



**Monterey Bay Air Resources District**  
24580 Silver Cloud Court, Monterey, CA 93940

<b>MEETING DATE:</b>	October 20, 2021	<b>CONSENT</b>
<b>TO:</b>	The Air Pollution Control Board	
<b>FROM:</b>	Rosa Rosales, Administrative Services Manager	
<b>SUBJECT:</b>	Authorizing the Air Pollution Control Officer to Execute a Lease with the City of Watsonville for Office Space at Watsonville Civic Center Effective November 1, 2021	

**RECOMMENDATION**

Staff recommends authorizing the Air Pollution Control Officer to sign the proposed new office lease with the City of Watsonville to maintain the District's satellite office to better serve the San Benito and Santa Cruz county areas.

**DISCUSSION**

Back in October 2017, the District entered into a two year lease agreement with the City of Watsonville for office space located in the City's Civic Center building and then extended the lease for an additional two years starting in October 2019. The current lease expires on October 31, 2021.

Attached is a new lease with the City of Watsonville lease effective November 1, 2021 with a two year term and an option to extend under the same terms and conditions for a period of two years. The District wishes to sign this lease agreement and seeks approval from the Board of Directors. The rent for the initial two year period is \$1,590.92 per month (\$2.15 per square foot). If the lease is extended beyond the initial two year period, the rent will be adjusted using the Consumer Price Index for the San Francisco-Oakland-Hayward Metropolitan Area, with increases limited to no more than 3% per year.

**FISCAL IMPACTS**

Starting in November 2021, the annual rent expense will be \$19,091.04. The current fiscal year budget will need to increase by \$2,070 to cover the new lease rate. The subsequent annual amounts due will be factored in with future budgets.

The total rent cost for the initial two year term is \$38,182.08. The District's Administrative Code allows the APCO to execute contracts and leases up to \$25,000 or less. Contracts and leases in excess of \$25,000 require approval by the Board of Directors Chairperson.

**ATTACHMENTS**

Draft Lease Agreement

**LEASE AGREEMENT**  
**WATSONVILLE CIVIC PLAZA**  
**275 Main ST– SUITE 104**

**BETWEEN**  
**THE CITY OF WATSONVILLE**  
**AND**  
**MONTEREY BAY AIR RESOURCES DISTRICT**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. BASIC LEASE PROVISIONS .....	1
1.01. Tenant's Trade Name .....	1
1.02. Premises .....	1
1.03. Term.....	1
1.04. Minimum Monthly Rent .....	1
1.05. Other Monthly Costs.....	2
1.06. Parking .....	2
1.07. Use of Premises.....	2
1.08. Hours.....	2
1.09. Security Deposit.....	2
1.10. Tenant's Percentage.....	2
1.11. Guarantor of Lease.....	2
1.12. Address for Notices to Tenant .....	2
ARTICLE 2. LEASE OF PREMISES .....	3
2.01. City of Watsonville as Landlord.....	3
2.02. Premises .....	3
2.03. Reservations.....	3
2.04. Tenant Improvements. ....	3
2.05. Condition of Premises.....	3
ARTICLE 3. TERM.....	3
3.01. Commencement of Term .....	3
3.02. Option to Extend.....	4
3.03. Expiration; Holding Over .....	4
3.04. Tenant's Rights and Obligations on Termination or Expiration .....	4
3.06. Landlord's Failure to Timely Sign Lease .....	4
ARTICLE 4. RENT .....	4
4.01. Rent.....	4
4.02. Commencement of Rent. ....	4
4.03. Annual Adjustment To Minimum Rent .....	5
4.04. Late Charges & Interest on Unpaid Rent.....	5
ARTICLE 5. SECURITY DEPOSIT.....	6
5.01. Amount of Deposit.....	6
5.02. Use and Return of Deposit.....	6
5.03. Transfer of Security Deposit.....	6
ARTICLE 6. USE .....	6
6.01. Use of Premises. ....	6
6.02. Operation of Business.....	7
6.03. Hazardous or Toxic Materials.....	7

6.04. Compliance with Governmental Regulations .....	8
6.05. Americans With Disabilities Act. ....	8
ARTICLE 7. TAXES; ASSESSMENTS .....	8
7.01. Personal Property Taxes .....	8
7.02. Possessory Interest Taxes .....	8
ARTICLE 8. OPERATING EXPENSES .....	9
8.01. Additional Rent.....	9
8.02. Definitions .....	9
8.03. Payment of Additional Rent .....	9
8.04. End of Term .....	10
ARTICLE 9. ALTERATIONS AND ADDITIONS.....	10
9.01. Consent .....	10
9.02. Notices .....	10
9.03. Trade Fixtures .....	10
9.04. Restoration .....	10
9.05. Signs and Advertising Matter. ....	11
ARTICLE 10. UTILITIES.....	11
10.01. Separate Charges.....	11
10.02. Jointly Metered Utilities .....	11
10.03. Interruption .....	11
ARTICLE 11. INDEMNIFICATION; INSURANCE.....	12
11.01. Indemnification .....	12
11.02. Insurance Requirements.....	12
11.03. Tenant's Failure To Maintain Insurance .....	13
11.04. Property Insurance/Other Insurance Premiums. ....	13
11.05. Waiver of Subrogation.....	14
11.06. Waiver of Loss and Damage.....	14
11.07. Notice by Tenant.....	15
ARTICLE 12. MAINTENANCE AND REPAIRS .....	15
12.01. Landlord's Maintenance Obligations. ....	15
12.02. Landlord's Right of Entry .....	16
12.03. Tenant's Maintenance Obligations.....	16
12.04. Plate Glass.....	16
12.05. Landscaping .....	17
ARTICLE 13. ASSIGNMENT AND SUBLETTING.....	17
13.01. Prohibition Against Voluntary Assignment, Subletting, and Encumbering; Tenant's Request to Landlord .....	17
13.02. Involuntary Assignment.....	17
13.03. Consent Required.....	18
13.04. Unauthorized Assignment or Sublease .....	18

13.05. Effect of Consent .....	18
13.06. Surrender of Lease .....	18
ARTICLE 14. DEFAULT .....	18
14.01. Events of Default .....	18
14.02. Remedies.....	19
14.03. Covenants and Conditions .....	20
ARTICLE 15. DAMAGE OR DESTRUCTION; Condemnation .....	20
15.01. Landlord's Duty To Repair. ....	20
15.02. Tenant's Duty to Repair or Replacement .....	21
ARTICLE 16. ESTOPPEL CERTIFICATES; ATTORNMENT .....	22
16.01. Tenant to Furnish Certificate .....	22
16.02. Attornment .....	22
16.03. Additional Documents .....	22
ARTICLE 17. MISCELLANEOUS .....	22
17.01. Rules and Regulations .....	22
17.02. Attorneys' Fees.....	22
17.03. Sale or Lease of the Premises by Landlord.....	22
17.04. Liability to Successors .....	23
17.05. Interpretation.....	23
17.06. Time .....	23
17.07. Force Majeure .....	23
17.08. Notices .....	24
17.09. Relationship of Parties .....	24
17.10. Waiver.....	24
17.11. Accord and Satisfaction .....	24
17.12. Authority .....	24
17.13. Broker's Commission.....	24
17.14. Guaranty of Lease.....	24
17.15. Recycling Activities.....	25
17.16. Quiet Enjoyment.....	25

## **EXHIBITS**

Exhibit A	Diagram Showing Location of Premises
Exhibit B	Description of Landlord's and Tenant's Work
Exhibit C	Form of Confirmation of Lease Terms
Exhibit D	Rules and Regulations

## INDEX OF DEFINED TERMS

	<u>Page</u>
Act of bankruptcy .....	19
ADA .....	8
Adjustment Date .....	5
Applicable Operating Expenses .....	9
Beginning Index .....	5
Building .....	1
Commencement Date .....	1, 3
Expiration Date .....	1
Extended Term .....	4
Extension Index .....	5
Hazardous Material .....	7
Index .....	5
Landlord .....	1
Lease .....	1
Lease Year .....	9
Minimum Monthly Rent .....	1, 4
Operating Expenses .....	9
Possessory Interest Tax .....	8
Premises .....	1, 3
Rent Commencement Date .....	1
Security Deposit .....	1, 6
Tenant .....	1
Tenant's Percentage .....	9
Tenant's Trade Name .....	1
Term .....	1, 3

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the CITY OF WATSONVILLE ("**Landlord**") and MONTEREY BAY AIR RESOURCES DISTRICT ("**Tenant**"). Landlord and Tenant agree to all of the terms and conditions of this Lease as follows:

### ARTICLE 1. BASIC LEASE PROVISIONS

The following are basic terms applicable to this Lease. The Sections and Exhibits referenced below in parenthesis explain and define the basic terms specified below and are to be read in conjunction with basic terms herein:

1.01. Tenant's Trade Name. Not Applicable

1.02. Premises. (Section 2.02, **Exhibit A**).

A. Premises; Building. 275 Main Street, Suite 104 Watsonville, California (the "**Premises**") located within the building known as the Watsonville Civic Plaza, located on the corner of Second and Main Streets in Watsonville (the "**Building**")

B. Approximate Square Feet Within Premises: 741 +/-

1.03. Term.

A. Term: Two years commencing on the Commencement Date and expiring two years afterward (the "**Expiration Date**"), unless extended as provided herein (Section 3.02).

B. Lease Commencement Date (the "**Commencement Date**". November 1, 2021. (Section 3.01)

C. Rent Commencement Date (the "**Rent Commencement Date**"):  
Commensurate with the Commencement Date

D. Confirmation of Lease Terms: (Exhibit C) Not Applicable

E. Options to Extend: One option for two years. (Section 3.02).

1.04. Minimum Monthly Rent. \$1,294.22 (Section 4.01)

1.05. Other Monthly Costs. Subject to annual bidding of Janitorial Services tenant shall pay the cost of janitorial services for the Suite to be cleaned twice per week. The cost of Janitorial Services for the first year of tenancy is \$296.70 per month. Cost of Janitorial Services will be payable with monthly rent. Cost and cleaning frequency may vary from time to time as mutually agreed by tenant and landlord in writing with a 30 day notice.

