

LEASE
(100 East Santa Clara Street)

This Lease is made as of September 15, 2009 ("Effective Date"), by and between RSTP INVESTMENTS , LLC, a California limited liability company ("Lessor"), and THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, A PUBLIC BODY ("Lessee"), corporate and politic, established pursuant to the Community Redevelopment Law of the State of California.

RECITALS

1. Lessor is the sole owner of that certain real property located at 100 East Santa Clara Street (at Third Street) in San Jose, California improved with a building which Lessee desires to lease from Lessor and then sublease to several non-profit entities for their use as set forth herein.
2. Lessor and Lessee now desire to enter into this Lease of the property on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the public benefits that will result from Lessee's use of the Property and such other good and adequate consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Basic Lease Provisions Summary

Property:	100 East Santa Clara Street (at Third Street).
Lessor:	RSTP Investments, LLC.
Use:	Offices and meeting space for research, development and training, including use by business incubators, innovation and entrepreneur center to promote corporate growth and innovation, job creation and economic diversification in San Jose
Floor Area of Building:	26,075 rentable square feet.
Initial Term:	Five Years, subject to an option to extend.
Monthly Base Rent:	Months 1-24: \$1.50 per square foot Months 25-36: \$1.53 per square foot

Months 37-60: \$1.53 per square foot plus CPI adjustment not to exceed 3% per annum applied on months 37 and 49 for each following 12 month period.

Option to Extend: One five-year option to extend at 95% of fair market rental value of the Property

Insurance, Maintenance
Taxes and Utilities:

Lessor shall be responsible for the following:

- Insurance, as set forth herein
- Property Taxes
- Property Maintenance including:
 - Elevator Maintenance
 - Elevator phone line and Fire Monitoring phone line
 - HVAC maintenance and upkeep
 - Trash and Recycling Services
 - Utilities
 - Janitorial Services

Lessee shall be responsible for insurance and cost for after hours gas and electric as set forth herein.

Security Deposit: Equal to first month's rent.

Lease Commencement
Date: October 1, 2009.

Improvements: Lessor shall be responsible for constructing tenant improvements. Agency is responsible for reimbursing Lessor for the actual cost incurred for construction of such improvements up to a designated dollar amount.

Parking: Lessor shall provide and pay for sixty (60) reserved parking spaces for Lessee's use during the Lease term. Thirty (30) of the spaces shall be paid for fully by Lessor. The remaining thirty (30) spaces shall be provided by Lessor at 60% of current market rental rate. Lessor shall pay the remaining 40% of the current market rental rate for such spaces.

Furniture: Lessor to provide all existing furniture at no cost to the Lessee.

First Right of Refusal: Agency shall have the first right of refusal to purchase the Property if the Lessor decides to sell the Property during the Lease term.

The above summary is governed by the terms and conditions below.

2. Building/Property

A. The building is located on real property described on Exhibit A, the location of which is shown on Exhibit A-1, located at 100 East Santa Clara Street, City of San Jose, County of Santa Clara, State of California ("Building"). The Building has 26,075 interior square feet that will be available for Lessee's use pursuant to this Lease. Lessor shall provide free of charge for Lessee's use all furniture that currently exists as listed on Exhibit B. Additionally, Lessor shall, at no cost to Lessee, reinstall existing demountable work stations, on first or second floors, as needed and requested by Lessee. The Building and the land on which the Building sits are sometimes collectively referred to as the "Premises."

B. Use Lessee may use the Premises for the purpose of conducting office, research and development activities, and any other legal activity. Lessor acknowledges that the Premises is intended to be used as a business incubator, innovation and entrepreneur center to promote corporate growth and innovation, job creation and economic diversification in San Jose.

2.1 Parking

A. Lessor shall purchase and provide to Lessee for Lessee's use each month during the Term of this Lease, at no charge to Lessee, thirty (30) reserved parking spaces located in the adjacent parking lot shown on Exhibit A-1, ("Parking Lot"). Additionally, Lessor shall provide Lessee with thirty (30) additional parking spaces in the Parking Lot ("Additional Spaces"). Lessee shall pay Lessor 60% of the then market posted parking rate available to the public at the Parking Lot ("Market Rate") for the Additional Spaces. Lessor shall pay for the remaining 40% Market Rate cost, for the Additional Spaces.

B. If Lessor is unable to provide Lessee with the parking spaces, including the Additional Spaces, as set forth in Paragraph 2.1.A above, at any time during the Term of the Lease, Lessor shall be obligated to provide the same number of parking spaces at the same rates (30 at no charge and 30 at 60% of Market Rate) at a parking lot located within 750 linear feet of the Premises ("Alternative Lot"). In such an instance, the term "Market Rate" shall mean the then market posted parking rate available to the public at the Alternative Lot. In such an instance, Lessor shall be obligated to secure and purchase monthly parking passes from the operator of the Alternative Lot utilized by Lessor to satisfy this paragraph "B" requirement. The following, in the following designated order, shall be sought by Lessor as the location of the Alternative Lot: (1st) Globe Parking Garage, on South Third Street at Santa Clara Street; (2nd) 4th/San Fernando Garage, at NorthEast corner of Fourth and San Fernando; (3rd) Central Place Garage, off Central Place between 2nd and 3rd streets; (4th) Third Street Garage, at North Third Street between Santa Clara and St. John streets.

C. **Rent Credit.** Lessor's obligation to provide the sixty (60) parking spaces referenced above in both paragraphs "A" and "B" shall be continuous and uninterrupted during the Term. Failure to provide such shall constitute a material breach of the Lease and shall cause Lessor to credit against the Rent for each month beginning in the month the Landlord breaches this paragraph 2.1, the Market Rate cost Lessee incurs to provide the sixty (60) parking spaces as contemplated in paragraph 2.2. The amount Lessee is entitled to deduct, and Landlord shall credit against the Rent, pursuant to this paragraph shall consist of 100% of the Market Rate cost, each month, to Lessee for thirty (30) reserved parking spaces and forty percent (40%) of the Market Rate cost to Lessee for the Additional Spaces. Lessee shall be responsible for the other sixty percent (60%) of the Market Rate cost for such Additional Spaces.

3. **Letting.** Lessor hereby leases to Lessee, and Lessee hires from Lessor, the Property as defined above upon all the terms and conditions set forth herein

4. **Term/Early Access.** The initial term of the Lease shall be for five (5) years, unless extended pursuant to Section 35, Option to Extend, of this Lease, commencing on October 1, 2009 ("**Commencement Date**") and ending on September 30, 2014 (the "**Lease Term**").

Following the Effective Date, Lessee shall have access to the Premises for purposes of designing and constructing interior improvements to the Property ("**Improvements**") in preparation for Premises occupancy.

5. **Rent.** Base rent ("**Rent**") shall be payable in monthly installments, on the first day of each month, as set forth below. The payment of Rent shall commence on the Rent Commencement Date, which for purposes of this Lease shall be September 1, 2009 ("**Rent Commencement Date**"). Rent shall be paid in lawful money of the United States of America and shall be paid to Lessor at such place or places as may be designated from time to time by Lessor. Rent for any period less than a calendar month shall be a pro rata portion of the monthly installment of Rent.

Months 1-24	\$1.50/sq.ft. x 26,075=\$39,112.50
Months 25-36	\$1.53/sq.ft.x 26,075= \$39,894.75
Months 37-48	\$1.53/sq.ft., as adjusted**
Months 49-60	\$1.53/sq.ft., as adjusted**
Months 61-120, where option timely exercised	95% of fair market monthly rent, per \$41 below.

** The Rent shall be adjusted at month 37 and month 49 as follows: The Rent then in effect at the time will be increased by an amount equal to the percentage of increase for the preceding twenty-four (24) month period shown by the Consumer Price Index for All Urban Consumers as

published by the United States Department of Labor Statistics, Washington, DC (All Items, San Jose-San Francisco-Oakland, 1982-1984=100) ("Index"); provided that such increase shall not exceed 3% at month 37 and month 49. If the Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to reach substantially the same result as would have been reached if the Index had not been discontinued or revised.

6. Late Charges Lessee's Rent is due on the first day of each month starting with the Rent Commencement date. If Lessor, or Lessor's designee, does not receive rent due from Lessee within ten (10) business days of the date such Rent is due, a late charge equal to five percent (5%) of such over due amount shall be charged to Lessee, starting on the sixth day of each month following the Rent Commencement Date. However, where the amount of or applicability of a Rent credit pursuant to paragraph 2.1(C) is in dispute between the parties, the applicability of any late charges shall be suspended until such dispute is resolved by the parties.

7. Security Deposit. Lessee shall deposit in the amount equal to the first month's Rent with the Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefore deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 60 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

8. Quiet Enjoyment. Lessor covenants and agrees with Lessee that upon Lessee paying Rent and performing its covenants and conditions under this Lease, Lessee shall and may peaceably and quietly have, hold and enjoy the Property for the Lease Term, subject, however, to the rights reserved by Lessor hereunder. Lessor agrees that Lessee's covenants and conditions under this Lease shall not consist of any covenants which may be imposed on Lessor's tenants pursuant to any other agreement Lessor has, at any time, with Lessee.

