

# COUNTY OF MONTEREY

## STANDARD LEASE AGREEMENT



LEASED PREMISES: **713 La Guardia Street, Salinas, CA 93905**

DEPARTMENT: **Department of Social Services (H.R., A.S. & C.W.E.S)**

LESSOR: **Caputo Associates  
1530 A Parkmoor Avenue  
San Jose, CA 95128  
(408) 920-8000**

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**EXHIBITS:**

- EXHIBIT A: Description of Premises
- EXHIBIT B: Statement of Seismic Adequacy
- EXHIBIT C: Tenant Improvements
- EXHIBIT D: Summary of Services and Utilities
- EXHIBIT E: Summary of Repair and Maintenance Responsibilities

# COUNTY OF MONTEREY STANDARD LEASE AGREEMENT

## PREAMBLE

THIS LEASE ("Lease") is made this 3rd day of January, 2001, by and between CAPUTO ASSOCIATES, Federal Identification Number 94-6108226, ("LESSOR") and COUNTY OF MONTEREY, ("LESSEE"), C/O Lease Manager, 855 East Laurel Drive, Building C, Salinas, CA, 93905. LESSOR and LESSEE hereby agree as follows:

## ARTICLE 1 - PREMISES

1.1 **Description:** LESSOR hereby leases to LESSEE and LESSEE hereby leases from LESSOR, upon the terms and conditions herein set forth, that certain real property and its appurtenances, situated at 713 La Guardia Street, Salinas, CA 93905 and described as follows: Building consisting of approximately 28,224 rentable square feet of space on approximately 4.6 acres of land (the "Premises"), as designated in Exhibit A, which is attached and incorporated. If the Premises constitute only a portion of the building, the Premises represent one hundred percent (100%) of the total rentable space. This building is one hundred percent (100%) of the total complex.

1.2 **Non-Exclusive Use Areas:** LESSEE shall also have the non-exclusive right to use, in common with other lessees in the building, any and all of the following areas which may be appurtenant to the Premises: Common entrances, lobbies, elevators, stairways and access ways, loading and unloading areas, visitor parking areas, ramps, drives, platforms, public rest rooms, and common walkways and sidewalks necessary for access to the Premises.

1.3 **Parking Areas:** LESSOR shall ensure that LESSEE is provided with a minimum of two hundred fifty-five (255) parking spaces adjacent to or near the Premises for the exclusive use of LESSEE'S employees and visitors. Should LESSEE desire marked spaces, it shall be at LESSEE'S expense.

1.4 **Compliance with the "Americans with Disabilities Act of 1990" (ADA):** LESSOR, to the best of LESSOR'S actual knowledge, will ensure that the Premises are in compliance with the Americans with Disabilities Act of 1990 ("ADA"), as amended, and, if necessary, prior to the Commencement Date, shall modify the Premises to comply with the Act and the regulations promulgated to implement the ADA. LESSEE shall, at its own cost and expense, comply with the ADA once taking occupancy of the Premises.

## ARTICLE 2 - TERM

2.1 **Lease Term:** The term of this Lease (the "Lease Term") shall be five (5) years, commencing April 1, 2001 ("Lease Commencement Date"), and ending March 31, 2006, with such rights of termination and extension of the Lease Term as are hereinafter set forth.

2.2 **Extended Term:** LESSEE shall have the option to extend the Lease Term for one (1) additional five (5) year period on the same terms and conditions. LESSEE shall exercise such option no later than one hundred eighty (180) days prior to the last day of the Lease Term by written notice to LESSOR of LESSEE'S intent to exercise this option to renew and/or extend this Lease. The monthly base rent applicable to the Extended Terms ("Renewal Rent") will be at ninety five percent (95%) of the Fair Market Rental Value ("FMV") for similar buildings with similar office improvements in the City of Salinas. Should LESSEE exercise its option, the parties will attempt to mutually agree on the Renewal Rent based upon the parameters as outlined above. If the parties have not agreed in writing at least one hundred and twenty (120) days before expiration of the then current lease term upon the amount of rent to be paid during the Renewal Term, LESSOR and LESSEE shall each designate an appraiser who is a member of the American Institute of Real Estate Appraisers. Within ten (10) days after selection of the last of the two appraisers, the two appraisers chosen shall select a third appraiser. If a third appraiser is not selected within the time allotted,

the American Arbitration Association shall select such third appraiser, the cost of which shall be shared equally by the parties. Lessor and Lessee shall share all appraisal costs equally. The Premises shall be appraised according to its use at the time of appraisal. The fair market rental value of the Premises for purposes of calculating the Renewal Rent shall be the average of the three appraisals. However, in any event, the Renewal Rent will be no less than the base rent during the last year of the initial term and no more than fifteen percent (15%) over the base rent during the last year of the initial term. The Renewal Rent shall be subject to annual adjustments as outlined in Article 4. Should LESSEE exercise this option, LESSOR, at LESSOR's sole cost and expense, shall provide LESSEE with a Premise Improvement allowance of twenty eight thousand two hundred twenty four dollars (\$28,224) to be applied towards further Premise Improvements (as defined below).

### ARTICLE 3 - RENT

In consideration of the continuing right of use, quiet enjoyment and possession of the Premises, LESSEE shall pay to LESSOR as monthly base rent for the Premises the initial sum of Twenty Three Thousand Nine Hundred Ninety Dollars and forty cents (\$ 23,990.40) payable on or before the first day of each month. LESSEE shall commence rental payments upon April 1, 2001 ("Rent Commencement Date") If the Rent Commencement Date is other than the first day of a calendar month, then the rent for that month shall be prorated on a daily basis, based on a thirty (30) day month. Rent shall be payable to LESSOR at the address specified in Article 6 or at such other address as LESSOR may from time to time designate in writing. In addition to the base rent as outlined above, Lessee shall be responsible to reimburse Lessor for Real Estate taxes and assessments attributable to the Premises and real estate insurance on the Premises as provided in Article 18. Said reimbursements shall be paid by LESSEE within thirty (30) days of LESSEE'S receipt of LESSOR'S invoice for said taxes, assessments, and insurance. In addition, LESSEE shall contract and pay directly to its vendors for its responsibilities as outlined in Exhibits D and E.

LESSEE hereby acknowledges that late payment by LESSEE to LESSOR of rent or other sums due hereunder will cause LESSOR to incur costs not contemplated in this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon LESSOR by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any sum due from LESSEE shall not be received by LESSOR or LESSOR'S designee by the tenth (10th) calendar day following the date due, then LESSEE shall pay to LESSOR a late charge of five percent (5%) of such overdue amount plus any attorney's fees incurred by LESSOR by reason of LESSEE'S failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charges represent fair and reasonable estimate of the cost that LESSOR will incur by reason of the late payment by LESSEE. Acceptance of such late charges by LESSOR shall in no event constitute a waiver of LESSEE'S default with respect to such overdue amount, nor prevent LESSOR from exercising any of the other rights and remedies granted hereunder.