1.06. Parking. Parking is available on the Civic Plaza Parking Garage located behind the Building. Parking permits are available for purchase at annual or monthly fee.



1.07. Use of Premises. General offices. Premises shall be used solely for this use and for no other use or purpose (Section 6.01).

1.08. Hours. Tenant's hours of operation shall be normally accepted business hours for office uses; however, Tenant shall have access to the Premises at all hours for the conduct of Tenant's business.

1.09. Security Deposit. Existing \$2,082.00 will be transferred from existing lease and maintained as security deposit. (Section 5.01).

1.10. Tenant's Percentage. (for purposes of shared expense) 0% (Section 8.02).

1.11. Guarantor of Lease. None (Section 17.14,

1.12. Address for Notices: (Section 17.08) The following notice addresses will continue to be effective, unless changed by written notice to the other party:

Tenant.

Monterey Bay Air Resources District  
24580 Silver Cloud Court  
Monterey, CA 93940

Landlord – for Notices

City of Watsonville  
City Clerk  
275 Main Street  
Watsonville, CA 95076

Landlord - For Rent Payment

City of Watsonville  
Finance Department  
250 Main Street  
Watsonville, CA 95076

## ARTICLE 2. LEASE OF PREMISES

2.01. City of Watsonville as Landlord. Tenant acknowledges and understands that the Landlord is a municipality consisting of numerous offices, departments, agencies and districts. Whenever a provision contained in this Lease, or any extension, modification or amendment, requires the "written consent" of the Landlord, such consent must be obtained from the then acting City Manager or Assistant City Manager for the City of Watsonville. Tenant may not rely on any statement or representation by any other employee, agent or representative of Landlord in obtaining such consent and any such statement or representation other than the express written consent of the City Manager or Assistant City Manager shall be null and void and have no effect. Nothing contained in this Section shall limit in any way the authority of any office, department, agency or district of the City of Watsonville or County of Santa Cruz, California from approving or withholding consent to any event or activity regulated by local law.

2.02. Premises. Landlord leases to Tenant and Tenant leases from Landlord the space within the Building described in Section 1.02 (the "**Premises**"). A diagram of the location of the Premise is attached to this Lease as Exhibit A.

2.03. Reservations. Landlord reserves the right at any time to make alterations or additions to the Building. Easements for light and air are not granted in this Lease. Landlord further reserves the right to enter and access and use any space within walls or above the ceiling finish and beneath the floor surface of the Premises for utility lines and conduits.

2.04. Tenant Improvements. If applicable, the respective obligations of the Landlord and Tenant regarding preparation of and improvement to the Premises for Tenant's use are set forth in Exhibit B attached to this Lease and are defined as either Landlord's Work or Tenant's Work, as the case may be. Any improvement, fixture or item of equipment that is not listed on Exhibit B is the Tenant's obligation at its sole cost and any such item must be approved in writing by the Landlord before work on such item of improvement or installation of such fixture or equipment related thereto and will promptly return any and all monies paid by Tenant.

2.05. Condition of Premises Tenant acknowledges that it accepts the Premises in their current and disclosed condition existing on the date of execution of this Lease, subject to all applicable zoning, municipal county or state laws, ordinances and regulations affecting the use of the Premises, and subject to those items included on Exhibit B as Landlord's Work. Tenant acknowledges that it has satisfied itself, by its own independent investigation, that the Premises are suitable for its intended use and neither Landlord nor its agents or representatives have made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

## ARTICLE 3. TERM

3.01. Commencement of Term. The initial term of this Lease (the "**Term**") shall commence on the date specified in Section 1.03 ("**Commencement Date**") and shall continue until the Expiration Date, unless extended or terminated sooner in accordance with the terms and provisions of this Lease.

3.02. Option to Extend. Tenant is hereby granted the option(s) to extend described in Section 1.03.E (the "**Extended Term**") following the expiration of the initial Term, upon the same terms and provisions contained in this Lease except for the amount of the Minimum Annual Rent, which shall be adjusted to market rate as provided in Section 4.03. Tenant may exercise the option to extend the Term by giving written notice to Landlord at least four but not more than six months before the expiration of the initial Term. If Tenant is in default at the time of exercise of the option, Tenant's election to extend the Term of this Lease shall be totally ineffective and this Lease shall expire at the end of the initial Term, unless otherwise terminated earlier in accordance with this Lease.

3.03. Expiration; Holding Over. The Term will expire at 5:00 p.m. on the Expiration Date. If Tenant remains in possession of the Premises after the Expiration Date in the absence of a new lease agreement or after Landlord has declared a forfeiture of this Lease as a result of Tenant's default, then such holding over shall be construed as a tenancy from month-to-month, subject to all of the terms, conditions, provisions and obligations of this Lease at the time this Lease expires or upon the Tenant's default, as the case may be, except the Minimum Annual Rent shall be 125% of the rent in effect prior to Tenant's holdover. Unless Tenant obtains the express written consent of Landlord to holding over, Landlord does not waive its right to pursue any legal or equitable remedy against Tenant with regard to Tenant's continued possession of the Premises after the expiration of the Term of this Lease.

3.04. Tenant's Rights and Obligations on Termination or Expiration. On or before the expiration or earlier termination of this Lease, Tenant shall surrender to Landlord the Premises and all of Tenant's alterations and fixtures broom clean, in good order and condition, excepting reasonable wear and tear.

#### **ARTICLE 4. RENT**

4.01. Rent. Tenant shall pay to Landlord, in advance, on the first day of each month during the Term of this Lease, a minimum monthly rent, (the "**Minimum Monthly Rent**") without deduction, setoff, prior notice or demand, in the amount set forth in Section 1.04, subject to adjustment as set forth in Section 4.03. Minimum Monthly Rent for any partial month shall be prorated at the rate of 1/30 of the Minimum Monthly Rent per day. All rent and other amounts owed to Landlord shall be paid to Landlord at the address to which notices are given, unless Landlord provides written notice of a change of address.

##### 4.02. Commencement of Rent.

A. Rent Commencement Date. Tenant's obligation to pay the Minimum Annual Rent shall commence on the Rent Commencement Date as set forth in Section 1.03.

B. Proration. If Tenant's obligation to pay rent does not commence on the first day of a calendar month, Tenant shall pay rent for the fractional month on a per-diem basis (calculated on the basis of a 30-day month) until the first day of the calendar month following the Commencement Date. If the Term commences prior to Tenant's obligation to pay Minimum Annual Rent and Percentage Rent, Tenant shall nonetheless be required to pay all sums set forth in the Lease other than Minimum Rent.

4.03. Annual Adjustment To Minimum Rent. During the initial two year term of the lease, rent is not subject to annual adjustment. In the event the lease is extended as set forth above, rent will be adjusted to reflect the then market rate, and will be subject to adjustment at the commencement of the third year of occupancy and each year thereafter including all extensions of the Term (the "**Adjustment Date**") as follows:

A. Method of Adjustment. The base for computing the adjustment is the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose Metropolitan Area, All Items (1982-1984 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics ("**Index**"), which is in effect on the date of the commencement of the Term ("**Beginning Index**"). The Index published most immediately preceding the Adjustment Date in question ("**Extension Index**") is to be used in determining the amount of the adjustment. If the Extension Index is increased over the Beginning Index, the Minimum Rent for the following year (until the next rent adjustment) shall be set by multiplying the Minimum Rent set forth above by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. The amount of the Annual Increase shall not exceed 3% in any one year.

B. Additional Provisions. In no case shall the Minimum Rent be less than the Minimum Rent set forth in Section 1.04, nor shall the Minimum Rent be less than the Minimum Rent in effect immediately prior to the adjustment date then occurring. On adjustment of the Minimum Rent as provided in this Lease, the Landlord shall notify the Tenant in writing of the new Minimum Rent. If the Index has changed so that the base differs from that in effect when the Term commences, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised.

4.04. Late Charges & Interest on Unpaid Rent. Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any installment of rent due from Tenant is not received by Landlord when due, Tenant shall pay to Landlord an additional sum of 10% of the overdue rent as a late charge, and interest at the rate of 1.5% per month, or the maximum rate of interest allowed by law, on the unpaid balance of such rent or sum until paid. The parties agree that such late charges and interest represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. The acceptance by Landlord of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or as provided by law.

## **ARTICLE 5. SECURITY DEPOSIT**

5.01. Amount of Deposit. Upon delivery of Premises, Tenant shall deposit with Landlord the sum set forth in Section 1.09 herein ("**Security Deposit**"). This Security Deposit shall be held by Landlord, without liability for interest, as partial security for the full and faithful performance by Tenant of all the terms, covenants and conditions of this Lease to be performed by Tenant. Landlord may commingle the Security Deposit and shall not be required to keep it separate from its general funds.

5.02. Use and Return of Deposit. If Tenant fails to abide by any of the terms, covenants and conditions of this Lease, then Landlord, at its option, may use any amount of the Security Deposit to compensate Landlord for any loss or damage sustained or suffered due to such failure by Tenant. The entire Security Deposit, or any portion thereof, may be applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder. Tenant shall, upon the written demand of Landlord, immediately remit to Landlord a sufficient amount in the form of a cashier's check to restore the Security Deposit to the original sum deposited. Failure to do so within five days after such demand shall constitute a material breach of this Lease. Should Tenant comply with all of the terms, covenants and conditions of this Lease and promptly pay when due all of the rent herein provided and all other sums payable to Tenant to landlord, the Security Deposit will be returned in full to Tenant within 30 days following the end of the Term or earlier termination of this Lease.

5.03. Transfer of Security Deposit. Landlord may deliver the Security Deposit to Landlord's assignee or successor in interest in the Premises, if Landlord's interest is sold, conveyed, transferred or assigned, and upon delivery, Landlord shall be discharged from any further liability with respect to repayment of the Security Deposit to Tenant.