9. Lessee Improvements

9.1 Leasehold Improvements

A. **Construction Documents.** Lessor, at its sole cost and expense, shall retain an architect ("**Architect**"), subject to Agency approval, to prepare plans and specifications, at Lessor's sole cost and expense and construction documents necessary for construction of the improvements, as set forth in Exhibit D, on behalf of Lessee, to the Premises ("**Improvements**"). The plans and specifications shall be submitted to Agency for review and approval prior to submittal to City for final approval. The City approved plans and specifications ("**Approved Plans**") shall be used by Architect to prepare final construction documents ("**Final Construction Documents**") which shall be provided to Agency for review and approval. Lessor shall require that every contract between a contractor and Lessor for the Improvements shall contain those provisions set forth in Exhibit C.

B. **Construction Costs.** Lessee shall be responsible for all construction costs for Improvements ("**Construction Cost**"). The term Construction Costs shall be defined to mean all costs, subject to the below identified dollar amount set forth in subparagraph "f", incurred to complete the Improvements, including, without limitation, the following:

(i) Payments to contractors for labor material, equipment, and fixtures supplied pursuant to construction contracts approved in accordance with this Lease;

(ii) Taxes, permit fees and other related fees, charges, and levies by governmental and quasi-governmental agencies for permits or for inspection of the work;

(iii) Utilities incurred in the course of the construction of the Improvements;

(iv) Premiums for builder's risk insurance associated with the construction of the Improvements

(v) Actual third party costs incurred for the management and administration of the construction, including, without limitation, wages, labor and other administrative and soft costs.

C. **Building Permits/Selection of Contractors.** The building permits required to construct the Improvements shall be secured by Lessee. When the parties have approved the Construction Documents as described above, Lessor shall prepare and circulate a bid package for bidding by at least three prospective contractors for the Improvements project. Selection of the contractor and the terms and price of the contract between Lessor and the contractor shall be subject to Lessee's reasonable approval or disapproval. When the bids are received by Lessor, Lessor shall provide copies of the bids to Lessee with a recommendation regarding which bid is the lowest reasonable bid. Within 30-days of receipt of the copies of the bids, Lessee shall provide Lessor with its reasonable approval or disapproval of the recommended lowest

reasonable bid. Under no circumstances shall a bid be deemed approved by the Lessee. Lessor shall enter into a contract, which contains the requirements set forth in Exhibit C-1, for the Improvements with the selected contractor and shall require the insurance as set forth in Exhibit C.

D. Performance of the Work. Lessor shall cause the Improvements on Floors two through four to be constructed and completed no later than November 15, 2009 and the Improvements on the Ground Floor and Floor Five to be constructed and completed no later than December 15, 2009. Lessor shall diligently undertake to construct the Improvements in accordance with the Final Construction Documents and shall cause the Improvements to be constructed in a good and workmanlike manner, free from material and workmanship defects and in compliance with all applicable permits and laws. If Improvements are not completed by deadline dates stated above, Tenant shall receive a Rent Credit in the amount of 20% of the monthly rent (\$7,822.50) for each floor for which Improvements are not complete. Tenant shall receive Rent Credit, each month, until such time as Improvements are complete.

E. Inspection and Punchlist. Lessee and its representatives shall have the right to enter upon the Premises at all reasonable times for the purpose of inspecting the progress of the construction of the Improvements. Lessor shall notify Lessee in writing when the Improvements are substantially complete. On receipt of such notice, Lessee's representative, the Architect, and Lessor's representatives shall immediately inspect the Improvements ("**Inspection**") and prepare a written list of any items that are defective, incomplete or do not conform to the Final Construction Documents or all applicable laws or permits ("**Punchlist**"). Lessee may augment the Punchlist at any time on or before ten business (10) days following the Inspection. Lessee's failure to specify any item on the Punchlist shall not waive Lessor's obligation to construct the Improvements in accordance with the Final Construction Documents. Lessor shall cause all items listed on the Punchlist to be remedied within thirty (30) business days after the Inspection. The date of final inspection by the City Building Department shall be the "**Completion Date**". Lessor shall notify Lessee in writing of the Completion Date and Lessee shall thereafter have the right to occupy the Premises and Lessor shall tender possession of the Premises to Lessee. Within sixty (60) business days after the Completion Date, Lessor shall deliver to Lessee a final accounting of the Construction Costs and shall provide such evidence as reasonably necessary to substantiate such costs ("**Final Accounting**").

F. Payment of Construction Costs

(i) **Payment of Construction Costs.** Lessee shall be solely responsible for reimbursing Lessor for the cost and expense of the actual Construction Costs incurred by Lessor in an amount not to exceed two hundred and fifty thousand dollars (\$250,000) ("**Lessee's Assistance**") except as expressly set forth in Section g (ii) (Lessee changes) below. On or before the first day of each calendar month, Lessor shall deliver to Lessee a progress report that includes reasonable

documentary evidence of the status and progress of the Improvement work performed and the Construction Costs incurred to date.

(ii) Reimbursement Procedure.

a. Payment Requests. No more often than monthly during construction of the Improvements Lessor shall submit to the Lessee a request for payment ("**Request**") which Request shall be accompanied by contractor lien releases (conditional and unconditional as applicable) and other supporting documentation reasonably requested to evidence actual costs and expenses incurred by or on behalf of the Lessor in connection with construction of the Improvements for the immediately preceding month.

b. Conditions to Reimbursement. The reimbursements shall not be disbursed until Lessee receives the following documentation:

(i) Lessor's statement disclosing the various contracts entered into by Lessor relating to construction of the Improvements and setting forth the names of the contractors, their addresses, amounts of current payments to date and balances due pursuant to the Request.

(ii) Lessor's contractor's statement setting forth the names and addresses and license numbers of all contractors and material suppliers with whom it has contracted in connection with the Improvements, including the amounts of contracts, amounts paid to date, amount of current payments and balances due along with the general contractor's executed conditional waiver and release.

(iii) A certification from Architect certifying that work set forth in the Request has been completed and material are in place as indicated by the payment application ("**Application**") of the general contractor.

(iv) Confirmation from the San Jose Office of Equality Assurance that all documents required for the Improvement Project have been submitted and there are no outstanding issues such as actions or complaints regarding payment of prevailing wages pending with the City's Office of Equality Assurance or State Department of Industrial Relations

c. Lessee Review. Lessee shall review the Application and supporting documentation to determine whether the items for which payment is requested are consistent with this Agreement, including the contract between Lessor and Contractor. Lessee shall approve or disapprove such Application for Payment within ten (10) business days following receipt of Architect approved Application for Payment thereof by the Agency.

Lessee approval of payments shall not require strict adherence to budget line items as reflected in the contract between Lessor and Contractor but shall require satisfactory documentation of Lessor's actual costs. Lessee shall have the right to disapprove the Application for Payment if Lessor is in default, beyond applicable notice and cure periods, of any of Lessor's obligations under this Agreement or if the Application for Payment, or any portion thereof fails to conform with this Agreement. If the Lessee disapproves all or any portion of the Application for Payment, then the Lessee shall provide Lessor with written notice of disapproval within said ten (10) business day period, which written notice shall specify those items disapproved by the Lessee. If the Lessee disapproves all or any portion of the Application for Payment, the parties shall, negotiate in good faith to resolve any such disputed items.

d. **Retention Amount.** Lessor shall withhold a minimum of ten percent (10%) of payments due contractor ("**Contractor Retention**") until the obligations of the contractor are satisfactorily completed. Disbursement requested of the Lessee shall not include the retention amount until such retention amount is due the contractor under the terms of the construction contract. Lessee shall withhold an additional ten percent (10%) of the Lessor's monthly Application for Payment ("**Retention Amount**").

Before the Lessee shall release the Retention Amount, Lessor shall submit a written request to the Agency requesting disbursement of the Retention Amount along with the following documents:

(i) An affidavit from the Lessor's contractor that all payrolls, bills or other indebtedness, including but not limited to all subcontractors, material men and suppliers of goods and services, connected with the work have been paid;

(ii) Executed Conditional Waiver and Releases upon Final Payment forms submitted by all contractors and all subcontractors;

(iii) Confirmation from the Office of Equality Assurance that all documents required under this Lease have been submitted and there are no outstanding issues such as actions or complaints regarding payment of prevailing wages pending with the City's Office of Equality Assurance or State Department of Industrial Relations;

(iv) A copy of a Notice of Completion as recorded with the Santa Clara County Recorder evidencing its recordation; and

(v) Any other documents reasonably requested by the Agency.

Provided the statute of limitations for filing mechanics liens have expired or Lessor has provide Lessee with mechanics lien releases for all contractors, material men and suppliers of goods and services contributing to the Improvements, then no less than thirty-five (35) days after recordation of the Notice of Completion, the Lessee shall disburse the Retention Amount to Lessor.