### ARTICLE 4 - COST OF LIVING ADJUSTMENT

At the end of each year of the Lease Term, the monthly base rent, excluding Amortized Costs, shall be increased by the fixed amount of 3.5% to reflect Cost of Living Increases.

### ARTICLE 5 - TERMINATION BY COUNTY

Notwithstanding any other provisions of this Lease, LESSEE, after its one (1) year anniversary, and at its sole option, may terminate this Lease upon one hundred eighty (180) days written notice that funds have not been budgeted for leasing of the property described herein. Such termination shall be without penalty to LESSEE. Such right of termination shall not be construed so as to permit LESSEE to terminate this Lease in order to lease other premises for a similar purpose. LESSEE represents it is its intent not to exercise its rights under this Article unless financial conditions prevent the Monterey County Board of Supervisors from budgeting funds for this Lease. If LESSEE exercises its right to terminate under this Article, LESSEE shall reimburse LESSOR for the Premise Improvements Allowance and for the balance of the Amortized Costs then remaining, as indicated on the Amortization Schedule, within thirty (30) days of LESSOR'S receipt of LESSEE'S written notice to terminate pursuant to this article. The above-referenced Premise Improvements Allowance, Amortized Costs, and Amortization Schedule are as defined in Article 7.

## ARTICLE 6 - NOTICES

All notices or correspondence provided for herein shall be effective only when made in writing, personally delivered or deposited in the United States mail, certified, postage prepaid, and addressed as follows:

To LESSOR: Caputo Associates  
Attn: Dan Caputo, Jr.  
1530A Parkmoor Avenue  
San Jose, CA 95128

To LESSEE: County of Monterey,  
General Services Department  
C/O Real Property Specialist  
855 East Laurel Drive, Building C  
Salinas CA 93905

Rent payments shall be made to (need not be sent certified): Caputo Associates at the address listed above. Any notice or correspondence shall be deemed delivered upon personal delivery or five (5) days after notice is mailed. Correspondence other than notices may be given by regular mail or facsimile. Any correspondence sent by facsimile shall also be sent by United States mail. By written notice to the other, either party may change its own mailing address.

## ARTICLE 7 - PREMISE IMPROVEMENTS

**7.1 *Premise Improvements:*** Prior to the Lease Commencement Date, LESSOR shall construct Premise Improvements and make installations in the Premises (collectively "Premise Improvements") in accordance with plans and specifications approved by LESSEE and LESSOR and in accordance with those provisions of the attached Exhibit C ("Premise Improvement Agreement"), which describe construction. The work described in the preceding sentences and the resulting installations are referred to in this Lease as the "Premise Improvements", and Exhibit C is referred to herein as the "Premise Improvement Agreement".

**7.2 *Cost of Premise Improvements:*** The cost of the Premise Improvements shall be paid by LESSEE. Provided LESSEE is not in default under this Lease, LESSOR shall contribute a one-time Premise Improvements Allowance ("Allowance") which shall not exceed a total cost of One Hundred Fifty Thousand Dollars (\$150,000) to be credited by LESSOR toward the cost of the Premise Improvements. If such cost exceeds the maximum amount of the Allowance, LESSOR shall make available to LESSEE an additional amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000) for the purpose of defraying the cost of the Premise Improvements in excess of the Allowance ("Excess Premise Improvements Cost"). The Excess Premise Improvements Cost shall be repaid by LESSEE to LESSOR, together with interest on such an amount at the rate of eleven percent (11%) per annum, amortized in equal monthly installments over the initial term of this Lease of five (5) years ("Amortized Costs"). Within fifteen (15) days following LESSEE'S occupancy of the Premises, LESSOR shall provide LESSEE with a reasonably detailed statement of the Excess Premise Improvements Cost, together with an amortization schedule reflecting the repayment of the Amortized Costs over the original term of this Lease ("Amortization Schedule"). In accordance with such Amortization Schedule, LESSEE shall pay to LESSOR the monthly amounts set forth in such Amortization Schedule. The Amortization Schedule shall be attached to this Lease as Exhibit F. No trade fixtures, furniture or equipment items or costs shall be included in the Allowance or the Excess Premise Improvements Cost.

Subject to approval of the prior tenant, Household Credit Services, LESSOR further agrees to transfer ownership of all existing furniture remaining in the Premises, uninterrupted power source (in working order), and generator (in working order) for LESSEE'S proposed use. These items will be provided to LESSEE at no charge.

**7.3 *Premise Improvement Warranties:*** LESSOR warrants to LESSEE that all materials and equipment furnished by LESSOR in its improvement of the Premises shall be new unless otherwise specified in the Premise Improvement Agreement, and that all of LESSOR'S work to be performed under the Premise Improvement Agreement shall be of good and workmanlike quality, free from faults and defects, and in accordance with the final requirements of the Premise Improvement Agreement. Any of LESSOR'S work not conforming to the above standards shall be considered defective.

For one (1) year after the date of substantial completion of the Premise Improvements, LESSOR shall, following written notice from LESSEE, unconditionally make any repair, replacement, correction or other alteration of any nature necessary by virtue of any defective construction of the Premises or defective materials used therein.

Thereafter, LESSOR shall promptly make or cause to be made all repairs, replacements, corrections or alterations, at no expense to LESSEE, to correct latent defects in the Premises.

#### ARTICLE 8 - NOTICE OF COMPLETION

LESSOR will be responsible to insure that a properly prepared Notice of Completion is filed with the County Clerk-Recorder's Office on all construction and remodeling work performed as a result of this Lease Agreement. The Notice of Completion form will be filed within thirty (30) working days after LESSOR and LESSEE have concurred that the construction is complete.

#### ARTICLE 9 - PUBLIC WORKS LAWS

Under Section 1720.2 of the California Labor Code, any construction contract to improve the space to be leased by the County of Monterey for government services may be considered a 'public work' if certain conditions are met. If applicable, LESSOR shall comply with provisions of law governing public works including, without limitation, Labor Code sections 1773, 1773.2, 1773.3, 1773.8, 1775 (payment of prevailing wages), 1776 (payroll records), and 1777.5 (employment of apprentices), all as periodically amended.

#### ARTICLE 10 - TIME LIMIT AND PRIOR TENANCY

LESSOR shall deliver possession of the Premises to LESSEE in the condition required by Article 11.2 with construction completed as required in Exhibit C, the Premise Improvement Agreement. If LESSOR'S ability to deliver possession by the Lease Commencement Date is delayed as a result of any of the following causes, the Lease Commencement Date shall be postponed without penalty to LESSEE for a period of time equivalent to the period caused by such delay:

- (a) acts of God which LESSEE could not reasonably have foreseen or guarded against;
- (b) any strikes, boycotts or like obstructive actions by employees or labor organizations and which are beyond the control of LESSEE and which cannot be reasonably overcome; or
- (c) restrictive regulations by the Federal Government which are enforced in connection with a national emergency.

