

McNamara Realty Agreement to Lease

This rental agreement is made and entered into this 1st day of January 2009 by and between McNamara Realty, known as Landlord, Mary Jones, known as Tenant.

Basic Rental Provisions.

1. **Property Address:** Tenant hereby offers to rent from owner the premises situated in the City of San Luis Obispo, County of San Luis Obispo, State of California, described and commonly known as **1234 Mundane Ave.** subject to the terms, conditions and covenants set out herein, which are a material part of the consideration for this agreement.
2. **Agent(s) of Landlord:** McNamara Realty
3. **Lease Term:** The term of this agreement shall commence on January 1, 2009 at 12:00 noon, and continue until January 31, 2010 at 12:00 noon.
4. **Rent:** The monthly rent for the premises shall be One Thousand Eight Hundred Fifty dollars (**\$1,850.00**), due and payable in advance upon the 1st day of each month by **5:00 pm**, without notice, offset or demand. If rent is not received by the 5th day of the month, Tenant shall pay a late charge of **\$50.00** and for each day thereafter until paid an additional **\$5.00** late charge per day. Tenant shall also pay **\$35.00** service charge for each returned bank check, as well as the above mentioned late charges. Such charges shall be deemed additional rent for such rental month and landlord may deduct such charges from the Tenant's deposits.
5. **Payee of Rent:** McNamara Realty, Inc.
6. **Address of Payee:** 390 Higuera Street, San Luis Obispo, CA 93401.
7. **Security Deposit:** Landlord hereby acknowledges receipt of Security Deposit in the amount of Two Thousand Four Hundred dollars (**\$2,400.00**) which, when combined with all other advanced deposits herein, does not exceed two months' rent for an unfurnished unit or three month's rent for a furnished unit. The breach Security Deposit shall cover the following: of this agreement including nonpayment of rent, damage to the premises caused by Tenant or any person on the premises with Tenant's consent, cleaning of the premises, including carpet cleaning by a licensed professional (Tenant shall provide Landlord with a receipt for services), flea fumigation, if necessary. No portion of this deposit shall be used toward last month's rent without prior written consent of Landlord. Within twenty one (21) days from vacated the premises and surrendering possession of the said premises to Landlord, Landlord shall refund the entire security deposit, or in the case of Co-Tenants, to the last remaining Co-Tenant, or if deductions have been made, a written itemization of all deductions stating the reason therefore and the amount thereof along with the remainder of the Security Deposit, if any. Tenant is liable to Landlord for any cost hereunder in excess of the Security Deposit.

(_____)

8. **Use of Property:**

The premises shall be used exclusively as a private residence for no more than one person and for no other purpose without the prior written consent of Landlord. Occupancy of guest staying more than fourteen (14) days without written consent of Landlord shall constitute a breach of this Agreement. The premises shall be occupied by only the following named **Mary Jones**, tenants agrees not to allow any excessive noise or activity on the premises or commit any other nuisance or act which disturbs or interferes with the peace and quiet of neighbors. Tenant agrees to keep the dwelling unit in a clean and sanitary condition, to keep premises clear of debris, rubbish and unsightly materials, and not to allow the commission of waste upon the premises. Tenant shall not violate any governmental law or ordinance relating to the use of the premises. Tenant shall pay all fines assessed as a result of such violations by Tenant(s) or guest of Tenant(s). Tenant agrees to keep garage closed during the rains and all other times when not in use.

9. **Utilities:**

Tenants shall be responsible for **all utilities and services** and agrees to make payment for same, **except landscape maintenance**, which shall be paid by Landlord. Tenant shall hold Landlord harmless from all cost or expenses from Tenant failure to pay utility bills

10. **Entry and Inspections:**

Landlord may enter upon the premises with consent of Tenant or one (1) day oral notice of any entry for the purpose of making repairs, alterations or additions; installing, repairing, testing or maintaining smoke alarms; or to exhibit the premises to prospective or actual buyers, mortgagees or prospective tenant. Entry shall be made during regular business hours of 8:00 am to 6:00 pm, Monday through Friday, except that if an emergency exists, Landlord may enter without notice. Landlord shall have duplicate or master keys to all locks upon the premises.