G. Changes to the Construction Documents and Estimated Construction Costs.

(i) **Lessor Changes.** If, during construction of the Improvements, changes are required to accommodate field conditions or any other changes required to construct the Improvements, including any changes required to be made to the Final Construction Documents, Lessor shall make such changes ("**Lessor Changes**"). Lessor shall notify Lessee in writing of any changes to the Final Construction Documents and any related costs. If, as a result of any Lessor Changes, the actual Construction Costs exceed "Lessee's Assistance", Lessor and Lessee shall meet and confer in an attempt to either value engineer, as appropriate for the intended use, or redesign the Improvements until the actual Construction Costs are equal to, or less than, the Estimated Construction Costs. If the parties mutually agree upon such terms, Lessor shall commence to construct the Improvements in the mutually agreed upon manner. If the parties are unable to mutually agree upon such terms, either party may terminate this Lease upon written notice to the other party. From and after the date of such termination, neither party shall have any further obligations hereunder to the other party. Either party may, within thirty (30) days after receipt of a notice of termination hereunder, elect to pay for such Lessor Changes in excess of the Estimated Construction Costs, in which event, the termination shall be deemed rescinded and of no further force and effect.

(ii) **Lessee Changes.** If Lessee desires to make any changes to the Final Construction Documents ("**Lessee Changes**"), Lessee shall notify Lessor of such change in writing ("**Change Order**"). Within ten (10) days after receipt of a Change Order, Lessor shall notify Lessee in writing whether such Change Order will result in the Construction Costs exceeding the Estimated Construction Costs. If a Change Order will not result in the Construction Costs exceeding the Estimated Construction Costs, Lessor shall implement the Change Order. If a Change Order will result in the Construction Costs exceeding the Estimated Construction Costs, Lessee shall notify Lessor in writing whether Lessee desires to implement the Change Order.

H. Prevailing Wages. The construction of any improvements at the Premises is a public work as defined in the California Labor Code. Throughout the Term, Lessor shall cause to be paid prevailing wages for all construction work performed at the Premises. For the purposes of this Agreement, "prevailing wages" means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 *et seq.*), and as established by the Director of the California Department of Industrial Relations ("**DIR**"), or in the

absence of such establishment by the DIR, by the City's Office of Equality Assurance ("OEA"), for the respective craft classification.

In addition to State Law requirements regarding prevailing wages, the Redevelopment Agency of the City of San Jose recognizes that Lessor's payment of prevailing wages promotes the following goals:

1. Protection of job opportunities within the City of San Jose and stimulation of the economy by reducing the incentive to recruit and pay a substandard wage to workers from distant, cheap-labor areas;
2. Benefiting the public through the superior efficiency and ability of well-paid employees, thereby avoiding the negative impact that the payment of inadequate compensation has on the quality of services because of high turnover and instability in the workplace;
3. Payment of a wage that enables workers to live within the community, thereby promoting the health and welfare of all citizens of San Jose by increasing the ability of such workers to attain sustenance, avoid poverty and dependence on taxpayer funded social services; and
4. Increasing competition by promoting a level playing field among contractors with regard to the minimum prevailing wages to be paid to workers.

Lessor's compliance with prevailing wage requirements is a material consideration of Lessee in entering into this Lease. Lessee will monitor Lessor's compliance with the Labor Code requirements and additional requirements of this Lease through the City Of San Jose's Office of Equality Assurance ("OEA").

Lessor shall:

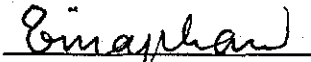
- Require its construction contractor and subcontractors to complete and submit all prevailing wage initial compliance documentation to OEA.
- Following commencement of construction, require its contractor and subcontractors to submit completed certified payroll records with each monthly pay request and Lessor shall refuse to pay all or a portion of a pay request to the extent not supported by certified payroll documentation.
- Submit all certified payroll to Agency or OEA on a monthly basis within fifteen days of Lessor's receipt ("**Payroll Due Date**").
- Require the contractor for the construction of the improvements to grant the City of San Jose ("**City**") and Agency access to the Premises at reasonable times for the purpose of enforcing the provisions of this Section.

- Provide the City and Agency with documentation relating to compliance with this Section.
- Indemnify and hold the City and Agency harmless from any third party costs, claims, or damages arising from the contractor's or any subcontractor's failure to pay prevailing wages.

Agency and Lessor recognize that Lessor's breach of applicable prevailing wage provisions, including those applicable through the California Labor Code and Agency's additional prevailing wage compliance provisions within this Lease, will cause the Agency damage by undermining Agency's goals in assuring timely payment of prevailing wages, and will cause the Agency additional expense in obtaining compliance and conducting audits, and that such damage would not be remedied by Lessor's payment of restitution to the worker paid less than the prevailing wage. Agency and Lessor further recognize the delays, expense and difficulty involved in proving Agency's actual losses in a legal proceeding. Accordingly, and instead of requiring such proof of loss or damage, Agency and Lessor agree that:

(A) for each day beyond the Payroll Due Date that Lessor fails to submit contractor's certified payroll to Agency, Lessor shall pay to Agency as liquidated damages the sum of FIFTY DOLLARS (\$50.00); and

(B) for each instance where Agency or OEA has determined that prevailing wage requirements were not met, Lessor shall pay to Agency as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wage which should have been paid.


Lessor


Lessee

1. **Maintenance of Records.** Lessor shall keep and maintain or cause to be kept and maintained accurate financial books and records with respect to the construction of the Improvements in accordance with good and customary accounting practices. These financial books and records shall include all supporting documentation related to the construction of the Improvements, and shall be maintained for a period of five years following the Completion Date. All such financial books and records shall be made available to Lessee for its inspection and copying during reasonable business hours.

10. **Covenants To Surrender.** Lessee agrees on the last day of the Lease Term, or on the sooner termination of this Lease, to surrender the Premises to Lessor in Good Condition and Repair. "Good Condition and Repair" shall generally mean that the Premises are in the same condition as the condition of the Premises as of the date Lessee occupies the Premises reasonable wear and tear excepted. Lessee, on or before the end of the Lease Term or sooner termination of this Lease, shall remove all its personal property and trade fixtures from the Premises, and all such property not so removed shall be deemed to be abandoned by Lessee. Lessee shall leave furniture set

forth in Exhibit B. Lessee shall reimburse Lessor for all disposition costs incurred by Lessor relative to Lessee's abandoned property. If the Premises is not surrendered at the end of the Lease Term or earlier termination of this Lease, Lessee shall indemnify Lessor against loss or liability resulting from any delay caused by Lessee in surrendering the Premises including, without limitation, any claims made by any succeeding lessee founded on such delay.

11. Uses Prohibited. Lessor consents to Lessee's use of materials which are incidental to the normal, day-to-day operations of any office user, such as copier fluids, cleaning materials, etc., but this does not relieve Lessee of any of its obligations not to contaminate the Premises and the Premises or violate any Hazardous Environmental Law. Lessee shall not install, operate or maintain in the Building any electrical equipment that would overload any portion of the electrical system that serves the Building.

12. Alterations And Additions. Lessee shall not make, or suffer to be made, any alteration or addition to said Premises, or any part thereof, without the express, advance written consent of Lessor; any addition or alteration to said Premises, except movable furniture and trade fixtures, shall become at once a part of the realty and belong to Lessor at the end of the Lease Term or earlier termination of this Lease except to the extent otherwise agreed in writing by Lessor. Alterations and additions which are not deemed as trade fixtures shall include HVAC systems, lighting systems, electrical systems, partitioning, carpeting, or any other installation which has become an integral part of the Premises. Lessee agrees that it will not proceed to make such alterations or additions until all required government permits have been obtained and after having obtained consent from Lessor to do so, until five (5) days from the receipt of such consent, so that Lessor may post appropriate notices to avoid any liability to contractors or material suppliers for payment for Lessee's improvements. Lessee shall at all times permit such notices to be posted and to remain posted until the completion of work. At the end of the Lease Term or earlier termination of this Lease, Lessee shall remove and shall be required to remove its special tenant improvements, all related equipment, and any additions or alterations installed by Lessee at or during the Lease Term and Lessee shall return the Premises to the condition that existed before the installation of the tenant improvements. Notwithstanding the above, Lessor agrees to allow any reasonable alterations and improvements and will use its best efforts to notify Lessee at the time of approval if such improvements or alterations are to be removed at the end of the Lease Term or earlier termination of this Lease.

13. Maintenance Of Premises

13.1. Lessor at its sole cost and expense shall keep, repair, and maintain in Good Condition and Repair including replacements to the following:

A. The exterior of the building, any appurtenances and every part thereof, including but not limited to, glazing, sidewalks, parking areas, electrical systems, and painting of exterior walls.

B. The HVAC by a service contract with a licensed air conditioning and heating contractor which contract shall provide for a minimum of quarterly maintenance and upkeep of all air conditioning and heating equipment at the Premises.

C. The roof membrane by a service contract with a licensed reputable roofing contractor which contract shall provide for a minimum of semi-annual maintenance, cleaning of storm gutters, drains, removing of debris, and trimming overhanging trees, repair of the roof and application of a finish coat every five years to the Building.

D. Fire monitoring services and Fire monitoring phone line.

E. Trash and recycling service contract.

F. Elevator phone line and Elevator maintenance service contract with a licensed elevator maintenance contractor which contract shall provide for a minimum of quarterly maintenance and upkeep of all elevator equipment at the Premises.