If any of the causes listed above result in the Lease Commencement Date being postponed Two Hundred Seventy (270) days or more, either party may declare this Lease terminated and of no further force and effect upon written notice to the other party. In addition, LESSEE may terminate this Lease if negligent acts of LESSOR, its agents or employees result in the Lease Commencement Date being postponed Two Hundred Seventy (270) days or more. In the event this Lease is terminated by LESSOR for any reason pursuant to this article or by LESSEE as a result of the negligence of LESSOR, its agents or employees, LESSEE shall have no obligation to repay LESSOR for the Allowance or any unamortized Excess Premise Improvements Cost. It shall be LESSOR'S responsibility to remove any prior lessee in the Premises and LESSOR shall deliver the Premises free of any prior tenancies.

#### ARTICLE 11 - USE

11.1 **Use:** LESSEE shall use the Premises for general office use. LESSEE may not alter said use without obtaining the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

11.2 **Compliance with Laws:** LESSOR represents and warrants to LESSEE, that, to the best of LESSOR'S knowledge, the construction (including all LESSOR-constructed Premise Improvements), the current and proposed uses, and the operation of the Premises are in full compliance with applicable building and seismic codes, environmental, zoning and land use laws, and other applicable local, state and federal laws, regulations and ordinances. LESSOR absolves LESSEE of legal or other responsibility for any code violations or other deviations from applicable local, state and federal laws, regulations and ordinances as may be listed above.

11.3 **Hazardous Substances:** LESSEE shall have no liability or responsibility for toxic or hazardous materials or

substances in existence on the Premises prior to LESSEE'S occupancy of the Premises or which result from LESSOR 'S acts or omissions or which occur on any portion of LESSOR 'S property not occupied by LESSEE, unless caused by LESSEE, its agents, employees, invitees or guests. LESSOR warrants, to the best of Lessor's actual knowledge, that at the time of execution of this Lease there are no known areas on LESSOR 'S property where hazardous or toxic materials or substances (including asbestos or PCBs) have been used, stored, or deposited. LESSOR will comply with all applicable laws concerning the handling and removal of any hazardous materials, including asbestos or PCB containing materials.

During the term of this Lease, LESSEE shall not use in any way, or permit the use of the Premises or any part thereof, to either directly or indirectly prepare, produce, generate, manufacture, refine, transport, store, maintain, handle, dispose of, transfer, or process any Hazardous Substances. A Hazardous Substance is any item which is regulated or restricted in any way by federal, state, county, municipal statutes or laws now or at anytime hereafter in effect. LESSEE agrees to indemnify and defend LESSOR against any claims, losses, liabilities, judgments and expenses, including reasonable attorney's fees, in any action or proceeding brought by or on behalf of any governmental entity or private party in connection with the alleged discharge of any Hazardous Substance, or the alleged violation of any law or regulation relating to Hazardous Substances by LESSEE.

#### **ARTICLE 12 - SIGNS AND FIXTURES**

LESSEE may place such signs and advertisements upon the Premises as LESSEE may desire, subject to approval by LESSOR which consent shall not be unreasonably withheld provided, however, that at the expiration of the term hereof or any renewal or extension of this Lease, LESSEE will remove said signs and will restore the Premises to their original condition. Any trade fixtures, equipment, furniture, demountable walls, and other property installed in the Premises by and at the expense of LESSEE shall remain the property of LESSEE, and LESSOR agrees that LESSEE shall have the right at any time, and from time to time, to remove any and all of its trade fixtures, equipment and other property which it may have stored or installed in the Premises, provided the Premises are restored to a condition which LESSOR reasonably considers acceptable. LESSOR agrees not to mortgage or pledge LESSEE'S trade fixtures, equipment and other property.

#### **ARTICLE 13 - SERVICES AND UTILITIES**

Services and utilities shall be furnished and the cost borne as outlined in Exhibit D. In the event of failure by LESSOR to furnish, in a satisfactory manner, any of the services and utilities to the Premises for which LESSOR is responsible, LESSEE may furnish the same if LESSOR has not undertaken to correct such failure within fifteen (15) days after written notice, and, in addition to any other remedy LESSEE may have, may deduct the amount thereof, including LESSEE'S service costs, from rent or other remuneration due LESSOR hereunder.

#### **ARTICLE 14 - REPAIR AND MAINTENANCE**

14.1 **LESSOR and LESSEE Obligations:** The respective repair and maintenance responsibilities of LESSOR and LESSEE are set forth in Exhibit E, Summary of Repair and Maintenance Responsibilities, which by this reference is incorporated herein. This is a triple net lease with LESSEE responsible for maintenance, repairs and replacements as indicated on Exhibit E.

14.2 **Negligent Acts or Omissions of LESSEE:** Notwithstanding the foregoing, LESSEE will pay to LESSOR the reasonable cost of any repairs or maintenance required as a direct result of the fault of LESSEE, its agents, employees, or invitees.

14.3 **Failure of LESSOR to Make Repairs:** If LESSOR fails to maintain the Premises or to make the repairs required in this article within the time periods as specified in Article 22.1, LESSEE may perform such maintenance or make such repairs at its expense and deduct the reasonable cost thereof from the rent due hereunder.

14.4 **LESSOR Obligations in Applying Noxious Substances:** LESSOR and/or LESSEE, its officers, employees, and agents shall not apply any substance as part of any building maintenance or repair which would introduce irritating



or noxious odors or any other hazardous condition to occupied spaces without prior coordination and approval of the County of Monterey Facilities and Construction Manager, who can be reached by telephone at (831) 755-4855. Prior notification and approval shall be made at least 48 hours prior to the desired application time. Also, a Product Safety Data Sheet shall be furnished by the proposed applicator to the Department of Social Services, Human Resources, Adult Services and Cal Works Divisions. Examples of such substances or materials include, but are not limited to, the following:

- ⇒ Termite Control Materials
- ⇒ Pesticides
- ⇒ Paint
- ⇒ Water Treatment Chemicals
- ⇒ Any other substance that is or could be construed as hazardous

#### **ARTICLE 15 - ALTERATIONS, MECHANICS' LIENS**

15.1 ***Alterations:*** Except for the Premise Improvements, no structural alterations or improvements shall be made to the Premises by LESSEE or at LESSEE'S request without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

15.2 ***Condition at Termination:*** LESSEE may remove any trade fixtures, machinery and equipment installed in the Premises by LESSEE upon the termination of this Lease, if LESSEE is not then in default under this Lease and if LESSEE repairs any damage to the Premises caused by such removal. Upon termination of this Lease, LESSEE shall return the Premises in the same condition as when delivered to LESSEE, reasonable wear and tear, and damage by casualty, and alterations approved by LESSOR excepted. If LESSEE does not exercise the option to extend the Lease, LESSEE shall pay to LESSOR the sum of twenty eight thousand two hundred twenty four dollars (\$28,224) to reimburse LESSOR in its efforts to restore the Premises.