## **ARTICLE 6. USE**

6.01. Use of Premises.

A. Permitted Use. Tenant shall use the Premises for the use specified in Section 1.07, specifically general offices.

B. Limitations on Use. Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenants in the Building.

C. Insurance Considerations. No use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the Premises, or cause a cancellation of any insurance policy covering the Premises or any part thereof. Nor shall Tenant sell or permit to be kept, used, stored or sold in or about the Premises any article which may be prohibited by any policy of fire insurance obtained by the Landlord. Tenant shall, at its sole cost, comply with any and all requirements regarding the use of the Premises by any company that issues a policy of fire, casualty or public liability insurance to the Landlord. If Tenant's use of the Premises results in a rate increase for the Premises or the Building, Tenant shall pay as additional rent within 10 days written notice, a sum equal to the additional premium caused by such rate increase.

6.02. Operation of Business. Tenant shall conduct its business in the Premises during the usual and customary days and hours for such type of business, as forth in Section 1.08.

6.03. Hazardous or Toxic Materials.

A. Generally. Tenant shall comply, at its expense, with all federal, state and local statutes or regulations concerning environmental conditions, emissions, pollutants and controls. Tenant shall not cause, store, use or permit any Hazardous Material, including without limitation asbestos or polychlorinated biphenyls, to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invites, without the prior written consent of Landlord, which Landlord shall not unreasonably withhold as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business, does not violate any requirements of the Landlord's policies of fire, causality or public liability insurance and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Premises.

B. Indemnity by Tenant. If Tenant breaches any of its obligation stated herein, or if the presence of Hazardous Material on the Premises caused or permitted by Tenant results in contamination of the Premises, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgment, damages, penalties, fines, costs, liabilities or losses, including, without limitation, diminution in value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on the Building, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees which arise during or after the lease Term as a result of such contamination. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises. Landlord agrees to hold the Tenant harmless from any and all past, present and future environmental problems not caused by the direct or indirect result of the operation of Tenant's business.

C. Definition. As used herein, the term "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" shall include without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under

Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) asbestos; (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601), and any amendments or successor statutes thereto.

6.04. Compliance with Governmental Regulations. Tenant shall, at its sole cost and expense, comply with all of the requirements of all local, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises. With regard to the use of the Premises, Tenant shall faithfully observe all local ordinances and state and federal statutes now in force or which may hereafter be in force.

6.05. Americans With Disabilities Act.

A. Landlord's Responsibility. Landlord and Tenant agree that as of the Commencement Date, the Premises, the Building, and common areas are in compliance with the requirements of the Americans with Disabilities Act ("**ADA**") and any other local, state or federal law or regulation regarding the accessibility of the Premises by disabled individuals.

B. Tenant's Responsibility. Tenant acknowledges and expressly accepts full responsibility and shall incur all costs and expenses for construction or modification to the Premises required to meet future revisions or changes in the requirements of the ADA and any other local, state or federal law or regulation regarding the accessibility of the Premises by disabled individuals. Tenant agrees to release, indemnify, defend and hold Landlord harmless for any claim, loss, expense or liability arising from Tenant's failure to fully comply with all such laws or regulations.

## **ARTICLE 7. TAXES; ASSESSMENTS**

7.01. Personal Property Taxes. Tenant shall pay before delinquency all federal, state or local taxes, assessments, license fees, and other charges that are levied and assessed against Tenant's personal property installed or located in or on the Building, and that become payable during the Term. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments.

7.02. Possessory Interest Taxes. Tenant shall pay before delinquency all possessory interest taxes, assessments, license fees, and other charges that are levied and assessed against Tenant's leasehold interest under this Lease. "**Possessory Interest Tax**" means that tax imposed pursuant to laws of the State of California on leaseholds of tax exempt property and does not include taxes on Tenant's inventory, personal, or any other tax or assessment that is presently or may, in the future be levied. On demand by Landlord, Tenant shall furnish Landlord with satisfactory evidence of these payments

## ARTICLE 8. OPERATING EXPENSES

8.01. Additional Rent. In addition to the Minimum Monthly Rent, Tenant agrees to pay additional rent as and when provided in this Article 8 and elsewhere in this Lease; provided, however, that in no event shall the total rent payable by Tenant to Landlord exceed the sum of \$1,294.22, as may be adjusted pursuant to section 4.03, and the Minimum Monthly Rent shall be adjusted accordingly if any additional payment is required pursuant to this Article 8.

8.02. Definitions. For the purposes of this section, the following terms are defined as follows:

A. **"Lease Year"**: Each consecutive calendar year of the term.

B. **"Tenant's Percentage"**: That portion of the total rentable area of the Building occupied by Tenant as set forth as a percentage in Section 1.10 above.

C. **"Operating Expenses"**: All direct costs of operation and maintenance of the Building as determined by standard accounting practices, calculated assuming the Building is 100% occupied, including the following costs by way of illustration, but not limitation: real property taxes and assessments and any taxes or assessments hereafter imposed in lieu thereof; rent taxes, gross receipt taxes assessed against Landlord; water and sewer charges, the net cost and expense of insurance for which Landlord is responsible hereunder or which Landlord or any first mortgagee with a lien affecting the Premises reasonably deems necessary in connection with the operation of the Building; utilities; janitorial services; security; labor, costs incurred in the management of the Building, if any (including a proportionate share of the wages and salaries of employees used in the management, operation and maintenance of the Building, and payroll taxes and similar governmental charges with respect thereto and administrative fees not to exceed 10% of the annual Operating Expenses excluding therefrom such fee from taxes and insurance, which proportionate share shall be determined by dividing the rentable square feet in the Building by the total rentable square feet managed by such employer); air-conditioning; waste disposal; heating; ventilating; elevator maintenance; supplies; materials; equipment; tools; and maintenance, costs of upkeep of all parking and common areas. Operating Expenses shall not include depreciation on the Building or equipment therein, Landlord's executive salaries or real estate brokers' commissions.

D. **"g"**: In the case of the food service or retail tenants located on and accessible only from Second Street, Applicable Operating Expenses will mean only the direct costs of maintenance of the building exterior, sidewalks, landscaping, lighting and Landlord's insurance costs. In the case of office tenants, Applicable Operating Expenses will mean all Operating Expenses.

8.03. Payment of Additional Rent. Tenant shall pay as additional rent an amount equal to the Applicable Operating Expenses paid by Landlord, as set forth above, multiplied by Tenant's Percentage. Landlord shall endeavor to give to Tenant by the first day of March of each Lease Year, a statement of the additional rent payable by Tenant hereunder. However, failure by Landlord to give such statement by such date shall not constitute a waiver by Landlord of its right to require payment of the additional rent. One twelfth of the amount of the annual



additional rent shall be payable in monthly installments along with the installments of Minimum Monthly Rent due after receipt of the statement, and, in the case of the monthly installment of Minimum Monthly Rent first due following receipt of the statement, Tenant shall pay along with such monthly installment one twelfth of the amount of additional rent multiplied by the number of months having passed within the then current Lease Year.

8.04. End of Term. Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Percentage of Operating Expenses for the year in which this Lease terminates, Tenant shall immediately pay additional rent due for the period of Tenant's occupancy.

## **ARTICLE 9. ALTERATIONS AND ADDITIONS**

9.01. Consent. Tenant shall not make any improvements, alterations or additions to the Premises without Landlord's prior written consent. All improvements, alterations and additions shall be in conformity with the laws, directives, rules or regulations of all applicable public and governmental agencies.

9.02. Notices. At least 15 days prior to commencing any work relating to any improvements, alterations or additions approved by Landlord, Tenant shall notify Landlord in writing of the expected commencement date. Landlord shall have the right thereafter to post and maintain on the Premises such notices as Landlord deems necessary to protect Landlord and the Premises from mechanics' liens, materialmen's liens or any other liens. Tenant shall pay, when due, all claims for labor and materials furnished to or for Tenant for use in improving the Premises. Tenant shall not permit any mechanics' or materialmen's liens to be levied against the Premises arising out of work performed, materials furnished or obligations to have been performed on the Premises by or at the request of Tenant. Tenant hereby indemnifies and holds Landlord harmless against loss, damage, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to Tenant or persons claiming under it.

9.03. Trade Fixtures. Tenant may install trade fixtures, display items, machinery or other trade equipment in conformance with the all laws, ordinances, directives, rules or regulations of all applicable public and governmental agencies. With the exception of furniture, equipment and trade fixtures that may be removed by Tenant without causing damage to the Premises, all improvements, alterations or additions shall become part of the realty and belong to Landlord at termination of the Lease. Tenant shall not remove any trade fixtures, display items, machinery or other trade equipment from the Premises, without Landlord's written consent, if the removal of any such item would cause damage to the Premises and, in the absence of Landlord's written consent to removal, any such item shall be deemed a part of the realty and belong to the Landlord at termination of the Lease.

9.04. Restoration. Except as otherwise provided herein, Tenant shall return the Premises to the same condition as existed at the date of execution of the Lease, reasonable wear and tear excepted. In addition, Landlord, at its election, may require Tenant to remove, at Tenant's sole cost, any improvements, alterations or additions approved by Landlord in

accordance with this Lease. Tenant shall repair, at its sole cost, any damage resulting from the removal of any alterations, improvements, additions, equipment, machinery or trade fixtures.

9.05. Signs and Advertising Matter.

A. Consent Required. Tenant shall not place any sign upon the Premises or the Building visible from the exterior without Landlord's prior written consent, which consent shall not be unreasonably withheld. Landlord shall maintain monument and/or directory signs.

B. Maintenance and Display Requirements. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or window coverings in good condition and repair at all times. Tenant shall not display or sell any merchandise or allow carts, portable signs, devices, vending machines or other objects to be stored or remain on the sidewalk or elsewhere outside of the defined exterior of the Premises without the prior written consent of the Landlord.

C. Limitation on Advertising Media. No advertising medium shall be used or allowed to be used by Tenant which can be heard or experienced outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or television. Except with Landlord's prior written consent, Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking facilities serving the Building; nor shall Tenant distribute or cause to be distributed in or near the Building any handbills or other advertising devices.

