Regular Council Meeting

August 14, 2025

FRESNO CITY COUNCIL

City of FRESNO

Supplement Packet

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ITEM(S)

2-G (ID 25-1056)
Actions pertaining to a Lease Agreement between the City of Fresno and River Park Properties III, for real property located at 2314 Mariposa Street, Fresno, CA 93721 for the Police Department as a new Headquarters (Council District 3):

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement: Lease Agreement

Supplemental Information:
Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.
Americans with Disabilities Act (ADA):
The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

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SINGLE-TENANT LEASE (TRIPLE NET)

LANDLORD:

RIVER PARK PROPERTIES III,
a California limited partnership

TENANT:

CITY OF FRESNO,
a California municipal corporation

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EXHIBIT “C” Sample Form Of Notice Of Lease Term Dates
EXHIBIT “D” Environmental Reports
EXHIBIT “E” Sample Form Of Tenant Estoppel Certificate
EXHIBIT “F” Self-Dealing Transaction Disclosure Form
EXHIBIT “G” Memorandum of Lease
EXHIBIT “H” Tenant Improvement Plans

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SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS

This SUMMARY OF BASIC LEASE INFORMATION AND DEFINITIONS ("**Summary**") is hereby incorporated into and made a part of the attached Single-Tenant Lease which pertains to the Premises described in Section 1.3 below. All references in the Lease to the "**Lease**" shall include this Summary. All references in the Lease to any term defined in this Summary shall have the meaning set forth in this Summary for such term. Any initially capitalized terms used in this Summary and any initially capitalized terms in the Lease which are not otherwise defined in this Summary shall have the meaning given to such terms in the Lease.

1.1 **Landlord's Address:**

River Park Properties III
c/o Lance-Kashian & Company
255 East River Park Circle, Suite 120
Fresno, California 93720
Attention: Lease Administrator
Telephone: (559) 438-4800
Email : syoung@lance-kashian.com

1.2 **Tenant's Address:**

City of Fresno
Fresno Police Department
2600 Fresno Street
Fresno, CA 93721-3600
Attention: Georgeanne A. White
City Manager
Email:_Georgeanne.White@fresno.gov
Telephone: (559) 621-7795

with a copy to:

Brian Barr
General Services Department
2101 G Street, Bldg. A
Fresno, CA 93706
Email: Brian.Barr@fresno.gov
Telephone: (559) 621-1418

1.3 **Premises**: The real property located at 2314 Mariposa Street, in the City of Fresno, County of Fresno, State of California, as more particularly described in Exhibit "A" attached hereto (the "**Property**"), together with all buildings, improvements and facilities, now or subsequently located on the Property from time to time, including, without limitation, the three (3)-story office building containing approximately 65,690 rentable square feet including the basement area and parking level (the "**Building**") more particularly described below, which Building will be improved by Tenant with certain Tenant improvements ("Improvements" or "Tenant Improvements").

Basement	6,925 GSF
Garage:	15,145 GSF
Floor 1:	14,540 GSF
Floor 2:	14,540 GSF
Floor 3:	14,540 GSF
Total:	65,690 GSF

1.4 **Commencement Date**: The Commencement Date shall occur on August 15, 2025 following Fresno City Council approval and full execution of Agreement by all Parties.

1.5 **Lease Expiration Date**: Twenty-one (21) years following the Commencement Date.

1.6 **Rent:** The initial Monthly Rent for the Premises is set forth in Exhibit "B" attached hereto and shall be subject to increases at the times to the amounts set forth in Exhibit "B".

1.7 **Permitted Use**: The Premises shall be used as the City of Fresno Police Department headquarters and limited to and for purposes incidental to Police Department needs ("**Permitted Use**").

1.8 **Brokers**: None.

1.9 **Interest Rate**: The lesser of: (a) the prime rate announced from time to time by Wells Fargo Bank or, if Wells Fargo Bank ceases to exist or ceases to publish such rate, then the rate announced from time to time by the largest (as measured by deposits) chartered operating bank operating in California, plus five percent (5%) per annum; or (b) the maximum rate permitted by law.

