the terms of the Occupational Safety and Health Act of 1970 (29 USC §§ 651 et seq.) and all other applicable laws pertaining thereto as they may now or hereafter exist and apply to the Leased Premises.

14. Subordination of Landlord's Lien.

Landlord, within a reasonable time after demand from Tenant, shall execute and deliver any document required by any bona fide supplier, lessor, or lender, in connection with the installation in the Leased Premises of Tenant's personal property or Tenant's trade fixtures, in which Landlord subordinates to the lien of such supplier, lessor, or lender any rights it may have or acquire with respect to that property, if the said supplier, lessor, or lender agrees in writing

that, for so long as it possesses any interest therein or claim thereto, it will remove that property from the Leased Premises within fifteen (15) days of the expiration, or earlier termination, of the term of this Lease, and that in any such event, it will make, forthwith, all repairs and restoration to the Leased Premises that are necessitated by removal of such fixtures and property. Tenant conveys and grants unto Landlord a lien, secured by all of said personal property and trade fixtures at any time in or upon the Leased Premises, not inconsistent with the foregoing provisions of this Section 14, and Tenant shall execute and deliver unto Landlord, upon request, such instruments and documents as are requested by Landlord, to secure unto Landlord, Landlord's security interest therein. Upon the expiration of the term hereof, and provided tenant is not in default hereunder, Landlord shall, upon request, execute such release of said lien as may be requested by Tenant. In the event of any default hereunder, Landlord may, in addition to all other rights of Landlord hereunder, and at law or equity, proceed to foreclose upon such lien, and to otherwise levy upon the same.

15. No Partnership.

Notwithstanding any other express or implied provision of this Lease, Landlord shall not, in any way or for any purpose, become or be deemed to be a partner of Tenant, in its business or otherwise, or a joint venturer, or a member of any joint enterprise with Tenant.

16. Insurance and Hold Harmless.

16.1 Fire, Etc. Insurance. During the term hereof, Landlord shall keep the buildings and improvements within which the Leased Premises are located, insured against loss or damage by fire, with extended coverage and any additional, further, or excess general liability insurance, vandalism and malicious mischief endorsement or their equivalents, together with such other insurance coverage (including without limitation earthquake coverage at full replacement cost) as Landlord may deem reasonably applicable with such insurance companies as Landlord shall select and in amounts not less than the higher of (a) the amount Landlord's lender shall require or (b) \$11 million, with loss payable thereunder to Landlord and to any authorized encumbrancer of Landlord (with standard mortgagee loss payable clause) in accordance with their respective interests. Landlord may, at its option, maintain rent insurance for the benefit of Landlord equal to at least one year's rent hereunder. If this Lease is terminated as a result of damage by fire or casualty as set forth in Section 19 hereof, all insurance proceeds shall be paid to and retained by Landlord, subject to the rights of any authorized encumbrancer of Landlord. Tenant shall further pay to Landlord the entire amount of the increase, if any, in insurance rates, which is caused in whole or in part by Tenant's use of the Leased Premises, over the lowest rate obtainable by Landlord within the premises.

16.2 Additional Insurance. Tenant shall, at its cost and expense, at all times during the term of this Lease, maintain and carry for the joint benefit, and in the names, of Tenant and Landlord, as co-insureds, with cross liability endorsement, (a) Commercial General Liability Insurance by the terms of which Tenant and Landlord shall be indemnified against liability for damage or injury to property or person (including death) occurring on the Leased Premises, or any part thereof, or arising from the use or occupancy thereof, or arising directly or indirectly from any act or omission of Tenant, its employees, agents, representatives, assigns, or

licensees; such insurance policy or policies shall name Landlord, and others designated by Landlord as having an insurable interest in the Leased Premises, as additional insured(s) and shall be carried and maintained by Tenant the minimum basis of Two Million Dollars (\$2,000,000.00) Combined Single Limit for bodily injury (including death) and property damage; (b) Property/Business Interruption Insurance written on an All Risk or Special Cause of Loss Form, including earthquake sprinkler leakage, at replacement cost value and with a replacement cost endorsement covering all of Tenant's business and trade fixtures, equipment, movable partitions, furniture, merchandise and other personal property within the Premises ("Tenant's Property") and any leasehold improvements performed by or for the benefit of Tenant; (c) Workers' Compensation Insurance in amounts required by Law; and (d) Employers Liability Coverage of at least \$2,000,000.00 per occurrence. Tenant shall deliver to Landlord the certificate of each insurance carrier as to each such insurance policy prior to commencement of the term hereof, and thereafter at least thirty (30) days prior to the expiration of any such policy. In the event the terms of this Lease shall permit the sale of alcoholic beverages from or on the Leased Premises, such insurance as carried by Tenant hereunder shall include dram shop liability insurance. In the event Tenant fails at any time during the term of this Lease to obtain insurance required to be carried by Tenant hereunder or to provide to Landlord such evidence thereof, Landlord may, but shall not be required, in addition to all other rights and remedies of Landlord hereunder, procure such insurance, in which event Tenant shall pay to Landlord, upon demand, the cost and expense thereof, together with interest thereon at the maximum rate permitted by law. All insurance carried by Tenant shall be issued as a primary policy by an insurance company authorized to do business in the state in which the Leased Premises are located with a Best's minimum policyholder rating of "A" status or better and a Best's financial category minimum rating of Class XI status or better as rated in the most recent edition of Best's Insurance Reports, or as otherwise approved by Landlord.

16.3 Notice. Each insurance policy shall contain a clause that it cannot be canceled or reduced in scope without thirty (30) days' prior written notice to Landlord and to any mortgagee or trust deed holder of whom the insurer has been notified in writing.

16.4 Hold Harmless and Waiver of Claims. Tenant covenants and agrees that neither Landlord nor its agents, servants, or employees, shall at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage to person(s) or property which at any time may be suffered or sustained by Tenant or by any person(s) whomsoever who may at any time be using or occupying or visiting the Leased Premises or be in, on or about the same, or who may be injured as a result of any act, omission, or negligence whether or not such loss, injury, death or damage shall be caused by or in any manner result from or arise out of any act, omission or negligence of Tenant or of any occupant, subtenant, agent, assignee, employee, visitor, or invitee of any portion of the Leased Premises, or from the use or occupancy of the Leased Premises, or arising from any breach or default of Tenant hereunder, and Tenant shall and herewith does forever indemnify, defend, hold and save Landlord, its agents, servants, and employees free and harmless of, from and against any and all claims, liability, loss, cost, expense or damage whatsoever, including, but not by way of limitation, attorney's fees, on account of any loss, injury, death, or damage occurring on, in, or about the Leased Premises, or arising from the use or occupancy of the Leased Premises, or the violation of any law, rule, ordinance, or regulation thereon.

16.5 Waiver of Subrogation. With respect to loss or damage resulting from any cause insured against by the insurance to be carried by Landlord pursuant to the terms of Section 16.1 hereof, and with respect to any similar insurance of the type referenced in said Section 16.1 which is maintained by Tenant, the parties hereto waive any and all rights of recovery against the other, and each such party hereby agrees that it shall not make any claim against the other, or seek to recover from the other, for loss of or damage to the other, or its property, or property of others under its control, and each party hereto shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier a waiver of right to recovery against the other party hereto, its agents and employees. In furtherance of the foregoing, Tenant agrees that in the event of a sale of the Leased Premises by Landlord, the hereinabove waiver of subrogation shall continue in favor of the original Landlord hereunder, and any subsequent Landlord, as well as be in favor of any such purchaser, and their respective successors and assigns.

17. Repairs, Maintenance, Alterations, and Removal of Equipment.

17.1 Tenant's Maintenance and Repairs. At all times Tenant shall, at Tenant's sole cost and expense, keep and maintain (including replacements if necessary) the Leased Premises (and each and every part thereof) clean, and free from rubbish, dirt, and in good and sanitary order, condition and repair. Tenant shall maintain in good order and condition and otherwise repair and replace as and when necessary, all show windows, plate glass, and show cases comprising a part of the Leased Premises or within which the Leased Premises are contained. Tenant shall not place any rubbish or other matter outside any building within the premises, except in such containers as are authorized from time to time by Landlord. Tenant shall keep sewers and drains open and clear and shall use the same only for designated purposes. Tenant shall paint, varnish, wallpaper, or otherwise redecorate or renovate the interior of the Leased Premises and Tenant's trade fixtures as necessary to maintain the Leased Premises in good order, condition and repair, except to the extent the need for such repairs is caused by Landlord or its agent(s)' active negligence or intentional misconduct, in which event Landlord shall be responsible for such repairs (e.g., water stains from leaking roofs, grease stains on carpet or walls from Landlord's contractors). Except as specifically provided in this Lease, Landlord shall not be obligated to repair, replace, maintain, or alter the Leased Premises, or the Property, Building or improvements within which the same are located, and Tenant waives all laws in contravention thereof. With regard to repairs, except as expressly provided in Section 21.2, Tenant expressly waives any right pursuant to any law now existing, or which may be effective during the term hereof, to make repairs at Landlord's expense, including, without limitation, the provisions of Sections 1932, 1933(4), and 1942 of the California Civil Code, and any provisions amendatory thereof or supplemental thereto.

17.2 Tenant Alterations. Tenant shall not have the right to make any additions, alterations, changes, or improvements to the Leased Premises unless Landlord, in its reasonable discretion, has approved the same in advance and in writing. No addition, alteration, change, or improvement shall be made which will weaken the structural strength, lessen the value of or change the architectural appearance or elevation of any building or other construction. All alterations, additions, and improvements made or installed by Tenant to or upon the Leased

Premises and the building within which the same are located, except signs, cases, counters, or other removable trade fixtures, shall at once when made or installed be deemed to have attached to the freehold and to have become the property of Landlord.

17.3 Landlord's Maintenance and Repairs. Landlord agrees and acknowledges that it is providing Tenant with space in a prime, commercial shopping center (i.e., "the Building"). Landlord shall use commercially reasonable efforts to manage and maintain the Building and the Property, including but not limited to public bathrooms, parking areas, roof, and all Common Areas, in good order, condition and repair and in a manner that will not unreasonably interfere with Tenant's use and enjoyment of the Leased Premises. Landlord shall, Landlord reserves the right, at any time and from time to time throughout the term of this Lease, to let or make agreement(s) or contract(s) and/or to otherwise arrange for, or perform, the maintenance, repair and operation (or any combination thereof) of: (a) the heating and ventilating system, including heat pumps, electrical, plumbing, pipes, wiring, conduit, sprinkler system (if any), and air conditioning apparatus of the building serving the Leased Premises, (b) the roof of the building serving the Leased Premises, (c) the exterior of the building within which the Leased Premises are located, including, without limitation, the painting thereof, and (d) the structural portions of the building within which the Leased Premises are located, or any of the foregoing or any combination thereof. In the event any such maintenance, repair or operation, as aforesaid, is attributable to the negligent act or omission of Tenant, or to any violation by Tenant of any provision of this Lease, Tenant shall pay to Landlord, as aforesaid, an amount equal to the cost of any such maintenance, repair, or operation so attributable to the act or omission of Tenant. Landlord may make such repairs and perform such maintenance and operation without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property, or to Tenant's business by reason thereof, unless due to the active negligence or willful misconduct of Landlord.