D. Sign Construction. Tenant's signs shall not be installed without the written consent of Landlord and shall comply with all City sign requirements. Tenant, at its sole cost, shall obtain all necessary permits before installing, erecting or constructing any such sign. Signs shall be installed prior to the commencement of Tenant's business and thereafter shall be maintained by Tenant at Tenant's sole expense. If Tenant fails to maintain any such sign(s), Landlord shall have the right to maintain any such sign(s) and Tenant shall reimburse Landlord for such cost, plus a 20% overhead fee. If Tenant installs a sign without the Landlord's prior written consent, Landlord shall have the right, at its sole discretion, to remove and store Tenant's sign at Tenant's sole expense. The removal and storage costs shall bear interest at the rate of 1.5% per month until paid, or at the maximum rate allowed by law, whichever is less.

**ARTICLE 10. UTILITIES**

10.01. Separate Charges. Tenant shall pay for all water, gas, heat, light, power, telephone service and any other utilities metered or otherwise separately charged to the Premises.

10.02. Jointly Metered Utilities. Landlord shall pay tenant's pro rata share of any utility charges which are jointly metered or charged. Tenant's pro rata share of these charges shall be based upon the ratio of the square footage of the Premises to the total square footage of the building or buildings serviced by such meter.

10.03. Interruption. Landlord shall not be liable for any failure or interruption of any utility service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease.

## ARTICLE 11. INDEMNIFICATION; INSURANCE

11.01. Indemnification. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause which is not the result of Landlord's gross negligence or willful misconduct. Tenant, as a material part of the consideration for this Lease, hereby expressly waives and releases all claims against Landlord, its officers, employees, representatives and agents, for any injury or damage to any person or property on or about the Premises arising for any reason, except for such injury or damage that may be caused by Landlord's gross negligence or willful misconduct. Tenant agrees to indemnify, release, defend and hold harmless Landlord, its officers, employee, representatives and agents from any loss, claim, cost, expense or liability for any injury or damage to person or property, occurring in, on or about the Premises, arising for any reason, including without limitation the condition or use of the Premises or the improvements or personal property located therein and against any loss, claim, cost, expense or liability for injury to the person or property of Tenant, its agents, officers, employees, invitees or trespassers except for such injury or damage, or any loss, claim, cost, expense or liability that may be caused by Landlord's gross negligence or willful misconduct.

11.02. Insurance Requirements. Tenant shall procure and maintain for the duration of the Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with Tenant's operation and use of the Premises. The cost of such insurance shall be borne by Tenant.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as the following:

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (2) Workers' Compensation insurance as required by the State of California.
- (3) Property insurance against all risks of loss to any tenant improvements or betterments.

B. Minimum Limits of Insurance. Tenant shall maintain limits no less than the following:

- (1) General Liability. **\$2,000,000** per occurrence for bodily injury, personal, (Including operations, injury and property damage, products and completed operations).
- (2) Property Insurance. Full replacement cost with no coinsurance penalty provision.

C. Deductibles and Self-Insured Retentions. Landlord may choose to review deductibles and self-insured retentions on property insurance. At the option of Landlord, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Landlord, its officers, officials, employees and volunteers; or Tenant shall provide a financial

guarantee satisfactory to Landlord guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(1) The City of Watsonville, its officers, officials, employees and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the Premises leased to Tenant.

(2) Tenant's insurance coverage shall be primary insurance as respects Landlord, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by Landlord, its officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not contribute with it.

(3) Coverage shall not be canceled, except after 30 days' prior written notice has been given to Landlord.

E. Acceptability of Insurer. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

F. Verification of Coverage. Tenant shall furnish Landlord with original certificates and amendatory endorsements effecting commercial general liability coverage required by this agreement. Upon request by Landlord, Tenant shall provide certificates evidencing the other coverages required herein. The endorsements should be on forms provided by Landlord or on other than Landlord's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by Landlord before the Lease commences. Landlord reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

G. Increase in Coverage. Landlord may increase or decrease the amount of commercial general liability insurance required herein, based upon a general review by Landlord of the standard insurance requirements. Changes in insurance amounts shall occur not more frequently than once a year. Landlord will notify Tenant of any changes under this provision of this Lease.

11.03. Tenant's Failure To Maintain Insurance. Tenant agrees that if Tenant does not maintain any insurance policy required under this Lease or fails to pay any premiums when due, Landlord may, at its election, either terminate this Lease, require that the Premises be immediately closed for business pending reinstatement of insurance by Tenant, or obtain the necessary insurance and pay the premium, and the repayment thereof shall be deemed to be additional rent due by the Tenant and payable on the next date upon which a payment of rent is due.

11.04. Property Insurance/Other Insurance Premiums.

A. Tenant, at its sole cost, shall procure and maintain a property insurance policy, Special Form Causes of Loss at least as broad as ISO Special Form Causes of Loss, CP1030, throughout the Term of this Lease in an amount equal to the replacement value of the improvements or alterations constructed by Tenant in the Premises, together with other insurance as may be deemed necessary by Landlord or required by Landlord's lender or by any governmental agency. Said insurance shall include coverage for Tenant's personal property, trade fixtures, equipment and merchandise located in or upon the Premises. Landlord, in its sole discretion, may require Tenant, from time to time, to procure and maintain other policies of insurance covering the Premises, including without limitation, earthquake insurance, vandalism and malicious mischief endorsement and rental loss insurance.

B. All policies of insurance required under this Lease shall name Landlord as an additional insured. Landlord has the right at any time to demand a copy of a Certificate of Insurance from Tenant for the policies of insurance required herein and any other reasonable evidence proving compliance with these provisions. The failure to provide Landlord with such evidence within five calendar days of such demand shall constitute a material breach of this Lease.

11.05. Waiver of Subrogation. Tenant and Landlord each waive its right of recovery against the other, and each party's successors, assigns, directors, agents and representatives in connection with any loss or damage caused to property belonging to Tenant or Landlord which is covered by any insurance policy of either Tenant or Landlord in force at the time of any such loss or damage. Tenant and Landlord hereby waive, on behalf of each party's insurance carriers, any right of subrogation it may have against the other party and each shall notify its carriers of the waiver contained herein.

11.06. Waiver of Loss and Damage. Landlord shall not be liable for any damage to inventory or other property of Tenant, or others, located in, on or about the Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise, which is not the direct result of Landlord's negligence, and Tenant waives any claim against Landlord with respect to such property. Landlord shall not be liable to Tenant, Tenant's employees or representatives for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliance or plumbing works or from the roof, street or subsurface or from any other places or by dampness or by any other cause of whatsoever nature except to the extent such injury or damage may be caused by Landlord's gross negligence or willful misconduct. Landlord shall not be liable to Tenant, Tenant's employees or representatives for any such damage caused by other tenants or persons in the Premises, occupants of other property in the Building, or the public, or caused by operations in construction of any private, public or quasi-public work except to the extent such injury may be caused by Landlord's gross negligence or willful misconduct. All property of Tenant kept or stored on the Premises shall be so kept or stored at the sole risk of Tenant, and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, unless such damage shall be caused by the willful act or gross neglect of Landlord.

11.07. Notice by Tenant. Tenant shall give immediate notice to Landlord in case of fire or accidents in or around the Premises or of any damage or defects in the Premises, or any fixtures or equipment therein.

## **ARTICLE 12. MAINTENANCE AND REPAIRS**

### **12.01. Landlord's Maintenance Obligations.**

A. Landlord's Obligations. Landlord, on behalf of Tenant and the other occupants of the Building, shall maintain in good condition and repair the foundations, roofs and structural components and exterior surfaces of exterior walls of the Building (exclusive of doors, door frame, door checks, windows, window frames and store fronts); provided, however, if any repairs or replacements are necessitated by the negligence, gross negligence or willful acts of Tenant, its officers, employees, representatives, agents, customers, invitees or trespassers or by reason of Tenant's failure to observe or perform any provisions contained in this Lease or caused by alterations, additions or improvements made by Tenant or its officers, employees, representatives, agents, contractors, subcontractors, laborers or materialmen, the cost of such repairs and replacements shall be the sole obligation of Tenant.

B. Tenant's Maintenance Obligations. Tenant shall be solely responsible for all repairs to and maintenance of the Premises which are not expressly allocated to the Landlord under this Lease or by separate written agreement between Landlord and Tenant.

C. HVAC. Landlord shall maintain all shared HVAC systems. In the event Premises have an individual HVAC system, if Tenant fails to maintain, repair, or replace HVAC systems in accordance with Section 12.03, Landlord may contract with a service company licensed and experienced in servicing HVAC equipment and approved by Landlord for regular maintenance, repairs and replacement, if required, of the HVAC equipment serving the Premises. Tenant shall be responsible for the reasonable costs of such maintenance, repairs or replacement as set forth in this Lease. Tenant will contract with a HVAC service company licensed and experienced in serving HVAC equipment for service on a quarterly basis.

D. Landlord Repair Provisions. Unless Tenant notifies Landlord in writing of the need for repairs under this provision, Landlord shall not be liable for its failure to make such repairs. Landlord shall be entitled to a reasonable period of time to effect such repairs upon receipt of said written notice from Tenant. Tenant waives any right of offset against any rent due hereunder and agrees not to assert as an affirmative defense in any judicial proceeding or arbitration brought by Landlord against Tenant on claims made under this Lease the provisions of Sections 1941 and 1942 of the California Civil Code, or any superseding statute, and of any other law permitting Tenant to make repairs at Landlord's expense. If Landlord fails to make repairs within 30 days after notice of the need for such repairs from Tenant, or if Landlord does not respond timely in the case of an urgent repair request (e.g. ceiling leak on food or equipment), or if repairs take longer than 30 days, if Landlord does not commence the repairs within 30 days and pursue to completion thereafter, Tenant shall have the right, at its option, to make such repairs on the behalf of and for the account of Landlord and deduct all costs and expenses thereof from the next installment(s) of rent due under this Lease.