11. **Damage to the Premises:**

Tenant(s) shall be liable for the cost of repairs of any damage to the premises caused by Tenant or any invitees of Tenant. Except as provided by law, such repairs shall be made by Tenant at their own expense within ten (10) days after notice of repair by Landlord, or at Landlord's option, caused such repairs to be made at the Tenant's expense. The cost of such repairs may, at the option of Landlord, be deducted by Landlord from any security deposit made by Tenant; and Tenant agrees to replace such expended portion of security deposit within five (5) days from receipt of notice by Landlord. All repairs under this section shall be completed in a reasonable amount of time, for a reasonable cost and to the satisfaction of Landlord.

12. **Fire or Casualty:**

If the premises shall be damaged or destroyed by fire or other causes as to render them untenable, then either party shall have the right to terminate this lease as of the date on which such damage or destruction occur, by written notice to the other party, to be given within fifteen (15) days after occurrence of such damage; except that should such damage or destruction occur as the result of the abuse or negligence of Tenant or any invitees of Tenant, then Landlord only shall have the right to termination. Should this right be exercised by either Landlord or Tenant, then rent for the current month shall be prorated between the parties as of the date the damage occurred and any prepaid rent and unused security deposit shall be refunded to Tenant. If Landlord does not elect to cancel and terminate this lease as herein provided, Landlord shall repair and restore the premises with reasonable promptness.

13. **Alterations or Signs:**

Tenant shall not make any alterations in or additions to the premises without Landlord's prior written consent in each and every instance. No signs, lettering, picture, notice or advertisement shall be placed on any outside window or in a position to be visible from outside the building without Landlord's prior written consent.

14. **Multiple Occupancy:**

Tenant acknowledges that this Agreement is between the Landlord and each Tenant executing this Agreement jointly and severally, whether or not in actual possession of the premises. In the event of default by any one, each and every remaining Tenant shall be responsible for payment of rent and all other provisions of this Agreement.

15. **Holdover:**

If Tenant holds over at the expiration of the termination date of the tenancy herein, the following actions must occur, Landlord must give permission to Tenant to holdover and Landlord accepts rental payment, then this Agreement shall remain in full force and effect except that the term of this tenancy shall become month to month at the monthly rental then in effect, unless otherwise agreed by the parties in writing. Should Tenant holdover property with or without Landlord permission, Tenant shall pay Landlord pro-rated rent for each day held over.

16. **Keys/Locks:**

Tenant shall pay \$25.00 for each replacement house or mail key. Any replacement fee(s) for other lost keys may vary depending on the type of key and shall be at Tenant expense. If Tenant is locked out of premises after normal business hours and requests an emergency maintenance call to be let in by Property Manager, Tenant agrees to pay a lock-out fee of \$50.00. All original keys and key copies must be returned to Property Manager upon termination of the occupancy. If all keys are not received in our office, possession is not returned on lease expiration date or date tenancy ends and management deems the unit vacated, Tenant shall be also be responsible for all costs related to re-keying entire unit (minimum \$175.00 for one set of locks and \$250.00 for two sets). Price shall be dependent upon the total number of locks needed to be changed at the property.

16. **Subletting or Assignment:**

Tenant shall not, without Landlord's prior written consent to assign or convey this lease or any interest under it; sublet the premises or any part thereof; permit the occupancy of the premises or any part thereof by anyone other than Tenant. If Tenant desires to assign the lease or enter into any sublease of the premises, Tenant shall deliver written notice thereof to Landlord at least thirty (30) days prior to the effective date of the proposed assignment, or the proposed commencement date of the term of the proposed sublease. In making its determination as whether to consent to any proposed assignment or sublease, Landlord will consider the credit-worthiness of the proposed assignee or subtenant. Subject to the foregoing, Landlord's consent to any assignment or subletting shall not unreasonably be withheld; Tenant will be financially responsible until possession is delivered to assignee or subtenant. Tenant will be subject to charges by Landlord in connection with a new lease document Tenant will be subject to charges (\$200 roommate change or \$500 early termination fee both with approved applicant(s) by McNamara Realty) by Landlord in connection with a new lease document. No permitted assignment shall be effective and no permitted sublease shall commence unless and until any default by Tenant hereunder shall have been cured.

17. **Defaults:**

Tenant further agrees that any one or more of the following events shall be considered events of default as said term is used herein, that is to say, if: 1.) Tenant shall abandon the premises or vacate the same during the term hereof; or 2.) Tenant shall default in any payments of rent required to be made by Tenant hereunder when due as herein provided and such default shall continue for three (3) days after notice thereof in writing to Tenant; or 3.) Tenant shall repeatedly be late in the payment of rent required to be paid hereunder or shall repeatedly default in the keeping, observing, or performing of any other covenants or agreements herein contained to be kept, observed or performed by Tenant.