18. Mechanic's Liens.

18.1 No Liens Against Leased Premises. Tenant agrees to keep all of the Leased Premises and every part thereof and all buildings and other improvements within which the same are located free and clear of and from any and all mechanic's, materialman's, and other liens for work or labor done, services performed, materials, appliances, transportation, or power contributed, used or furnished to be used in or about the Leased Premises to or on the order of Tenant, and Tenant shall promptly and fully pay and discharge any and all claims upon which any such lien may or could be based within ten (10) days after learning of the existence thereof and Tenant shall save and hold Landlord and all of the Leased Premises and all buildings and improvements within which the same are contained free and harmless of and from any and all such liens and claims of liens and suits or other proceedings arising out of materials or services furnished to or on the order of Tenant. Tenant agrees to give Landlord written notice not less than ten (10) days in advance of the commencement of any construction, alteration, addition, improvement, installation, or repair costing in excess of Five Hundred Dollars (\$500) in order that Landlord may post appropriate notices of Landlord's non-responsibility, and, if reasonably necessary to secure, at Tenant's sole cost and expense, a bond indemnifying and releasing Landlord and the Leased Premises from the effect of all aforesaid liens, with corporate surety, and in form, satisfactory to Landlord.

18.2 No Effect of Tenant's Liens. No mechanic's or materialman's liens or mortgages, deeds of trust, or other liens of any character whatsoever created or suffered by Tenant shall in any way, or to any extent, affect the interest or rights of Landlord in any buildings or other improvements on or about the Leased Premises, or attach to or affect Landlord's title to or rights in the Leased Premises.

19. Fire and Casualty Damage.

If all or any portion of the Leased Premises becomes untenable by fire or other casualty to the Leased Premises (collectively a "Casualty"), Landlord, with reasonable promptness, shall cause a general contractor selected by Landlord to provide Landlord and Tenant with a written estimate of the amount of time required using standard working methods to substantially complete the repair and restoration of the Leased Premises and any Common Areas necessary to provide use of and access to the Leased Premises ("Completion Estimate"). If the Completion Estimate indicates that the Leased Premises or any Common Areas necessary to provide access to the Leased Premises cannot be made tenantable within 180 days from the date the repair is started, then either party shall have the right to terminate this Lease upon written notice to the other within 10 days after receipt of the Completion Estimate. Tenant, however, shall not have the right to terminate this Lease if the Casualty was caused by the acts, omissions, negligence or intentional misconduct of Tenant or any Tenant related parties. In addition, Landlord, by notice to Tenant within 45 days after the date of the Casualty, shall have the right to terminate this Lease if: (1) the Leased Premises have been materially damaged and there is less than 2 years of the Term remaining on the date of the Casualty; (2) any mortgagee requires that the insurance proceeds be applied to the payment of the mortgage debt; or (3) a material uninsured loss to the Building or Leased Premises occurs. If this Lease is not terminated, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment or other matters beyond Landlord's reasonable control, restore the Leased Premises and Common Areas. Such restoration shall be to substantially the same condition that existed prior to the Casualty, except for modifications required by Law or any other modifications to the Common Areas deemed desirable by Landlord. Upon notice from Landlord, Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant's insurance with respect to any leasehold improvements performed by or for the benefit of Tenant; provided if the estimated cost to repair such leasehold improvements exceeds the amount of insurance proceeds received by Landlord from Tenant's insurance carrier, the excess cost of such repairs shall be paid by Tenant to Landlord prior to Landlord's commencement of repairs. Within 15 days of demand, Tenant shall also pay Landlord for any additional excess costs that are determined during the performance of the repairs. In no event shall Landlord be required to spend more for the restoration than the proceeds received by Landlord, whether insurance proceeds or proceeds from Tenant. Landlord shall not be liable for any inconvenience to Tenant, or injury to Tenant's business resulting in any way from the Casualty or the repair thereof. Provided that Tenant is not in default, during any period of time that all or a material portion of the Leased Premises is rendered untenable as a result of a Casualty, the Rent (including Common Area Expenses) shall abate for the portion of the Leased Premises that is untenable and not used by Tenant.



20. Condemnation.

20.1 General. If title to all or any portion of the Leased Premises be taken by a public or quasi-public authority under any statute or by right of eminent domain or by private purchase in lieu thereof, then the rights of the parties to share in the condemnation award or purchase price thereby resulting shall be governed hereby.

20.2 Total or Material Taking. Should all or any portion of the Leased Premises be taken in such a manner as to materially interfere with Tenant's use and occupancy thereof, then either party, by giving written notice to the other party within thirty (30) days after such taking, may terminate this Lease as of the date of such notice, or should more than fifty percent (50%) of the area of land included within the Leased Premises hereto be so taken, or should more than twenty percent (20%) of the Leased Premises be so taken, then Landlord, by giving written notice to Tenant within sixty (60) days after such taking, may terminate this Lease as of the date of such notice. All compensation awarded for a Taking shall be the property of Landlord. The right to receive compensation or proceeds is expressly waived by Tenant, however, Tenant may file a separate claim for Tenant's property and Tenant's reasonable relocation expenses, provided the filing of the claim does not diminish the amount of Landlord's award.

20.3 Partial Taking. In the event of a partial taking of the Leased Premises, and the Lease is not canceled, then this Lease as to the part so taken only shall terminate as of the date that possession of such part of the Leased Premises be so taken, and the Base Minimum Rent herein provided for shall be reduced in the proportion that the square footage of the ground floor of building area of the Leased Premises so taken bears to the total building floor area of the Leased Premises existing before such taking. Landlord shall diligently replace or repair the building within which the Leased Premises are located but at a cost to Landlord not to exceed the condemnation award received by Landlord for such repairs. In the event of such partial taking, Landlord shall be entitled to any and all awards and payments except Tenant shall be entitled to only that portion of any award allocated to the taking of Tenant's fixtures and personal property and any affected improvements to the Leased Premises that were paid for by Tenant.

21. Default.

21.1 Tenant's Default. If Tenant shall default in the payment of any rent or charge or sum of money due, or to be paid by Tenant hereunder, and such default shall continue for a period of seven (7) days after written notice thereof from Landlord, or if Tenant shall conduct, or permit any act of waste or nuisance on or with respect to the Leased Premises or any portion thereof, and the same shall not be corrected within fifteen (15) days after written notice thereof from Landlord, or if Tenant shall default in the performance or observation of any other term, covenant, agreement or obligation of this Lease to be performed or observed by Tenant, and such default shall continue for a period of fifteen (15) days after written notice thereof by Landlord, or if more than two (2) of any of the foregoing defaults, or any combination thereof,

shall occur in any single twelve (12) month period during the term hereof, whether or not the same be timely cured, or if Tenant shall vacate or abandon the Leased Premises, then Landlord shall have, in addition to any other remedies available at law, without further notice to Tenant, and without barring later election of any other remedy, any one or more of the following remedies at Landlord's election:

a. Landlord may require strict performance of all the terms, covenants, agreements and obligations hereof as the same shall accrue, and have the right of action therefor; or

b. By written notice to Tenant, Landlord may terminate this Lease, re-enter the Leased Premises by process of law, remove all parties in possession thereof therefrom and repossess said Leased Premises, in which event, Landlord shall have the right to recover from Tenant: (1) the worth, at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease; (2) the worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of loss of rent that could have been reasonably avoided; (3) the worth, at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that could have reasonably been avoided; and (4) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. "The worth, at the time of the award", as used in (1) and (2) of this subsection is to be computed by allowing interest at the rate of ten percent (10%) per annum, or the maximum lawful rate, whichever is the lesser; "the worth, at the time of the award", as referred to in (3) of this subsection is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%), or the maximum lawful rate, whichever is the lesser.

All rights and remedies of Landlord herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law, or equity; and likewise, the exercise by Landlord of any remedy provided for herein or allowed by law or equity shall not be to the exclusion of any other remedy.

Landlord and Tenant further agree that in the event Tenant breaches this Lease, or any covenant, term, or condition hereunder, then abandons the Leased Premises, or any portion thereof, this Lease shall continue in force and effect for so long as Landlord does not terminate Tenant's right to possession, as set forth in this Lease, and Landlord may enforce all rights and remedies of Landlord including without limitation, the right to recover rental as it becomes due hereunder. Acts of maintenance or preservation, or efforts to relet the Leased Premises, or the appointment of a receiver upon the initiation of the Landlord to protect the Landlord's interests under this Lease shall not constitute a termination of Tenant's right to possession.

Any re-entry shall be allowed by Tenant without let or hindrance, and Landlord shall not be liable in damages for any such re-entry, or be guilty of trespass or forcible

entry. No act by Landlord hereunder shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

It is further agreed that Landlord, at any time after Tenant commits a default, may cure the default at Tenant's cost, and otherwise take such action with respect thereto as Landlord shall deem reasonably necessary and Landlord shall have no liability therefor. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, or if Landlord incurs any expense, including attorney's fees, in instituting proceedings, or defending any action or proceeding instituted by reason of any default of Tenant hereunder, the sum or expense paid by Landlord, with all interest, costs, and damages, shall be due immediately from Tenant to Landlord at the time the same is paid, and if not so immediately paid by Tenant, shall bear interest as hereinafter provided.

Any sums to be paid to Landlord under this Lease not paid when due shall bear interest at the rate of ten percent (10%) per annum from the date due until paid; provided, however, in no event shall any amount in excess of the maximum lawful rate of interest ever be charged or payable hereunder.

If Tenant tenders payment of any rent or charge or sum of money due or to be paid by Tenant hereunder in the form of a check which is subsequently returned for insufficient funds, Tenant shall be in default hereunder. In such event, Landlord may, in addition to all other rights and remedies of Landlord herein enumerated, may, without further notice to Tenant, require that future payments of any rent or charge or sum of money due be made in the form of cashier's or certified checks or cash. Additionally, Tenant shall be required to pay, within five (5) days of demand therefor, a returned check fee in the sum of twenty-five dollars (\$25.00) as additional rent for each such check returned for insufficient funds. Further, if Tenant is delinquent in the payment of any rent or charge or sum of money due or to be paid by Tenant hereunder for a period of more than ten (10) days from the due date of any such rent or charge or sum of money due, and such delinquency occurs more than two (2) times in any single twelve (12) month period during the term hereof, whether or not the same be timely cured, then Landlord may, in addition to any other rights and remedies of Landlord herein enumerated, without further notice to tenant, require that future payments of any rent or charge or sum of money due be made in the form of cashier's or certified checks or cash.

In addition to and without limiting the other remedies provided to Landlord herein, in the event that Tenant is in default of this Lease and the Lease is terminated by Landlord for cause the end of the Term or this Lease is otherwise cancelled or terminated prior to the end of the Term for any reason other than Landlord's default beyond all applicable notice and cure period, Tenant shall be obligated to reimburse Landlord for (a) the tenant improvement allowance received by Tenant at the commencement of the Term and (b) any and all free rent received by Tenant during the Term.

21.2 Default by Landlord. Landlord's failure to perform any of its obligations under this Lease, including but not limited to any failure to perform any repair or maintenance that materially interferes with Tenant's use of the Leased Premises, shall constitute a default by Landlord under the Lease if the failure continues for thirty (30) days after written notice of the

failure from Tenant to Landlord, provided Tenant is not in default at the time it delivers such notice to Landlord. If the required performance cannot be completed within thirty (30) days, Landlord's failure to perform shall constitute a default under the Lease unless Landlord undertakes to cure the failure within thirty (30) days and diligently and continuously attempts to complete this cure as soon as reasonably possible. See also Section 26.17. In the event of a default by Landlord, which is not cured within the applicable notice and time periods, Tenant may terminate the Lease for cause, abate rent with respect to the affected portion of the Leased Premises during the period commencing on the date upon which all applicable notice and cure periods have expired or, in its discretion, exercise any other tenant right or remedy under California law.