15.3 ***Mechanic's Liens:*** LESSOR and LESSEE shall keep the Premises free from any liens arising out of any work performed by, materials furnished to, or obligations incurred by the parties.

15.4 ***Notice of Non-Responsibility:*** LESSOR may post such notices of non-responsibility as it reasonably deems appropriate in the Premises during any construction provided for in this article.

#### **ARTICLE 16 - ASSIGNMENT AND SUBLETTING**

LESSEE shall not assign or sublet all or any portion of the Premises without the prior written consent of LESSOR, which consent shall not be unreasonably withheld.

#### **ARTICLE 17 - ENTRY BY LESSOR**

LESSEE shall permit LESSOR and LESSOR'S agents to enter the Premises, with reasonable advance written notice (except in the case of emergency), provided such entry is made in a reasonable manner and does not unreasonably interfere with the conduct of LESSEE'S business.

#### **ARTICLE 18 - INSURANCE AND INDEMNIFICATION**

LESSEE, during the term hereof, shall indemnify and hold harmless LESSOR from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, occurring within the Premises and arising out of the use of the Premises by LESSEE, including reasonable attorney's fees and costs, excepting however, such claims and demands whether for injuries to persons or loss of life, or damage to property, caused by negligent acts or omissions of LESSOR.

LESSEE shall maintain public liability and property damage coverage or program of self insurance with liability limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate for injury or death to one or more

persons and property damage insuring against liability of LESSEE and its authorized representatives arising out of and in connection with LESSEE'S use or occupancy of the Premises. LESSOR, during the term hereof, shall indemnify, defend and save harmless LESSEE from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, arising out of and to the extent actually caused by negligent acts or omissions of LESSOR.

LESSOR shall maintain in effect throughout the term of this Lease, at the cost of LESSEE, the following insurance: (a) commercial general liability insurance to the limit of not less than \$1,000,000.00 per occurrence and/or \$2,000,000.00 in the aggregate; (b) commercial property insurance, with special form causes of loss, to the extent of at least ninety percent (90%) of the full replacement value cost of the Premises (exclusive of land, trade fixtures, tenant improvements and betterments installed by Lessee and equipment of LESSEE); and (c) coverage for loss of rent during reconstruction following any damage or destruction of the Premises. LESSEE shall reimburse LESSOR for the annual premiums incurred for all insurance maintained by LESSOR pursuant to this article in accordance with Article 3.

#### **ARTICLE 19 - WAIVERS OF SUBROGATION**

LESSOR and LESSEE each hereby waive any right of recovery against the other due to loss of or damage to the property of either LESSOR or LESSEE when such loss of or damage to property arises out of the acts of God or any of the property perils whether or not such perils have been insured, self-insured or non-insured.

#### **ARTICLE 20 - DESTRUCTION**

Except as otherwise provided in this article, if at any time during the term of this Lease, the Premises are damaged or destroyed by any cause, LESSOR shall promptly repair, rebuild, or restore the Building to substantially the same condition as the Building was delivered to LESSEE at the commencement of this Lease (i.e., exclusive of LESSEE fixtures and equipment) and shall be entitled for that purpose to any and all insurance proceeds. LESSOR shall have the obligation to repair, rebuild, or restore described in this section whether or not the insurance proceeds paid to LESSOR are sufficient to cover the total cost of repair, restoration, or rebuilding. LESSOR shall commence repair, restoration, or rebuilding, as appropriate, not later than sixty (60) days after occurrence of the event causing damage or destruction and shall cause construction to be completed not later than one hundred eighty (180) days after the occurrence of the event causing damage or destruction. LESSOR's obligation to commence and complete construction within the time periods described in this section shall not be extended by the fact that LESSOR may not yet have been paid the insurance proceeds. In the event LESSOR does not commence or complete construction within the time periods described in this section, LESSEE shall have the right to terminate this Lease by giving LESSOR written notice within ten (10) days after expiration of either time period.

LESSOR shall have the right to terminate this Lease and shall have no obligation to repair, restore, or rebuild the Premises or the Building when damage or destruction from an insured casualty when the damage or destruction cannot reasonably be repaired, restored, or rebuilt within a period of one hundred eighty (180) days. If LESSOR elects to terminate this Lease under any of the above circumstances, LESSOR shall give written notice to LESSEE not later than thirty (30) days after occurrence of the casualty.

#### **ARTICLE 21 - DEFAULT BY LESSEE**

21.1 **Default:** If any of the following events occur, each such event shall constitute a material breach of this Lease, and LESSOR may, at LESSOR 's option, exercise any or all rights available to a LESSOR under the laws of the State of California:

- a. A default in the payment of rent when such default continues for a period of thirty (30) days after written notice, or
- b. LESSEE fails to faithfully perform or observe any other covenant or undertaking required under this Lease and such failure continues for a period of thirty (30) days after written notice thereof, or
- c. A voluntary or involuntary petition for relief under any bankruptcy or insolvency laws is filed by or

- against LESSEE; or
- d. LESSEE'S lease interest is sold under execution of judgment.

*21.2 Remedies:* In the event of any default of this lease by Lessee, then LESSOR shall have, in addition to any other rights or remedies, and after thirty (30) days written notice, the right either to terminate this Lease or to continue this Lease in full force and effect. This Lease shall not terminate unless LESSOR notifies Lessee in writing that this Lease and Lessee's right of possession thereunder are terminated, or unless LESSOR institutes a judicial proceeding for the primary purpose of termination and which in fact results in a termination of Lessee's right to possession of the Premises. In no event shall the following actions by LESSOR or its agents, either before or after any abandonment of the Premises by Lessee constitute a termination of this Lease: (i) maintenance or preservation of the Premises; (ii) efforts to relet the Premises; or (iii) appointment of a receiver in order to protect LESSOR's interests thereunder. If LESSOR elects to terminate this Lease as a result of default by Lessee, LESSOR thereupon shall, without liability to Lessee, have immediate right to reenter the Premises, remove all persons and property therefrom and store any property so removed in a public warehouse or elsewhere at the cost of and for the account of Lessee. Additionally, LESSOR shall not be responsible for the care of safety of persons or property so removed from the Premises by LESSOR pursuant hereto and LESSOR shall not be guilty of trespassing or forcible entry. Any reletting of the Premises by LESSOR may be for such term (including a term extending beyond the term of this Lease) at such rental or rentals and containing such other provisions as LESSOR, at its sole discretion, shall determine.