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SINGLE-TENANT LEASE AND OPTION TO PURCHASE

This SINGLE-TENANT LEASE AND OPTION TO PURCHASE ("**Lease**"), which includes the preceding Summary of Basic Lease Information and Definitions ("**Summary**") attached hereto and incorporated herein by this reference, is made as of the _____ day of ____, 2025, by and between RIVER PARK PROPERTIES III, a California limited partnership ("**Landlord**"), and CITY OF FRESNO, a California municipal corporation ("**Tenant**").

1. Lease of Premises.

1.1 **Lease of Premises**. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises upon and subject to the terms, covenants and conditions contained in this Lease to be performed by each party.

1.2 **Measurement of Premises**. Landlord and Tenant hereby stipulate to the rentable square footage and total square footage of the Premises and Building (including the basement and parking level) as set forth in the Summary and agree that such rentable square footage and total square footage shall not be subject to confirmation or recalculation.

1.3 **Premises AS-IS**. Subject to the express representations and warranties set forth herein and Landlord's maintenance and repair obligations hereunder, Tenant hereby accepts possession of the Premises in its "AS-IS" condition. Promptly hereafter, Tenant shall commence construction of Tenant's Work as described in Section 35 and shall diligently prosecute such construction to lien free completion. Landlord hereby assigns, on a non-exclusive basis, to Tenant all warranties and guaranties Landlord received from Landlord's contractors and materialmen relating to the Landlord's prior construction.

2. Term.

2.1 **Term; Notice of Lease Dates**. This Lease shall be effective upon the date first above written (the "**Effective Date**"). The term of this Lease (the "**Term**") shall commence upon the Commencement Date and shall expire on the Lease Expiration Date, unless sooner terminated as permitted herein. Within ten (10) days after Landlord's request, Tenant and Landlord shall confirm the agreed upon Commencement Date by mutually executing the Notice of Lease Term Dates attached hereto as Exhibit "C". The executed Notice of Lease Term Dates shall be binding upon Tenant and Landlord. Landlord understands that Lessee's Director of General Services (or another authorized individual) shall execute the Notice of Lease Term Dates on Tenant's behalf. The Notice of Lease Term Dates will, among other things, confirm the Commencement Date, which Commencement Date shall be determined in accordance with Section 1.4 above.

2.2 **Conditions Precedent**. Landlord will not be obligated to deliver possession of the Premises to Tenant until Landlord has received from Tenant all of the following: (i) a copy of this Lease fully executed by Tenant; and (ii) copies of policies of insurance or certificates thereof as required under Section 19 of this Lease.

3. Rent.

3.1 **Monthly Rent**. Tenant agrees to pay Landlord, as rent for the Premises, the Monthly Rent set forth in the Rent Schedule attached hereto as Exhibit "B". The Monthly Rent shall be paid by Tenant in advance on the first day of each and every calendar month commencing upon the Commencement Date as described in Exhibit "C". Monthly Rent for any partial month shall be prorated in the proportion that the number of days this Lease is in effect during such month bears to the actual number of days in such month.

3.2 **Additional Rent**. All amounts and charges payable by Tenant under this Lease in addition to the Monthly Rent described in Section 3.1 above shall be considered additional rent for the purposes of this Lease, and the word "**Rent**" in this Lease shall

include such additional Rent unless the context specifically or clearly implies that only the Monthly Rent is referenced. Rent shall be paid to Landlord as provided in Section 7, but subject to Section 17.4, herein, for any abatement of any Rent, without any prior demand therefor and without any deduction or offset except as specified elsewhere in the Lease, in lawful money of the United States of America. Additional Rent shall not accrue between August 15, 2025 and June 30, 2026. Additional Rent shall begin at the same time as Monthly Rent, as set forth in Exhibit "B."

3.3 **Late Payments**. Late payments of Rent will be subject to interest and a late charge as provided in Sections 21.6 and 21.7 below.

4. Triple-Net Lease.

Except as otherwise provided herein (including, but not limited to, the abatement provisions of this Lease), all Rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord, the Rent to be paid each month during the Term of this Lease. Nothing herein contained shall be deemed to require Tenant to pay or discharge any liens or mortgages of any character whatsoever which may exist or hereafter be placed upon the Premises by an affirmative act or omission of Landlord.