## 22. Surrender of Premises.

22.1 Surrender on Termination. Upon any termination of this Lease, whether by lapse of time, cancellation pursuant to an election provided for herein, forfeiture, or otherwise, Tenant shall surrender immediately possession of the Leased Premises and all buildings and improvements within which the same are located to Landlord in good order, condition and repair, reasonable wear and tear and damage from fire or other casualty or peril excepted.

22.2 Removal of Tenant's Property. At any time during the term of this Lease, and upon the termination of this Lease, Tenant, if Tenant is at such time not in default hereunder, shall have the right to remove from the Leased Premises all furniture, furnishings, signs, and equipment belonging to Tenant then installed or in place in, on or about the Leased Premises; provided, however, Tenant shall, and it covenants and agrees to, make all repairs to the Leased Premises required because of such removal. If any of such property shall remain on the Leased Premises after the end of the term hereof, such property shall be and become, at the option of Landlord, the property of Landlord without any claim therein of Tenant; provided that Landlord may direct Tenant to remove such property, in which case Tenant agrees to do so, and to reimburse Landlord for any expense of removal in the event Tenant shall fail to remove such property if and when directed.

22.3 Condition of Leased Premises. Upon termination of this Lease, Tenant shall surrender the Leased Premises in a neat and clean condition, and Tenant shall repair any holes or openings made by Tenant in the walls, roof, or floor of the building, remove any protuberance and perform any maintenance or repairs required of Tenant by this Lease. If directed to do so by Landlord, in Landlord's sole and absolute discretion, Tenant shall also remove any improvements, additions, or alterations made to the Leased Premises by Tenant even though such improvements by the terms of this Lease become a part of the Leased Premises.

22.4 Quitclaim Deed. If this lease or a memorandum thereof is recorded, upon termination of this Lease, Tenant shall execute a quitclaim deed, quitclaiming all of its right, title, and interest in and to the Leased Premises to Landlord.

22.5 Expiration of Term. This Lease shall terminate and shall become null and void without further notice upon the expiration of the term (or any extension thereof) herein

specified, and any holding over by Tenant after such expiration shall not constitute a renewal hereof or give Tenant any rights under this Lease. If Tenant shall hold over for any period after the expiration of said term, Landlord may, at its option, exercised by written notice to Tenant, treat Tenant as a tenant from month to month commencing on the first day following the expiration of this Lease, subject to the terms and conditions herein contained except that the Base Minimum Rent, which shall be payable in advance monthly, shall be (a) one hundred and twenty five percent (125%) of said Base Minimum Rent applicable at the date of expiration for the first three months of the holdover; (b) one hundred and fifty percent (150%) of said Base Minimum Rent applicable at the date of expiration for the second three months of the holdover and (c) two hundred percent (200%) of said Base Minimum Rent applicable at the date of expiration for every month thereafter. If Tenant fails to surrender the Leased Premises upon the expiration of this Lease, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claims made by any succeeding Tenant founded on or resulting from such failure to surrender.

23. Force Majeure.

Delay in performance of any obligation by any party under this Agreement (other than the payment of Rent by Tenant) shall be excused to the extent that the delay is occasioned by the other party, strikes, threats of strikes, blackouts, war, threats of war, bombing, insurrection, invasion, acts of God, calamities, civil commotions, violent action of the elements, snow, fire, action or regulations of any governmental authority, state, law or ordinances, impossibility of obtaining materials, or other matters or things, whether similar or dissimilar to the foregoing, beyond the reasonable control of the obligated party.

24. Rights Reserved by Landlord.

24.1 Easements. Landlord expressly reserves all rights in and with respect to the Leased Premises not inconsistent with Tenant's use thereof as in this Lease provided.

24.2 Inspection.

24.2.1 Inspection. Tenant agrees to permit Landlord or the authorized representatives of Landlord to enter the Leased Premises at all reasonable times during usual business hours for the purposes of (a) inspecting same, and (b) making such repairs or reconstruction required or permitted by Landlord, and (c) performing any work therein that may be necessary by reason of Tenant's default under the terms of this Lease, without prior written notice thereof to Tenant. Nothing herein shall imply any duty upon the part of Landlord to do any such work which, under the provisions of this Lease, Tenant may be required to perform, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. In the event Landlord makes any repairs or maintenance which Tenant has failed to do, the cost thereof shall be paid to Landlord with the next installment of Rent hereunder.

24.2.2 Entry. Landlord is hereby given the right during usual business hours to enter the Leased Premises and to exhibit the same for purposes of sale, lease, or

mortgage, and during the last six (6) months of the term of this Lease, to exhibit the same to any prospective tenant, and to post any signs on or about the Leased Premises regarding such sale, lease, or mortgage.

24.3 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated 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 in this Lease provides.

25. Interest.

In addition to any late charges, fees, or other costs which Tenant may be obligated to pay pursuant to this Lease, Tenant shall be liable to Landlord for interest to accrue at the rate of ten percent (10%) per annum on any amount due Landlord pursuant to this Lease which is not paid within ten (10) days after the due date for any such payment. Interest shall continue to accrue in addition to any other late charges, fees, or other costs until the obligation has been satisfied in full.

26. Miscellaneous.

26.1 Loss and Damage. Landlord shall not be liable for any damage to property of Tenant or of others located on the Leased Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Except to the extent caused by the active negligence or intentional misconduct of Landlord, its agents, employees, contractors, invitees, or other associated persons, Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, snow, rain or leaks from any part of the Leased Premises or from the pipes, appliances, or plumbing works or from the roof, street, or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Landlord shall not be liable for any such damage caused by other Tenants or persons in the Leased Premises, occupants of adjacent property, of the Property, or the public, or caused by operations in construction of any private, public or quasi-public work. Landlord shall not be liable for any latent defect in the Leased Premises or in the building of which they form a part. All property of Tenant kept or stored on the Leased Premises shall be so kept or stored at the risk of Tenant. For the purposes of this Section, Latent Defect means any defect which is not known to Landlord, and which could not have reasonably been known to Landlord at the time of acquisition of the Property through the exercise of commercially reasonable due diligence.

26.2 Lease Binding on Successors. The terms, covenants, and agreements herein contained shall bind and inure to the benefit of Landlord and Tenant, and each of their heirs, personal representatives, successors and assigns, subject to the provisions of this Lease. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord as set forth in Section 9 hereof. No rights in any option(s) granted by Landlord shall inure to the benefit of any assignee of Tenant.

26.3 Attorney's Fees. In the event that legal proceedings are brought or commenced to enforce the terms of this Lease, or otherwise arise out of or pursuant to this Lease, the prevailing party shall be entitled to recover from the other party all costs and expenses of such proceedings, including reasonable attorney's fees, whether or not any proceedings are prosecuted to judgment.

26.4 Sale of Leased Premises. The term "Landlord" as used in this Lease shall mean the owner of Landlord's estate in and to the Leased Premises. If the Landlord's interest and estate in and to the Leased Premises is sold or assigned by Landlord, the selling Landlord shall be entirely freed, relieved, and discharged of all covenants, agreements, and obligations under this Lease, except those occurring prior to the date of such sale by Landlord, and attributable to Landlord's period of ownership of such interest and estate.

26.5 Corporate Resolutions. If a corporation executes this Lease as Tenant, Tenant shall, concurrently upon such execution of the Lease, furnish Landlord with certified corporate resolutions attesting to the authority of the officers so executing the Lease to execute the same on behalf of such corporation.

26.6 Notices. Any notice or demand required or permitted by law or by any of the provisions of this Lease shall be in writing. All notices or demands by Landlord to Tenant shall be deemed to have been properly given when served personally on the Tenant's administrative officer or legal counsel or when sent by registered or certified mail, postage prepaid, addressed to Tenant at the address set forth herein. All notices or demands by Tenant to Landlord shall be deemed to have been properly given if served personally on an executive officer or partner of Landlord, or when sent by registered or certified mail, postage prepaid, addressed to Landlord at the address set forth herein. Either party hereto may change the place to which notices are to be given by advising the other party in writing. If any notice or other document is sent by mail, postage prepaid, addressed to Landlord at the address set forth herein. Either party hereto may change the place to which notices are to be given by advising the other party in writing. If any notice or other document is sent by mail, as aforesaid, the same shall be deemed served or delivered seventy-two (72) hours after the mailing thereof provided there is regular service by mail, at the time of such mailing, between the place of mailing and the place to which such notice or other document is mailed. Notice may also be provided to either party by facsimile transmission during normal business hours, with transmission confirmation. If more than one Tenant is named under this Lease, service of any notice upon any one of said Tenants shall be deemed as service upon all of said Tenants.

TO LANDLORD: DOHENY V LLC  
400 S. Beverly Drive, Suite 412  
Beverly Hills, CA 90212

TO TENANT: COUNTY OF MONO  
P.O. Box 2415  
Mammoth Lakes, CA 93546

26.7 Section Headings. The headings or captions of sections in this Lease are for convenience and reference only, and they in no way define, limit, or describe the scope or intent of this Lease or the provisions of such sections.

26.8 Gender and Interpretation of Terms and Provisions. As used in this Lease and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include all genders. Landlord and Tenant as used in this Lease or in any other instrument referred to in or made a part of this Lease shall likewise include both the singular and the plural, a corporation, co-partnership, individual, or person acting in any fiduciary capacity as executor, administrator, trustee, or in any other representative capacity. All covenants herein contained on the part of Tenant shall be joint and several.

26.9 Time of Essence. Time is hereby expressly declared to be of the essence of this Lease and of each and every covenant, term, condition, and provision hereof.

26.10 Impartial Construction. The language in all parts of this Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for nor against either Landlord or Tenant. The provisions of Civil Code §1654 shall not apply hereto.

26.11 Waiver. No waiver of any breach of the terms, covenants, agreements, restrictions, or conditions of this Lease shall be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Lease, nor shall consent to any assignment or sublease be deemed to waive any requirement of consent of Landlord to any other assignment or sublease. The consent or approval of either party to or of any other matter requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent or similar act or matter.

26.12 Partial Invalidity. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant, or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law. It is agreed, however, that anything contained in the preceding sentence to the contrary notwithstanding, in the event any court of competent jurisdiction makes a final adjudication to the effect that any portion of this Lease is invalid under the laws of the State within which the Leased Premises are located, or any other applicable law, then in that event, Landlord or Tenant shall have the right and option to terminate the entire Lease upon notice thereof to the other party.

26.13 Remainder of Premises. Tenant acknowledges and agrees that it shall have no right of control, regulation, approval, or disapproval with respect to the use or development of that portion of the premises which is not included within the Leased Premises. It is understood by Tenant that Landlord may not now or in the future own all of the premises in which the Leased Premises are located. Tenant agrees not to cancel its Lease, reduce, or abate its rents or pursue any other remedies under this Lease for any violation of this Lease occurring by virtue of any act or omission on or with respect to property not owned by Landlord.