G. Interior of the Premises in Good Condition and Repair, including, but not limited to, the interior walls and floors of all offices and other interior areas, doors and door closures, all lighting systems, temperature control systems, and plumbing systems. Damages caused by the Tenant are excluded.

H. Janitorial services five nights per week.

I. During the Lease Term, Lessor, at its sole cost and expense, shall be responsible for the repair of any structural defects in the Premises, including the roof structure (not membrane), foundation, exterior walls and other structural components of the Building.

14. Insurance

14.1 Lessor Carried Insurance.

A. **Property/Liability Insurance.** Lessor shall, at Lessor's sole cost and expense, purchase and keep in force a standard policy of commercial general liability insurance and property damage policy covering the Premises and all related areas insuring the Lessor having a combined single limit for both bodily injury, death and property damage in an amount not less than five million dollars (\$5,000,000.00) and Lessor's insurance shall be primary. The limits of said insurance shall not, however, limit the liability of Lessee hereunder. Lessor shall, at its sole cost and expense, comply

with all of the insurance requirements of all local, municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to Lessee's use and occupancy of the said Premises. Property policy coverage shall include fire and extended coverage insurance, covering loss or damage to the Premises, tenant improvements and betterments, contents (furniture, fixtures, stock and equipment) owned by Lessor in an amount equal to the full replacement cost of the Premises, as determined by Lessor, with proceeds payable to Lessor

14.2 Lessee Carried Insurance.

A. Property/Liability Insurance: Lessee shall obtain, at Lessee's sole cost and expense, a policy of fire and extended coverage insurance including coverage for direct physical loss special form, and a sprinkler leakage endorsement insuring the personal property of Lessee. The proceeds from any personal property damage policy shall be payable to Lessee except if such personal property is any of that listed in Exhibit B. Any proceeds for damage to personal property listed on Exhibit B shall have the Lessor as the the loss payee.

B. Lessee shall obtain at Lessee's sole cost and expense, purchase and keep in force a standard policy of commercial general liability insurance and property damage covering the Premises and all related areas insuring Lessee having a combined single limit for both bodily injury, death and property damage in an amount not less than five million dollars (\$5,000,000.00)

14.3 All insurance policies required in 14.1 and 14.2 above shall: (i) provide for a certificate of insurance evidencing the insurance required herein, being deposited with Lessor and/or Lessee respectively ten (10) days prior to the Commencement Date, and upon each renewal, such certificates shall be provided 30 (thirty) days prior to the expiration date of such coverage, (ii) be in a form reasonably satisfactory to Lessor and/or Lessee and shall provide the coverage required by Lessee and Lessor in this Lease, (iii) be carried with companies with a Best Rating of A minimum, (iv) specifically provide that such policies shall not be subject to cancellation, reduction of coverage, or other change except after 30 (thirty) days prior written notice to the other party, (v) name Lessor and Lessee, respectively, as additional insured's by endorsement to policy, and (vi) shall be primary.

It is agreed that Lessee's obligation under this paragraph shall be prorated to reflect the date Lessee occupies the Premises and the end of the Lease Term.

14.4 Lessor and Lessee hereby waive any rights each may have against the other related to any loss or damage caused to Lessor or Lessee as the case may be, or to the Premises or its contents, and which may arise from any risk covered by fire and extended coverage insurance and those risks required to be covered under Lessee's personal property insurance. The parties shall provide that their respective insurance policies insuring the property or the personal property include a waiver of any

right of subrogation which said insurance company may have against Lessor or Lessee, as the case may be.

15. Abandonment. Lessee shall not vacate or abandon the Premises at any time during the Lease Term; and if Lessee shall abandon, vacate or surrender said Premises, or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor. Notwithstanding the above, the Premises shall not be considered vacated or abandoned if Lessee maintains the Premises in Good Condition and Repair and is not in default.

16. Free From Liens. Lessee and Lessor shall keep the subject Premises and the property in which the subject Premises are situated, free from any and all liens including but not limited to liens arising out of any work performed, materials furnished, or obligations incurred by Lessor and Lessee. However, the Lessor shall allow Lessee to contest a lien claim, so long as the claim is discharged prior to any foreclosure proceeding being initiated against the property and provided Lessee provides Lessor a bond if the lien exceeds \$5,000. Lessor warrants that prior to the effective date of this Lease, the Premises shall be free and clear of all liens, except Deeds of Trust.

17. Compliance With Governmental Regulations. All federal, state, county, city or government agency laws, statutes, ordinances, standards, rules, requirements, or orders now in force or hereafter enacted, promulgated, or issued, shall be referred to in this Section as "Laws". Laws also includes governmental measures regulating public access, such as the Americans with Disabilities Act of 1990. Lessee shall use the Premises, including the Improvements and other tenant improvements, furnishings and fixtures in compliance with all Laws. Lessee, at Lessee's expense shall perform such repairs, alterations, maintenance, or improvements needed to comply with Laws to the extent the Laws relate to (a) Lessee's particular use of the Premises, or (b) the Improvements and the other tenant improvements located in the Premises as they may be altered from time to time. Lessor warrants that the Premises complies with all applicable Laws.

18. [Intentionally Omitted.]

19. Advertisements And Signs. Lessee shall not place or permit to be placed, in, upon or about the Premises any unusual or extraordinary signs, or any signs not approved by the city, local, state, federal or other applicable governing authority. Lessee shall not place, or permit to be placed upon the Premises, any signs, advertisements or notices without the written consent of the Lessor, and such consent shall not be unreasonably withheld. A sign so placed on the Premises shall be so placed upon the understanding and agreement that Lessee will remove same at the end of the Lease Term or earlier termination of this Lease and repair any damage or injury to the Premises caused thereby, and if not so removed by Lessee, then Lessor may have the same removed at Lessee's expense.

20. Utilities/Other Charges. Lessor: shall cause the Premises to be equipped to provide, and shall pay for the following utilities and service charges: water, sewer, garbage, electric, and gas, for Lessee's occupation and use of the Premises. Lessor warrants that prior to October 1, 2009 Lessor shall have paid any balance due to PG&E in full for PG&E service to the Premises. Lessor shall contract directly with PG&E services for the term of the lease. Lessor shall pay for the electric and gas service for the building during the normal operating hours of 7:00 a.m. to 5:30 p.m., Monday through Friday excluding national holidays.

Lessee: Lessee shall pay for telephone, communications, cable services for Premises, incurred following the Rent Commencement Date, for the Premises. Lessee shall pay for the electric and gas service for the building after the normal operating hours of 7:00 a.m. to 5:30 p.m., Monday through Friday excluding national holidays. Lessee's obligation shall exclude Fire Monitoring phone line and Elevator telephone line.

Disruption of utility services. Lessor and Lessee agree that Lessor shall not be liable to Lessee for any disruption in any of the utility services to the Premises unless such disruption is caused by Lessor.

21. Default

21.1 Lessee Default. The occurrence of any of the following shall constitute a default and breach of this Lease by Lessee: a) Any failure by Lessee to pay Rent or to make any other payment due under this Lease if the failure continues for five (5) days after written notice of the failure from Lessor to Lessee; b) The abandonment or vacation of the Premises by Lessee except as provided herein; c) A failure by Lessee to observe and perform any other provision of this Lease to be observed or performed by Lessee, where such failure continues for thirty days after written notice thereof by Lessor to Lessee; provided, however, that if the nature of such default is such that the same cannot be reasonably cured within such thirty (30) day period, Lessee shall not be deemed to be in default if Lessee shall, within such period, commence such cure and thereafter diligently prosecute the same to completion.

21.2 Surrender Of Lease. In the event of any such default by Lessee, then in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the option to terminate this Lease before the end of the Lease Term and all rights of Lessee hereunder, by giving written notice of such intention to terminate.

21.3 Right of Entry and Removal. In the event of any such default by Lessee, Lessor shall also have the right, with or without terminating this Lease, to re-enter, upon timely notice to Lessee, the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee.

21.4 Abandonment. In the event of the vacation or abandonment, except as provided herein, of the Premises by Lessee or in the event that Lessor shall elect to re-enter as provided in paragraph 21.3 above or shall take possession of the Premises pursuant to legal proceeding or pursuant to any notice provided by law, and Lessor does not elect to terminate this Lease as provided in Section 21.2 above, then Lessor may from time to time, without terminating this Lease, either recover all Rent as it becomes due or relet the Premises or any part thereof for such term or terms and at such rental rates and upon such other terms and conditions as Lessor, in its sole discretion, may deem advisable with the right to make alterations and repairs to the Premises. In the event that Lessor elects to relet the Premises, then Rent received by Lessor from such reletting shall be applied; first, to the payment of any indebtedness other than Rent due hereunder from Lessee to Lessor; second, to the payment of any cost of such reletting; third, to the payment of the cost of any alterations and repairs to the Premises; fourth, to the payment of Rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied to the payment of future Rent as the same may become due and payable hereunder. Should that portion of such Rent received from such reletting during any month, which is applied by the payment of Rent hereunder according to the application procedure outlined above, be less than the Rent payable during that month by Lessee hereunder, then Lessee shall pay such deficiency to Lessor immediately upon demand therefor by Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor, as soon as ascertained, any costs and expenses incurred by Lessor in such reletting or in making such alterations and repairs not covered by the rentals received from such reletting.