If LESSOR terminates this Lease in the event of LESSEE's default, LESSEE shall pay to LESSOR and be liable for: (1) all rents and other charges which become due between the time of termination and the time of award, less any rents and other charges that (i) LESSOR has actually received from reletting the Premises, or (ii) LESSOR could have obtained in reletting the Premises by acting reasonably in the circumstances then prevailing, together with interest hereon accrued from the date each sum became due at the rate of ten percent (10%) per annum; and (2) the difference, if any, between (a) all rents and other charges for the balance of the term of this Lease, less (b) any rents and charges that (i) LESSOR will receive by reason of the reletting of the Premises or (ii) LESSOR could obtain in reletting the Premises by acting reasonably in the circumstances then prevailing; and (3) all costs, expenses and losses LESSOR incurs by reason of LESSEE's breach of this Lease, including without limitation the following: (i) all expenses for altering, remodeling, or otherwise improving the Premises for the purpose of reletting after making an appropriate allowance for normal wear and (5) if, upon breach of this Lease by Lessee, Lessor elects to continue this lease; (ii) all broker's fees, advertising costs and other expenses of reletting the Premises; (iii) all expenses in retaking possession of the Premises; and (iv) reasonable attorney fees and court costs; and (4) if, upon breach of this Lease by LESSEE, LESSOR elects to continue this Lease in full force and effect, LESSOR, in addition to exercising any other rights or remedies, may enforce all of its rights and remedies thereunder and LESSEE shall remain obligated to perform all of LESSEE's obligations thereunder to be performed by LESSEE, including without limitation, timely payment of all rents and other charges. In addition, LESSEE shall be liable for all attorney fees and costs incurred by LESSOR by reason of LESSEE's breach thereunder. Notwithstanding, that Lessor elects after a breach of this lease by Lessee, to continue this lease in full force and effect, Lessor may at any time thereafter, elect to terminate this lease for any subsequent breach. If Lessor shall have all of the rights or if LESSOR elects after a breach of this Lease by LESSEE, to remedies provided for in subparagraphs 21 (a) and (b) above.

## **ARTICLE 22 - DEFAULT BY LESSOR**

*22.1 Default:* LESSOR shall not be in default unless LESSOR fails to perform its obligations under this Lease within a reasonable time, but in no event later than thirty (30) days after written notice by LESSEE to LESSOR specifying wherein LESSOR has failed to perform such obligations. If the nature of LESSOR's obligation is such that more than thirty (30) days are required for performance, then LESSOR shall not be in default if LESSOR commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. LESSEE'S obligation to provide written notice to LESSOR of a default by LESSOR is limited to those instances where knowledge of LESSOR'S default is within the actual knowledge of LESSEE.

*22.2 Remedies:* If LESSOR fails to cure a prospective default within the time periods outlined above, LESSEE shall have the option to cure the default or to terminate this Lease, in addition to any other remedies at law not inconsistent herewith. Should LESSEE elect to cure the default itself, all costs associated with such cure, including reasonable

attorneys' fees (if any), shall be reimbursed by LESSOR to LESSEE within thirty (30) days of receipt of LESSEE'S invoice for said costs. However, upon LESSOR'S failure to so reimburse or, at LESSEE'S option, said costs shall be held from rent due hereunder. If LESSOR 'S default hereunder prevents LESSEE'S use of the Premises, there shall be an abatement of rental payments for the period of such non-use. The extent of the rental abatement as herein provided shall be based on the proportionate share of floor area that LESSEE is precluded from occupying.

#### **ARTICLE 23 - CONDEMNATION**

If more than ten percent (10%) of the floor space area of the Premises is taken or condemned for a public or quasi-public use, or the part taken renders the entire Premises insufficient for the conduct of LESSEE'S business and operations, then this Lease shall terminate at the option of LESSEE as of the date title shall vest in the condemner. If only part of the Premises is taken and the remainder of the Premises is sufficient for the conduct of LESSEE'S business and operations, then LESSOR shall restore the Premises to a single architectural unit and the Lease shall continue as to the part not taken, but the monthly rent and the reimbursements for taxes, assessments, and insurance set forth in Article 3 shall be reduced in proportion that the usable area of the Premises taken bears to the usable area of the Premises before the taking.

#### **ARTICLE 24 - HOLDING OVER**

If LESSEE, with LESSOR'S consent, remains in possession of the Premises after the Lease Term or any Extended Term, this Lease shall automatically be extended on a two month-by-two month basis at One Hundred Fifteen percent (115%) of the monthly base rent applicable to the last month of the Lease Term or Extended Term, subject to termination upon sixty (60) days' written notice by either party. All other terms and conditions shall remain in full force and effect.

#### **ARTICLE 25 - WAIVER**

The waiver by LESSOR or LESSEE of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, nor shall either party's consent to any breach of any term, covenant or condition be deemed to constitute or imply its consent to any subsequent breach of the same or other term, covenant or condition herein contained.

#### **ARTICLE 26 - QUIET POSSESSION**

As long as LESSEE keeps and performs the covenants in this Lease, LESSEE shall at all times during the term of this Lease peaceably and quietly have, hold and enjoy the Premises, without suit, trouble or hindrance from LESSOR or any person claiming under LESSOR.

#### **ARTICLE 27 - SUBORDINATION**

This Lease shall be subject and subordinated to the lien of any mortgages and deeds of trust which are hereafter placed against LESSOR 's interest or estate in the property provided that the mortgage or beneficiary under such mortgage or deed of trust shall agree in writing that, in the event of a foreclosure of same or of any other such action or proceeding for the enforcement thereof, or of any sale there under, this Lease shall not be barred, terminated, cut off, or foreclosed, nor will the rights and possession of LESSEE hereunder be disturbed if LESSEE shall not then be in default under the terms of this Lease, and LESSEE shall attorn to the purchaser at such foreclosure, sale or other action or proceeding, provided that such purchaser shall assume the obligations of LESSOR hereunder. The foregoing subordination shall be effective without the necessity of having any further instruments executed by LESSEE, but LESSEE shall nonetheless execute, upon demand, such further instruments evidencing such subordination as may be reasonably requested by LESSOR or any mortgagee or beneficiary.

#### **ARTICLE 28 - ESTOPPEL CERTIFICATES**

Within thirty (30) days of written notice by one party to the other, each will execute, acknowledge and deliver

to the other an estoppel certificate in writing declaring any modifications, defaults or advance payments and whether the lease, as may be modified, is in full force and effect, and containing such other information as LESSOR may reasonably request. Any such certificate may be conclusively relied upon for the intended transaction for which the statement was requested.

**ARTICLE 29 - MISCELLANEOUS PROVISIONS**

29.1 **No Amendments:** No oral amendment of this Lease shall be valid unless made in writing and signed by the parties hereto, and no prior oral understanding or agreement not incorporated herein shall be binding on either party hereto.

29.2 **Time is of the Essence:** Time is of the essence of each term and provision of this Lease.

29.3 **Binding Effect:** Subject to any provision hereof restricting assignment or subletting by LESSEE, this Lease shall bind the parties, their personal representatives, successors, and assigns.