26.14 Tenant's Acknowledgment of Condition of Leased Premises. Tenant agrees that its acceptance of the Leased Premises, as evidenced by Tenant's entry into possession thereof, shall constitute unqualified proof that the Leased Premises are, as of the date of the commencement of Tenant's occupancy thereof, in a tenantable and good condition. Notwithstanding anything contained in this Section to the contrary, in no event shall Landlord's obligations as set forth in Section 17.3 of this Lease be in any way minimized or reduced by the language set forth in this Section 26.14. In respect to any partial destruction which Landlord may repair under any of the provisions of this Lease, Tenant further waives any rights which may permit Tenant to terminate this Lease for so long as Landlord so repairs such destruction, except as provided in Section 19 of this Lease. Notwithstanding the foregoing or any other provision of this Lease, Landlord agrees that any and all animal odors related to a prior tenant's use of a portion of the New Space for an animal-boarding business must be eliminated by Landlord at its expense to Tenant's commercially reasonable satisfaction prior to possession and occupancy of said space by Tenant and continuing thereafter for the duration of the Lease as a warranty by Landlord to the extent that such odors reappear at any time during the Lease term (including any extensions thereof).

26.15 No Option to Lease. The submission of this Lease for examination does not constitute a reservation of or option for the Leased Premises, and this Lease becomes effective as a Lease only upon execution and delivery thereof by Landlord and Tenant.

26.16 Waiver of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LANDLORD (AND OF ANY SUCCESSOR LANDLORD) SHALL BE LIMITED TO THE LESSER OF (A) THE INTEREST OF LANDLORD IN THE PROPERTY, OR (B) THE EQUITY INTEREST LANDLORD WOULD HAVE IN THE PROPERTY IF THE PROPERTY WERE ENCUMBERED BY THIRD PARTY DEBT IN AN AMOUNT EQUAL TO 80% OF THE VALUE OF THE PROPERTY. TENANT SHALL LOOK SOLELY TO LANDLORD'S INTEREST IN THE PROPERTY FOR THE RECOVERY OF ANY JUDGMENT OR AWARD AGAINST LANDLORD OR ANY LANDLORD RELATED PARTY. NEITHER LANDLORD NOR ANY LANDLORD RELATED PARTY SHALL BE PERSONALLY LIABLE FOR ANY JUDGMENT OR DEFICIENCY, AND IN NO EVENT SHALL ANY PARTY TO THIS LEASE BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFIT, DAMAGE TO OR LOSS OF BUSINESS OR ANY FORM OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE. BEFORE FILING SUIT FOR AN ALLEGED DEFAULT BY LANDLORD, TENANT SHALL GIVE LANDLORD AND THE MORTGAGEE(S) WHOM TENANT HAS BEEN NOTIFIED HOLD MORTGAGES NOTICE AND REASONABLE TIME TO CURE THE ALLEGED DEFAULT.

26.17 Rights of Lenders. Notwithstanding anything to the contrary in this Lease, Landlord shall not be in default under any provision of this Lease unless written notice specifying such default is given to Landlord and to all mortgagees and/or trust deed holders of which Tenant, prior to such notice, has been notified in writing. Tenant agrees that any such mortgagee or trust deed holder shall have the right to cure such default on behalf of Landlord within thirty (30) calendar days after receipt of such notice, plus such additional time as is

reasonably necessary. Tenant further agrees not to invoke any of its remedies under law or this Lease until said thirty (30) days have elapsed, or during any period that such mortgagee or trust deedholder is proceeding to cure such default with due diligence, or is taking steps with due diligence to obtain the legal right to enter the Leased Premises or adjoining property to cure the default.

26.18 Brokers. Except for Highmark Advisors, Inc., Drew Hild and Matthew Lehman (who will be compensated by Landlord pursuant to a separate written agreement between them), each party represents to the other that no person, firm, corporation, or other entity is entitled to any brokerage commission or finder's fee on account of the execution, delivery, and consummation of this Lease. Tenant hereby agrees to indemnify Landlord and to hold Landlord free and harmless of and from any and all claims, losses, damages, costs, and expenses of whatsoever nature, including attorney's fees and costs of litigation arising from or relating to any brokerage commissions or finder's fees incurred by Tenant in connection with this Lease.

26.19 Agreement in Writing. It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none shall be used to interpret or construe this Lease. It is further agreed by and between the parties hereto that there shall be no modification or amendment of this Lease, except as may be executed in writing between the parties hereto. Landlord makes no warranty, representation, contract, agreement, or statement concerning the use, occupancy, or suitability of the Leased Premises for the use of the Leased Premises as set forth herein, or with respect to the condition of title with respect thereto, or the means, mode, or manner of construction of any buildings or improvements, or the adequacy or fitness thereof for any use or occupancy, or the accuracy or validity of any statement, representation, warranty, agreement, or document by any other person, party, or entity, unless expressly set forth herein as an agreement of Landlord.

26.20 Matters in Existence. Tenant agrees that this Lease is, and shall be, subject and subordinate to all matters in existence, of record and as now or hereafter modified or amended (provided that the rights of Tenant are not materially adversely affected by such modification or amendment), and further agrees to be bound by and not to violate or cause Landlord to be in violation of any of the provisions of such matters and the provisions contained herein or in any present or future modification or amendment thereof.

26.21 Law Governing. The terms and provisions of this Lease shall be interpreted and governed pursuant to the laws of the State of California.

26.22 Warranties of Tenant. Tenant warrants and represents to Landlord, for the express benefit of Landlord, that: (a) Tenant has undertaken a complete and independent evaluation of the risks inherent in the execution of this Lease and the operation of the Leased Premises for the use permitted hereby as set forth herein, and that, based upon said independent evaluation, Tenant has elected to enter into this Lease and hereby assumes all risks with respect thereto; (b) no oral or written inducement(s) to execute this Lease have been made to Tenant

unless expressly set forth herein in writing; (c) in entering into this Lease, Tenant relies upon no statement, fact, promise, or representation (whether express or implied, written or oral) not specifically set forth herein in writing; (d) any statement, fact, promise, or representation (whether express or implied, written or oral) made at any time whatsoever to Tenant, which is not expressly incorporated herein in writing, is, and shall forever be, waived and renounced by Tenant; and (e) any statement, fact, promise, or representation not expressly contained herein shall in no way bind Landlord, and Tenant hereby waives any right of rescission and all claims for damages by reason of any statement, fact, promise, or representation, if any, not contained in this Lease. The warranties and representations of Tenant herein shall be enforceable by way of specific performance or injunctive relief, in addition to any other remedy at law or equity. On the basis of the foregoing warranties and representations of Tenant, Landlord is willing to enter into this Lease. In the event any of such warranties or representations of Tenant herein contained shall be inaccurate or untrue, Landlord may, in addition to all other rights of Landlord at law or equity, terminate this Lease at any time thereafter upon written notice to Tenant.

26.23 Recordation of Lease. Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a short form memorandum of this Lease for recording purposes. Upon the termination of this Lease for any reason, including but not limited to surrender or cancellation, Tenant shall within three (3) days of the date of request by Landlord, convey to Landlord, by quitclaim deed any and all interests Tenant may have under this Lease.

26.24 Rules and Regulations. Tenant shall observe faithfully and comply strictly with the rules and regulations set forth in Exhibit "B" attached hereto and incorporated by this reference, receipt of a copy of which Tenant hereby acknowledges, and such other reasonable rules and regulations as Landlord may from time to time adopt. Landlord shall not be held liable to Tenant for any other tenant's noncompliance with Landlord's rules and regulations, or any other tenant's breach of covenant or condition in such tenant's lease, unless caused by the fault or negligence of Landlord. In the event of a conflict between this lease and any of the rules and regulations, the provisions of this Lease shall govern the resolution of such conflict.

26.25 Snow Removal. Landlord shall use reasonable efforts to keep the parking areas, access roads and driveways reasonably clear of snow and ice, always giving due consideration to the season and amount of snow so involved. Landlord shall not be held liable for any claims, liability, loss, cost, expense or damage whatsoever, including, but not by way of limitation, attorney's fees, as a result of Landlord's failure to keep the parking areas, access roads and driveways reasonably clear of snow and ice so long as Landlord complies with its obligations as set forth in this Section 26.25.

26.26 Hazardous Material. Tenant hereby represents, warrants and covenants that: Tenant's business operations in the Premises do not and will not involve the use, storage or generation of "Hazardous Material" (as defined below). Without Landlord's prior written consent (which consent may be withheld in Landlord's sole discretion), Tenant shall not cause or permit any Hazardous material to be brought upon, stored, manufactured, generated, blended, handled, recycled, disposed of, used or released on, in, under or about the Premises by Tenant or Tenant's employees, guests, or invitees, and Tenant shall keep, operate and maintain the

Premises in compliance with all, and shall not permit the Premises to be in violation of any federal (including, but not limited to, the Comprehensive Environmental Response Claim and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq), state or local environmental, health and/or safety related law currently existing and as amended, enacted, issued or adopted in the future which is applicable to the Premises (collectively, "Environmental Laws"). Tenant shall indemnify, protect, defend and hold Landlord, its partners, officers, employees, agents, lenders and each of their respective successors and assigns (collectively, the "Indemnified Parties") harmless from any and all claims, judgments, damages, penalties, enforcement actions, taxes, fines, remedial actions, liabilities, losses, costs and expenses (including, without limitation, reasonable attorney's fees, litigation, arbitration and administrative proceeding costs, expert and consultant fees and laboratory costs), which arise during or after the Term in whole or in part as a result of the presence or suspected presence of any Hazardous Material, in, on, under or about the Premises due to Tenant activities. Without limiting the foregoing, if any Hazardous Material is found in, on, under or about the Premises at any time during or after the Term, the presence of which was caused by Tenant, Tenant shall, at its sole cost and expense, promptly take all actions as are necessary to return the Premises to the condition existing prior to the introduction or release of such Hazardous Material in accordance with applicable Environmental Laws and Landlord's prior written approval, which approval shall not be unreasonably withheld. For purposes of this Lease, the term "Hazardous Material" means any chemical, substance, material, controlled substance, object, condition, waste or combination thereof which is or may be hazardous to human health or safety or to the environment due to its radioactivity, ignitability, corrosivity, reactivity, explosivity, toxicity, carcinogenicity, infectiousness or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, or become in the future listed, defined or regulated in any manner by any federal, state or local law based upon, directly or indirectly, such properties or effects.

27. Exhibits.

Any attached exhibits are expressly made a part hereof:

- Exhibit "A": Leased Premises
- Exhibit "B": Rules and Regulations
- Exhibit "C": Subordination Agreement
- Exhibit "D": Estoppel
- Exhibit "E": Tenant Improvement Allowance

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

LANDLORD:

Doheny V LLC

By:   
Name: JERRY L. Preston  
Title: MANAGER

TENANT:

County of Mono


By:   
Name: Tom Farnetti  
Title: Chair, Mono County Board of Supervisors

Exhibit "A"

Leased Premises

See attached.

