

LEASE AGREEMENT

THIS LEASE ("Lease") is made effective _____, 2016 by and between OMNINET PROPERTIES MANCHESTER CENTER, LLC, a Delaware limited liability company ("Lessor"), and the CITY OF FRESNO, a municipal corporation ("Lessee").

1. LEASED PREMISES. The "Leased Premises" consists of approximately 2,165 square feet, in a location to be reasonably designated by Lessor and acceptable to Lessee, situated within a 640,858 square foot shopping center (the "Property") located at 1901 E. Shields, Fresno, California 93726. Lessor and Lessee shall confirm the square footage and location of the Leased Premises in the Commencement Letter (defined below).

2. AUTHORITY. Lessor represents and warrants that it is the owner of the Property, or has the legal interest and authority, to lease the Leased Premises to Lessee.

3. TERM. Lessor leases to Lessee the Leased Premises for a twelve month term ("Term"), commencing on the earlier of (i) the date of substantial completion to the satisfaction of the Lessee of the Tenant Improvements (as set forth in Section 7 below) or (ii) the date that Lessee commences business from the Leased Premises ("Commencement Date"), and ending the date immediately preceding the twelfth monthly anniversary of the Commencement Date ("Expiration Date"); provided, however, if the Commencement Date is not the first (1st) day of a month, then the Expiration Date shall be the last day of the twelfth full calendar month after the month in which the Commencement Date falls.

Upon the substantial completion of the Tenant Improvements, Lessee shall execute and deliver to Lessor a Commencement Letter ("Commencement Letter") substantially in the form attached hereto as Exhibit "A" which will specify, among other things, the Commencement Date, the Expiration Date, the location and square footage of the Leased Premises and Lessee's proportionate share of operating expenses for the Property as set forth below.

4. RENT. Lessor shall pay \$2.00 per square foot base rent, plus its proportionate share of operating expenses for the Property ("Rent"), as set forth below, for a total monthly payment of \$5,260.95 per month. All monthly Rent payments shall be payable in advance, on or before the first day of each calendar month occurring during the Term, at the Lessor's address as shown on the signature page of this Lease.

| Expense | Estimated Rate per Square Foot of the Leased Premises per Month |
|------------|---|
| CAM | \$0.25 |
| TAX | \$0.03 |
| INSURANCE | \$0.02 |
| HVAC | \$0.04 |
| JANITORIAL | \$0.09 |

5. UTILITIES. Lessee is responsible for the cost of all utilities including all electricity, gas, water, telephone, cable and data charges supplied to the Leased Premises during the Term. HVAC shall be provided by Lessor to the Leased Premises 8:00 a.m., until 8:00 p.m., Monday through Saturday and 8:00 a.m., until 6:00 p.m., on Sunday. Lessee shall pay to Lessor, as part of Rent, its proportionate share of HVAC and electricity consumed at the Leased Premises, as reasonably determined by Lessor via an engineer's estimate.

6. USE. Lessee shall use the Leased Premises only for the purposes of office and administrative space by Fresno Area Express and Utility Billing and Collection Departments.

7. TENANT IMPROVEMENTS. The Tenant Improvements shall consist of those improvements to be reasonably agreed upon by Lessor and Lessee, Lessee shall contribute towards the actual costs of the Tenant Improvements an amount not to exceed \$50,000 (the "Allowance"). Lessor shall use its commercially reasonable efforts to complete the Tenant Improvements by December 31, 2016. Lessor agrees it will not terminate Lessee's tenancy at 1901 E. Shields, Suite B114, prior to the Commencement Date of this Lease. Lessor shall construct improvements per a mutually agreeable space plan using Lessor's building standards and materials. Lessor shall comply with all applicable laws including applicable laws related to ADA accessibility and prevailing wage. Upon completion of the Tenant Improvements, Lessor shall provide Lessee an invoice for the costs of the Tenant Improvements, which Lessee shall pay within thirty days of receipt.

Notwithstanding any contrary provision contained in this Lease, in no event shall the Tenant Improvements include Tenant's personal property including, without limitation, Tenant's furniture, fixtures, equipment, lockers, cubicles and other furnishings. Lessor shall not provide any communication or data cabling beyond telephone and CAT 6 cabling.