21.5 No Implied Termination. No re-entry or taking possession of the Premises by Lessor pursuant to Section 21.3 or Section 21.4 of this Lease shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Lessee or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any reletting without termination by Lessor because of any default by Lessee, Lessor may at any time after such reletting elect to terminate this Lease for any such default.

22. [Intentionally Left Blank.]

23. Taxes

23.1 Property Tax. Lessor shall pay and discharge punctually property tax. Lessee shall pay for all personal property taxes, including all existing furniture Lessor is providing pursuant to this Lease. Such personal property taxes shall be prorated for the Lease Term.

23.2 Possessory Interest Tax. Lessee acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. If assessed against Lessee or the Premises during the Term, Lessee agrees to pay and discharge, as additional rent for the Premises during the Term, before delinquency, all taxes except property taxes (including, without limitation, possessory interest taxes associated with

the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "Taxes") which are or may be at any time or from time to time during the Term levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Lessee's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of Lessee acquired pursuant to this Lease on account of any taxable possessory right which Lessee may have acquired pursuant to this Lease. Lessee shall pay or reimburse Lessor, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Lessee hereunder.

23.2 Installments. If at any time during the Term any taxes (other than personal property taxes) are levied which may, at the election of the taxpayer, be paid in installments, Lessee shall pay such installments during the Term and Lessor shall pay any installments thereafter. If any such taxes must be paid in a lump sum, Lessee shall pay the entire amount, subject to the following limitations with respect to special assessments. Lessee shall be responsible for any and all taxes, assessments, fees or levies (collectively, "Taxes" which are or may be at any time or from time to time Lease levied, charged, assessed, or imposed upon or against the Premises or any improvements or Lessee's personal property now or hereafter located on the Premises, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created by this Lease or which may be imposed upon any taxable interest of Lessee acquired pursuant to this Lease on account of any right which Lessee may have acquired pursuant to this Lease. If at any time during the Term, any Taxes (other than personal property taxes) are levied which may, at the election of the taxpayer, be paid in installments, Lessee shall pay such installments during the Term and Lessor shall pay any installments thereafter. If any such Taxes must be paid in lump sum, Lessee shall pay the entire amount.

24. Notices. Unless otherwise provided for in this Lease, any and all written notices or other communication (the "Communication") to be given in connection with this Lease shall be given in writing and shall be delivered by personal delivery, facsimile transmission with electronic confirmation or by mailing by registered or certified mail with postage thereon or recognized overnight courier, fully prepaid, in a sealed envelope addressed to the intended recipient as follows:

to the Lessor at: RSTP Investments, LLC,
4909 Bridgeview Lane
San Jose, CA 95138
Attention:
Tina Phan

With a copy to: Mai D. Phan, Attorney at Law
1570 The Alameda, Suite 225
San Jose, CA 95126
Fax 408-975-9654

to the Lessee at: The Redevelopment Agency of the City of San Jose
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113
Attention: Pete Larko, Director
Transactions & Real Estate
Fax No: (408) 292-6747

With a copy to: San Jose Redevelopment Agency
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113
Attention: General Counsel

or such other addresses, facsimile number or individual as may be designated by notice in accordance with this section, a Communication given by a party to the other parties as aforesaid. Any Communication given by personal delivery shall be conclusively deemed to have been given and received on a date it is so delivered at such address provided that such date is a business day, otherwise on the first business day following its receipt, and if given by registered or certified mail, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed pursuant to below or if given by recognized overnight courier, on the first business day following deposit with such overnight courier and if given by facsimile transmission, on the day on which it was transmitted provided such day is a business day, failing which, on the next business day thereafter.

25. Entry By Lessor. Lessee shall permit Lessor and its agents to enter into and upon said Premises at all reasonable times using the minimum amount of interference and inconvenience to Lessee and Lessee's business, subject to any security regulations of Lessee, for the purpose of inspecting the same or for the purpose of maintaining the Premises, or for the purpose of making repairs, alterations or additions to any other portion of the Premises, including the erection and maintenance of such scaffolding, canopies, fences and props as may be required, without any rebate of Rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises; and shall permit Lessor and his agents, at any time within ninety (90) days prior to the end of the Lease Term, to place upon said Premises any usual or

ordinary "For Sale" or "For Lease" signs and exhibit the Premises to prospective tenants at reasonable hours.

26. Destruction Of Premises.

A. Landlord's Obligation to Repair. If all or any part of the Premises, or any portion of the Premises necessary for Tenant's use of the Premises shall, by reason of fire, earthquake, the elements, acts of God or other unavoidable casualty, be destroyed or so damaged as to become unusable in whole or in part and the damage can, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect. If all or any part of the Premises, or any portion of the Premises necessary for Tenant's use of the Premises, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, this Lease may be terminated by Landlord by written notice given to Tenant within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty.

B. Election to Terminate. If all or any part of the Premises, or any portion of the Premises necessary for Tenant's use of the Premises, are damaged, and the damage cannot, by proceeding with reasonable diligence, be repaired within one hundred eighty (180) days from the date of such destruction or damage, and Landlord has not terminated this Lease pursuant to above, then this Lease may be terminated by Tenant by written notice given to Landlord within thirty (30) days after the date of the casualty. Such notice shall terminate this Lease as of the date of the casualty. If Tenant does not make the foregoing election within the required period and Landlord has not terminated the Lease, then Landlord shall promptly and diligently repair the damage and this Lease shall remain in full force and effect (subject to the provisions below regarding completion of Landlord's repairs). If Landlord is required or elects to repair the Premises or the Premises under the provisions above and fails to complete such repair within one hundred eighty (180) days after the casualty described above (or at least to complete such repair, within such one hundred eighty (180) day period, to the extent that permits substantial resumption of Tenant's business in the Premises, provided that Landlord thereafter continuously and diligently pursues any remaining required repairs to completion), then thereafter Tenant, at Tenant's option, may terminate this Lease by giving Landlord written notice of Tenant's election to do so at any time prior to the substantial completion of such repair. In such event this Lease shall terminate as of the date of Tenant's notice.

C. Abatement of Rent. If all or any part of the Premises, or any portion of the Premises necessary for Tenant's use of the Premises, are damaged, and Landlord is required or elects to repair them pursuant to the provisions of Section above, the Rent payable pursuant to Section 5 shall be abated from the date of the casualty and while such repairs are being made. If, however, Tenant is able to occupy and operate its business within a portion of the Premises, Rent shall be abated only for

the portion of the Premises that Tenant cannot occupy and operate within. Such partial abatement shall be calculated on a square foot basis.

27. Assignment And Subletting.

27.1 The parties acknowledge that Lessor and Lessee are entering into this Lease in contemplation of Lessee entering into multiple subleases with third-parties that will occupy the space and use it as among other things for a business incubator and innovation center. Lessee shall have the right to sublease any part of the Premises for any lawful use at any time during the Term without the prior consent or approval of Lessor.

27.2 Except for an assignment or sublease to a Permitted Transferee as defined below, Lessee shall not assign this Lease, or any interest therein, and shall not sublet the said Premises or any part thereof, or any right or privilege appurtenant thereto, or cause any other person or entity, to occupy or use the Premises, or any portion thereof, without the advance written consent of Lessor. Any such assignment or subletting shall be subject to Lessor's reasonable consent and if made without Lessor's consent shall be void, and shall, at the option of the Lessor, terminate this Lease.

27.3 This Lease shall not, be assignable, as to the interest of Lessee, by operation of law without the written consent of Lessor.

27.4 In the event of any sublease or assignment, Lessee shall be and shall remain primarily liable for the performance of all conditions, covenants, and obligations of Lessee hereunder and, in the event of a default by an assignee or sublessee, Lessor may proceed directly against the original Lessee hereunder and/or any other predecessor of such assignee or sublessee without the necessity of exhausting remedies against said assignee or sublessee.

27.5 For purposes of this Lease, a "Permitted Transferee" shall include a business operator subleasing the Premises from Lessee to operate and run a business incubator at the Premises ("**Operator**") and any business subtenants subleasing or occupying any portion of the Premises as part of the business incubator [what about just businesses since there is more than the incubator?], and the City of San Jose. Lessee shall provide Lessor with a copy of the sublease between Lessee and the Operator.

28. Condemnation.

28.1 Total Condemnation. If, during the term of this Lease, the whole of the Premises shall be taken pursuant to any condemnation proceeding or a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable for the purposes for which Lessee was using the Premises prior to the taking, then this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Lessor and Lessee shall be released from any future obligations arising under this Lease.

28.2 Partial Condemnation. If, during the term of this Lease, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Lessee was using the Premises prior to the taking, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Lessor and Lessee shall be released from any future obligations under this Lease with respect to such portion of the Premises taken.

28.3 Condemnation Award. If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Lessor shall be entitled to the entirety of any condemnation award except that portion allocable to any personal property of Lessee or any unsalvagable trade fixtures or furnishings owned by Tenant.