## Exhibit "B"

### Rules and Regulations

1. Tenant shall not obstruct or interfere with the rights of other tenants of the Building, or of persons having business in the Building, or in any way injure or annoy tenants or persons.
2. Tenant shall not use the Building for any purposes other than those specified in the Lease. In no event shall Tenant use the Building or the Leased Premises for lodging, sleeping, cooking, or for any immoral or illegal purpose that will damage the Building, or reputation thereof.
3. Canvassing, soliciting and peddling in the Building are prohibited, and Tenant shall cooperate to prevent such activities.
4. Tenant shall not bring or keep within the Building any animal, bicycle or motorcycle.
5. Tenant shall not conduct mechanical or manufacturing operations, cook or prepare food, or place or use any inflammable, combustible, explosive or hazardous fluid, chemical device, substance or material in or about the Building without the prior written consent of Landlord. Tenant shall comply with all statutes, ordinances, rules, orders, regulations and requirements imposed by governmental or quasi-governmental authorities in connection with fire and panic safety and fire prevention and shall not commit any act, or permit any object to be brought or kept in the Building, which shall result in a change of the rating of the Building by the Insurance services Office or any similar person or entity or which shall increase the rate of fire insurance on the Building or on property located therein.
6. Tenant shall not use the Building for manufacturing or for the storage of goods, wares or merchandise, except as such storage may be incidental to the use of the Premises for general office purposes and except in such portions of the premises as may be specifically designated by Landlord for such storage.
7. Except as expressly permitted elsewhere in the Lease, Tenant shall not install or use in the Building any air conditioning unit, engine, boiler, generator, machinery, heating unit, stove, water cooler, ventilator, radiator or any other similar apparatus without the express prior written consent of Landlord, and then only as Landlord may direct.
8. Tenant shall not use in the building any machines, other than standard office machines such as typewriter, calculators, copying machines and similar machines, without the express prior written consent of Landlord. All office equipment and any other device of any electrical or mechanical nature shall be placed by Tenant in the premises in settings

approved by, Landlord so as to absorb or prevent any vibration, noise or annoyance. Tenant shall not cause improper noises, vibrations or odors within the Building.

9. Tenant shall move all freight, supplies, furniture, fixtures and other personal property into, within and out of the Building only at such times and through such entrances as may be designated by Landlord. Tenant shall not move or install such objects in or about the Building in such a fashion as to unreasonably obstruct the activities of other tenants, and all such moving shall be at sole expense, risk and responsibility of Tenant. Tenant shall not use in the delivery, receipt or other movement of freight, supplies, furniture, fixtures and other personal property to, from or within the Building, any hand trucks other than those equipped with rubber tires and side guards.
10. Tenant shall not place within the Building any safes, copying machines, computer equipment or other objects of unusual size or weight, nor shall Tenant place within the building any objects which exceed the floor weight specifications of the Building, without the express prior written consent of Landlord. The placement and positioning of all such objects within the building shall be prescribed by Landlord and such objects shall, in all cases, be placed upon plates or footings of such size as shall be prescribed by Landlord.
11. Tenant shall not deposit any trash, refuse of other substances of any kind within or out of the Building, except in the refuse containers provided therefore. Tenant shall exercise its best efforts to keep the sidewalks, entrances, courts, lobby areas, parking areas, stairways and public corridors in and about the Building (the "Common Areas") clean and free from rubbish.
12. Tenant shall use the Common Areas only as a means of ingress and egress, and Tenant shall permit no loitering by any persons upon the Common Areas or elsewhere within the building. The Common Areas and roof of the Building are not for the use of the general public, and Landlord shall in all cases retain the right to control or prevent access thereto by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation or interests of the Building and its tenants. Tenant shall not enter the mechanical rooms, air conditioning rooms, janitorial closets, or similar areas or go upon the roof of the Building without the express prior written consent of Landlord.
13. Landlord reserves the right to exclude or expel from the Building any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner act in violation of the rules and regulations of the Building.
14. Tenant shall not use the washrooms, restrooms, and plumbing fixtures of the Building, appurtenances thereto, for any purpose other than the purposes for which they were constructed, and Tenant shall not deposit any sweepings, rubbish, rags or other improper substances therein. Tenant shall not waste water by interfering or tampering with the faucets or otherwise. If Tenant or Tenant's servants, employees, contractors, jobbers,



agents, licensees, invitee, guests, or visitors cause any damage to such washrooms, restrooms, plumbing fixtures or appurtenances, such damage shall be repaired at Tenant's expense and, Landlord shall not be responsible therefore.

15. Tenant shall not mark, paint, drill into, cut, string wires within, or in anyway deface any part of the Building, without the express prior written consent of Landlord, and as Landlord may direct. Upon removal of any wall decorations or installations or floor coverings by Tenant, any damage shall be repaired by Tenant at Tenant's sole cost and expense. This paragraph shall apply to all work performed in the Building, including without limitation installations of telephones, telegraph equipment, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other portion of the Building. All installations, alterations and additions shall be constructed by Tenant in a good and workmanlike manner and only good grades of material shall be used in connection therewith. The means by which telephone, telegraph and similar wires are to be introduced to the Premises and the location of telephones, call boxes and other office equipment affixed to the Premises shall be subject to the express prior written approval of Landlord. Tenant shall not lay linoleum or similar floor coverings so that the same shall come into direct contact with the floor of the Premises. The use of cement or other similar adhesive is expressly prohibited.
16. No signs, awnings, showcases, advertising devices or other projections or obstructions shall be attached to the outside walls of the Building or attached or placed upon any Common Areas without the express prior written consent of Landlord. No window shades, blinds, drapes or other window coverings shall be installed in the Building without the express prior written consent of Landlord. No sign, picture, advertisement, window display or other public display or notice shall be inscribed, exhibited, painted or affixed by Tenant upon or within any part of the Premises in such a fashion as to be seen from the outside of the Premises or the Building without the express prior written consent of Landlord. In the event of the violation of any of the foregoing by Tenant, Landlord may remove the articles constituting the violation without any liability and Tenant shall reimburse Landlord for the expense incurred in such removal upon demand as additional rent under the Lease. Signs on doors shall be subject to the express prior written approval of Landlord and shall be inscribed, painted or affixed by Tenant at the expense of Tenant.
17. Tenant shall cooperate with Landlord in obtaining maximum effectiveness of the cooling system of the Building by closing drapes and other window coverings when the sun's rays fall upon the windows of the premises. Tenant shall not obstruct, alter or in any way impair the efficient operation of Landlord's heating, ventilating, air conditioning, electrical, fire, safety or lighting systems, nor shall Tenant tamper with or change the setting of any thermostat or temperature control valves in the Building.
18. Subject to applicable fire or other safety regulations, all doors opening onto Common Areas shall be kept closed and during non-business hours, locked, except when in use for

ingress or egress. If Tenant uses the Premises after regular business hours or on non-business days, Tenant shall lock any entrance doors to the Building or the Premises used by Tenant immediately after using such doors.

19. All keys to the exterior doors of the Premises shall be obtained by Tenant from Landlord, and Tenant shall pay to Landlord a reasonable deposit determined by Landlord from time to time for such keys. Tenant shall not make additional copies of such keys. Tenant shall not install additional locks or bolts of any kind upon any of the doors or windows of, or within, the Building nor shall Tenant make any changes in existing locks or the mechanisms thereof. Tenant shall, upon the termination of its tenancy, provide Landlord with the combinations to all combination locks on safes, safe cabinets and vaults and deliver to Landlord all keys to the Building, the Premises and interior doors, cabinets, and other key controlled mechanisms therein, whether or not such keys were furnished to Tenant by Landlord. In the event of the loss of any key furnished to Tenant by Landlord, Tenant shall pay to Landlord the cost of replacing the same or of changing the lock or locks opened by such lost key if Landlord shall deem it necessary to make such a change.
20. Intentionally omitted.
21. Tenant and its employees and invitee shall not use the parking areas for anything but parking motor vehicles. Landlord can impose limitations in all or parts of the parking area as to the length of time for parking use, subject to any terms contained in the Lease to the contrary.
22. No employees of Tenant shall use any area for motor vehicle parking except the area specifically designated for employee parking in writing by Landlord.
23. For purposes hereof; the terms "Landlord," "Tenant" "Building" and "Premises" are defined as those terms in the Lease to which these Rules and Regulations are attached. Whenever Tenant obligated under these Rules and Regulations to do or refrain from doing an act or thing, such obligation shall include the exercise of Tenant of its best efforts to secure compliance with such obligation by the servants, employees, contractors, jobbers, agents, invitee, licensees, guests and visitors of Tenant. The term "Building" shall include the Premises, and all obligations of Tenant hereunder with regard to the Building shall apply with equal force to the Premises and to other parts of the Building.

**Exhibit "C"**

**Subordination Agreement**

See attached on next page.

**This document was prepared by,  
and after recording, return to:**

C. Olivia Keating, Esq.  
LaSalle Bank Corporation  
135 South La Salle Street, Suite 925  
Chicago, IL 60603

Permanent Tax Index Number:

35-200-19

Property Address:

452 Old Mammoth Road  
Mammoth Lakes, CA 93546

*This space reserved for Recorders use only.*

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**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

This **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** dated as of \_\_\_\_\_, 2006 (the "Agreement"), is executed by and among **DOHENY V LLC**, a limited liability company, together with its tenants-in-common of record (collectively, the "Landlord"), \_\_\_\_\_, a[n] \_\_\_\_\_ [**individual/corporation / limited partnership / liability company**] (the "Tenant"), and **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (the "Lender").

**RECITALS:**

A. The Lender is the mortgagee under that certain Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of even date herewith, to be recorded concurrently herewith (the "Mortgage"), which Mortgage encumbers the Real Estate (as hereinafter defined) and secures a principal indebtedness in the amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_).

B. The Tenant has entered into that certain lease agreement dated \_\_\_\_\_, 200\_\_ with the Landlord (or the Landlord's predecessor-in-interest) (the "Lease Agreement", the Lease Agreement, together with all amendments and modifications thereof, being collectively referred to herein as the "Lease"), pursuant to which the Tenant has leased certain premises (the "Leased Premises") consisting of approximately \_\_\_\_\_ rentable square feet of space in the building ("Building") on the parcel of land (the "Land"; the Land and Building being collectively referred to herein as the "Real Estate") legally described on Exhibit "1" attached hereto and made a part hereof.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

**AGREEMENTS:**

1. The Tenant represents and warrants to the Lender that the Lease constitutes the entire agreement between the Tenant and the Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of the Tenant with respect to the Leased Premises.

2. The Tenant has executed and delivered to the Lender that certain Tenant Estoppel Certificate dated on or about the date hereof (the "Estoppel Certificate"). The provisions of the Estoppel Certificate are hereby incorporated into this Agreement as if fully set forth in this Agreement in their entirety, and the Tenant acknowledges that the Lender will be relying on the statements made in the Estoppel Certificate in determining whether to disburse the proceeds of the loan secured by the Mortgage and whether to enter into this Agreement.

3. The Tenant covenants with the Lender that the Lease shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease. Without limiting the generality of the foregoing subordination provision, the Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to the Lender's right, title and interest in and to such proceeds and awards.

4. The Tenant acknowledges that the Landlord has collaterally assigned to the Lender any and all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, the Tenant agrees that, upon receipt by the Tenant of a notice from the Lender of the occurrence of a default by the Landlord under such assignment and a demand by the Lender for direct payment to the Lender of the rents due under the Lease, the Tenant will honor such demand and make all subsequent rent payments directly to the Lender. The Landlord hereby agrees that any rents, fees or other amounts paid by the Tenant to or as directed by the Lender pursuant to this section shall be deemed to have been duly and validly paid by the Tenant under the Lease, and any such amounts shall be credited against the Tenant's obligations under the Lease as if the same were paid directly to the Landlord. The Landlord further agrees that the Tenant shall have no obligation to determine whether the Landlord is in default under such assignment, and the Tenant may rely on such notice and direction from the Lender without any duty to investigate. The Tenant further agrees that any Lease termination fees payable under the Lease shall be paid jointly to the Landlord and the Lender.