18. Remedies for Defaults:

Upon the occurrence of any one or more events of default, Landlord, at his option may terminate all rights of Tenant thereunder, unless Tenant, within said time shall cure such default. If Tenant abandons or vacates the premises while in default, Landlord may re-enter the premises to remove fixtures or chattels therefrom, and Landlord may consider the fixtures or chattels therefrom abandoned, and may dispose or discard of the same in any manner allowed by the law and shall not be liable for any damages resulting therefrom; all chattels on the premises shall be subject to a lien for the benefit of Landlord securing the payment of all sums due hereunder, to the maximum extent allowed by the law; upon happenings of any one or more of the above-mentioned events of default, Landlord may elect to continue the lease in effect and enforce all his rights and remedies hereunder, including the right to recover the rental payments as it becomes due or at any time, terminate all of Tenant's rights hereunder and recover from Tenant all damages he may incur by reason of the breach of the lease, including the cost of recovering the premise, and including the worth at the time of such termination, or at the time of an award if suit be instituted to enforce this provision, of the amount by which the unpaid rent for the balance of the term exceeds the amount of such rental loss which the Tenant proves could be reasonably avoided.

19. Physical Possession:

If Landlord is unable to deliver possession of the premises at the commencement hereof, Landlord shall not be liable for any damage caused thereby, nor shall this agreement be void or voidable, but Tenant shall not be liable for any rent until possession is delivered. Tenant may terminate this agreement if possession is not delivered within five (5) days of the commencement of the term hereof.

20. Legal Fees:

In the event that Landlord is required to employ an attorney to enforce the terms, covenants and conditions of this Agreement, or to recover possession of the premises from Tenant, Tenant shall pay to Landlord reasonable attorney's fee whether or not a legal action is filed or a judgement is obtained. Furthermore, Landlord shall be entitled to Attorney's fees, cost and expenses incurred in the preparation and service of Notices of Default and consultation in connection therewith, whether or not legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

21. Notices:

Any notices which either may give or is required to give, should be in writing and delivered to the parties as follows:
To Tenant at the leased premises.
To Landlord by service to:
McNamara Realty, Inc., 390 Higuera Street,
San Luis Obispo, CA 93401

22. Rules and Regulations:

Tenant agrees to comply with all rules and regulations which are applicable to all Tenants and are existence at the time of execution of this Lease, (parking rules are part of the rules & regulations). Tenant shall also comply with any such rules and regulations adopted from time to time by Landlord as long as they don't create a substantial change in the provisions of this Lease.

23. Smoke Detector:

The premises are equipped with one (1) smoke detector. The Tenant acknowledges that the smoke detector was tested and its operation explained by Landlord to the Tenant at the time of initial occupancy, and the smoke detector was working properly at that time; Tenant agrees to inspect and test the smoke detector monthly or as needed; to replace the battery as needed; to notify the Landlord prompt in writing of any defects or malfunctions; and to not remove, dismantle or otherwise render the smoke detector inoperable.

