

18.5.2 provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of or interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable.

18.5.3 provide the terms and conditions of the proposed assignment, sublease, or encumbrancing or other transfer;

18.5.4 provide financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the lease premises; and

18.5.5 provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

18.5.6 Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

18.5.7 Lessor shall have sixty (60) days from the receipt of all documents and other information required under this provision

to grant or deny its approval of the proposed party.

18.5.8 Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee shall be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises.

18.6 Additional Consideration to State.

18.6.1 Lessee and Lessor agree that in the event of a refinancing (where 100%) of the proceeds of the refinancing are not used on the Premises as provided for in paragraph 19.1.4) after the first permanent loan has been secured, Lessee shall pay to Lessor one and one-half percent (1.5%) of any increased loan or encumbrances against the Property over and above the then existing balance(s) of the existing encumbrance(s).

18.6.2 Lessee and Lessor agree that in the event of an assignment or in the event of a majority subletting of the Property, Lessee shall pay to Lessor one and one-half percent (1.5%) of the gross amount paid for the leasehold in connection with an approved assignment of the Lease, or one and one-half percent (1.5%) of any amount paid Lessee in consideration of a sublease of all or a majority portion of the leasehold.

18.6.3 The amount upon which the one and one-half percent (1.5%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to: stocks, bonds, deferred payments, secured and unsecured notes and forebearances regarding claims and judgements.

18.6.4 The sum due Lessor shall be payable in full to Lessor

concurrent with the completion of the transaction be it an assignment, a sublease or a refinancing. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void.

18.6.5 The provisions of this paragraph 18.6 shall not be applicable to any assignment, refinancing or majority sublease during the first ten (10) years of this Lease.

18.7 If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No election to assume or assign this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

18.8 Notwithstanding any provision to the contrary in this paragraph #18, the consent of the State shall not be required for any assignment of this Lease and the interest of Lessee hereunder or to any major sublease of the Property or any part thereof if such assignment or sublease is made to an exempt transferee as defined in the following sentence. An "Exempt Transferee" shall mean (a) Pravin Pranav, Ganesh Patel and Nanu Patel; (b) a limited partnership of which Lessee or Pravin Pranav, Ganesh Patel and Nanu Patel, or an entity described in subsection (c) or (d) below, is a general partner; (c) a joint venture

or a general partnership of which Lessee or Pravin Pranav, Ganesh Patel and Nanu Patel are partners or venturers; or (d) a corporation or other entity of which Lessee or Pravin Pranav, Ganesh Patel and Nanu Patel are the owner of at least fifty percent (50%) of the issued and outstanding stock and interest thereof. The assignment/sublease provided for in this paragraph 18.8 shall be available only once and shall thereafter terminate.

19. Encumbrancing.

19.1 Leasehold - Mortgaging. Lessee shall have the right at any time and from time to time to subject the leasehold estate granted hereunder and any or all improvements to the Property, to one or more mortgages (as used elsewhere in this Lease, the term mortgage includes a deed of trust and other real property security interests) as security for a loan or loans or other obligations of Lessee, provided that:

19.1.1 The mortgage and all rights acquired under the mortgage shall be subject and subordinate to each and all of the covenants, conditions, and restrictions stated in this Lease and to all rights and interest of State, except as provided in Paragraph #19.2 and 19.3 of this Lease.

19.1.2 Lessee shall give Lessor prior written notice pursuant to paragraph 45 herein of any such proposed mortgage, accompanied with a true copy of the promissory note or other evidence of indebtedness and the mortgage securing the same together with any other information set forth in paragraph #18 relating to assignments. Lessor shall not unreasonably withhold its consent to the proposed mortgage and shall have no right to object to the terms of the proposed mortgage so long as such terms comply with the provisions of this paragraph #19 and the encumbrancing agreement mentioned in the next sentence. Upon approval by the State, the State, Lessee and the mortgagee shall execute an Agreement and a Consent to Encumbrancing substantially in the form

attached hereto as Exhibit "D" and incorporated herein by reference.

19.1.3 The total amount of indebtedness secured by all such mortgages shall not, in the aggregate, exceed eighty (80%) of the fair market value of the Property as improved at the time the most junior of such mortgages is recorded. For purposes of this paragraph, the fair market value shall be as determined by the beneficiary under such junior mortgage.