5. The Lender agrees that so long as the Tenant is not in default under the Lease:

(a) The Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless the Tenant is a necessary party under applicable law); and

(b) The possession by the Tenant of the Leased Premises and the Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage.

6. Prior to pursuing any remedy available to the Tenant under the Lease, at law or in equity as a result of any failure of the Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by the Landlord under the Lease (any such failure being hereinafter referred to as a "Landlord's Default"), the Tenant shall: (a) provide the Lender with a notice of the Landlord's Default specifying the nature thereof, the section of the Lease under which such Landlord's Default arose, and the remedy which the Tenant will elect under the terms of the Lease or otherwise, and (b) allow the Lender not less than thirty (30) days following receipt of notice of the Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, the Tenant shall give the Lender such additional time as the Lender may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as the Lender is diligently pursuing a cure. The Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless the Lender fails to cure same within the time period specified above. For purposes of this Section 6, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease have lapsed without the Landlord having effectuated a cure thereof.

7. If the Lender or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between the Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subsection (b) below), and in such event:

(a) The Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term), and the Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time the Lender exercises its remedies then the Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

(b) Such new owner shall be bound to the Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if the Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including the Landlord);

(ii) subject to any offsets or defenses which the Tenant has against any prior landlord (including the Landlord) unless the Tenant shall have provided the Lender with (A) notice of the Landlord's Default that gave rise to such offset or defense, and (B) the opportunity to cure the same, all in accordance with the terms of Section 6 above;

(iii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which the Tenant might have paid in advance for more than the current month to any prior landlord (including the Landlord);

(iv) liable to refund or otherwise account to the Tenant for any security or other deposits not actually paid over to such new owner by the Landlord;

(v) bound by any amendment or modification of the Lease made without the Lender's consent;

(vi) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including the Landlord); or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate.

7. Notwithstanding the foregoing, the new owner will be required to cure all on-going, non-monetary defaults existing at the time it becomes the new owner of the Building pursuant to the terms and conditions of the Lease. Additionally, notwithstanding any provision of the Lease or this Agreement to the contrary, Lender and Landlord acknowledge and agree that, the prior landlord (including, if applicable, the Landlord) shall be liable for any and all defaults of the prior landlord arising prior to the date the new owner becomes owner of the Property.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To the Lender                      LaSalle Bank National Association  
135 South LaSalle Street, Suite 1225  
Chicago, IL 60603  
Attention: Commercial Real Estate Division

With a copy to:                      LaSalle Bank National Association  
135 South LaSalle Street, Suite 925  
Chicago, IL 60603  
Attention: Gary Fordyce, Esq.

To the Landlord:                      Doheny Enterprises, LLC  
400 S. Beverly Drive, Suite 412  
Beverly Hills, CA 90212  
Attention: Property Management

With a copy to:                      Doheny Enterprises, LLC  
400 S. Beverly Drive, Suite 412  
Beverly Hills, CA 90212  
Attention: Kristina E. Raspe, Esq.

To the Tenant:                      County Administrative Officer  
P.O. Box 2415  
Mammoth Lakes, CA 93546

With a copy to:                      County Counsel  
P.O. Box 2415  
Mammoth Lakes CA 93546

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

9. The Tenant acknowledges and agrees that the Lender will be relying on the representations, warranties, covenants and agreements of the Tenant contained herein and that any default by the Tenant hereunder shall permit the Lender, at its option, to exercise any and all of its rights and remedies at law and in equity against the Tenant and to join the Tenant in a foreclosure action thereby terminating the Tenant's right, title and interest in and to the Leased Premises. Waiting to hear from Lender.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of the Lender, all of whom are



entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of California.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

[Signature page to follow]

**IN WITNESS WHEREOF**, the parties hereto have executed this Subordination, Non-Disturbance and Attornment Agreement the day and year first above written.

LANDLORD:

Doheny V LLC, a California limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

County of Mono, a political subdivision of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LENDER:

LASALLE BANK NATIONAL ASSOCIATION,  
a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "1"**  
**LEGAL DESCRIPTION OF REAL ESTATE**

LOT 2 OF TRACT 36-117, IN THE TOWN OF MAMMOTH LAKES, COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 9, PAGES 31 AND 31B OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**PROPERTY ADDRESS OF REAL ESTATE:**

452 Old Mammoth Road  
Mammoth Lakes, CA 93546

**PERMANENT TAX IDENTIFICATION NUMBER:**

35-200-19

**Exhibit "D"**

**TENANT ESTOPPEL CERTIFICATE**

To: LaSalle Bank National Association  
135 South La Salle Street  
Suite 1225  
Chicago, IL 60603  
Attention: Commercial Real Estate Division

Re: Lease Dated: \_\_\_\_\_ (the "Lease")  
Tenant: County of Mono (the "Tenant")  
Landlord: Doheny V LLC (the "Landlord")  
Common Address of Building:  
452 Old Mammoth Road, Mammoth Lakes, CA (the "Building")  
Leased Premises within the Building: \_\_\_\_\_ (the "Premises")

The Tenant acknowledges that (a) LaSalle Bank National Association, a national banking association (the "Lender") has agreed, subject to the satisfaction of certain terms and conditions, to make a loan (the "Loan") to Doheny Enterprises LLC, a California limited liability company or an entity formed by Doheny Enterprises LLC, the successor in interest to the Landlord, secured by a mortgage lien on the Landlord's interest in the Building and the land on which the Building is located, and (b) the Lender is requiring this Certificate as a condition to its making the Loan. Accordingly, the Tenant hereby certifies and confirms to the Lender and acknowledges and agrees as follows:

1. The Tenant is in full and complete possession of the Premises demised under the Lease, such possession having been delivered by the Landlord pursuant to the Lease and having been accepted by the Tenant.
2. The improvements to the Premises that the Landlord is required to furnish under the Lease have been completed in all respects to the satisfaction of the Tenant, and the Premises are open for the use of the Tenant, its customers, employees and invitees. All contributions required to be paid by the Landlord to the Tenant in connection with improvements to the Premises have been paid in full.
3. All duties or obligations of the Landlord required under the Lease which were an inducement to the Tenant to enter into the Lease have been fully performed.
4. The Lease is in full force and effect. No default exists on the part of the Landlord or the Tenant under the Lease, nor does any circumstance currently exist that, but for the giving of notice or the passage of time, or both, would be such a default. The Lease constitutes the entire rental agreement between the Landlord and the Tenant with respect to the Premises and has not been amended, modified or supplemented, except as attached hereto, and has not been superseded. There are no oral agreements between the Landlord and the Tenant with respect to the Premises. A true and correct copy of the Lease (including all amendments thereto) is

attached to this Certificate as Exhibit "A", and the Tenant agrees not to amend or modify the Lease without the prior written consent of the Lender.

5. No rents under the Lease have been prepaid, except the current month's rent. The Tenant agrees that it shall not prepay any rents under the Lease more than one month from the date when such rents are due. The Tenant does not now have or hold any claim or defense against the Landlord which might be set off or credited against future accruing rents or which might otherwise excuse the Tenant's performance under the Lease.

6. The Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of the Lease or of the rents secured therein.

7. The Tenant does not have any outstanding options or rights of first refusal to purchase the Premises, or any part thereof, or to purchase or lease any other part of the Building, except (state none, if applicable): None.

8. No actions, whether voluntary or involuntary, are pending against the Tenant or any guarantor of the Lease under any bankruptcy, insolvency or similar laws of the United States or any state thereof.

9. The term of the Lease commenced on \_\_\_\_\_, 200\_\_ and ends on \_\_\_\_\_, 20\_\_, subject to options to renew, if any, set forth in the Lease.

10. The current monthly base rental payable by Tenant under the Lease is \$\_\_\_\_\_. Percentage rent is not payable, as provided in the Lease. The current estimated monthly payments made by the Tenant under the Lease in respect of common area maintenance costs and real estate taxes are \$\_\_\_\_\_ and \$\_\_\_\_\_, respectively.

11. The security deposit under the Lease is currently \$\_\_\_\_\_.

12. So long as the Loan is outstanding, the Tenant shall pay any termination fees payable for the early termination of the Lease to the Landlord and the Lender jointly.

13. The Lender will rely on the representations and agreements made by the Tenant herein in connection with the Lender's agreement to make the Loan and the Tenant agrees that the Lender may so rely on such representations and agreements.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Tenant has executed this Tenant Estoppel Certificate as of \_\_\_\_\_, 200\_\_\_\_\_.

**TENANT**, County of Mono, a political subdivision of the State of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "1"**

**COPY OF LEASE**

**[TO BE ATTACHED BY TENANT]**

## Exhibit "E"

### Tenant Improvement Allowance

1. Tenant, following the delivery of the Leased Premises by Landlord and the full and final execution and delivery of the Lease to which this Exhibit is attached, shall have the right to perform alterations and improvements in the Leased Premises (the "Initial Alterations").
2. Prior to starting work, Tenant shall furnish Landlord with plans and specifications; names of contractors; required permits and approvals; and evidence of contractor's and subcontractor's insurance in commercially reasonable amounts and naming Landlord as an additional insured. Changes to the plans and specifications must also be submitted to Landlord for its approval. Alterations shall be constructed in a good and workmanlike manner using materials of a commercially reasonable quality, in compliance with all Laws and all terms and conditions of the Lease. Upon completion, Tenant shall furnish "as-built" plans, completion affidavits and full and final waivers of lien. Landlord's approval of an Alteration shall not be deemed a representation by Landlord that the Alteration complies with Law.
3. Tenant shall be responsible for all elements of the design of Tenant's plans (including, without limitation, compliance with Law, functionality of design, the structural integrity of the design, the configuration of the Leased Premises and the placement of Tenant's furniture, appliances and equipment), and Landlord's approval of Tenant's plans shall in no event relieve Tenant of the responsibility for such design. Landlord acknowledges and agrees that Tenant is a government agency and is required by applicable state law and regulations to engage in formal or informal bidding to select contractors; or, in some instances, Tenant may have the right to avoid or reject such bidding and perform work with its own forces. Any Contractor utilized by Tenant shall: (i) maintain insurance as required by Landlord, in its commercially reasonable discretion, (ii) have the ability to be bonded for the work in an amount of no less than 150% of the total estimated cost of the Initial Alterations, (iii) provide current financial statements, (iv) be licensed as a contractor in the state/municipality in which the Leased Premises is located, and (v) meet any other reasonable objective criteria specified by Landlord, to the extent Tenant is permitted by applicable bidding laws to include such criteria in its bid documents. Landlord acknowledges and agrees that Tenant may or may not require the services of an architect. Tenant shall comply with any such applicable laws and procedures. In the event that Tenant utilizes its own forces to complete the work, then any provisions of this Exhibit referring to contractors or architects shall instead be construed as referring to the Tenant (e.g., payment to contractors shall instead mean payment to Tenant).
4. Provided Tenant is not in Default, Landlord agrees to contribute the sum of \$400,000.00 (the "Allowance") toward the cost of performing the Initial Alterations in preparation of Tenant's occupancy of the Leased Premises. The Allowance may be used for any costs in connection with the Initial Alterations and also any purchase of furniture, decorations, fixtures, or any other personal property or expense related to Tenant's use of the Leased Premises. Tenant shall provide Landlord with the space plan and layout for the Leased Premises upon their completion. The Allowance, less a 10% retainage (which retainage shall be payable as part of the final draw), shall



be paid to Tenant's General Contractor (or to Tenant if Tenant utilizes its own forces) upon approval from Tenant in periodic disbursements within 30 days after receipt of the following documentation (if applicable): (i) an application for payment and sworn statement of contractor substantially in the form of AIA Document G-702 covering all work for which disbursement is to be made to a date specified therein; (ii) a certification from an AIA architect substantially in the form of the Architect's Certificate for Payment which is located on AIA Document G702, Application and Certificate of Payment; (iii) Contractor's, subcontractor's and material supplier's waivers of liens which shall cover all Initial Alterations for which disbursement is being requested and all other statements and forms required for compliance with the mechanics' lien laws of the state in which the Leased Premises is located, together with all such invoices, contracts, or other supporting data as Landlord or Landlord's mortgagee may reasonably require; (iv) a cost breakdown for each trade or subcontractor performing the Initial Alterations; (v) plans and specifications for the Initial Alterations, together with a certificate from an AIA architect that such plans and specifications comply in all material respects with all laws affecting the Building, Property and Leased Premises; (vi) copies of all construction contracts for the Initial Alterations, together with copies of all change orders, if any; and (vii) a request to disburse from Tenant containing an approval by Tenant of the work done and a good faith estimate of the cost to complete the Initial Alterations.