29.4 **Invalidity:** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

29.5 **Warranty of Authority:** If LESSOR is a corporation, the person executing this lease on behalf of LESSOR hereby covenants and warrants that LESSOR is a duly authorized and existing corporation and that he/she is duly authorized to execute this Lease.

29.6 **Addendum:** In the event of conflict between this Lease and any Addendum or Exhibit attached hereto, the provisions of such Addendum or Exhibit shall control.

**ARTICLE 30 - MAJOR APPLIANCES**

Installation of major appliances such as vending machines, refrigerators, stoves, etc., must be approved by LESSOR prior to installation. LESSOR will grant installation approval for new appliances only. Such approval shall not be unreasonably withheld.

**ARTICLE 31 - ATTORNEY'S FEES**

In the event LESSOR or LESSEE bring suit against the other to enforce any rights under this Lease, the prevailing party shall recover from the other, in addition to any other award, an amount equal to reasonable attorney's fees to be fixed by the court.

LESSEE: (County of Monterey)

By: Maria Salazar

Title: PURCHASING MANAGER

Date: 1/03/01

APPROVED AS TO FORM: (County Counsel)

By: Mary

Title: Chief Asst. County Counsel

Date: 1-3-01

LESSOR: (Caputo Associates)

By: Don Caputo

Title: ~~WIFE~~ PARTNER

Date: 1/5/01

# EXHIBIT A

## DESCRIPTION OF PREMISES [ATTACHED]

(Floor Plan with Dimensions A-1)

(Parking Location /Site Map A-2)

713 LaGuardia

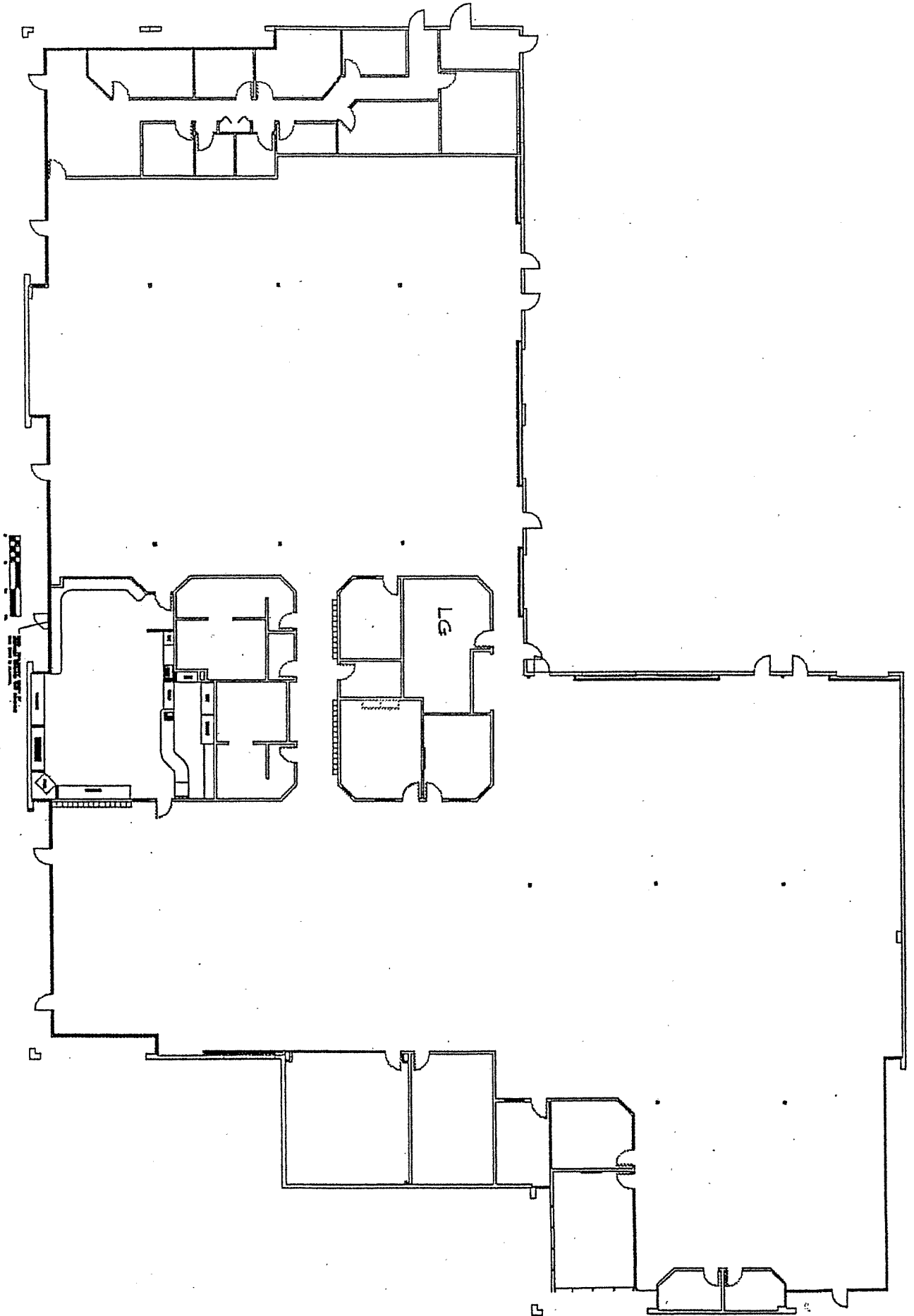


Exhibit A-1

Add'l 2.4 Acres surfaced for parking

LaGuardia St.

