

## Negotiate Favorable Hazardous Materials Provisions

The following “hazardous materials” provisions were drafted by Eileen Nottoli, Of Counsel at real estate law firm Allen Matkins Leck Gamble Mallory & Natsis LLP, in San Francisco, Calif. Note that you should include a

provision that defines “Hazardous Materials” and “Environmental Laws” for the purpose of the lease. Show these provisions to your attorney before using them.

### HAZARDOUS MATERIALS

#### 1. COMPLIANCE WITH ENVIRONMENTAL LAWS.

Owner covenants that during the Lease Term, Owner shall comply with all Environmental Laws in accordance with, and as required by, the Terms and conditions of this Lease. Tenant shall not sell, use, or store in or around the Premises any Hazardous Materials, except if stored, properly packaged and labeled, disposed of and/or used in accordance with applicable Environmental Laws. In addition, Tenant agrees that it: (a) shall not cause or suffer to occur, the release, discharge, escape, or emission of any Hazardous Materials at, upon, under, or within the Premises or any contiguous or adjacent premises; (b) shall not engage in activities at the Premises that could result in, give rise to, or lead to the imposition of liability upon Tenant or Owner or the creation of a lien upon the building or land upon which the Premises is located; (c) shall notify Owner promptly following receipt of any knowledge with respect to any actual release, discharge, escape, or emission (whether past or present) of any Hazardous Materials at, upon, under, or within the Premises; and (d) shall promptly forward to Owner copies of all orders, notices, permits, applications, and other communications and reports in connection with any release, discharge, escape, or emission of any Hazardous Materials at, upon, under, or within the Premises or any contiguous or adjacent premises.

Prior to the Lease Commencement Date, Tenant shall complete, execute, and deliver to Owner a Hazardous Materials Disclosure Certificate (Initial Disclosure Certificate), a fully completed copy of which is attached hereto and incorporated herein by this reference. The completed Hazardous Materials Disclosure Certificate shall be deemed incorporated into this Lease for all purposes, and Owner shall be entitled to rely fully on the information contained therein. Tenant shall, upon written request from Owner, and at such other times as Tenant desires to handle, produce, treat, store, use, discharge, or dispose of new or additional Hazardous Materials on or about the Premises that were not listed on the Initial Disclosure Certificate, complete, execute, and deliver to Owner an updated Disclosure Certificate (each, an Updated Disclosure Certificate) describing Tenant’s then current and proposed future uses of Hazardous Materials on or about the Premises. Tenant shall deliver an Updated Disclosure Certificate to Owner not less than thirty (30) days prior to the date Tenant intends to commence the manufacture,

treatment, use, storage, handling, discharge, or disposal of new or additional Hazardous Materials on or about the Premises, and Owner shall have the right to approve or disapprove such new or additional Hazardous Materials in its reasonable discretion. Tenant shall make no use of Hazardous Materials on or about the Premises except as described in the Initial Disclosure Certificate.

#### 2. OWNER’S RIGHT OF ENVIRONMENTAL AUDIT.

Owner may, upon reasonable notice to Tenant, be granted access to and enter the Premises no more than once annually to perform or cause to have performed an environmental inspection, site assessment, or audit. Such environmental inspector or auditor may be chosen by Owner, in its sole discretion, and be performed at Owner’s sole expense. To the extent that the report prepared upon such inspection, assessment, or audit indicates the presence of Hazardous Materials in violation of Environmental Laws, or provides recommendations or suggestions to prohibit the release, discharge, escape, or emission of any Hazardous Materials at, upon, under, or within the Premises, or to comply with any Environmental Laws, Tenant shall promptly, at Tenant’s sole expense, comply with such recommendations or suggestions, including but not limited to performing such additional investigative or subsurface investigations or remediation(s) as recommended by such inspector or auditor.

Notwithstanding the above, if at any time, Owner has actual notice or reasonable cause to believe that Tenant has violated, or permitted any violations of any Environmental Law, then Owner will be entitled to perform its environmental inspection, assessment, or audit at any time, notwithstanding the above-mentioned annual limitation, and Tenant must reimburse Owner for the cost or fees incurred for such as Additional Rent.

#### 3. TENANT INDEMNIFICATION.

Tenant agrees to indemnify, defend, protect, and hold harmless the Owner Parties from and against any liability, obligation, damage, or costs, including without limitation, attorneys’ fees and costs, resulting directly or indirectly from any use, presence, removal, or disposal of any Hazardous Materials or breach of any provision of this section, to the extent such liability, obligation, damage, or costs was a result of actions caused or permitted by Tenant or a Tenant Party.