12.02. Landlord's Right of Entry. Landlord, its agents, contractors, employees and assigns may enter the Premises at all reasonable times to: (a) examine the Premises; (b) perform any obligation of, or exercise any right or remedy of, Landlord under this Lease (c) make repairs, alterations, improvements or additions to the Premises or the Building as Landlord deems necessary; (d) perform work necessary to comply with laws, ordinances, rules or regulations of any public authority or of any insurance underwriter; (e) show prospective tenants the Premises during the last six months of the Term; and (f) perform work that Landlord deems necessary to prevent waste or deterioration in connection with the Premises should Tenant fail to commence to make, and diligently pursue to completion, its required repairs within three days after written demand therefor by Landlord. Landlord will give a minimum of 24 hours advance notice of such entry when practicable.

12.03. Tenant's Maintenance Obligations.

A. Generally. Except as provided elsewhere in this Lease, Tenant, at its sole cost and expense, shall keep the Premises in good order, condition and repair and shall make all replacements necessary to keep the Premises in such condition, including maintenance, repair, and replacement of grease traps (if business is a food service operation) and HVAC systems, and maintenance and inspection of fire sprinkler systems. All replacement equipment shall be of a quality equal to or exceeding that of the original equipment or improvements. Notwithstanding anything to the contrary, if a replacement of the HVAC or fire sprinkler is required, Landlord shall be responsible for such costs.

B. Failure to Repair, Etc. Should Tenant fail to commence to make these repairs and replacements or otherwise maintain the Premises within a period of fifteen business days after delivery of a written demand by Landlord, or should Tenant commence, but fail to complete, any repairs or replacements within a reasonable time after written demand by Landlord, Landlord shall have the right to make such repairs or replacements without liability to Tenant for any loss or damage that may occur to Tenant's stock or business, and Tenant shall pay for all costs incurred by Landlord in making such repairs or replacements, together with interest thereon at the maximum rate permitted by law from the date of commencement of the work through the date of payment. Tenant shall, at its expense, repair promptly any damage to the Premises or the Building caused by Tenant, its agents, employees, customers, invitees, subtenants, assignees or concessionaires, or caused by the installation or removal of Tenant's personal property.

C. Compliance with Requirements. Tenant shall, at its own expense, comply with all requirements of the Landlord's insurance underwriters and any other governmental authority having jurisdiction thereof, regarding the installation and periodic maintenance of fire suppression systems or apparatus.

12.04. Plate Glass. Tenant shall replace, at its expense, any and all damaged or broken glass and plate glass components on or about the Premises resulting from any cause whatsoever other than the direct negligence of Landlord. Tenant shall have full responsibility, at its sole discretion, to either self-insure or obtain insurance policies covering damage or replacement of said glass and plate glass components.

12.05. Landscaping. If landscaping in the vicinity obstructs the view of the Premises from the street, Tenant shall contact Landlord to evaluate and discuss the situation. If the trimming required to restore reasonable visibility is routine maintenance, Landlord shall bear the cost of such landscape maintenance. If the trimming required by Tenant is beyond routine maintenance, Landlord shall undertake the trimming and shall charge Tenant the additional expense beyond the cost of routine maintenance.

### **ARTICLE 13. ASSIGNMENT AND SUBLETTING**

13.01. Prohibition Against Voluntary Assignment, Subletting, and Encumbering; Tenant's Request to Landlord. Tenant shall not voluntarily assign or encumber its interest in this Lease or in the Premises, or sublease all or any part of the Premises, or allow any other person or entity (except Tenant's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining Landlord's express written consent, which consent shall not be unreasonably withheld. Any assignment, encumbrance, or sublease without Landlord's consent shall be voidable, and at Landlord's election, shall constitute a default. No consent to any assignment, encumbrance, or sublease shall constitute a further waiver of the provisions of this provision. For purposes of this provision, the consent of Landlord shall be construed as meaning the express approval of any assignment, encumbrance or sublease of the Premises by the City Council of Watsonville, California, or any agent or representative authorized by said City Council to give said consent. Unless otherwise provided in writing by Landlord, the Term of this Lease shall not be extended under any option(s) to extend or renew the Term of this Lease granted herein that have not already commenced at the time of said assignment or sublease.

#### 13.02. Involuntary Assignment.

A. No interest of Tenant in this Lease shall be assignable by operation of law including, without limitation, the transfer of this Lease by testate or intestate succession. Each of the following acts shall be considered an involuntary assignment:

(1) If Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which Tenant is the bankrupt; or, if Tenant is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(2) If a writ of attachment or execution is levied on this Lease;

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

B. An involuntary assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant.

C. If a writ of attachment or execution is levied on this Lease, Tenant shall have 15 days in which to cause the attachment or execution to be removed. If any involuntary



proceeding in bankruptcy is brought against Tenant, or if a receiver is appointed, Tenant shall have 30 days in which to have the involuntary proceeding dismissed or the receiver removed.

13.03. This Section intentionally omitted

13.04. Deemed Assignment. Any transfer of this Lease from Tenant by merger, consolidation, liquidation or sale of a controlling interest of corporate stock shall constitute an assignment.

13.05. Unauthorized Assignment or Sublease. Any attempted assignment or subletting without Landlord's required consent shall be void and shall, at the option of Landlord, terminate this Lease. Any assignee, subtenant or other recipient of Tenant's interest in this Lease is hereby notified that such transfer is of no force or effect without Landlord's prior written consent.

13.06. Effect of Consent. Consent by Landlord to an assignment or subletting shall not release Tenant from its primary liability under this Lease, and Landlord's consent to one assignment, subletting or occupation by other parties shall not be deemed a consent to other subleases, assignments or use by other parties.

13.07. Surrender of Lease. The voluntary or other surrender or a mutual cancellation of this Lease by Tenant shall not work a merger, and shall, at the election of Landlord, either terminate all or any existing subleases or subtenancies or may operate as an assignment to it of any or all of such subleases or subtenancies. Landlord shall exercise its election within 30 days of the event so requiring.

## **ARTICLE 14. DEFAULT**

14.01. Events of Default. The occurrence of any of the following shall constitute a breach and material default of this Lease by Tenant:

A. The failure of Tenant to pay or cause to be paid any rent, monies or other charges due Landlord as set forth in this Lease within 10 days of Tenant's receipt of written notice.

B. The failure of Tenant to maintain all insurance coverage as set forth in Article 11.

C. The abandonment of the Premises by Tenant, which shall mean failure to utilize the Premises for general office purposes for a continuous period of thirty days, except by prior written notice by Tenant and with the written consent of Landlord.

D. Except as otherwise provided in this Lease, the failure of Tenant to do or cause to be done any act as set forth in this Lease, if the failure continues for 15 consecutive days after notice has been given to Tenant. However, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the 15 day period and diligently and in good faith continues to cure the default to the satisfaction of Landlord;

E. Tenant causing, permitting or suffering, without the prior written consent of Landlord, any act when this Lease requires Landlord's prior written consent or prohibits such act; or

F. Any act of bankruptcy caused, suffered or permitted by Tenant. For the purposes of this Lease, "**act of bankruptcy**" shall include any of the following:

(1) Any general assignment or general arrangement for the benefit of creditors;

(2) The filing of any petition by or against Tenant to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy, unless such petition is filed against Tenant and the same is dismissed within 60 days;

(3) The appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease; or

(4) The attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease.

14.02. Remedies. In the event of any breach by Tenant, in addition to other rights or remedies of Landlord at law or in equity, Landlord shall have the following remedies:

A. Landlord shall have the right to recover against Tenant:

(1) The worth at the time of award of the unpaid rent that had been earned at the time of termination;

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

(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of this rental loss that Tenant proves could be reasonably avoided; and

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under the Lease.

B. The worth at the time of award of the amounts referred to in the previous subparagraphs shall be computed by allowing interest at 10% per annum. The worth at the time of award of the amount referred to in subparagraph (3) shall be computed by discounting this amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

C. Efforts Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against

Tenant, nor shall anything contained in this Lease affect Landlord's right to indemnification against Tenant for any liability arising prior to the termination of this Lease for personal injuries or property damage, and Tenant agrees to indemnify and hold Landlord harmless from any injuries and damages, including all reasonable attorney fees and costs incurred by Landlord in defending any action brought against Landlord for any recovery, and in enforcing the terms and provisions of this indemnification against Tenant.

D. However, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, nor of Tenant's right of possession under this Lease, unless and until Landlord elects to do so, and until that time Landlord shall have the right to recover rent and all other payments to be made by Tenant under this Lease as they become due; provided, that until Landlord elects to terminate this Lease and Tenant's right of possession under this Lease, Tenant shall have the right to sublet the Premises or to assign interests in this Lease, or both, subject only to the written consent of Landlord, which consent shall not be unreasonably withheld.

E. As security for the performance by Tenant of all duties and obligations under the Lease, Tenant assigns to Landlord the right, power, and authority, during the continuance of this Lease, to collect the rents, issues, and profits of the Premises, reserving to Tenant the right, prior to any breach or default by Tenant under this Lease, to collect and retain the rents, (solely in the case of a sublease previously approved by Landlord) issues, and profits, from the operation of Tenant's approved business use, as they become due and payable, and so long as payments to Landlord are also kept current. Upon any breach or default, Landlord shall have the right at any time afterward, without notice except as provided for previously, either in person, by agent, or by a receiver to be appointed by a court, enter and take possession of the Premises and collect rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any secured indebtedness, and in an order as Landlord may determine.

F. If Landlord should take any act to maintain or preserve the Premises on Tenant's behalf, or seek the appointment of a receiver to protect Landlord's interests under this Lease, such acts shall not constitute a termination of Tenant's right of possession unless Tenant receives written notice from Landlord to regarding Landlord's election to terminate.

G. Intentionally Deleted.

14.03. Covenants and Conditions. All covenants made by Tenant hereby are conditions of this Lease; therefore, in the event of any default by Tenant in fulfilling any of the same, Landlord may at any time thereafter at its option declare a forfeiture of this Lease. Landlord shall not be obligated to perform any covenant made by him under this Lease which accrues after the date of any default by Tenant hereunder.