28.4 Effect of Termination. In the event this Lease is canceled or terminated pursuant to any of the provisions of this Paragraph all rentals and other charges payable on the part of Lessee to Lessor hereunder shall be paid either as of the date upon which actual physical possession shall be taken by the condemner, or as of the date upon which Lessee ceases doing business in, upon or from the Premises, whichever first occurs; and the parties shall thereupon be released from all further liability hereunder, except for any liability arising prior to the date upon which actual physical possession shall be taken by the condemner.

29. **Waiver**. The waiver by Lessor or Lessee of any breach of any term, covenant or condition, herein contained shall not be construed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition therein contained. The subsequent acceptance of Rent hereunder by Lessor shall not be deemed to be a waiver of Lessee's breach of any term, covenant, or condition of the Lease.

30. **Time**. Time is of the essence of the Lease.

31. **Captions**. The headings on titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part thereof. This instrument contains all of the agreements and conditions made between the parties hereto and may not be modified orally or in any other manner than by an agreement in writing signed by all of the parties hereto or their respective successors in interest.

32. **Party Names**. Lessor and Lessee may be used in various places in this Lease as a substitute for Lessor and Lessee respectively.

33. Hazardous Substances/Environmental Liability

33.1 Environmental Law. The term "**Environmental Law**" means any federal, state, or local law, statute, ordinance, regulation or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions or Hazardous Substances.

33.2 Hazardous Substance. The term "**Hazardous Substance**" shall mean any hazardous or toxic substances, materials or wastes, or pollutants or contaminants as defined, listed or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents; petroleum products or by products; asbestos; and polychlorinated biphenyl.

33.5 Environmental Indemnity.

Lessor. Lessor shall protect, indemnify, and hold harmless Lessee and Lessee's employees, agents, parents, and subsidiaries from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees) and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to undertaking any activity related to any Hazardous Substance directly arising out of or attributable to Lessor's or Lessor's agents, contractors, employees, or Lessee's use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises.

34. **Brokers**. Lessor and Lessee represent that they have not utilized or contacted a real estate broker or finder with respect to this Lease and Lessee agrees to indemnify and hold Lessor harmless against any claim, cost, liability or cause of action asserted by any broker or finder claiming through Lessee. Lessor represents and warrants that it has not utilized or contacted a real estate broker or finder with respect to this Lease and Lessor agrees to indemnify and hold Lessee harmless against any claim, cost, liability or cause of action asserted by any broker or finder claiming through Lessor.

35. Option to Extend

35.1 **Option**. Lessor hereby grants to Lessee one (1) option to extend the Lease Term for a period of five (5) years ("**Option Period**"), on the following terms and conditions ("**Option**"):

A. Notice of Exercise of Option. Lessee shall give Lessor written notice of its exercise of its Option no earlier than twelve (12) months prior to the expiration of the Lease Term, and no later than July 1, 2014. The date of the notice and exercise of the Option shall be the date such notice is given by Lessee to Lessor. ("**Exercise Date**") Lessee may only exercise Option if Lessee is not in default of the Lease, at the time of exercise of the Option. However, Lessor may waive such

requirement. Upon any extension of the Lease Term pursuant to this Section 41, the term "Lease Term" as used in this Lease shall thereafter include the then extended term.

B. Rent during Option Period. All terms and conditions of this Lease shall apply during the Option Period except for the amount of Rent which shall be determined, prior to the first day of the Option Period, as set forth below in section 41.2.

35.2 Rent - Option Period.

A. 95% of fair market monthly Rent. The monthly Rent for the Premises during the Option Period shall equal to 95% the fair market monthly Rent for the Premises as of the Exercise Date of the Option, but in no case, less than the Rent during the last month of the prior Lease term. Promptly upon Lessee's exercise of the Option, Lessee and Lessor shall meet and attempt to agree on the 95% fair market monthly Rent for the Premises as of the commencement date of the Option Period.

B. Determination by Appraisal/Rent Floor. In the event the parties fail to agree upon the amount of the monthly Rent for the Option Period prior to commencement thereof, the monthly Rent for the Option Period shall be determined by appraisal in the manner set forth below in "d"; provided, however, that in no event shall the monthly Rent for the Option Period be less than the Rent during the last month of the initial Lease Term. ("**Rent Floor**")

C. Rent Ceiling. Every twenty-four (24) months during the Option Period, Rent shall be increased by an amount equal to the percentage of increase for the preceding twenty-four (24) month period shown by the Consumer Price Index for All Urban Consumers as published by the United States Department of Labor Statistics, Washington D.C. (All Items, San Jose-San Francisco Oakland, 1982-1984=100) ("**Index**"); provided that such increase shall not exceed 3%. ("**Rent Increase Ceiling**") If the Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to reach substantially the same result as would have been reached if the Index had not been discontinued or revised.

D. Use of Appraisers. In the event it becomes necessary to determine the 95% fair market monthly Rent of the Premises by appraisal, Lessor and Lessee each shall appoint a real estate appraiser within five (5) business days after Lessor or Lessee notifies the other party that the proposed rental rate for the extended term is unacceptable, who shall be a Member of the Appraisal Institute ("**MAI**") and such appraisers shall each determine the 95% fair market monthly Rent for the Premises taking into account the value of the Premises and the Premises, and prevailing comparable rentals in the area but excluding any specialized improvements within the Premises. Such appraisers shall, within twenty (20) business days after their appointment, complete their appraisals and submit their appraisal reports to Lessor and Lessee.

E. Variance of 5% or less. If the 95% fair market monthly Rent of the Premises established in the two (2) appraisals varies by five percent (5%) or less of the higher Rent, the average of the two shall be controlling.

F. Third Appraiser. If said 95% fair market monthly Rent varies by more than five percent (5%) of the higher Rent, said appraisers, within ten (10) business days after submission of the last appraisal, shall appoint a third appraiser who shall be a member of the MAI and who shall also be experienced in the appraisal of Rent values and adjustment practices for commercial properties in the vicinity of the Premises. Such third appraiser shall, within twenty (20) business days after his appointment, determine by appraisal the 95% fair market monthly Rent of the Premises taking into account the same factors referred to above, and submit his appraisal report to Lessor and Lessee. The 95% fair market monthly Rent determined by the third appraiser for the Premises shall be controlling, unless it is less than that set forth in the lower appraisal previously obtained, in which case the value set forth in said lower appraisal shall be controlling, or unless it is greater than that set forth in the higher appraisal previously obtained in which case the Rent set for in said higher appraisal shall be controlling.

If either Lessor or Lessee fails to appoint an appraiser, or if an appraiser appointed by either of them fails, after his appointment to submit his appraisal within the required period in accordance with the foregoing, the appraisal submitted by the appraiser properly appointed and timely submitting his appraisal shall be controlling. If the two appraisers appointed by Lessor and Lessee are unable to agree upon a third appraiser within the required period in accordance with the foregoing, application shall be made within twenty (20) days thereafter by either Lessor or Lessee to MAI, which shall appoint a member of said institute willing to serve as appraiser. The cost of all appraisals under this subparagraph shall be borne equally by Lessor and Lessee.

36. Approvals. Whenever in this Lease the Lessor's or Lessee's consent is required, such consent shall not be unreasonably or arbitrarily withheld or delayed. In the event that the Lessor or Lessee does not respond to a request for any consents which may be required of it in this Lease within ten business days of the request of such consent in writing by the Lessee or Lessor, such consent shall be deemed to have been given by the Lessor or Lessee.

37. Authority. Each party executing this Lease represents and warrants that he or she is duly authorized to execute and deliver the Lease. If executed on behalf of a corporation, that the Lease is executed in accordance with the by-laws of said corporation (or a partnership that the Lease is executed in accordance with the partnership agreement of such partnership, or a Limited Liability Company ("LLC") that is manager managed, that no other party's approval or consent to such execution and delivery is required, and that the Lease is binding upon said individual, corporation (or partnership or LLC) as the case may be in accordance with its terms.

38. Indemnification of Lessor. Except to the extent claims are caused by the intentional or negligent acts of Lessor or Lessor's Agents, Lessee shall defend, indemnify and hold Lessor harmless from and against any and all obligations, losses, costs, expenses, claims, demands, attorney's fees, investigation costs or liabilities in connection with any and all third party claims arising out of Lessee's use of the Premises ("Claims").

39. Successors And Assigns. 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 all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

40. Miscellaneous Provisions. All rights and remedies hereunder are cumulative and not alternative to the extent permitted by law and are in addition to all other rights or remedies in law and in equity.

41. Choice of Law. This lease shall be construed and enforced in accordance with the substantive laws of the State of California. The language of all parts of this lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee.

42. Entire Agreement. This Lease is the entire agreement between the parties, and there are no agreements or representations between the parties except as expressed herein. Except as otherwise provided for herein, no subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

43. Right of First Offer. During the Term, prior to LESSOR selling or agreeing to sell the Premises, LESSOR shall first offer in writing ("First Offer") to sell the Premises to LESSEE on the same terms and conditions that LESSOR would then be willing to offer to a third party. The First Offer shall, at a minimum, include the purchase price (which shall not be greater than the "appraised value" of the Premises), and the time and location for the close of escrow, and shall be presented in the form of a purchase and sale agreement, duly executed by LESSOR.