5. Use.

5.1 **General**. Tenant shall use the Premises solely for the Permitted Use specified in Section 1.7 of the Summary and shall not use or permit the Premises to be used for any other use or purpose whatsoever. Tenant shall, at its sole cost and expense, observe and comply with all requirements of any board of fire underwriters or similar body relating to the Premises, all recorded covenants, conditions and restrictions now or hereafter affecting the Premises and all laws, statutes, codes, rules and regulations now or hereafter in force relating to or affecting the condition, use, occupancy, alteration or improvement (whether structural or non-structural, including unforeseen and/or extraordinary alterations or improvements, and regardless of the period of time remaining in the Term) of the Premises, including, without limitation, the provisions of the Americans with Disabilities Act ("**ADA**") as it pertains to the condition, use, occupancy, improvement and alteration (whether structural or non-structural, including unforeseen and/or extraordinary alterations or improvements, and regardless of the period of time remaining in the Term) of the Premises. Tenant shall not use or allow the Premises to be used (a) in violation of any recorded covenants, conditions and restrictions affecting the Premises or of any law or governmental rule or regulation, or of any certificate of occupancy issued for the Premises, or (b) for any improper, immoral, unlawful or reasonably objectionable purpose. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, nor commit or suffer to be committed any waste in, on or about the Premises.

5.2 **Signs**. All of Tenant's signage, both signage initially installed and any subsequent changes to the Building façade (including, but not limited to, signage), shall comply with any covenants of record and shall be subject to approval by Landlord and from all governmental authorities having jurisdiction over the Premises. Any future changes to the Building façade (including, but not limited to, modifications to any Tenant signage) shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld. Tenant agrees to maintain any such signs in good condition and repair at all times. At the expiration or earlier termination of this Lease, at Landlord's election, Tenant shall remove all signs and similar items installed by or at the direction of Tenant and shall repair any damage to the Premises resulting therefrom all at Tenant's sole cost and expense. If Tenant fails to maintain any such approved signs or similar items, Landlord may do so and Tenant shall reimburse Landlord for such cost plus a ten percent (10%) overhead fee. If, without Landlord's prior written consent, Tenant installs any signs or similar items, or fails to remove any such item(s) at the expiration or earlier termination of this Lease, Landlord may have such item(s) removed and stored and may repair any damage to the Premises at Tenant's expense. The removal, repair and/or storage costs shall bear interest until paid at the Interest Rate.

5.3. **Hazardous Materials.**

5.3.1 **Tenant's Environmental Representations and Indemnification**. Tenant will (i) obtain and maintain in full force and effect all Environmental Permits that may be required from time to time under any Environmental Laws applicable to Tenant or the Premises throughout the Term of the lease and (ii) be and remain in compliance in with all terms and conditions of all such Environmental Permits and with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in all Environmental Laws applicable to Tenant or the Premises. As used in this Lease, the term "**Environmental Law**" means any past, present or future federal, state or local statutory or common law, or any regulation, ordinance, code, plan, order, permit, grant, franchise, concession, restriction or agreement issued, entered, promulgated or approved thereunder, relating to (a) the environment, human health or safety, including, without limitation, emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, air, surface water, groundwater or land), or (b) the manufacture, generation, refining, processing, distribution, use, sale, treatment, receipt, storage, disposal, transport, arranging for transport, or handling of Hazardous Materials. "**Environmental Permits**" means, collectively, any and all permits, consents, licenses, approvals and registrations of any nature at any time required pursuant to, or in order to comply with, any Environmental Law. Except for items and materials, including but not limited to evidentiary items such as contraband, firearms, and munitions for the ordinary and usual conduct of Tenant's business as provided in Section 1.7 in the Summary and general office supplies, such as copier toner, liquid paper, glue, ink and common household cleaning materials and, to the extent approved in writing by Landlord (which shall not be unreasonably withheld), materials reasonably necessary for the conduct of Tenant's business that are used and stored in compliance with all Environmental Laws (some or all of which may constitute "Hazardous Materials" as defined in this Lease), Tenant agrees not to cause or permit any Hazardous Materials to be brought upon, stored, used, handled, generated, released or disposed of on, in, under or about the Premises by Tenant, its agents, employees, subtenants, assignees, licensees, contractors or invitees (collectively, "**Tenant's Parties**"), without the prior written consent of Landlord, which consent Landlord may withhold in its sole and absolute discretion. Upon the expiration or earlier termination of this Lease, Tenant agrees to promptly remove from the Premises, at its sole cost and expense, any and all Hazardous Materials, including any equipment or systems containing Hazardous Materials which are installed, brought upon, stored, used, generated or released upon, in, under or about the Premises by Tenant or any of Tenant's Parties or other persons or entities. To the fullest extent permitted by law, Tenant agrees to promptly indemnify, protect, defend and hold harmless Landlord and Landlord's partners, officers, directors, employees, agents, successors and assigns (collectively, "**Landlord Indemnified Parties**") from and against any and all claims, damages, judgments, suits, causes of action, losses, liabilities, penalties, fines, expenses and costs (including, without limitation, clean-up, removal, remediation and restoration costs) which arise or result from the presence of Hazardous Materials on, in, under or about the Premises and which are caused or permitted by Tenant or any of Tenant's Parties . Tenant agrees to promptly notify Landlord of any release of Hazardous Materials which Tenant becomes aware of during the Term of this Lease, whether caused by Tenant or any other persons or entities. In the event of any release of Hazardous Materials caused or permitted by Tenant or any of Tenant's Parties or any other persons or entities, Landlord shall have the right, but not the obligation, to cause Tenant to immediately take all steps Landlord deems necessary or appropriate to remediate such release and prevent any similar future release to the satisfaction of Landlord and Landlord's mortgagee(s). Upon giving reasonable notice to Tenant, at all times during the Term of this Lease, but subject to being escorted by an authorized employee of Tenant while in the Premises as provided in Section 14 herein, Landlord will have the right, but not the obligation, to Tenant-escorted entry only upon the Premises to inspect, investigate, sample and/or monitor the Premises to determine if Tenant is in