## **ARTICLE 15. DAMAGE OR DESTRUCTION; CONDEMNATION**

### **15.01. Landlord's Duty To Repair.**

A. If the Premises are destroyed or materially damaged from a cause not insured against under a fire or casualty insurance required herein, or if the amount of available

insurance proceeds, including deductible costs, is not sufficient to completely repair or restore any such damage or destruction, Landlord or Tenant shall have the right to terminate this Lease by giving written notice of termination to Tenant within 30 days after the date of the damage or destruction. If the Lease is not terminated, then Landlord shall diligently proceed to repair and restore the Premises to the extent that insurance proceeds, including deductible costs, are sufficient to completely repair or restore any such damage or destruction.

B. If the Premises are materially damaged or destroyed from a cause covered by a fire or casualty insurance required herein, and it can be repaired or restored within 180 days after commencement of repair or restoration, then Landlord shall diligently proceed to repair and restore the Premises. If Landlord determines that the Premises cannot be repaired or restored within this period, then Landlord shall have the right to terminate this Lease by written notice to Tenant given within 60 days after the date of the damage or destruction, and Tenant's obligation to pay Rent and other charges under this Lease shall terminate as of the date of the damage or destruction, or the date Tenant ceases to do business at the Premises, whichever date is later.

C. If the Premises are damaged to the extent of 50% or more of the replacement cost, Landlord may elect to terminate this Lease by written notice to Tenant given within 60 days after the date of the destruction.

D. If Landlord elects or is required to make repairs under this Article, Tenant shall be entitled to a reduction in rent, equal to that portion of the Premises in which the floor area rendered unusable bears to the gross floor area of the Premises, from the date of damage to the earlier of the date Tenant reopens for business or 30 days from completion of Landlord's repair work. Tenant waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to any destruction of the Premises.

E. Except as otherwise provided in this Lease, damage to or destruction of the Premises shall not terminate this Lease or result in the abatement of any rent or other charges payable under this Lease. Tenant expressly waives any right it may have, in law or equity, to offset any cost incurred by Tenant for repairs or restoration to the Premises against Tenant's obligations to pay rent in connection with Landlord's duties of repair and restoration under this Lease.

F. Landlord's duties of repair and restoration under the provisions of this Lease shall extend only to those portions of the Premises insured under a policy of fire or casualty insurance required herein, and Landlord shall not be responsible for any loss, damage, or destruction to Tenant's personal property, trade fixtures, merchandise, inventory or equipment.

15.02. Tenant's Duty to Repair or Replacement. Except as otherwise provided herein, Landlord's obligation to restore shall not include the restoration or replacement of Tenant's personal property, trade fixtures, merchandise, inventory, or equipment. Tenant shall restore and replace said items in the event that Landlord is obligated or elects to repair any damage or destruction of the Premises.

## ARTICLE 16. CERTIFICATES; ATTORNMENT

16.01. Tenant to Furnish Certificate. Landlord or Tenant shall, within 15 business days of written notice from Landlord or Tenant, execute and deliver to Landlord or Tenant a written statement, certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification. Landlord's or Tenant's statement shall include other details requested by the other, such as the date to which rent and other charges are paid and Landlord's or Tenant's knowledge concerning any uncured defaults in Landlord's obligations under this Lease and the nature of such defaults if they are claimed. Any such statement may be relied upon conclusively by any prospective purchaser or encumbrancer of the Premises. Landlord's or Tenant's failure to deliver such statements within such time shall be conclusive upon the Tenant that this Lease is in full force and effect, except as and to the extent any modification has been represented by Landlord or Tenant, and that there are no uncured defaults in Landlord's or Tenant's performance and that not more than one month's rent has been paid in advance.

16.02. Attornment. If any proceedings are brought for foreclosure, or if the power of sale is exercised under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser/transferee upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease, provided the transferee expressly assumes the obligations of this lease. Further, Landlord shall be required to provide said transferee with the material terms of this lease to which transferee will be bound and required to fulfill the obligations of "Landlord". If the transferee refuses to assume the obligations of the lease, Tenant may immediately terminate this Lease without penalty or forfeiture.

16.03. Additional Documents. Tenant, upon request of any party in interest, shall execute promptly such instruments and certificates necessary to carry out the intent of the foregoing Sections as shall be requested by Landlord. In no event shall Tenant be required to provide financial statements.

## ARTICLE 17. MISCELLANEOUS

17.01. Rules and Regulations. Tenant shall faithfully observe and comply with the "Rules and Regulations," a copy of which is attached hereto and marked **Exhibit D**, and all reasonable and nondiscriminatory modifications thereof and additions thereto from time to time put into effect by Landlord.

17.02. Attorneys' Fees. In the event of any legal action, arbitration or proceeding between the parties, the prevailing party shall be entitled to reasonable attorneys' fees and expenses as a part of the judgment or award resulting therefrom.

17.03. Sale or Lease of the Premises by Landlord. Notwithstanding any provisions of this Lease, Landlord may assign in whole or in part Landlord's interest in this Lease and may sell all or part of Landlord's leasehold interest in the real estate of which the Premises are a part. In the event of any sale or exchange of the Premises by Landlord and assignment by Landlord of this Lease, Landlord shall be entirely freed and relieved of all liability under all covenants and obligations contained in or derived from this Lease or arising out of any act, occurrence or

omission relating to the Premises which occurs after the consummation of such sale, exchange or assignment, provided the transferee expressly assumes the obligations of this lease. Further, Landlord shall be required to provide any transferee with the material terms of this lease to which transferee will be bound and required to fulfill the obligations of "Landlord". Landlord shall give written notice to Tenant and any assignee or subtenant of any such change of ownership. If the transferee refuses to assume the obligations of the lease, Tenant may immediately terminate this Lease without penalty or forfeiture.

17.04. Liability to Successors. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto who shall be jointly and severally liable for the covenants contained herein.

17.05. Interpretation.

A. Whenever the singular number is used in this Lease, the same shall include the plural. Reference to any gender shall include the masculine, feminine and neuter genders, and the word "person" shall include corporation, firm or association, when required by the content.

B. The headings or titles to the paragraphs of this Lease are for convenience only and do not in any way define, limit or construe the contents of such paragraphs.

C. This instrument contains all of the agreements and conditions made between the parties with respect to the hiring of the Premises and may not be modified orally or in any manner except by a written instrument signed by all the parties to this Lease.

D. The laws of the State of California shall govern the validity, performance and enforcement of this Lease. If any provision of this Lease is determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and such other provisions shall remain in full force and effect. If any provision of this Lease is capable of two constructions, one which would render the provision void and one which would render the provision valid, the provision shall be interpreted in the manner which would render it valid.

E. Except as may otherwise be expressly stated, each payment required to be made by the Tenant shall be in addition to and not in substitution for other payments to be made by Tenant.

17.06. Time. Time is of the essence in this Lease.

17.07. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to that resulting from such prevention, delay or stoppage. However, Tenant's obligations to make

payment for rental and other charges pursuant to the terms of this Lease shall be excused or reduced only as elsewhere specifically provided in this Lease.

17.08. Notices. All notices to be given by one party to the other or options to be exercised under this Lease shall be in writing, mailed or delivered to Tenant at the addresses shown in Section 1.10 and to Landlord at the following address:

City of Watsonville  
c/o City Clerk  
275 Main Street  
Watsonville, CA 95076

Mailed notices shall be sent by United States Postal Service, certified or registered mail, or via a nationally recognized overnight courier, postage prepaid, and shall be deemed to have been given on the date of posting in the United States Postal Service.

Either party may, by proper notice, at any time designate a different address to which notices shall be sent.

17.09. Relationship of Parties. The relationship of the parties hereto is that of Landlord and Tenant and it is expressly understood and agreed that Landlord is not in any way or for any purpose a partner of Tenant, or a joint venturer with Tenant in the conduct of Tenant's business or otherwise.

17.10. Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord, unless such waiver is in writing by Landlord.

17.11. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the 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 provided.

17.12. Authority. Tenant is a California public entity, and the individual executing this Lease on behalf of such entity represents or warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such entity and that such entity shall be bound by all the terms and provisions hereof.

17.13. Guaranty of Lease. Intentionally Deleted.

17.14. Recycling Activities. If no regulation or ordinance is in effect, Tenant warrants to Landlord that it will adopt a recycling plan which shall include Tenant's sorting and separating recyclable materials from all other solid waste and place recyclables in proper recycling containers. If, during the Term, any local governmental authority having jurisdiction over the Premises adopts any ordinances or regulations on recycling, Tenant warrants that Tenant shall comply with the all applicable ordinances and regulations and if any such local government authority determines that Tenant has violated any provision of the recycling laws, Tenant shall pay all costs, expenses, fines, penalties or other damages imposed upon Landlord by reason of Tenant's failure to comply with such law. Tenant agrees to indemnify Landlord accordingly.

17.15. Quiet Enjoyment. Landlord covenants, warrants and represents that upon commencement of the Lease term, Landlord has full right and power to execute and perform this Lease, and to grant the estate demised herein; and that Tenant, upon the payment of the rent herein reserved and performance of the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Premises and all rights, easements, covenants, and privileges belonging or in any way appertaining thereto, during the term of this Lease. Upon request, Landlord shall provide proof of ownership satisfactory to Tenant.

**SIGNATURES ON FOLLOWING PAGE**



The parties have executed this Lease as of the date first written above.