Following Lessor's construction of the Tenant Improvements, Lessee shall make no alterations to the Leased Premises without Lessor's prior written consent. Lessor shall allow Lessee access to install conduit and/or fiber cable for Lessee's data use.

8. PARKING. Lessee shall have access to parking spaces in the parking lots on the Property, on a first come first serve basis, at no cost.

9. MAINTENANCE. All exterior, interior and roof maintenance, including, but not limited to leak damage, if any, shall be the responsibility of the Lessor, unless such damage was caused by the wrongful acts of Lessee or its employees, agents or invitees. The Lessor is also responsible for the structural condition of the Leased Premises and the condition of the parking surfaces and agrees that the Leased Premises will always be maintained in the good working order and condition. Lessor will also maintain all fixtures, doors, and gates in good working condition. Lessee shall repair and maintain the Leased Premises in good working condition, except for such portions of the Leased Premises which are Lessor's responsibility as described above.

10. MAINTENANCE - NON PERFORMANCE. In the event the Lessor neglects, fails or refuses to maintain the portion of the Leased Premises which Lessor is obligated to maintain as afore stated within thirty (30) days after written notice by Lessee, Lessee may, at Lessee's sole option, cure any such default by performance of any act, including payment of money. Lessor shall reimburse Lessee the reasonable costs incurred by Lessee in performing the obligation Lessor failed to perform, expressly excluding any administrative fee, mark-up or profit. Notwithstanding the foregoing, Lessee shall not

exercise the right to perform Lessor's obligations as long as Lessor has commenced the maintenance of the Leased Premises and is diligently pursuing such maintenance to completion. If the repair to be performed by Lessee relates to the roof of the Leased Premises, then Lessee shall only use Lessor's designated roof contractor. Lessee shall perform any such work using only licensed contractors and otherwise in a manner so as to not void Lessor's roof warranty.

11. **LIABILITY.** Lessor, its officers, managers, employees, agents and authorized volunteers and their affiliates, successor and assigns shall be free from any and all liabilities, losses, costs, damages, and claims of any kind for loss or damage to property of Lessee or any other person, including, without limitation, any invitee or guest of Lessee, or for any injury to or death of any person, arising out of or resulting from: (1) Lessee's use and occupancy of the Leased Premises, or any work, activity or other things allowed or suffered by Lessee to be done in, on or about the Leased Premises; (2) any breach or default by Lessee of any of Lessee's obligations under this Lease; or (3) any act or omission of Lessee, its officers, officials, employees, agents, invitees or contractors.

Except to the extent arising out of or resulting from the negligence or willful misconduct of Lessee or any of Lessee's contractors, agents, employees or guests, Lessee, its officers, officials, employees, agents and authorized volunteers shall be free from any and all liability and claims of any kind for loss or damage to property of Lessor or any other person, or for any injury to or death of any person, arising out of: (1) Lessor or any other lessee's use and occupancy of the common areas of the Property, maintenance or repair of the common areas of the Property, or any work, activity or other things allowed or suffered by Lessor or any other Lessee to be done in, on or about the common areas of the Property; (2) any breach or default by Lessor of any of Lessor's obligations under this Lease; (3) any negligent act or omission of Lessor, its partners, officers, directors, employees, agents, invitees or contractors and any other lessee, its officers, directors, employees, agents, employees, invitees or contractors; or (4) structural failures of walls, roof and floor.

The parties acknowledge that as between Lessor and Lessee, each is responsible for the negligence of its own officers, officials, partners, directors, employees, agents, invitees and contractors.

Notwithstanding any contrary provision contained herein, neither party shall be liable to the other for incident, exemplary or consequential damages, however occurring, including, without limitation, loss of income, loss of use, loss of opportunity or loss of goodwill, loss of data, or loss due to interruption of service. No officer, director, manager, shareholder, contractor, agent or employee shall be personally liable for Lessor's obligations under this Lease.

This Section 11 shall survive termination or expiration of this Lease.