compliance with the terms of this Lease regarding Hazardous Materials. Landlord and Tenant agree to work in good faith to establish an entry system reasonably acceptable to Tenant so that an "authorized employee or agent of Landlord" can gain access to the Premises in the event of an emergency, which procedures shall include, but not be limited to, having Landlord's authorized employees and agents "pre- screened by Tenant" and added to Tenant's approved list of entrants. "Pre-screened by Tenant" means any criminal history or background check of any type (including, but not limited to, the Department of Justice's live scan) as may be required by Tenant and at the sole discretion of Tenant. "Authorized employee or agent of Landlord" means any "pre-screened by Tenant" employee or agent of Landlord approved, at Tenant's sole discretion, by Tenant for adding to the approved list of entrants. Tenant will, upon the request of Landlord, cause to be performed an environmental audit of the Premises at Tenant's expense by an environmental consulting firm reasonably acceptable to Landlord. As used in this Lease, the term "**Hazardous Materials**" shall mean and include any hazardous or toxic materials, substances or wastes as now or hereafter designated or regulated under any law, statute, ordinance, rule, regulation, order or ruling of any agency of the State, the United States Government or any local governmental authority, including, without limitation, asbestos, petroleum, petroleum hydrocarbons and petroleum based products, urea formaldehyde foam insulation, polychlorinated biphenyls ("**PCBs**"), and freon and other chlorofluorocarbons. The provisions of this Section 5.3.1 will survive the expiration or earlier termination of this Lease.

5.3.2 **Landlord's Environmental Representations and Indemnification**. Landlord represents and warrants to Tenant that, as of the Effective Date of this Lease and to Landlord's actual knowledge and except as disclosed in the environmental report(s) referenced in Exhibit "D", there are no Hazardous Materials in, on, under, below or otherwise located on or about the Premises in violation of applicable laws, rules and regulations ("**Applicable Laws**"). Landlord shall indemnify, protect, defend and hold Tenant, its successors, assigns, subtenants, agents, employees, officers and directors harmless from any and all losses, damages, liabilities, judgments, costs, claims, expenses, penalties, including, but not limited to, attorneys' fees, court costs and consultant fees (i) arising out of or involving any Hazardous Materials introduced upon the Premises by Landlord in violation of Environmental Law or (ii) due to Landlord's breach of its foregoing representation. The provisions of this Section 5.3.2 will survive the expiration or earlier termination of this Lease. Landlord's actual knowledge means the actual knowledge of any of the following: Edward M. Kashian, Salvatore Gonzales, and Daniel D. Kuniyoshi, or any person(s) succeeding the foregoing named person(s) in an equivalent position(s) and/or responsibility(ies); provided, however, in no event will any such individuals or succeeding person(s) be personally liable for any of the representations, warranties or indemnifications set forth in this Lease.