**TENANT**

MONTEREY BAY AIR RESOURCES  
DISTRICT, a California public entity

Dated: \_\_\_\_\_, 20\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDLORD:**

CITY OF WATSONVILLE, a municipal  
corporation

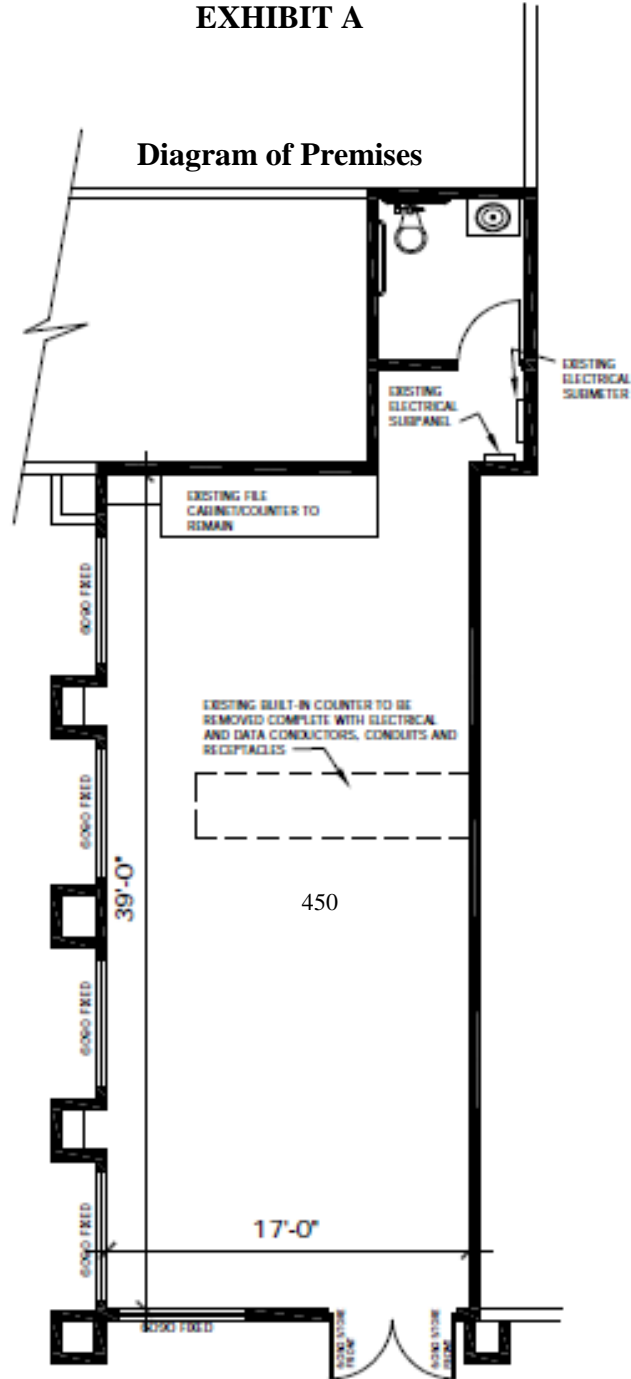
Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
By: Matt Huffaker, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_

# EXHIBIT A



## FLOOR PLAN 1ST FLOOR CIVIC PLAZA

SCALE: 1/4" = 1 FOOT

LEASE SPACE AREA:	
1. BATH AREA =	51.25 SF
2. OFFICE AREA =	663 SF
TOTAL =	741.50

**EXHIBIT B**

**Description of Landlord's and Tenant's Work**

NOT APPLICABLE

**EXHIBIT C**

**Form of Confirmation of Lease Terms**

NOT APPLICABLE

**EXHIBIT D**

**Rules and Regulations**

(See following pages)

# WATSONVILLE CIVIC PLAZA RULES AND REGULATIONS

## TABLE OF CONTENTS

<u>Section</u>	
	Introduction
1.0	<b>USE OF THE BUILDING / SPACE</b>
1.01	General Building Uses
1.02	Office Service Kitchens
1.03	Windows
1.04	Access By Manager
1.05	Heavy Floor Loading
1.06	Rest Rooms
1.07	Wall Penetrations
1.08	Storage of Toxic Materials
1.09	Storage of Flammable Materials
1.10	Building Electrical Work
1.11	User Door Locks
1.12	No Soliciting
1.13	Use of Utility / Loading Areas
1.14	Pets / Dogs
1.15	Parking
2.0	<b>COMMON AREAS</b>
2.01	Non-Permitted Uses
2.02	Common Area Repairs
3.0	<b>SECURITY AND ACCESS</b>
3.1	Keys and Access Cards
3.2	Security Services
3.3	Incident / Security Reporting
3.4	Special Arrangements
4.0	<b>EMERGENCY PROCEDURES</b>
4.1	User Emergency Procedures Requirements
5.0	<b>RISK MANAGEMENT</b>
5.1	Incident Reports
5.2	Safety Reporting
6.0	<b>BUILDING MAINTENANCE</b>
6.1	User maintenance
6.2	After-Hours Cleaning
6.3	Trash Storage
6.4	Special Events
7.0	<b>OPERATING HOURS</b>

7.1 Normal Operating Hours / Days / Holidays

**8.0 OTHER POLICIES**

8.1 Smoking

8.2 Holiday Decorations

8.3 Bicycle Storage

8.4 Mail Service and Large Deliveries

8.5 Moving Equipment and Furniture

8.6 Acknowledgement of Rules

8.7 Right to Change Rules

8.8 Conflict with Other Documents

## **Introduction**

The Watsonville Civic Plaza Building is owned by multiple ownerships occupied by multiple owners and tenants thereof. These Rules & Regulations have been prepared for the Civic Plaza Property Owners Association, hereinafter referred to as "Manager." For the purposes of this document, owners and their tenants shall be hereinafter referred to as "Users." The following Rules and Regulations are being provided to the "Users" of the Watsonville Civic Plaza Building. Said Rules and Regulations shall be imposed upon all building users, employees, guests and invitees.

For tenants of owners, individual lease agreements will also provide rules and regulations regarding use of the space within the building occupied by the tenant. In the event there is a conflict between the terms of a lease and these Rules and Regulations, the provisions of these Rules and Regulations shall prevail. All Rules and Regulations shall apply to all tenants of the Building.

Manager hereby establishes the following Rules and Regulations for the safety, care and cleanliness of (i) the Building, (ii) the Common Facilities (iii) the Building Site Areas (iv) and the safety of any Users, guests or invitees in general, and for the preservation of good order.

### **1.0 USE OF THE BUILDING / SPACE:**

#### **1.01 General Building Uses.**

The Building and Users Space shall be used only for the use it is designed for. No portion of the User's space shall be used for lodging purposes (unless specifically designed for such use and approved by Manager).

User and its authorized representatives and invitees shall use any entrée areas and walkways only for ingress to and egress from the Building. Use of the Common Facilities shall be in an orderly manner in accordance with directional or other signs or guides. Parking in delivery lanes is allowed for only for commercial deliveries. Parking in fire lanes is not allowed for any reason. Walkways shall be used only for pedestrian travel.

#### **1.02 Kitchens.**

Office or Commercial Service Kitchens are permitted providing they meet local building and health code requirements. Users agree to mitigate any odor or noise migration into other Spaces, as a result of such office or commercial service kitchen operation..

#### **1.03 Windows.**

Users shall not black out or otherwise obstruct the exterior windows of the User's space, without Manager's prior written consent. Signs in the windows of office space within the building are not permitted without Manager's written consent. Temporary notices are permitted. Window signs may be permitted for first floor retail/commercial tenants, provided they comply with the terms of tenant's lease.

#### **1.04 Access By Manager.**



Manager shall have the right to enter upon the Users space to perform Managers duties on a pre-scheduled basis, during normal work hours. Manager shall also have the right to enter Users Space at any time without notice in case of emergencies.

1.05 Heavy Floor Loading.

Installation of floor safes, high density filing systems, or other equipment, construction or fixtures which have high floor weight considerations, will require prior written approval by Manager, prior to installation. User shall be responsible for any required engineering and additional structural reinforcement required to support such heavy floor loading.

1.06 Rest Rooms.

The toilet rooms and urinals, wash bowls and other apparatus therein shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be placed therein. The expense of any breakage, stoppage, damage or hazardous waste contamination resulting from the violation of this rule shall be borne by the User, or User's employees, invitees, contractors or agents who shall have caused it. Any water or sewage leaks shall be reported immediately to Manager.

1.07 Storage of Toxic Materials.

User shall not use, keep or permit to be used or kept, any noxious gas, any substance considered a toxic substance, in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Manager or other occupants of the Building by reason of noise, odors, and/or vibrations, or interfere in any way with other Users or those having business therein.

1.08 Disturbances.

User shall not make or permit to be made any loud or disturbing noises or disturb or interfere with occupants of the Building or those having business with them, whether by the use of any musical instrument, radio, television, video or audio recording, shouting, or in any other manner. User shall not throw anything out of doors or windows.

1.09 Storage of Flammable Materials.

User shall not use or keep in the Premises or the Building, any kerosene, gasoline or flammable or combustible fluid or material, or use any method of heating or air conditioning other than that supplied or permitted by Manager.

1.10 Building Electrical Work.

Manager will direct electricians as to where and how electrical, telephone, television, communication, and cable wires are to be introduced to the Premises. No boring or cutting for wires will be allowed without the prior consent of Manager. The location of telephone call boxes and other office equipment in the Premises shall be subject to the approval of Manager. All such consents and approvals by the Manager must be in writing.

1.11 User Door Locks.

User shall be responsible for assuring that doors to Users Space are not left unlocked during non-business hours, except while moving furniture or other items in or out of Users Space.

1.12 No Soliciting.

User shall not canvass or solicit in the Building and User shall cooperate to prevent any such canvassing and/or solicitations by others.

1.13 Use of Utility/Loading Areas.

No person shall use any utility area, freight elevator, truck loading area, or other area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

1.14 Pets / Dogs.

User shall not allow pets in or about User Spaces or Common Facilities of the Building, without Manager's prior written consent. Lead dogs for the sight impaired, military/police dogs are allowed, provided User provides adequate facilities for the care (including appropriate waste disposal), of such dogs.

1.15 Parking.

User shall discourage employee parking in the parking spaces directly in front of the building. Manager may have offending vehicles towed. Leaving unattended vehicles in front of the trash compactor or at the loading dock is prohibited.

**2.0 COMMON AREAS:**

Subject to approval and licensing from the proper governmental authorities, Tenant shall be permitted to install the maximum allowable seating on the outside of the store and shall be required to share in the maintenance of the area with the other food user adjacent.