12. **SURRENDER OF POSSESSION.** It is mutually understood that upon any termination of the Lease, Lessee will surrender the Leased Premises to Lessor in as good order and condition as when received, except for reasonable wear and tear and any maintenance or repair that is the express obligation of Lessor pursuant to any of the provisions hereof. Any needed repairs will be completed within 15 days of termination, subject to extension as may be reasonably necessary to complete such work. If any needed repairs that are the express obligation of Lessee hereunder are not completed within 15 days, or such other reasonable period if cannot be completed within such

duration, the Lessor may take action needed to make said repairs and Lessee agrees to pay the cost for those repairs within 30 days of receipt of invoice by Lessor.

13. **FIXTURES.** It is further mutually understood and agreed that any equipment fixtures or apparatus installed in or on the Leased Premises by the Lessee, as permitted herein, shall continue to be the property of Lessee, and shall be removed by the Lessee without recourse at the expiration of this Lease; provided, however, Lessee shall, at its cost, repair any damage to the Leased Premises or Property caused by such removal. Said fixtures include communications and computer equipment, security systems, office furniture, shelving and cabinets. Lessee shall be solely responsible for all maintenance and repairs of its furniture, fixtures, shelving, security systems, cabinets and computer and communications equipment. Lessee is solely responsible for the installation and cost of all IT equipment, cabling, phone/data, security system, and all furniture.

14. **RIGHT OF ENTRY.** Lessor or its representative, upon reasonable advance notice to Lessee (except in the event of an emergency, in which case no notice shall be required) and subject to Lessee's right to accompany Lessor, may enter the Leased Premises during business hours at any time during the term of this Lease to protect, inspect, exercise or investigate any rights of Lessor herein reserved. Subject to the foregoing, Lessor may enter the Leased Premises for the purpose of making any alteration, repair or improvement to said building, or the Leased Premises, when it deems convenient for the maintenance or preservation thereof provided always that the normal business of Lessee or its invitees shall not be unnecessarily inconvenienced.

15. **TERMINATION BY LESSEE FOR NON-APPROPRIATION.** The Lessee obligation to pay the rental payments and any other payment obligations under this Lease shall constitute a current expense to Lessee for Lessee's beneficial use and occupancy of the Leased Premises. The rental payments shall be payable only from current funds, budgeted and appropriated, on deposit in a reserve fund, or otherwise legally available for the rental payments or other Leased Premises costs. This Lease does not create an immediate debt for aggregate rental payments, and is not a pledge of the City's full faith and credit.

During its annual budgeting process, Lessee shall consider, and will use best efforts to appropriate funding to meet its rental payments, maintenance, and other estimated Leased Premises costs under this Lease for the fiscal year under consideration.

In the sole event of non-appropriation relating to this Lease, Lessee shall have the right to terminate this Lease at the end of any fiscal year of Lessee, in the manner and subject to the terms specified in this paragraph. Lessee shall give Lessor written notice of such termination not less than thirty days prior to the proposed date of termination. For purposes of this paragraph, "fiscal year" shall mean the twelve month fiscal period of Lessee which commences on July 1 in every year and ends on the following June 30. For purposes of this paragraph, "non-appropriation" shall mean the failure of Lessee or Lessee's governing body to appropriate money for any fiscal year of Lessee sufficient for the continued performance of this Lease by Lessee.

16. **ASSIGNMENT.** Lessee shall not assign this Lease without Lessor's prior written consent.

17. **QUIET CONDUCT AND POSSESSION.** So long as Lessee is not in default under this Lease, Lessor shall not negligently or intentionally commit, or suffer to be committed, any nuisance, or negligently or intentionally do any other act or thing which may or does disturb the quiet enjoyment of Lessee of its occupancy of the Leased Premises.

18. CONDEMNATION. In the event that at any time during the Term of this Lease, the Leased Premises or any part thereof shall be taken by eminent domain or condemnation by any public or quasi public authority (or in the event a voluntary conveyance is made by Lessor to such public or quasi public authority by reason of or by threat or imminence of the exercise of said power of eminent domain or condemnation by said authority), Lessee's right of possession shall terminate as of the date of taking and rent and other charges provided for in this Lease shall be adjusted as of said date. The entire damage award of the condemnation proceedings shall be paid to Lessor.