5. Upon completion of the Initial Alterations, and prior to final disbursement of the Allowance, Tenant shall furnish Landlord with (if applicable): (1) general contractor and architect's completion affidavits, (2) full and final waivers of lien, (3) detailed invoices covering all labor and materials expended and used, (4) as-built plans of the Initial Alterations, and (5) the certification of Tenant and its architect that the Initial Alterations have been installed in a good and workmanlike manner in accordance with the approved plans, and in accordance with applicable Laws, codes and ordinances. In no event shall Landlord be required to disburse the Allowance more than one time per month. If the Initial Alterations exceed the Allowance, Tenant shall be entitled to the Allowance in accordance with the terms hereof, but each individual disbursement of the Allowance shall be disbursed in the proportion that the Allowance bears to the total cost for the Initial Alterations, less the 10% retainage referenced above. Notwithstanding anything herein to the contrary, Landlord shall not be obligated to disburse any portion of the Allowance during the continuance of an uncured Default under the Lease, and Landlord's obligation to disburse shall only resume when and if such Default is cured.

6. Any portion of the Allowance which exceeds the cost of the Initial Alterations or is otherwise remaining after January 1, 2008, ("Unused Allowance") shall be credited against Tenant's Rent. Tenant shall be responsible for all applicable state sales or use taxes, if any, payable in connection with the Initial Alterations and/or Allowance.

7. Except as may be otherwise set forth in the Lease to which this Exhibit is attached, Tenant agrees to accept the Leased Premises in its "as-is" condition and configuration, it being agreed that Landlord shall not be required to perform any work or, except as provided above with respect to the Allowance, incur any costs in connection with the construction or demolition of any improvements in the Leased Premises.

8. This Exhibit shall not be deemed applicable to any additional space added to the Leased Premises at any time or from time to time, whether by any options under the Lease or otherwise, or to any portion of the original Leased Premises or any additions to the Leased Premises in the event of a renewal or extension of the original Term of the Lease, whether by any options under the Lease or otherwise, unless expressly so provided in the Lease or any amendment or supplement to the Lease.

**August 7, 2018**  
**Regular Meeting**  
**Item # 7b**

**Behavioral Health**

**Presentation**

# Davison House

History

Where are we?

Next Steps If Approved



# History

- The Davison property was originally a residential treatment program, but after budget cuts became a sober living facility for men only
- Former names included Eastern Sierra Passages Lodge and Eastern Sierra Transitions
- 1990-1997: Mono County rents Davison property
- 1997: Mono County buys Davison property for \$392K
- 2008: Davison property was still open, but no full-time on-site staff
- 2011: To save costs, it is decided that Davison property should be closed
  - At this point, 7 transitional residents and 4 permanent residents were housed
- 2011: Davison property is appraised and put on market
  - One last minute bid (\$325K) fell through and the house has been unoccupied since

Where are  
we?

- Initial plan to renovate
- Roof collapse and structural analysis changed our plans
- Our current plan is to sell
- We are here today with a resolution of intention to sell

## Next Steps If Approved

- Public noticing of the resolution of intention to sell as required by law
- Opening of bids on September 4th



# Questions + Discussion





**August 7, 2018**  
**Regular Meeting**  
**Item # 7c**

**County Counsel**

**Letters, Presentations, Ag  
Report**

August 2, 2018

**Mono County Board of Supervisors**

c/o Clerk of the Board

PO Box 715

Bridgeport, CA 93517

Honorable friends:

Thank you in advance for considering these concerns I share with many other interested parties regarding the existing natural waters, and the threatened diversion of them, from the Long Valley watershed to the Los Angeles Department of Water and Power.

I have been informed about imminent changes by way of Long Valley residents who are reliant on this area and its ability to support their livelihood. As a member of a family who was displaced under very similar circumstances at Inyo County during the 1920's, I am too familiar with tragic hardships that can be carelessly inflicted by preventable bad decisions and mismanagement of resources.

While the tactic of obtaining whatever water can be captured for the aqueduct may seem reasonable on balance sheets; the hidden cost for Los Angeles is that Long Valley will eventually degrade and lose its ability to provide any extra water; sooner than the LADWP management anticipates. This is evident considering the current conditions around Owens and Mono Lakes... California's wildfire seasons are starting earlier every year; while resulting particulate air pollution emerged as an unforeseen by-product of water diversion, now contributing to a "snowball" effect of ever-increasing temperature changes that, in turn, continue to exacerbate this trend.

Furthermore, there's obvious appearances that LADWP is merely attempting to take advantage of a temporary window of opportunity presented by a current federal administration that seeks to eliminate the endangered species act, as well as other environmental protections that ultimately helped secure the Mono Basin. In contrast, Long Valley may not host the equivalent class of crucial biological habitat that Mono Lake does; yet in addition to what fragile environmental benefit it provides, Long Valley became the de-facto hub for local human endeavors in agriculture and recreation/tourism industries... crucial features that are also very much worth preserving.

I feel confident there exist sufficient water resources throughout Mono County that enable sharing finite quantities with Los Angeles, if properly managed... LADWP simply needs to adequately perform its function; demonstrating responsibility toward the regions it seeks to obtain resources... without the need to be forced. (Unfortunately, this agency exhibits little credibility in this regard, instead presenting a well-documented history employing methods of questionable ethics frequently resulting in self-defeat.)

I implore you to act against the decision to dehydrate Long Valley... not for my benefit, but for the sake of your constituents, for the long-term economic interests of the Mono region, and Los Angeles too.

Deepest regards,

Daniel R. Burdick  
2050 West Hedding Street  
San Jose, California 95128

(408) 772-8876

Mono County Board of Supervisors  
VIA EMAIL

August 7, 2018

Dear Supervisors,

I am writing regarding today's agenda item on LADWP's water practices in Long Valley. I had planned to attend the meeting but am unable to do so.

I have followed this issue with interest. I worked at the Mono Lake Committee from 1984-1996 and was deeply involved in key policy issues including the State Water Board's 1994 decision to protect Mono Lake from excessive diversions by LADWP. Because of my familiarity dealing with LADWP at Mono Lake, LADWP's unilateral action in Long Valley last spring was alarming to me.

I am very concerned about how Mono County responds to LADWP now, and the implications for DWP's future engagement in Mono County – not just in Long Valley but also at Mono Lake, Owens Gorge and all of LADWP's water holdings in Mono County (including as yet untapped reserves of groundwater).

I think it's very important for Mono County to stand up to LADWP at this time and send a strong message that the County will step up to protect waters in their area of origin, recognizing LADWP's water rights.

I am glad LADWP has already agreed to conduct a CEQA analysis and do an EIR, and they should be recognized for taking this first step. However, I believe Mono County needs to hold LA's feet to the fire on this so that it gets done properly and this fight doesn't drag on for years. My experience from working at MLC is that LADWP never agreed to come to the table unless and until the agency was sued; only then was it possible to negotiate any agreements.

I think Mono County should file for a restraining order to 1) compel DWP to keep an appropriate amount of water in Long Valley that will preserve baseline

conditions until it has completed the CEQA analysis, and 2) agree on a timetable for initiation and completion of the EIR in a timely manner.

Mono County should also support the use of the best available science based on solid data and peer-reviewed sources. In recent weeks, some statements and/or conclusions have been made (including by LADWP) in various articles and letters about sage grouse, grazing, irrigation, fisheries, economics, climate change and the like that appear to be unsupported by facts and data. LADWP has abundantly more resources than does Mono County and therefore it's essential that the County rely from the start on solid scientific information rather than hearsay in making its case, lest Mono County squander taxpayer dollars by making unsupported arguments that can easily be dismissed by LADWP's experts.

Ultimately, I would like to see Mono County do what has been done in Inyo County – that is, enter into some type of County long-term water agreement with LADWP that will protect the environment of Mono County while also recognizing LADWP's water needs.

In this era of climate change it is no longer business as usual. Everyone is going to have to learn to live with less. LADWP is right to be concerned about climate change and its effects on water supply, and the City of Los Angeles & LADWP have already done a lot to try to address climate change and water supply. Perhaps they can do more. Perhaps ranchers can increase irrigation efficiency and learn to live with less. Perhaps we who love those pastoral vistas need to realize that the meadows can't remain green all summer long as they always have been. Regardless of these competing demands, the protection of Mono County's environment (including but not limited to the habitat needs of the bi-state sage grouse) needs to be part of the balancing of water demands and uses, just as it was at Mono Lake.

Thank you very much for being willing to engage in this important issue. How Mono County acts today will set a standard for the County's future engagement in possible water disputes with LADWP at Mono Lake, in the Owens Gorge and elsewhere in Mono and Inyo counties.

Sincerely,

*Sally Miller*

Sally Miller  
P.O. Box 22  
Lee Vining, CA 93541

Attn: Mono County Board of Supervisors

As one of the thousands of tourists that enjoy the natural splendor of Mono County, I was dismayed to read of LADWP's plan to restrict irrigation waters in the Owens Valley.

Source: (<https://www.sierrawave.net/mono-ranch-lessee-supporters-waging-paper-war-on-ladwp/>)

On our June trip to the Eastern Sierra I read article after article in local news publications regarding this issue and felt compelled to write in **support** of irrigation waters being fully allocated.

I join in solidarity with the voices of the Audubon California, Eastern Sierra Audubon Society and The Sierra Club Range of Light in advocated for continued irrigation for both the benefit of the ranchers and the protection of wetlands, species and their habitat.

I believe that if more tourists were informed of this issue they would stand in solidarity. San Diego, like Los Angeles, requires we get our water from outside our counties. This does NOT mean we want places like the Owens Valley starved for water, while we water our lawns.

Perhaps those of us that live in urban and suburban environments should be mandated to restrict OUR wasteful irrigation for ornamental lawns before we restrict the irrigation of valuable habitat in the very valleys directly under the source.