2.1 Non-Permitted Uses.

Without the consent of Manager, no person shall use any of the Common Facilities for:

- a. Vending, peddling or soliciting orders for sale or distributing of any merchandise, device, service, periodical, book, pamphlet or other matter;
- b. Exhibiting any sign, placard, banner, notice or other written material;
- c. Distributing any circular, booklet, handbill, placard or other material;
- d. Soliciting membership in any organization, group or association, or soliciting contributions for any purpose;
- e. Parading, patrolling, picketing, demonstrating, or engaging in conduct that might interfere with the use of the Common Facilities or be detrimental to any of the business establishments in the Building.
- f. Discarding any paper, glass or extraneous matter of any kind, except in designated receptacles;

- g. Using a sound-making device of any kind or making or permitting any noise that is annoying, unpleasant or distasteful; or
- h. The display or storage of merchandise, equipment, supplies or devices.
- i. Use or installation of, public telephones, newsstands, refreshment, vending or other coin operated machines.

User and its authorized representatives and invitees shall not be permitted to do any of the following:

- a. Obstruct sidewalks, exits and entrances, other than for ingress to and egress from Users space.
- b. Access utility areas, roof areas and other designated areas by Manager, which are not for the use of the general public. Manager shall in all cases retain the right of control and prevent access thereto by all persons whose presence, in the judgment of Manager might be prejudicial to the safety, character, reputation and interests of the Building and its Users. Areas within Users Space and areas subject to specific license agreements are excepted from the above paragraph.
- c. Alter any lock or install any new or additional locks or any bolts on any door within the Common Areas, without the prior written consent of Manger.
- d. Damage any sign, light standard or fixture, landscaping material or other improvement or property within the property.
- e. Loiter in the Common Facilities.

2.2 Common Area Repairs.

Manager shall maintain the Common Areas. Users shall submit all service requests for Common Area repair and maintenance to:

City of Watsonville  
Attn: Grant Adams, Facilities and Maintenance Supervisor  
275 Main Street  
Watsonville, CA 95076  
768-3142 247-1011 (Cell)

3.0 **SECURITY AND ACCESS:**

3.1 Keys and Access Cards.

Each User shall be responsible for Users own Space access control system. User shall be granted Access Keys or Cards to the exterior entrances. Said access shall be provided on a limited basis to User Management for access other than for normal work hours. Manager shall establish a charge for lost access cards and/or keys. Manager shall be responsible for maintaining records of all authorized access cards and keys issued.

If changes are needed in a card's information due to an employee change or any other reason, User shall contact Manager, who will document such change and make the appropriate system change.

User shall immediately obtain from all employees who are no longer assigned to the building, such employee's access cards.

3.2 Security Services. Systems, Cameras, and Guards or Patrols

Each User shall be responsible for User's own Security Systems, Security Cameras and Security Guards or Patrols. Manager shall not be obligated to provide such services.

3.3 Incident / Security Reporting.

If any employee or guest feels threatened or in danger, contact 911 immediately.

All crimes, threatening or abnormal behavior, suspicious individuals, or other security threats, shall be reported immediately to Manager.

Any deliveries, parcels, packages, cases or other containers, which appear to be abandoned, shall be reported immediately to Manager.

Manager reserves the right to exclude or expel from the Building any person who, in the judgment of Manager, is intoxicated or under the influence of liquor or drugs, or is violating the rules and regulations of the Building.

3.4 Special Arrangements.

Manager should be notified in advance of any special event, late night meetings, or other events that are outside of Users normal schedule. This will provide Manager with valuable security and maintenance information.

4.0 **EMERGENCY PROCEDURES.**

4.1 User Emergency Procedures Requirements.

It is the responsibility of each User to develop, implement and communicate emergency procedures to the respective occupants of their space. User will be required to maintain a current emergency contact list with on and off-site phone numbers for senior management, on-site management, emergency area wardens and User's critical system outside vendors.

Emergency Procedures should include contact information and provisions for:

- Contacting 911
- Fires
- Medical emergencies
- Bomb threats
- Natural disasters
- Peak load energy reduction
- Evacuation Plan
- Emergency audible and visible notifications
- Emergency area wardens

Manager shall establish emergency procedures for the Common Areas.

5.0 **RISK MANAGEMENT.**

5.1 Incident Reporting.

Any incident that results in an injury or claim involving the building or its grounds must be immediately reported to Manager by phone or email and must be followed up by completing and remitting the incident form provided by Manager.

5.2 Safety Reporting.

Safety is of utmost importance to the operation of the Building. As such, Users must report any circumstances or issues, which might result or develop into a safety issue, immediately to Manager.

## 6.0 BUILDING MAINTENANCE.

### 6.1 User Maintenance.

Users shall be responsible for Users own maintenance, and janitorial services. Such maintenance shall include doors, fixtures, interior plate glass and windows. Such service and maintenance shall be performed in such a way and at such times which lessen any impacts on other Users. Each User shall keep its Space in a clean and safe condition free of repairs.

### 6.2 After-Hours Cleaning.

The following cleaning shall be performed after hours:

- Dusting
- Vacuuming
- Emptying waste baskets
- Emptying central recycling containers
- Mopping tile floors
- Other cleaning requiring noise emitting equipment and heavy cleaning, including, detail dusting, carpet cleaning, waxing, sealing, and buffing.

### 6.3 Trash Storage.

All trash, refuse and waste materials shall be stored in adequate containers, approved by Manager and regularly removed from each Users space. Trash or refuse may not be stored within interior building areas. Trash containers shall not be visible to the general public and shall not constitute a health or fire hazard or nuisance to any tenant. In the event that any User shall fail to remedy such a health or fire hazard or nuisance within five (5) days after written notice by Manager, Manager may remedy and/or correct such health or fire hazard or nuisance at the expense of User. Users must obtain a separate temporary dumpster to receive move-in merchandising debris, and construction debris from any tenant improvements or alterations. Should it be necessary for Manager to have User's solid or liquid rubbish cleaned up, the cost for such cleaning shall be charged back to Tenant along with an administrative fee of fifteen per cent (15%).

### 6.4 Special Events.

Manager should be notified, in advance, of any special cleaning projects, construction projects, or special events.

## 7.0 OPERATING HOURS.

### 7.1 Normal Operating Hours / Days / Holidays.

Listed below are the normal operating hours / days for the core building HVAC system.

Monday - Friday  
7 a.m. – 7 p.m.

All other times and holidays are considered "after hours."

The building will observe the following holidays:

- New Year's Day
- Martin Luther King, Jr. Day

- Lincoln's Birthday
- Presidents Birthday
- Cesar Chavez Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

Prior arrangement to access the building or for HVAC services, after normal business hours are to be coordinated through Manager.

## 8.0 OTHER POLICIES:

### 8.1 Smoking.

This building including User Spaces and Common Areas is a "non-smoking" or "smoke free" building. Smoking is also prohibited within 20 feet of any doorway or building entrance.

### 8.2 Holiday Decorations.

Due to the potential danger from the improper use of holiday decorations, Manager has established the following policies and procedures:

- Artificial holiday trees only
- Flame retardant decorations only
- UL listed decorative lighting
- Lighting designed for indoor use
- UL listed extension cords
- Extension cords that are one size larger than the wire size of the appliance being used.
- Extension cords to power only one appliance.
- Multiple outlet power strips, of proper capacity, to plug in more than one application.
- All decorative lighting is to be unplugged after hours or when the office will be vacant.
- All of the above fixtures and equipment must be UL rated, with a UL sticker displayed on the equipment.

### 8.3 Bicycle Storage.

Racks for bicycle parking are located at 275 Main Street, in front of the Watsonville Public Library. Bicycles are not to be brought into the building interior.

### 8.4 Mail Service and Large Deliveries.

Unless User or User's tenant makes other arrangements, mail will be delivered to individual mail boxes within the Civic Plaza Main Street Lobby, located at 275 Main Street. Each User will sign for each Users UPS, Federal express, Certified mail, etc. Outgoing mail is placed in the outgoing mailbox within the Civic Plaza Main Street Lobby located at 275 Main Street.

Users must coordinate the receiving of any deliveries to the loading dock area. No unsupervised deliveries will be accepted. Manager should be notified in advance of any large item deliveries, such as construction, tools, building materials, equipment or furniture, etc.

Users must be aware of both (1) safety for building occupants as large objects are moved and (2) care for the elevator doors/frames, walls and office doors/frames which are frequently damaged from moving furniture and the use of hand trucks or mail carts.

8.5 Moving Equipment and Furniture.

Any moving of equipment and furniture, in or about the common areas of the building, must be pre-scheduled with Manager.

All moving company employees are required to; provide identification, perform inspections of moving areas, and furnish supervision, materials and equipment during the move.

User shall coordinate with moving company and shall be responsible for inspecting the areas in which the move will take place within any Common Areas. Any damage to Common Areas as a result of User's moving company or moving personnel shall be repaired by Manager at User's sole expense.

User shall furnish all supervision, labor, materials, supplies and equipment necessary to perform moving services in an orderly, timely and efficient manner. All material handling vehicles must have rubber-tired wheels and be maintained free of grease and dirt.

The User shall also furnish, install and remove floor, carpet, wall and glass protective materials whenever necessary to protect the Common Area's from damage. The following minimum protection is mandatory:

- a) Elevator corner trim must be taped.
- b) Masonite floor protections must be used.
- c) Walk-off plates must be provided to protect door and elevator thresholds.
- d) Elevator pads must be utilized (available through Manager).
- e) All protective materials shall be removed from the building and any resultant damage must be repaired at the sole cost of User.

Movement in or out of the building of furniture, office equipment, safes or other bulk material which requires the use of elevators, stairways, or other Common Areas shall be restricted to hours established by Manager.

8.6 Acknowledgement of Rules.

Manager shall not be responsible to any User or to any other person for the nonobservance or variation of these rules and regulations by any other User or other person. User shall be deemed to have read these rules and to have agreed to abide by them as a condition to User's occupancy of Users Space.

8.7 Right to Change Rules.

Manager reserves the right upon written notice to User to rescind, alter or waive any rule or regulation at any time prescribed for the Building, or to establish additional rules and regulations when, in Manager's sole judgment, it is necessary, desirable or proper for the best interests of the Building.

8.8 Conflict with Other Documents.

In the event of a conflict between these Rules and Regulations and the Bylaws and recorded Covenants, Conditions and Restrictions ("CC&Rs") of the Property Owners Association, the provisions of the Bylaws and CC&Rs will govern.