19. DAMAGE OR DESTRUCTION. If the Leased Premises shall be damaged by fire, the elements, unavoidable accident, or other casualty, but is not thereby rendered untenable in whole or in part, Lessor shall, at Lessor's own expense and within thirty (30) days of Lessee's written notification to Lessor of the damage (or as soon as reasonably practicable thereafter), cause such damage to be repaired, but only to the extent on insurance proceeds received by Lessor, and the Rent shall not be abated. Repairs shall be done in a manner acceptable to Lessee such that Lessee has full use of the Tenant Improvements. If the repairs are insufficient for full use of the Tenant Improvements, Lessee may at its election terminate this Lease.

If by reason of such occurrence, the Leased Premises shall be rendered untenable only in part, Lessor shall, at Lessor's own expense and within thirty (30) days of Lessee's written notification of Lessor of the damage (or as soon as reasonably practicable thereafter), commence to cause such damage to be repaired, but only to the extent of insurance proceeds received by Lessor, and the Rent meanwhile shall be abated proportionately as to the portion of the Leased Premises rendered untenable from the time of such occurrence until such repairs are completed; provided, however, Lessor shall be obligated to perform such repairs only if it is repairing the spaces of similarly affected tenants (and if Lessor has elected to not repair the space of similarly affected tenants, this Lease shall terminate upon written notice from Lessor, retroactive to the date of the damage). Repairs shall be done in a manner acceptable to Lessee such that Lessee has full use of the Tenant Improvements. If the repairs are insufficient for full use of the Tenant Improvements, Lessee may at its election terminate this Lease.

If the Leased Premises shall be rendered wholly untenable by reason of such occurrence, Lessor shall, at Lessor's cost, within sixty (60) days after Lessee's written notice of the damage, cause such damage to be repaired, but only to the extent of insurance proceeds received, and the Rent shall abate completely from the date of the damage until the repairs are completed; provided, however, if Lessor determines that the repairs cannot be complete within sixty (60) days after the date of the damage, then, then either party shall have the right, to be exercised by notice in writing to the other within thirty (30) days from and after the date of the damage and destruction, to elect to terminate this Lease, and in such event, this Lease and the tenancy hereby created hereby shall cease as of the date of such notice, and the Rent shall be adjusted as of such date.

20. TAXES AND INSURANCE. Lessor will pay all real estate taxes, bonds and assessments when due on the Leased Premises and will maintain property and hazard insurance on the Leased Premises. Lessee, its officials, officers, employees, agents or authorized volunteers shall not be liable to Lessor or its insurer for any damage caused by fire or any of the risks insured against under the property and hazard insurance, unless such fire or other damage is caused by Lessee, its officials, officers, employees, agents, or authorized volunteers. Nothing herein is intended to require Lessee to maintain property and hazard insurance covering the Leased Premises for whatever cause;

provided, however, Lessee shall maintain a commercial general liability insurance (either through a third party or a self-insurance program) providing coverage of not less than \$2,000,000 per occurrence and \$3,000,000 in the annual aggregate. Lessee shall pay its proportionate share of Lessor's insurance premiums as Rent, upon the terms described in Section 4 above. Lessee shall maintain, at Lessee's sole cost, a policy of standard fire, extended coverage and special extended coverage insurance (all risks), including a vandalism and malicious mischief endorsement, sprinkler leakage coverage where sprinklers are provided in an amount equal to the full replacement value new without deduction for depreciation of all Tenant Improvements and trade fixtures, furniture, equipment and other personal property installed by or at the expense of Lessee. Notwithstanding the foregoing, if Lessee does not obtain sprinkler leakage coverage, then Lessee shall be deemed to have self-insured such risk (and, accordingly, such risk shall be treated as if Lessee actually carried a policy containing sprinkler leakage coverage).