BUILDING A

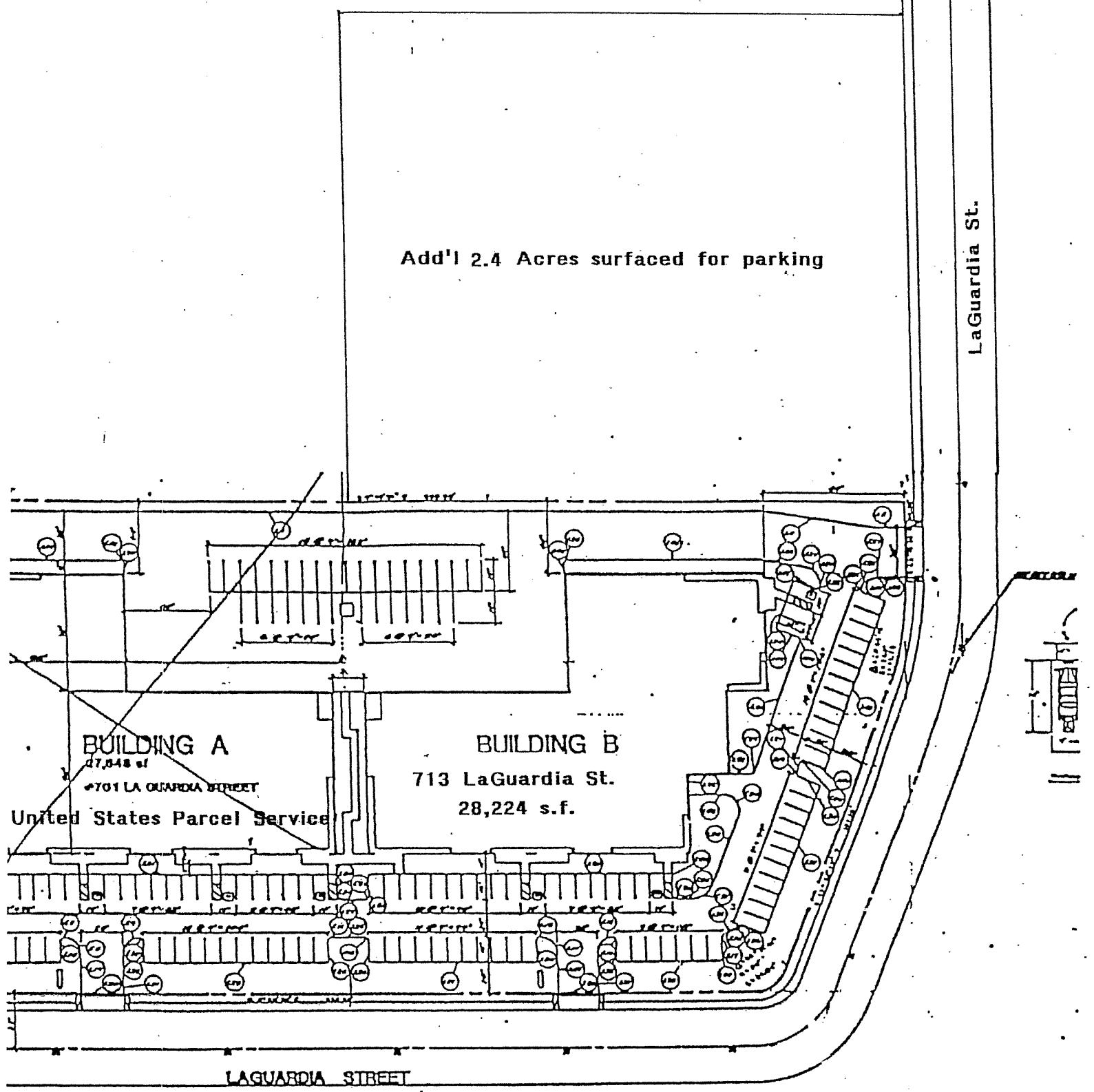
27,848 sq ft  
701 LA GUARDIA STREET

United States Parcel Service

BUILDING B

713 LaGuardia St.  
28,224 s.f.

LAGUARDIA STREET





**EXHIBIT B**

STATEMENT OF SEISMIC ADEQUACY

INTENTIONALLY BLANK

## EXHIBIT C

### PREMISE IMPROVEMENT AGREEMENT

This Premise Improvement Agreement, dated January 2, 2001 is by and between Caputo Associates, ("LESSOR"), and COUNTY OF MONTEREY, ("LESSEE").

1. Premise Improvements:

- a. LESSOR shall construct all Premise Improvements in accordance with the Plans and Specifications as approved by LESSOR and LESSEE and as further defined in Article 7 of the basic Lease Agreement to which this Exhibit is attached. Premise Improvements must satisfy the Americans with Disabilities Act, of 1990, as and if applicable.
- b. Premise Improvements are generally described as follows: the conversion of approximately 28,244 square feet of existing [*commercial research and development space*] to [*general office space*] by demolition of existing interior features and construction of new interior features so as to conform to LESSEE'S approved program for the use of the Premises.
- c. LESSOR shall commence construction of the Premises Improvement work at the earliest opportunity, but not more than 30 days following completion of the all of the following; 1) Plans and Specifications by LESSEE, 2) approval of the same by LESSOR and LESSEE and 3) issuance of a building permit from the City of Salinas.
- d. LESSOR shall diligently pursue construction of approved Premises Improvement work with the goal of occupancy by April 1, 2001 and deliver the Premises to LESSEE in a condition suitable for occupancy.

2. Construction Plans and Specifications, Change Orders and Delay:

- a. LESSOR shall provide for LESSEE'S approval the complete and detailed proposed Plans and Specifications for the Premises Improvements, the design of which shall conform to LESSEE'S approved program for use of the Premises.
- b. LESSEE shall provide LESSOR with written notice of its approval or disapproval of the Plans and Specifications within five (5) business days after receipt of such Plans and Specifications.
- c. During construction, LESSOR and LESSEE'S Representatives (as defined in paragraph 7 below) shall confer periodically regarding the progress of the work and the approximate cost of the work completed. LESSEE'S Representative may request changes, modifications or alterations to the Plans and Specifications by written change order delivered to LESSOR, but no such change shall be made without the written approval of LESSOR, which approval shall not be unreasonably withheld. LESSOR shall approve or deny each LESSEE change order within four (4) business days, and LESSOR shall also provide to LESSEE'S Representative, by written notice to LESSEE, an estimate of the maximum cost of each change order within five (5) business days after the delivery of the change order to LESSOR. No work based upon a change order shall be undertaken unless and until LESSEE'S Representative shall have approved (by notice to LESSOR) LESSOR'S cost estimate. In no event shall Lessor's costs exceed those outlined in Article 7.2 of the Lease.
- d. If LESSOR determines that a change proposed by LESSEE will delay completion of the construction