19.1.4 The proceeds of any such loans shall be used exclusively for financing the acquisition of the leasehold and construction, maintenance, operation, repair, alteration and reconstruction of the Property and the improvements, (including fixtures, equipment and personal property) on the Property.

19.2 Mortgage Default; Recognition of Mortgagee as Tenant.

19.2.1 If Lessee defaults under the terms of any permitted leasehold mortgage and the mortgagee acquires Lessee's leasehold estate and interest in the improvements to the Property, whether by exercising its power of sale, by judicial foreclosure, by assignment in lieu of foreclosure or otherwise, the State agrees to recognize such mortgagee as the tenant under all the terms and conditions of this Lease conditioned on the following:

19.2.1.1 Payment of all taxes, assessments, insurance and bond premiums required by this Lease to be paid by Lessee are current, or are brought current by mortgagee, and are kept current by mortgagee;

19.2.1.2 Payment of all utility charges are current or are brought current and are kept current by mortgagee;

19.2.1.3 Payment of all rental due from Lessee including

penalty and interest is current or is brought current by Mortgagee, and kept current by Mortgagee;

19.2.1.4 The mortgagee performs all Lessee's other obligations under the Lease.

19.3 Leasehold default; Notice, Cure. With respect to any such permitted leasehold mortgage, Lessor and Lessee agree as follows:

19.3.1 Upon receipt of notice of any leasehold mortgage (together with a copy of the mortgage and the evidence of indebtedness secured by the mortgage), Lessor shall provide any such leasehold mortgagee, concurrently with providing such notices or communications to Lessee hereunder, with copies of any and all notices or other communications from Lessor to Lessee under this Lease wherein the basis for a default by Lessee is described or alleged and any such leasehold mortgagee shall have the same periods as are given to Lessee under this Lease for remedying such default or causing it to be remedied, plus an additional period of 30 days after the expiration thereof.

19.3.2 In the event of any default by Lessee under this Lease, if prior to the expiration of any applicable curative period specified in this Lease, the leasehold mortgagee shall give Lessor written notice that it intends to undertake the curing of such default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Lessee by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to do so, then Lessor shall not terminate or take any action to effect a termination of this Lease or exercise its other remedies thereunder so long as the leasehold mortgagee is with all due diligence and in good faith engaged in the curing of such default or effecting such foreclosure but the leasehold mortgagee shall not be required to continue such foreclosure or other proceedings if such default shall be cured; any such

attempted termination or action to effect termination made or taken so long as Lessee is so acting diligently and in good faith shall be of no force or effect with respect to this Lease. If the leasehold mortgagee cannot effect a transfer of the Lease other than through foreclosure of the leasehold mortgage and the mortgagee is prohibited from commencing or consummating such foreclosure by order of court or rule of law, lessor shall not terminate this Lease so long as the mortgagee diligently and in good faith pursues legal action to be permitted to complete such foreclosure; provided, that the mortgagee shall keep and perform all provisions to be performed by it under the Agreement and Consent to Encumbrancing until such time as this Lease shall be transferred upon foreclosure or by any other means approved herein.

19.4 Except as set forth in Paragraph 19.3.2 with respect to exercising good faith and due diligence to cure Lease defaults or acquire the leasehold, no leasehold mortgagee shall be liable to perform any of the obligations herein imposed on it or Lessee unless it is in possession or ownership of the leasehold estate and the Property and improvements thereon and all of its obligations commencing with such possession or ownership shall terminate upon assignment or other transfer of the leasehold and the improvements in accordance with the provisions of this Lease. Unless any such mortgagee acquires the leasehold and possession and ownership of the property and improvements thereon, the State's sole remedy against the mortgagee for such mortgagee's failure or refusal to comply with the provisions of this Lease shall be to terminate the mortgagee's rights under this Lease and the Agreement and Consent to Encumbrancing of Lease.

19.5 Any leasehold mortgagee may be named as an additional insured or loss payee under any insurance policies carried by Lessee pursuant to this Lease.

19.6 Without limiting any other provision of this Lease, the

provisions of this Paragraph 19 shall inure to the benefit of and bind any assignee or successor of Lessee, including any leasehold mortgage, and Lessor. Any such assignee or successor, including any leasehold mortgagee in possession, shall assume and agree, in writing, to perform all terms, covenants and conditions of this Lease and any amendment to this Lease or new Lease as provided for herein.