24. **Pets:** No pets, including any animal, bird, fowl or reptile, and no aquariums in excess of ten (10) gallons, are allowed on the premise without the prior written consent of Landlord.
25. **Liquid Furniture:** No liquid furniture of any kind is allowed on the premises without the prior written consent of Landlord, consent shall not unreasonably be withheld, Tenant shall provide Landlord with a certificate of insurance within fourteen (14) days from commencement of this Agreement
26. **Noise Abatement:** Resident is aware of the City of San Luis Obispo's nuisance abatement ordinance and agrees to: (1) abide by same (2) reimburse Owner for any fines assessed against the Owner in regard to said ordinance. Chapter 9.12 of the City Municipal Code prohibits unreasonable noise, loud parties, yelling, stereos, etc. This ordinance shall be followed at all times. Residents to pay \$400 administrative fee for any D.A.C. Card and/or any Citations received from the City of San Luis Obispo. Tenants shall pay administrative fees within ten (10) days of notice by Landlord or his agents. (____)
27. **Lead-Base Paint Disclosure:** Any residential property built prior to 1978 is notified that such property may present exposure to lead from paint, paint chips and dust. Lead can pose health hazards if not taken care of properly. Young children may be placed at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Landlord is required by law to disclose any known lead-based paint or lead-based hazards present on or within the property. Therefore, the Landlord discloses no knowledge of lead-based paint or lead-based hazards present at the subject property.
28. **Ordinary Wear and Tear:** Landlord discloses to Tenant that some things simply wear out in the normal course of use. For example, carpets, garbage disposals or draperies wear out. We define this as "wear and tear." Landlord and Tenant understand that some things are beyond "ordinary wear and tear." Broken windows; stains in carpets; dirty carpets; stained, dirty, or torn draperies; damaged blinds; dirty or greasy appliances; dirty rooms; dirty or scratched or tobacco stained walls/woodwork; dirty, stained, or scratched floors; excessive nail holes or other holes in walls; are not the result of "ordinary wear and tear." When a Tenant rents a freshly painted apartment, it is expected with ordinary care that the paint should last three years. If a Tenant moves in less than one year and painting is required, the outgoing Tenant will be charged sixty-six percent, 66 % of the cost of the painting. If a Tenant moves after the first year but less than two years and painting is required, the outgoing Tenant will be charged thirty-three percent, 33 % of the cost of the painting. If the Tenant remains more than two years, Landlord will not charge for painting unless there is clear evidence of Tenant abuse in the unit. Likewise, if at the termination of tenancy, the unit is left damaged or dirty beyond the ordinary wear and tear defined in this paragraph, the Tenant will be charged up to a maximum of three (3) days rent for the time required for cleaning and repairs, plus the cost of the cleaning and repairs.
29. **Data Base Disclosure:** The California Department of Justice, sheriff's departments, police departments serving jurisdictions of 200,000 or more, and many other local law enforcement authorities maintain for public access a data base regarding registered sex offenders of the locations of persons required to register pursuant to paragraph (1) of subdivision (a) of section 290.4 of the Penal Code. The database is updated on a quarterly basis and a source of information about the presence of these individuals in any neighborhood. The department of

(____)

Justice also maintains a Sex Offender Identification Line through which inquiries about individuals may be made. This is a "900" telephone service. Callers must have specific information about individuals they are checking. Information regarding neighborhoods is not available through the "900" telephone service.

30. Waiver:

All personal property or chattel belonging to Tenant or any occupant of the premises that is in or any part of the property shall be there at the risk of Tenant or of such other person only, and Landlord shall not be liable for any damages thereto or for the theft or misappropriation thereof. Tenant waives all claims it may have against Landlord for damage to property sustained by Tenant or any persons claiming through Tenant or by an occupant on the premises, or by any other person, resulting from any part of the property or resulting from any accident on or about the property or resulting directly or indirectly from any act or neglect of any Tenant or occupant of any part of the property or of any other person, including Landlord to the extent permitted by law. This shall include, but not by limitation, damage caused by water, frost, steam, excessive heat or cold, sewage, gas, odors or noise, or caused by bursting or leaking pipes or plumbing fixtures, and shall apply equally whether any such damage results from the act or neglect of Tenant or of other Tenants, or occupants of any part of the property, or of any other person, including Landlord to the extent permitted by law. Landlord's insurance does not cover Tenant's personal property, Tenant is encouraged to obtain renter's insurance.

31. Indemnity:

Tenant agrees to protect, indemnify and save Landlord harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, cost and expenses imposed upon or incurred by or asserted against Landlord by reason of (a) any accident, injury to or death of persons or loss of or damage to property occurring on or about the premises and alleged to be due to any act or failure to act or any negligence or default under this Lease by Tenant; (b) any failure on the part of Tenant to perform or comply with any of the terms of this Lease.

32. Severability:

If any terms or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and conditions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

33. Landlord Means Owner:

The term "Landlord" as use in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the premise.

34. Time:

Time is of essence of this Lease, and all provisions relating thereto shall be strictly construed.

35. Modification of Lease:

All negotiations, considerations, representations and understanding between Landlord and Tenant are incorporated herein. This Lease may be modified or altered only by agreement in writing between Landlord and Tenant.

36. Execution of Lease by Landlord:

Submission of this instrument for examination or signature by Tenant does not constitute a reservation of or option for the Lease. This instrument becomes effective as a Lease upon execution and delivery by both Landlord and Tenant.

37. Miscellaneous:

For purposes of interpretation of this Lease, the masculine shall include the feminine and the singular shall include the plural.