21. DEFAULT. If either party defaults in the performance of any condition or covenant in this Lease, the other party, at its option, may terminate this Lease, but only if the defaulting party fails to rectify said default within thirty (30) days (except for nonpayment of rent, which shall be ten (10) days) after written notice thereof is served upon the defaulting party by the other party. In the event, however, that any default (except nonpayment of rent) complained of hereunder is of such nature that the same cannot be rectified in such thirty (30) day period as aforesaid, then such default shall be deemed to be rectified if the defaulting party shall have commenced the compliance of the provisions hereof breached by it and in the performance of which it is claimed to be in default within such thirty (30) day period and shall with all diligence prosecute work or perform the particular provisions until the same shall have been fully rectified or performed. Any amount due from Lessee to Lessor hereunder which is not paid when due shall bear interest at the lower of ten percent (10%) per annum or the maximum lawful rate of interest from the due date until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Lessee under this Lease. In addition to such interest: (i) if any rent or operating expense payment is not paid on or before the fifth (5th) day of the calendar month for which the same is due, a late charge equal to ten percent (10%) of the amount overdue or \$100, whichever is greater, shall be immediately due and owing and shall accrue for each calendar month or part thereof until such rental, including the late charge, is paid in full, which late charge Lessee hereby agrees is a reasonable estimate of the damages Lessor shall suffer as a result of Lessee's late payment and (ii) an additional charge of \$25 shall be assessed for any check given to Lessor by or on behalf of Lessee which is not honored by the drawee thereof; which damages include Lessor's additional administrative and other costs associated with such late payment and unsatisfied checks and the parties agree that it would be impracticable or extremely difficult to fix Lessor's actual damage in such event.

22. INTENTIONALLY OMITTED.

23. MISCELLANEOUS.

23.1 NOTICES. Notices hereunder to the respective parties shall be deemed delivered if given in writing, mailed with postage prepaid, return receipt requested, addressed to the respective party at the address given on the signature page of this Lease or at such other address as the parties may, from time to time, designate by written notice.

23.2 ATTORNEY FEES. In the event of a claim by either party for breach of, or failure to perform, or any inaccuracy in, any of the representations, warranties, covenants, or agreements contained in this Lease, then in any action or proceeding the prevailing

party shall be entitled to be reimbursed for all costs, fees, and expenses incurred in connection with prosecuting or defending such claim, including reasonable attorneys' fees.

23.3 OTHER AGREEMENTS SUPERSEDED WAIVER AND MODIFICATION. This Lease constitutes the entire agreement between the parties pertaining to the subject matter contained in and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Lease shall be binding unless executed in writing by all of the parties. No waiver of any condition or provision shall be enforceable unless made in writing. Nothing in this Lease shall be construed to give any person or entity other than the parties hereto any rights or remedies.

23.4 GOVERNING LAW AND VENUE. This Lease shall be construed and interpreted in accordance with and governed and enforced in all respects by the laws of the State of California, except that this Lease shall be given a fair and reasonable construction in accordance with the intention of the parties and without regard to, or aid of, Section 1654 of the California Civil Code. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Lease and rights and duties hereunder shall be Fresno County, California.

23.5 HEADINGS. The article and section headings throughout this Lease are provided for convenience only and the words contained therein shall in no way be held to expand, amplify, modify, or aid in the interpretation or construction thereof.

23.6 SUCCESSORS AND ASSIGNS. This Lease shall inure to the benefit of and be binding upon the heirs, executors, administrators, and successors of the parties hereto, but no right or liability or obligation arising hereunder may be assigned by Lessee.

23.7 COMPLIANCE WITH LAWS. As to the Leased Premises, Lessee shall, at Lessee's sole cost, comply with, and shall require compliance by all contractors and subcontractors, with all applicable local, state and federal laws and regulations applicable to Lessee's use of the Leased Premises and any alterations performed by or on behalf of Lessee. Lessor shall comply with all applicable local, state and federal laws and regulations applicable to Lessor's use of the common areas of the Property and repair work performed by Lessor at the Property.