As used herein, "appraised value" shall mean the value of the Premises, as appraised by an appraiser with qualifications, and using assumptions and methodologies, which are reasonably acceptable to LESSEE. LESSEE, upon the request of LESSOR, shall promptly reimburse to LESSOR any commercially reasonable fee charged by the appraiser in connection with rendering the appraised value, as provided in the First Offer.

LESSEE shall have ninety (90) days from receipt of the First Offer to accept the First Offer and, if accepted, thirty (30) days thereafter to consummate the purchase.

In the event that LESSOR sells the Premises to a third party in violation of the terms of this Paragraph then, in addition to any other rights or remedies available to LESSEE, LESSEE shall have the right to immediately thereafter purchase the Premises

from such third party for a purchase price which is the lesser of: (i) the appraised value, or (ii) the value of the consideration which such third party paid for the Premises.

44. Ownership of Improvements.

A. During the Term, any additional improvements constructed by LESSEE on the Premises and constituting the Project shall be and remain the property of LESSEE. Upon expiration of this Lease, any additional improvements constituting the Project automatically shall become the property of LESSOR without any compensation therefore and without any further act required of either LESSOR or LESSEE. Upon LESSOR's written request, LESSEE shall execute and deliver all such deeds and instruments of conveyance as LESSOR may require to confirm such title in LESSOR.

B. As of the date of transfer to LESSOR of any such additional improvements constituting the Project, LESSOR shall be responsible for payment of all real property taxes attributable to those improvements, including, without limitation, any reversionary interest real property taxes assessed as of the termination date of this Lease.

45. Relocation/Indemnification

Lessor agrees to secure from its current groundfloor tenant, Vanity Boutique M & K, owned by Michael Shadman and Mahnaz Khazen ("Current Tenant"), a signed copy of a waiver of relocation costs ("**Waiver**") a copy of which is attached as Exhibit F. Additionally, Lessor agrees to indemnify, defend and hold harmless Lessee and City of San Jose for any and all costs Lessee and City of San Jose incurs, including but not limited to attorney fees, as a result of Lessor's Current Tenant, or any third party, seeking relocation costs from Lessee Agency as a result of this Lease.

In Witness Whereof, Lessor and Lessee have executed this Lease, the day and year first above written.

Lessor

RSTP Investments, LLC.

By: Tina Phan,
Its Managing Member

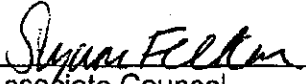
By *Tina Phan*


9/11/09
Date

Lessee

The Redevelopment Agency
of the City of San Jose

Approved as to form:


Associate Counsel


Harry Mavrogenes, Executive Director

9/17/09
Date

Exhibit A

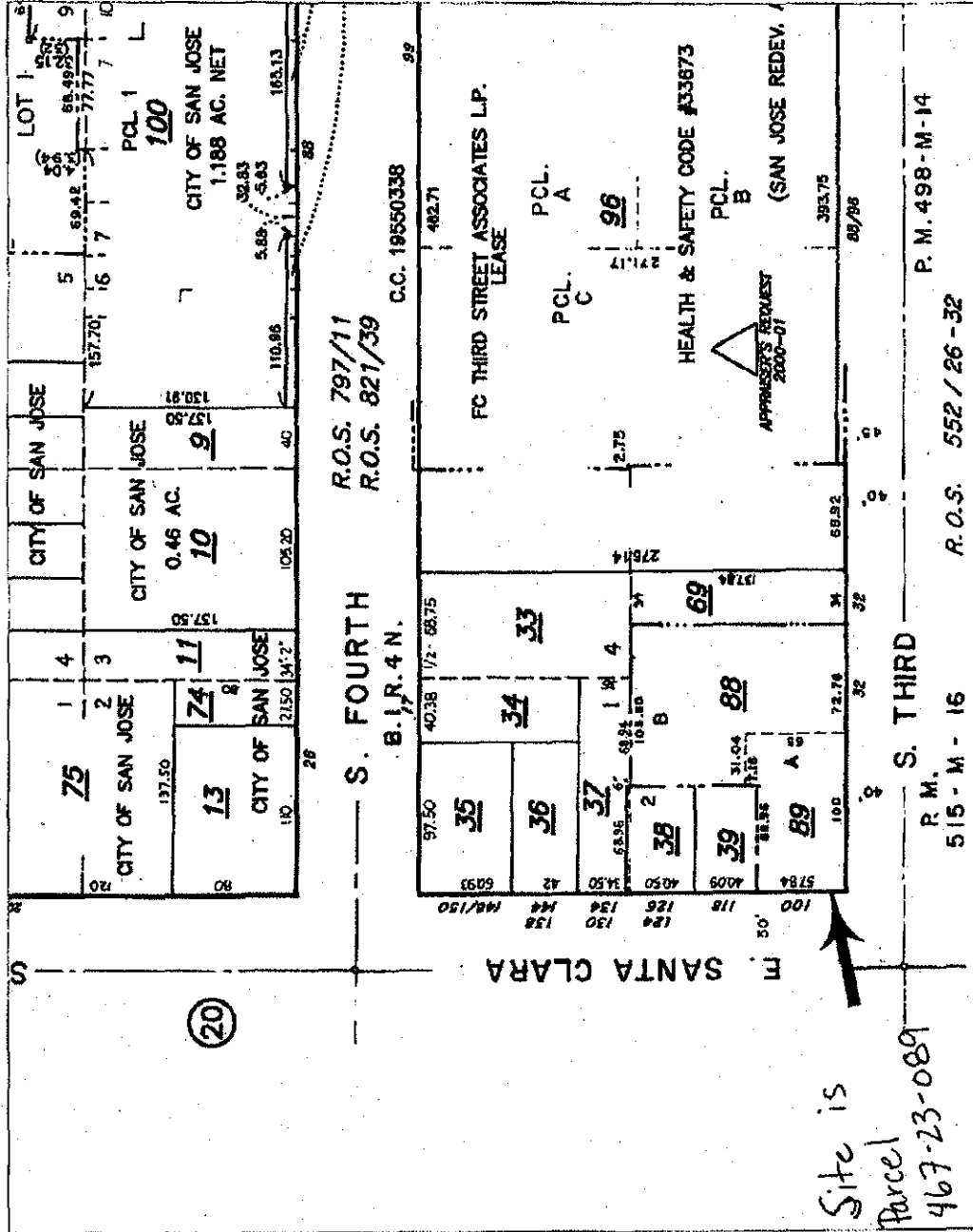
Legal Description of Property

ALL OF PARCEL A, AS SHOWN UPON THAT CERTAIN "PARCEL MAP",
FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY
OF SANTA CLARA, STATE OF CALIFORNIA ON JULY 25, 1983, IN BOOK 515
OF MAPS, PAGE(S) 16.

APN: 467-23-089

Exhibit A-1

Site Plan



578867_4
9/11/2009

Exhibit B

Furniture Inventory

First Floor

Quantity	Description	Color
1	6 drawers long file cabinet with counter top.	cream
8	5 drawers tall file cabinets.	cream
3	Office completed sectional desk with over head wood	
8	Desk chair	
1	Desk	
1	Corner display shelf.	wood
1	6 doors tall cabinet	wood
1	Wall mounted white board with doors	wood
1	Book shelf	wood
1	3 drawers desk file cabinet	wood
1	Assembly bench in data room and racks	
1	Table	
2	Shelving in the storage.	
1	Sectional shelving in the vault	
1	Kitchen cabinet	
1	Refrigerator	
4	Partition	
1	Telephone system	
22	Telephones	

Second Floor

Quantity	Description	Color
12	Partitions Stations completed with desk	
1	Server rack	white
1	3 rack	
30	Desk chair	mix
1	Conference table	
2	5 drawers file cabinet	cream
1	Corner table	
1	Sectional desk	
1	One end oval table	
2	Table	
6	3 drawers file cabinet	blue
1	2 drawers file cabinet	cream
1	tall book shelf	black
1	4 drawers file cabinet	cream
1	tall book shelf	cream
1	Partition	
2	Long table	

Third Floor

Quantity	Description	Color
1	Secretary station	
1	Oval table	
1	Fax station	
2	Cubical bookshelf	
12	Low wall partition station with desk	
1	Office sectional desk	
9	Office sectional desk with over heads	
2	Completed office station with partitions	
5	Desk stations with over heads and partitions	
4	Desk station with partitions	
1	Completed rack in storage next to the elevator	
1	Metal rack	
44	Chair	
4	5 drawers file cabinet	cream
7	Desk	
1	2 drawer desk file cabinet	black

Fourth Floor

Quantity	Description	Color
1	Data rack	
1	Completed metal rack in the storage	
1	Telephone system	
1	Telephone switchboard	
29	Telephone	
1	Secretary station	
3	Office desk station with overhead	
9	Office desk station	
2	Credenza	
2	2 drawers file cabinet	
4	5 drawers file cabinet	
18	Desk chair	
5	Kitchen bar stool	
1	2 drawers file cabinet	black
2	Bookshelf	cream
3	Bookshelf	white
3	3 drawers file cabinet with counter top and hanging racks	
1	4 drawers file cabinet	cream
4	Built in wood work station	
8	2 drawers file cabinet	blue
15	4 small drawers file cabinet	blue
1	Love seat	

- 1 Conference table with center rising station
- 1 Polycon conference telephone
- 1 Roll up video screen
- 1 White board
- Loose hanging racks for over heads

Fifth Floor

- 1 12' long Conference table

Exhibit C

INSURANCE REQUIREMENTS FOR CONTRACTOR

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to Premises which may arise from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Builders' Risk

There shall be no endorsements reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit, coverage shall also include \$100,000 Fire Legal Liability.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Builder's Risk: Completed value of the project. No deductible shall exceed \$50,000

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the Agency. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Agency, the City, and their officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the Agency.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.
 - a. The Agency, the City of San Jose, their officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; property owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Agency, the City of San Jose, their officials, employees, agents and contractors.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the Agency, the City of San Jose, their officials, employees, agents and contractors. Any insurance or self-insurance maintained by the Agency, the City of San Jose, their officials, employees, agents or contractors shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Agency, the City of San Jose, their officials, employees, agents, or contractors.

- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the Agency, the City, their officials, employees, agents, and contractors.
2. Workers' Compensation and Employers Liability Coverages
- Coverage shall contain a "waiver of subrogation" in favor of the Agency, the City, their officials, employees, agents and contractors.
3. Builders' Risk policies shall contain the following provisions:
- a. The Redevelopment Agency and City of San Jose shall be named as loss payee.
 - b. The insurer shall waive all rights of subrogation against the City of San Jose.
4. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the Agency, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

F. Verification of Coverage

CONTRACTOR shall furnish AGENCY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

The City of San Jose—Human Resources
Risk Management
200 East Santa Clara Street, 3rd Floor Wing
San Jose, CA 95113-1905

G. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT C-1

CONSTRUCTION CONTRACT REQUIREMENTS

All proposed contracts for the construction of the Eligible Improvements shall:

1. Identify the Eligible Improvements to be completed by Contractor and list all documents that describe the required work such as, but not limited to, drawings, specifications and negotiated changes to any of such documents.
2. List the Contractor's California State Contractor's License Number and the name and California State Contractor's License Number of each proposed subcontractor.
3. State the complete contract price for the work.
4. Include the following prevailing wage compliance provision:

Owner and Contractor recognize that Owner has received public funds for the construction of the Eligible Improvements, making it a public work to which Section 1771 of the Labor Code applies. Contractor shall pay or cause to be paid prevailing wages for all Eligible Improvements.

For the purpose of this Agreement, Prevailing Wages are the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute this Agreement as ascertained by the Director of the Department of Industrial Relations of the State of California, copies of which ("**Prevailing Rate Schedules**") are on file in the City of San Jose's Office of Equality Assurance. The Prevailing Rate Schedules shall be made available to any interested party on request. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of worker employed on the project. Contractor shall post the Prevailing Rate Schedule at the Site. Contractor shall comply with the payroll records requirements concerning apprentices and shall be responsible for causing all of Contractor's subcontractors to comply with these requirements and provisions.

The Contractor and each subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by the Contractor or subcontractor in

connection with the project. The payroll records shall be kept in accordance with the provisions of Section 1776 of the California Labor Code, and Contractor and each subcontractor shall otherwise comply with all requirements of such Section 1776.

5. Require insurance as provided in EXHIBIT C, naming the Agency and City of San Jose as additional insureds.
6. Include the following indemnification provision:

"Contractor shall indemnify, defend and hold the Redevelopment Agency of the City of San Jose ("**Agency**"), the City of San Jose ("**City**"), and all employees, officers and representatives of the Agency and/or the City free and harmless from any and all liability arising from or related to the Contractor's performance under this contract, including without limitation with regard to the construction work (whether performed by Contractor or by a subcontractor) and/or any claim related to the construction by any third party."
7. Include a Schedule of Performance and a completion date for all work.
8. Require that a conditional lien release in the form of a Conditional Waiver and Release Upon Progress Payment and a full lien release in the form of a Conditional Waiver and Release Upon Final Payment be submitted with requests for payment progress payments and the final payment respectively.
9. Include liquidated damages for unexcused delay in performance by the Contractor which shall be deducted from the Contractor's payment under the contract. The liquidated damages for each day of unexcused delay in performance shall equal \$100.
10. Attach certificate of insurance meeting requirements set forth in EXHIBIT C, and completed W9 form.

Exhibit D

Scope of Improvements

First Floor

- Construct five (5) offices approximately 110-115 square feet each with appropriate electrical and data connections;
- Construct Training room of approximately 1,000 square feet with movable partition wall, electrical and data connections in ceiling for projector;
- Construct a separate server room;
- Modify HVAC system to provide appropriate air supply to entire floor;
- Provide carpeting as needed;
- Ceiling modification as required;
- New door to the elevator lobby area to meet ADA guidelines;
- Add fire sprinklers as required.

Second Floor

- Demolish three partition walls between existing offices;
- Install new carpet in both offices;
- Adjust ceiling tiles as needed;
- Rewire electrical and phone as needed;
- Fix sheet rock at demo area;
- Painting of walls, as needed;
- Add fire sprinkler as required.

Third Floor

- Construct two (2) offices with appropriate electrical and data connections;
- Demolish three partition walls between existing offices;
- Provide carpeting as needed;
- Ceiling modification as required;
- Add fire sprinklers as required.

Fourth Floor

- Demolish four partition walls between existing offices;
- Provide carpeting as needed;
- Ceiling modification as required;
- Add fire sprinklers as required.

Fifth Floor

- Construct seven (7) offices with appropriate electric and data connections;
- Construct server room.

- Modify HVAC system to provide appropriate air supply to entire floor;
- Provide carpeting as needed;
- Ceiling modification as required;
- Add fire sprinklers as required.

EXHIBIT E

INSURANCE REQUIREMENTS

LESSEE at Lessee's sole cost and expense, shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to Premises which may arise from, or in connection with the Lessee's operation and use of the Premises.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
3. Property insurance against all risks of loss to any Lessee improvements or betterments to the Premises, and Lessee owned contents (stock, equipment, furniture and fixtures.).

B. Minimum Limits of Insurance

LESSEE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; \$100,000 fire legal liability; and
2. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident; and
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by AGENCY. At the option of AGENCY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, its officer, employees, agents contractors, Lessees; or Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the AGENCY.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability

a. The AGENCY, the City of San Jose, their officials, employees, agents and Contractors, and Lessor are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Lessee; products and completed operations of Lessee ; property owned, leased or used by Lessee; and automobiles owned, leased, hired or borrowed by Lessee. The coverage shall contain no special limitations on the scope of protection afforded to CITY, AGENCY its officers, employees, agents, Owners and Tenants.

b. LESSEE's insurance coverage shall be primary insurance as respects AGENCY, the CITY, their officials, employees, agents and Contractors. Any insurance or self-insurance maintained by AGENCY, the CITY, their officials, employees, agents or Contractors shall be excess of LESSEE's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by LESSEE shall not affect coverage provided AGENCY, the CITY, their officials, employees, agents, or Contractors.

d. Coverage shall state that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

2. Workers' Compensation and Employers Liability.

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, agents and contractors.

3. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to AGENCY; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

LESSEE shall furnish AGENCY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose - Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor - Wing
San Jose, CA 95113-1905

H. Review of Coverage

These insurance requirements shall be subject to review by City's Risk manager. Should the risk manager require any change in coverage, any such change shall be noticed in writing by City to Lessee and Lessee shall comply with the change within thirty (30) days of the date of receipt of the notice.

EXHIBIT F

WAIVER OF RELOCATION ASSISTANCE


1. RSTP Investments Inc. is currently the owner of ("Owner") the property, improved with a building, located at 100 East Santa Clara Street, San Jose, CA. ("Property") Michael Shadman and Mahnaz Kazen, dba Vanity Boutique M & K, are currently ground floor building tenants on the Property ("Current Tenant").

2. Current Tenant has been formally notified that this Property is to be leased by Owner to the San Jose Redevelopment Agency for office space and that it will therefore be necessary for Current Tenant to move permanently from this Property. Current Tenant has been further advised that Current Tenant may be eligible for relocation payments and other relocation assistance in connection with this displacement.

3. The nature and amounts of such payments and other assistance have been specifically described to me in such a manner and in sufficient detail that I fully understand Current Tenant's eligibility.

4. Current Tenant has determined not to claim the benefits that may be available to Current Tenant but instead choose to waive any rights it may have for such assistance and hereby releases the Agency from any and all obligations and liability regarding Agency and City of San Jose. Current Tenant does this freely, on the basis of Current Tenant's full understanding of all its legal rights. Current Tenant is under no duress or coercion by the Agency and make this decision without reservation or qualification.

5. Current Tenant agrees to indemnify, defend and hold harmless Agency, City and their officers, employees and agents for any and all of Agency's and/or City's losses and expenses occasioned by reason of any relocation assistance which may arise as a result of any displacement related to the lease of the Property.


9/11/09