19.7 No permitted leasehold mortgage shall purport to amend the terms of this Lease.

20. Default and Remedies.

20.1 Each of the following events shall constitute an event of default by Lessee and a breach of this Lease:

20.1.1 Lessee's failure or omission to pay any rent or other sum payable hereunder on or before the same is due.

20.1.2 Lessee's failure or omission to observe, keep or perform any of the other terms, agreements or conditions contained in this Lease to be performed by Lessee.

20.1.3 Lessee's abandonment or surrender of the Property or of the leasehold estate.

20.1.4 Lessee's assignment contrary to the provisions hereof.

20.1.5 The subjection of any right or interest of Lessee to attachment, execution or other levy, or to seizure under legal process, if not released within sixty (60) days.

20.1.6 The appointment of a receiver to take possession of the Property or of Lessee's interest in the leasehold estate or of Lessee's operation on the premises for any reason, including but not limited to assignment for the benefit of creditors or voluntary

or involuntary receivership:

20.1.6.1 pursuant to any leasehold mortgage permitted by the provisions of this Lease, or

20.1.6.2 instituted by State, the event of default being not the appointment of a receiver at State's instance but the event justifying the receivership, if any.

20.1.7 An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any law for the purpose of adjudicating Lessee a bankrupt; or for extending time for payment, adjustment or satisfaction of Lessee's liabilities; or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing or other initial event.

20.1.8 Uncured default in the payment of any loan secured by a leasehold mortgage permitted by this Lease.

20.1.9 Failure to substantially commence construction on the Premises within the time limits set forth in paragraph 11.

20.2 As a condition to pursuing any remedy for an alleged default by Lessee, the State shall, before pursuing any remedy, give notice of default to Lessee and to all qualifying subtenants and leasehold mortgagees whose names and addresses were previously given to State in a notice or notices from Lessee or any qualifying leasehold mortgagee stating that the notice was for the purpose of notice under this provision. A qualifying subtenant is a subtenant in possession under an existing sublease which is proper under this Lease. A qualifying

leasehold mortgagee is a mortgagee under an existing leasehold mortgage permitted hereunder. Each notice of default shall specify the alleged event of default and the intended remedy.

20.3 If the alleged default is nonpayment of taxes or other sums to be paid by Lessee, Lessee shall have thirty (30) days after notice is given to cure the default. For the cure of any other default, Lessee shall promptly and diligently after notice commence curing the default and shall have thirty (30) days after notice is given to complete the cure or in case of a failure or omission that cannot be cured by the payment of money and cannot be cured within thirty (30) days, such additional time as is reasonably required for the curing of the default.

20.4 If Lessee shall have failed to cure after expiration of the applicable time curing a particular default or before the expiration of that time in the event of emergency, the State may at its election, but is not obligated to, make any payment required of Lessee under this Lease or under any note or other document pertaining to the financing of improvements or fixtures on the Property, or perform or comply with any term, agreement or condition imposed on Lessee hereunder of any such notice or document, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the highest rate then permitted by law from the date of payment, performance or compliance shall be deemed to be additional rent payable by Lessee on the State's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default or render State liable for any loss or damage resulting from the same. If any default by Lessee shall continue uncured following receipt of notice of default for the period applicable to the default under the provisions of this Lease, State shall have the following remedies in addition to all rights and remedies provided by law or equity to which State may resort cumulatively or in the alternative:

20.4.1 State may at its election terminate this Lease by giving Lessee notice of termination. On the giving of the notice all

Lessee's rights in the Property and in all improvements shall terminate. Promptly after notice of termination Lessee shall surrender and vacate the Property and all improvements in good condition and State may reenter and take possession of the Property and all remaining improvements and eject all persons in possession or eject some and not others or eject none. In addition to all the rights and remedies of a landlord under Section 1951.2 of the California Civil Code, termination under this subparagraph shall not relieve Lessee from the payment of any sum then due to State or from any claim for damages previously accrued or then occurring against Lessee.