In Solidarity,

Amanda Mascia  
San Diego, CA  
Board Member San Diego Democrats for Environmental Action  
Member Sierra Club San Diego  
SDCDP Central Committee Member  
[amandamascia77@gmail.com](mailto:amandamascia77@gmail.com)  
858-880-8917

Martha Davis  
Box 508  
Nicasio, CA 94946

August 6, 2018

The Honorable Mono County Board of Supervisors  
c/o County Clerk for Mono County  
Box 715  
Bridgeport, CA 93517

Attn: Skendall@mono.co.gov

Re: Agenda Item 7C: Los Angeles Department of Water and Power Removal of  
Water from Little Round and Long Valleys

Dear Chair Gardner and the Board of Supervisors,

I recently became aware of the Los Angeles Department of Water and Power (LADWP) decision to modify leases in Little Round Valley and Long Valley that has resulted in a significant reduction in the release of water to these lands.

As the former executive director of the Mono Lake Committee and someone who has more than 40 years of experience with Southern California and statewide water issues, I want to thank the County for its leadership in seeking a constructive solution to the issue raised by Los Angeles.

All regions of the state need to prepare for the impact of climate change on regional water supplies and it is a good thing that the city of Los Angeles is thinking about how to continue to improve management of its water demands and supplies. It's been 25 years since the Mono Lake decision and the people of Los Angeles are still leading California in efficient water use for which they deserve credit.

However, key among the preparations for climate change is the need to ensure that state's meadows and wetlands can absorb and hold back the increasingly intense rain events California is experiencing, and release this water slowly to our stream and groundwater systems. Not only has LADWP's decision to reduce water available to the Mono County lands been disconcertingly abrupt, the Department is not considering the long-term benefit to the people of Los Angeles of releasing sufficient water to maintain existing meadows and wetlands and the value of the shared environmental and economic benefits to Mono County.

In particular, I applaud the County's proposal to develop a long-term water management plan for the Little Round and Long Valleys with Los Angeles along with a broad array of stakeholders including environmental organizations, recreation groups, wildlife organizations, state and federal agencies, ranchers and others.

The impacts of climate change are already far-reaching, and we need to develop resilient water management strategies now that will contribute to the long-term, sustainable environmental and economic well being of both Los Angeles and the Eastern Sierra. A water management plan that incorporates climate change considerations along the lines proposed by staff would be the first of its kind in California, and would go a long ways towards working out a common-sense strategy for sharing our state's public trust water resources between two important regions of the state.

Thank you for your consideration of my comments. Please let me know if I can be of assistance to you in any way.

Sincerely,

s/Martha Davis

Box 508  
Nicasio, CA 94946

Sent via email: [mlcmarthadavis@gmail.com](mailto:mlcmarthadavis@gmail.com)



August 7, 2018

Honorable members of the Mono County Board of Commissioners,

I am Malcolm Clark, vice chairman and conservation chair of ROLG, Sierra Club, covering Inyo and Mono Counties. My wife and I retired to Mammoth Lakes in 2004, moving from Indiana. Shortly after moving I became involved in local Sierra Club activities, especially as regards environmental protection. I urge the BoS to remain firm in pushing back against efforts by LADWP to cut drastically or eliminate irrigation water provided to various grazing leases in Mono County.

ROLG has a long history of engagement with LADWP on various water issues in Inyo County. A key example of what can be achieved through long term efforts is the rewatering of the lower Owens River, opening up new recreational opportunities as well as restored habitat for flora and fauna.

ROLG's experience is that even when agreements are reached with LADWP, even if under court settlements, it takes continuing effort to ensure that LADWP lives up to the terms of such agreements. BoS should not assume that reaching an agreement – through public pressure, negotiation, or legal action is the final step in efforts to keep Mono County Green. Water issues will only become more crucial in our area due to climate change and its effects on the eastern Sierra.

LADWP has shown what it can do positively through its not entirely voluntary control of dust pollution arising from the Owens dry Lake bed, and through its significant conservation achievements in LA itself. It is to be commended for these achievements while pressure is maintained on LADWP to ensure it does not turn Mono county into a desert. Cooperative efforts are best but are not sufficient by themselves.

Be suspicious of claims that LADWP is only returning the affected lands to their natural condition. If that were the goal of LADWP, then it would have to stop taking water out of the Owens River drainage entirely. Restoration efforts are important. But restoration efforts should be measured by what they accomplish for the habitat, its flora and fauna, and the people who live in the area. Simple restoration to some presumed state that existed in the past is not a viable goal, as that presumed state is often insufficiently known and would in any case differ radically depending upon what point in time one chooses as the "natural state" to which conditions are to be restored. And climate change introduces such massive changes into any restoration scenarios that any simply return to how thing were at some past point in time is not viable.

Thank you, BoS, for your efforts on this issue to protect the habitat, flora, fauna, and people of Mono County.

Malcolm Clark

[Wmalcolm.clark@gmail.com](mailto:Wmalcolm.clark@gmail.com). PO Box 3328. 637 John Muir Road, Mammoth Lakes, 93546

760-924-5639

**KEEP LONG VALLEY  
GREEN**







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**Cooperative Range and Riparian  
Restoration Project**

Dave Wood Livestock  
and  
Los Angeles Department  
of Water and Power

This fencing project is designed to  
improve habitats for fish, wildlife,  
upland game and rare plants.

Pedestrian access gates have been  
provided for your convenience  
and are so marked.

No vehicle access.





© Jennifer Little















# PHOTOGRAPHY

~ Jennifer Little ~

Associate Professor of Photography, University of the Pacific

[www.jenniferlittlephotography.com](http://www.jenniferlittlephotography.com)

~ Lynn Boulton ~

Chair, Sierra Club Range of Light Group

[www.sierraclub.org/toiyabe/range-light](http://www.sierraclub.org/toiyabe/range-light)

~ Maria Kemp ~

Cashbaugh and Giacomini Ranches

# **Cain Ranch, Mono Co.**



**August 3, 2018**  
**Patti Novak-Echenique**



# North Side – Tumble Mustard (*Sisymbrium altissimum*)









# Nebraska Sedge (*Carex nebrascensis*)





# Conway Ranch – Nebraska Sedge Meadow



Conway Ranch  
Sedge field  
Plot # 5  
7/16/07



# **Bloody Canyon – Cheatgrass, Rabbitbrush and Sagebrush**





# Parker Meadows

















**South Side of Cain Ranch from Grant Lake Road (Hwy 158)**







## DEPARTMENT REPORT

August 2018

### Agriculture

The Mono County lease situation continues to fester. The City of Los Angeles Department of Water and Power (LADWP) has written several responses to stakeholders ranging from the county to environmental groups to state representatives, all of which include some amount of untrue information. It is unclear whether the letter writers are unaware of certain facts. One example is a [recent response](#) to Friends of the Inyo from LADWP Board of Commissioners President, Mel Levine, in which the statement that ranchers “continue to demand more” water is reiterated several times. Our local ranchers have never asked for more water as a part of the current lease negotiations, only that the city consider committing to continuing irrigation at historic levels. Additionally, the letter says that “ranchers have never stepped to the table with any adjustments in their farming practices”. This is also false, as a proposal to measure water allotments on a tiered basis linked to snowpack levels and expected runoff was presented to LADWP early this year.

It is important that we continue to respond these false claims with the facts of what has really transpired. Removing irrigation from these areas will have economic and environmental impacts to Mono County residents. Despite the many proactive steps that our ranching community has taken to protect native species such as the sage grouse, if water is removed from the land we will lose valuable wetlands and grasslands which will have a negative impact on these species. This will surely also reduce flood control capacity of lands, create an environment conducive to invasive plant establishment, and lead to an increased threat of wildfire.

The Inyo and Mono Counties’ Agricultural Commissioner assisted the California Department of Food and Agriculture (CDFA) and California Department of Pesticide Regulation (CDPR) last month by sitting on an interview panel for potential agricultural commissioners and sealers as well as deputy commissioner/sealers. This interview portion of the license testing process includes a commissioner and representatives from the two state agencies to ensure that passing applicants are up to the standards of all involved. Those that make it to the interview portion must first pass a written test that includes multiple choice questions and an essay. This testing process is the only one of its kind in California.

Our office currently has five employees in various stages of this licensing, with a sixth looking to start the process shortly. This is the highest number of licensed employees that the department has ever seen – we have in the past had as few as one licensed employee. The large number of employees currently in the state testing system is good news for the department, as it helps us build capacity and assures some level of succession in the future.

### Weights and Measures

Our weights and measures inspector was busy in July with several consumer complains. One was regarding a local retail location of a national chain not ringing up items at sale pricing as indicated in their weekly flier. When these types of complaints come in, our staff conducts undercover purchases which follow strict state guidelines. If an issue is found, a notice of violations will be written requiring the business to fix the issue.

Another complaint that came in was with regard to fuel signage and associated pricing. Many fuel stations advertise separate cash and credit pricing. This is legal as long as conditions are met that remove the possibility of enticement. The California Department of Measurement Standards has answers to frequent consumer concerns [posted online](#), including information on cash/credit pricing, whether air is required to be supplied, if a business can charge a surcharge for credit cards and debit cards, and much more.

## Mosquito Abatement

Testing for West Nile virus began at the end of July. Until then, our traps had not been able to produce enough mosquitoes to meet the threshold required by testing labs for submittal. Typically, we do not see positive West Nile results until later in the summer. Our first human cases of this virus were confirmed last year and we hope that we do not see much West Nile activity this year given the lower runoff conditions. Our current mosquito species of concern, *Aedes floodwater* species, result from water fluctuation and not general high water conditions. These very aggressive mosquitoes do not carry the virus, but can be a serious biting nuisance. There has been some recent concern based on recent studies that certain [native \*Aedes\*](#) species may be able to transmit Zika.



Staff has received word that there will be some significant flows coming out of Pleasant Valley Reservoir soon. Crews will be monitoring potential mosquito breeding sources in down flow areas in the coming weeks. We hope that the fires that impacted the area recently may have removed the threat of floodwater mosquito eggs in the burnt areas. These eggs can lay dormant in dried mud for years and then hatch once water returns.

Although no complaints have been received, we did see an increase in mosquito counts coming in from traps in the Mammoth Lakes area. Crews have been working diligently in the area to reduce population numbers.

## Invasive Plant Management Program

Our invasive plant program recently submitted a project proposal to CDFA and USFS. We hope this proposal will be successful. If it is, we will be able to continue work on the few small infestations of Yellow starthistle that occur in Inyo and Mono. It is critical that we remove this weed before it has the chance to establish in our area. Our crews have kept this weed to only a few pioneer populations for decades while it has invaded most of California with severe consequences. This plant is not only spiny and aggressive, but is also fatally toxic to horses. The project proposal would also allow our crews to continue some work in the Antelope Valley area and on areas owned by the Eastern Sierra Land Trust, as well as begin a few new projects.



Welcome to our newest Invasive Plant Management Program seasonal staff member, Aaron Parker!

## Inyo County Commercial Cannabis Permit Office

Of the 35 applications that we began reviewing last month, it appears that 28 have the potential to move to round two scoring if the applicants provide requested missing information. Several applications were not able to move forward to round two due to inappropriate zoning or other concerns. We appreciate the help scoring applications we have received so far from other departments and the cannabis task force.

The Inyo County Commercial Cannabis Permit Office still does not have authorization to receive live scan results. Department of Justice staff has contacted our office several times recently to confirm information, so this will hopefully happen soon. The state just received similar authorization late in July, so they may begin issuing annual licenses for the almost 800 applications they have received soon. Just over 3,500 temporary licenses have been issued by the state to date.