- beyond the period allocated for such construction, LESSOR shall, within four (4) business days, notify LESSEE'S Representative of the estimated length of the delay caused by LESSEE'S request. LESSEE'S Representative shall advise LESSOR within two (2) business days after receipt of such notice as to whether LESSOR shall proceed with requested change, modification or alteration. LESSOR shall not make the requested change to the Plans and Specifications without LESSEE'S approval of any proposed time extensions.
- e. If LESSOR requires that LESSEE clarify or refine the Plans and Specifications, then LESSEE'S Representative shall meet with LESSOR for the purpose of clarifying or refining the Plans and Specifications within two (2) business days after LESSEE'S receipt of LESSOR'S request therefore. No such clarification or refinement shall be deemed to be a change order.
  - f. If LESSOR determines that the Plans and Specifications must be changed as a result of omissions or errors in the Plans and Specifications, then LESSOR shall prepare and submit to LESSEE revised Plans and Specifications correcting any such omission or error. LESSEE shall approve or disapprove such revised Plans and Specifications within two (2) business days after receipt and shall not unreasonably withhold its approval.
  - g. LESSOR shall not be responsible for any delays in the time for completion of construction resulting from LESSEE'S delay. For purposes herein, LESSEE'S delay in the completion of the construction of the Premise Improvements are delays that may arise as a result of: (1) LESSEE'S failure to comply with its obligations set forth in subsection b, c, d, e, or f, above, within the time specified; (2) any change directed by LESSEE after notification to LESSEE that the change will delay completion of the construction as provided in subsection d, above; or (3) extra time required to obtain any long lead items specified by LESSEE. For purposes herein, an item shall be considered a long lead item if LESSOR notifies LESSEE within fifteen (15) business days after receipt of LESSEE'S approval of the Plans and Specifications that such item is not readily available or readily installable after the same is requested by LESSEE.
3. Approval of Plans by Public Authorities. LESSOR shall obtain approval of the Plans and Specifications for the Premises from all appropriate government agencies, and a copy of the Plans and Specifications, as approved, shall be dated and initialed by both LESSOR and LESSEE. If permitting agency(ies) require modifications to Plans and Specifications prior to issuing the required permit(s), Architect shall, as agent of LESSEE and at LESSEE'S cost, make the necessary modifications. LESSOR shall exercise due diligence in obtaining any such approval.
4. Quality of Work. All work performed hereunder shall be done in a good and workmanlike manner, free from faults and defects and in accordance with the Plans and Specifications. All materials and equipment installed in the Premise Improvements shall be new unless otherwise specified in the Plans and Specifications.
5. LESSEE'S Access During Construction. LESSEE and its agents and contractors shall have access to the Premises during the construction of the Premise Improvements for activities and purposes related to construction of the Premises or preparation of the Premises for occupancy. LESSEE'S representatives on the Premises during construction shall cooperate with LESSOR'S contractor and not delay in any way the performance by LESSOR'S contractor or LESSOR'S representatives of any work (including but not limited to the construction of Premise Improvements).
6. Acceptance of Premises.
- a. At any time during the construction of the Premise Improvements, LESSEE may reject any work that does not conform to the Plans and Specifications or does not meet good and workmanlike standards as reasonably interpreted by LESSEE.
  - b. Within five (5) business days after LESSOR notifies LESSEE that the Premise Improvements are substantially complete and that the Premise Improvements are ready for inspection by LESSEE'S

representative, LESSEE shall deliver to LESSOR a list of items that LESSEE shall have reasonably determined that LESSOR must complete or correct prior to LESSEE'S acceptance of Premise Improvements in order for the work to conform to the Plans and Specifications. LESSOR shall immediately commence to complete or correct the items listed by LESSEE, except those it contends are not justified. If LESSEE fails to deliver such a list within the five (5) business day period, LESSEE shall be deemed to have accepted the Premises and to have approved the construction subject to any final inspections and approvals by the building officials of the permitting agency(s).

c. Acceptance by LESSEE shall not be unreasonably withheld.

7. Notices. All notices required or permitted under this Premise Improvement Agreement shall be in writing and shall be delivered as follows:

a. If to LESSOR, to:

Caputo Associates  
Attn: Dan Caputo, Jr.  
1530A Parkmoor Avenue  
San Jose, CA 95128  
(LESSOR'S Representative)

b. If to LESSEE, to:

Monterey County General Services  
Facilities Projects Division  
Facilities Project Manager  
855 E. Laurel Drive, Bldg C  
Salinas, California 93905  
(LESSEE'S Representative)

8. Responsibility for Damage. If LESSEE installs equipment in the Premises prior to completion of the work hereunder, LESSEE shall bear the risk of loss to such equipment other than loss that is a result of negligence or willful misconduct by LESSOR, its agent or contractors.

9. Approval of this agreement will result in a construction of a facility suitable for Department of Social Services, Human Resources, Adult Services and Cal Works Divisions. This agreement does not provide for necessary telecommunications/data processing linkages. Necessary telecommunications/data processing linkages and alarm systems will be coordinated by the County Information Technology Department and will either be done by County crews or contracted out by County. Completion of this element of the project, installation of an alarm system, and the actual move will result in additional costs to be borne by County.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LESSOR:

By: Dan Caputo, Jr.

Title: PARTNER

LESSEE:

By: Maria Salazar

Title: PURCHASING MANAGER

## EXHIBIT D

### SUMMARY OF SERVICES AND UTILITIES

The following is a summary of services and utilities responsibilities of LESSOR and LESSEE:

	N/A	Lessor	Lessee
Provide paper supplies, dispensers and waste containers (Premises & rest rooms)			x
Provide janitorial service for interior of premises (dust, waste removal, vacuum, mop, cleaning)			x
Provide janitorial service for exterior of premises and common areas			x
Clean carpet, tile and linoleum as deemed necessary by LESSEE			x
Cleaning of existing drapes, blinds, and window shades as deemed necessary by LESSEE			x
Window washing – Interior			x
Window washing – Exterior			x
Pest Control – Interior			X
Pest Control – Exterior			X
Landscape maintenance and gardening (including landscape irrigation system and associated water supply and service)			X
Parking Lot area sweeping			X
Refuse, rubbish and garbage disposal services			X
			X
Gas utility service			X
Electric utility service			X
Water utility service			X
MRWPCA (Monterey Regional Water Pollution Control) Fee			X
OTHER:			X

## EXHIBIT E

### SUMMARY OF REPAIR AND MAINTENANCE RESPONSIBILITIES

The following is a summary of maintenance and repair responsibilities of Lessor and Lessee:

	N/A	Lessor	Lessee
Common Areas	na		
Foundations		x	
Floor Slabs		x	
Elevators (Repairs over \$1,000-LESSOR; Maintenance service & minor repairs-LESSEE)	na		
Exterior and Bearing Walls		x	
Exterior Doors			x
Exterior Windows & Window Frames			x
Roof		x	
Parking Lot			x
Ceilings			x
Gutters, Drains, Downspouts		x	
Fire Sprinkler System			x
HVAC Systems (Lessee shall be responsible for repair and routine maintenance of the HVAC Systems serving the Premises. However, in the event said unit(s) needs to be replaced during the Lease term, LESSOR shall pay one hundred percent (100%) of the up-front costs and invoice LESSEE on a monthly basis for its proportionate share based on the unit(s) useful life. (For example, if a new unit costs \$ 3,500, has a useful life of ten years and there are six months remaining on the Lease, then LESSEE'S monthly "additional rent" obligation for the balance of the Lease term would be \$ 29.17 monthly.) Should LESSEE exercise the option for an Extended Term, LESSEE shall continue to be responsible for its proportionate share.)		x	x
Maintain, repair and/or replace heating & air conditioning control switches (thermostats)			x
Electrical Systems			x
Plumbing Systems			x
Lighting Systems			x
Replace light bulbs & fluorescent light tubes			x
Repair or replacement of starters, ballasts & transformers for fluorescent lights, light switches and electrical outlets			x
Fire Alarm Systems			x
Intrusion/Security Alarm System			x
Interior Doors			x
Interior Wall Surfaces			x
Interior Windows & Window Frames			x
Repainting of Interior Walls (Every 5 Years)			x
Repair and/or Replacement of Carpet and/or vinyl tile			x
Base and/or Moldings			x
Appliances & Fixtures			x