23.8 SUBORDINATION, NONDISTURBANCE AND ATTORNMENT. This Lease is subject and subordinate to all ground or underlying leases, mortgages and deeds of trust which affect the Property. If any future mortgagee or beneficiary requires this Lease be subordinate to its lien, this Lease shall be subordinate to that lien provided Lessor and any mortgagee or beneficiary enters into a Subordination, Nondisturbance and Attornment Agreement with Lessee.

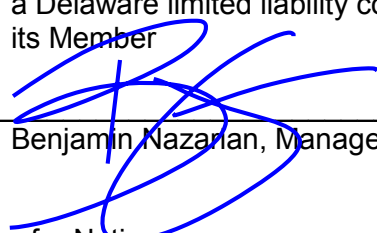
23.9 SEVERABILITY. In the event any of the provisions of this Lease shall be declared by a court to be void or unenforceable, then such provision shall be severed from this Lease without affecting the validity and enforceability of any of the other provisions hereof, and the parties shall negotiate in good faith to replace such unenforceable or void provisions with a similar clause to achieve to the extent permitted under law, the purpose and intent of the provisions declared void and unenforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LESSOR:
Omninet Properties Manchester Center, LLC

LESSEE:
City of Fresno,
a municipal corporation

By: California Mall Ventures, LLC,
a Delaware limited liability company,
its Member

By: 
Benjamin Nazarian, Manager

By: _____
Bruce Rudd,
City Manager

Address for Notices:

9420 Wilshire Boulevard, Suite 400
Beverly Hills, CA 90210
Attention: Benjamin Nazarian

Address For Lessee:

2600 Fresno Street
Fresno, CA 93721
Attention: City Manager

With a copy to:

9420 Wilshire Blvd., Suite 400
Beverly Hills, CA 90212
Attention: Andrea Costantini

Address for Payment of Rent:

Omninet Property Manchester Center, LLC
1901 E. Shields Avenue
Suite 203
Fresno, California 93726
Attention: Controller

ATTEST:

Yvonne Spence, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:

Douglas T. Sloan
City Attorney

By: _____

Exhibit "A"

Commencement Letter

TO: City of Fresno

DATE:

RE: Lease Agreement dated _____, 2016 (the "Lease"), between OMNINET PROPERTIES MANCHESTER CENTER, LLC, a Delaware limited liability company ("Lessor"), and the CITY OF FRESNO, a municipal corporation ("Lessee"), concerning Suite _____, located at 1901 E. Shields, Fresno, California, 93726 (the "Property").

Ladies and Gentlemen:

In accordance with the Lease, Lessor wishes to advise and/or confirm the following:

1. That the Leased Premises is outlined and attached hereto as Exhibit A and is located on the _____ floor of the Property.

2. The Leased Premises have been accepted herewith by the Lessee as being substantially complete in accordance with the Lease and that there is no deficiency in construction in any of the Tenant Improvements (as defined in Section 7 of the Lease).

3. That the Lessee has taken possession of the Leased Premises and acknowledges that under the provisions of the Lease the term of said Lease shall commence as of _____ for a term of approximately twelve (12) months ending on _____.

4. That in accordance with the Lease, Lessee shall begin the payment of its proportionate share of operating expenses, on _____.

5. If the Commencement Date of the Lease is other than the first day of the month, the first billing will contain a prorata adjustment. Each billing thereafter shall be for the full amount of the monthly installment as provided for in said Lease.

6. Rent is due and payable in advance on the first day of each and every month during the Term of said Lease. Your rent checks should be made payable to Omninet Properties Manchester Center, LLC at 1901 E. Shields Avenue, Suite 203, Fresno, CA 93726, Attn: Controller.

7. The exact number of rentable square feet within the Leased Premises is _____ square feet.

8. Lessee's proportionate share, as adjusted based upon the exact number of rentable square feet within the Leased Premises is _____%.

AGREED AND ACCEPTED:

"TENANT"

City of Fresno
A municipal corporation

By: _____
Name: _____

Title: _____

KBD:ns [72404ns/kbd]

Document comparison by Workshare Professional on Thursday, October 13, 2016
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| Insertion | |
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| Format changed | 0 |
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