20.4.2 State may at its election reenter the Property and, without terminating this Lease, at any time and from time to time relet the Property and improvements or any parts of them for the account and in the name of Lessee or otherwise. State may at State's election eject all persons or eject some and not others or eject none. Any reletting may be for the remainder of the term or for a longer or shorter period. State may execute any leases made under this provision either in State's name or in Lessee's name and shall be entitled to all rents from the use operation or occupancy of the premises or improvements or both. Lessee shall nevertheless pay to State on the due date specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus State's expenses, less the avails of any reletting or attornment. In addition to all other rights and remedies it may have State shall have all of the rights and remedies of a landlord under Section 1951.4 of the California Civil Code. State may do all things reasonably necessary for such reletting, including repairing, remodeling and renovating of the Property or improvements and Lessee shall reimburse State on demand for all costs incurred by State in connection therewith. If State relets the Property it shall apply any sums received upon such reletting in the following order or priority:

20.4.2.1 to the payment of any indebtedness, other than rent due hereunder from Lessee;

20.4.2.2 to the payment of all costs incurred by State in restoring the Property to good order and repair, or in remodeling, renovating or otherwise preparing the Property for reletting;

20.4.2.3 to the payment of all costs (including without limitation any brokerage commissions) incurred by State in reletting the Property;

20.4.2.4 to the payment of rent due and unpaid hereunder;

20.4.2.5 the balance, if any, to the payment of future rent as the same may become due hereunder. No act by or on behalf of State under this provision shall constitute a termination of this Lease unless State gives Lessee notice of termination. Notwithstanding any election by State not to terminate the Lease State may at any time thereafter elect to terminate this Lease for any previous breach or default thereunder by Lessee which remains uncured or for any subsequent breach or default which has not been cured.

20.4.3 State acknowledges that Lessee may acquire personal property and trade fixtures for its operation of the Property through personal property leases or financing arrangements. State will execute such documents as may be reasonably required by any lender or personal property lessor with respect to such personal property and fixtures, acknowledging the priority of the security interest of such personal property lender or lessor with respect to such personal property and fixtures. Subject to the rights of personal property and trade fixture lenders and lessors, State may at its election use Lessee's personal property and trade fixtures or any of such property or fixtures without compensation and

without liability for use or damage or remove them and store them for the account and at the cost of Lessee. Such storage may be in a public or private warehouse or elsewhere. If Lessee shall not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, State may sell any or all thereof at a public or private sale in such a manner and at such times and places as State in its sole discretion may deem proper, without notice to or demand upon Lessee. Lessee waives all claims for damages that may be caused by State's removing or storing or selling the property as herein provided, and Lessee shall indemnify and hold State free and harmless from and against any and all losses, costs and damages. Lessee hereby appoints State as Lessee's attorney-in-fact with the power of substitution and all other rights and powers necessary in order to effectuate the provisions of this Paragraph. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

20.4.4 State shall have the right to cause a receiver to be appointed in any action against Lessee to take possession of the Property and/or to collect the rents or profits derived therefrom. The appointment of such receiver shall not constitute an election on the part of State to terminate this Lease unless a written notice of such intention is given to Lessee.

20.4.5 State shall be entitled at its election to each installment of rent or to any combination of installments for any period before termination, plus interest at the highest rate of interest then permitted by law from the due date of each installment.

20.4.6 State shall be entitled at its election to damages which shall include, without limitation, the following sums:

20.4.6.1 All amounts that would have fallen due as rent between the time of termination of this Lease and the time of the claim, judgment or other award, less the avails of all relettings and attornments, plus interest on the balance at the highest rate of interest then permitted by law; and

20.4.6.2 The worth at the time of the claim, judgment or other award of the amount by which the unpaid rent for the balance of the term exceeds the lower of:

20.4.6.2.1 the fair rental value as then encumbered by the Lease and improvements and

20.4.6.2.2 the fair rental value unencumbered by the Lease and improvements. "Worth" as used in this provision is computed by discounting the total at the discount rate of the Federal Reserve Bank of San Francisco at the time of the claim, judgment or award, plus one (1%) percent. Any claim for damages shall immediately enforceable by State against Lessee by suit and shall be provable in any bankruptcy or insolvency proceedings involving Lessee.

20.5 The provisions of this Paragraph 20.5 are subject to the provisions of Paragraph 19 and the rights of any mortgagee under Paragraph 19 and under any leasehold mortgage made pursuant to Paragraph 19. Lessee assigns to State all subrents and other sums falling due from subtenants, licensees and concessionaires (herein called "subtenants") during any period in which State has the right under this Lease, whether exercised or not, to reenter the Property for Lessee's default and Lessee shall not have any right to such sums during that period. State may at State's election reenter the Property and improvements with or without process of law, without terminating this Lease, and either or both collect these sums or bring action for the recovery of the sums directly from such obligors. State shall receive

and collect all subrents and avails from reletting, applying them in the following order or priority:

20.5.1 to the payment of any indebtedness other than rent due hereunder,

20.5.2 to the payment of all costs incurred by State in restoring the Property to good order and repair, or in remodeling, renovating or otherwise preparing the Property for reletting,

20.5.3 to the payment of rent due and unpaid hereunder, and

20.5.4 the balance, if any, to the payment of future rent as the same may become due hereunder, and

20.5.5 to State's uses and purposes. Lessee shall nevertheless pay to State on the due date specified in this Lease the equivalent of all sums required of Lessee under this Lease, plus State's expenses, less avails of the sums assigned and actually collected under this provision. State may proceed to collect either the assigned sums of Lessee balances or both, of any installment or installments of them, either before or after expiration of the term, but the period of limitation shall not begin to run on Lessee's payments until the due date of the final installment to which State is entitled nor shall it begin to run on the payments of the assigned sums until the due date of the final installment due from the respective obligors.

20.6 No waiver of any breach or default shall constitute a waiver of any other breach or default, whether of the same or any other term, agreement or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding breach or default by Lessee other than default in the

payment of the particular rental payment so accepted regardless of State's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after termination constitute a reinstatement, extension or renewal of the Lease or revocation of any notice or other act by State.

21. Arbitration Applicability and Notice.

21.1 Arbitration may be required by either State or Lessee for matters for which arbitration is provided in this Lease. For other matters State, in its sole discretion, may require arbitration by giving a written notice to Lessee describing the matter to be arbitrated; provided, however, that if an action is already pending on any matter concerning which notice is given, the notice is ineffective unless given before the expiration of ten (10) days after service of process on the person given the notice.

21.2 Except as provided to the contrary in this Paragraph 21, the arbitration shall be in conformity with and subject to applicable rules and procedure of the American Arbitration Association. If the American Arbitration Association is not then in existence or for any reason fails or refuses to act the arbitration shall be in conformity with and subject to the then existing provisions of California law relating to arbitration. The arbitrators shall be bound by this Lease. Pleadings in any action pending on the same matter shall, if the arbitration is required or consented to, be deemed amended to limit the issues to those contemplated by the rules prescribed above. Each party shall pay one-half (1/2) the cost of arbitration including arbitrator's fees. The decision and award made by the arbitrator shall be final, binding and conclusive on all parties and, upon application of either party, judgment may be rendered by the Superior Court of the State of California in and for the County of San Mateo or by any other court having jurisdiction.

21.3 There shall be three (3) arbitrators appointed as follows:

21.3.1 Within twenty (20) days after notice requiring arbitration, each party shall appoint one arbitrator and give notice of appointment to the other party.

21.3.2 The two (2) arbitrators shall choose a third arbitrator within fifteen (15) days after appointment of the second.

21.3.3 If either party fails to appoint an arbitrator or if the two (2) arbitrators fail to choose a third, the appointment shall be made by the then presiding judge of the Superior Court of the State of California in and for the County of San Mateo acting in his individual and nonofficial capacity on the application of either party and on five (5) days notice given before commencement of the arbitration hearing, consent to arbitration by the arbitrator appointed by the other party. In that event no further appointments of arbitrators shall be made and any other arbitrators previously appointed shall be dismissed.

21.4 Notwithstanding anything to the contrary in this Paragraph 21 or elsewhere in this Lease, any claim by the State which might result in a judgment of restitution of the Property may not be arbitrated without the consent of Lessee.

22. Taxes and Assessments. The property interest created by this Lease may be subject to property taxation and the Lessee hereunder in whom the possessory interest is vested may be subject to the property taxes levied on such interest. Lessee agrees to pay all lawful taxes, assessments, user fees, service charges, or levies which at any time may be levied by the State, county, city or any tax assessment levying body upon any interest in this Lease or any possessory right which Lessee may have in or to the Property covered hereby by reason of its use or occupancy thereof or otherwise, as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned by it in or about said Property. Lessee shall be responsible for and pay all taxes when