5.4 **Refuse and Sewage**. Tenant agrees not to keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers and agrees to regularly and frequently remove same from the Premises. Tenant shall keep all containers or other equipment used for storage of such materials in a clean and sanitary condition. Tenant shall, at Tenant's sole cost and expense, properly dispose of all sanitary sewage and shall not use the sewage disposal system for the disposal of anything except sanitary sewage. Tenant shall keep the sewage disposal system free of all obstructions.

6. Payments and Notices.

All Rent and other sums payable by Tenant to Landlord hereunder shall be paid to Landlord at the address designated in Section 1.1 of the Summary, or to such other persons and/or at such other places as Landlord may hereafter designate in writing. Any notice required or permitted to be given hereunder must be in writing and given by personal delivery (including delivery by nationally recognized overnight courier or express mailing service) or by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant at the address(es) designated in Section 1.2 of

the Summary, or to Landlord at the address(es) designated in Section 1.1 of the Summary. Either party may, by written notice to the other, specify a different address for notice purposes. Notice given in the foregoing manner shall be deemed given (i) when actually received or refused by the party to whom sent if delivered by a carrier or personally served or (ii) if mailed, on the day of actual delivery or refusal as shown by the certified mail return receipt or the expiration of three (3) business days after the day of mailing, whichever first occurs. For purposes of this Section 6, a "business day" is Monday through Friday, excluding holidays observed by the United States Postal Service.

7. Brokers.

Each party represents and warrants to the other, that, to its knowledge, no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Lease on its behalf, or (b) is or might be entitled to a commission or compensation in connection with this Lease. Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Tenant of the foregoing representation, including, without limitation, any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by Tenant herein. Landlord shall indemnify, protect, defend (by counsel reasonably approved in writing by Tenant) and hold Tenant harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from any breach by Landlord of the foregoing representation, including, without limitation, any claims that may be asserted against Tenant by any broker, agent or finder undisclosed by Landlord herein. The foregoing indemnities shall survive the expiration or earlier termination of this Lease.

8. Surrender; Holding Over.

8.1 **Surrender of Premises**. The provisions in this Section 8 shall not apply if Tenant acquires the Premises as a result of exercising Tenant's option to purchase pursuant to Section 33 herein. Upon the expiration or sooner termination of this Lease, Tenant shall surrender all keys for the Premises to Landlord, and Tenant shall deliver exclusive possession of the Premises to Landlord broom clean and in first-class condition and repair, reasonable wear and tear excepted (and casualty damage excepted if this Lease is terminated as a result thereof pursuant to Section 17), with all of Tenant's personal property (and those items, if any, of Improvements and Tenant Changes identified by Landlord pursuant to Section 11.2 below) removed therefrom and all damage caused by such removal repaired, as required pursuant to Sections 11.2 and 11.3 below. If, for any reason, Tenant fails to surrender the Premises on the expiration or earlier termination of this Lease, with such removal and repair obligations completed, then, in addition to the provisions of Section 8.2 below and Landlord's rights and remedies under Section 11.4 and the other provisions of this Lease, Tenant shall indemnify, protect, defend (by counsel reasonably approved in writing by Landlord) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) resulting from such failure to surrender, including, without limitation, any claim made by any succeeding tenant based thereon. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

8.2 **Holding Over**. If Tenant holds over after the expiration or earlier termination of the Lease Term, then, without waiver of any right on the part of Landlord as a result of Tenant's failure to timely surrender possession of the Premises to Landlord, Tenant shall become a tenant at sufferance only, upon the terms and conditions set forth in this Lease so far as applicable (including Tenant's obligation to pay all costs, expenses and any other additional Rent under this Lease), but at a Monthly Rent equal to one hundred twenty-five percent (125%) of the Monthly Rent applicable to the Premises immediately prior to the date of such expiration or earlier termination. Acceptance by Landlord of rent after such expiration or earlier termination shall not constitute a consent to a hold over hereunder or result in an extension of this Lease. Tenant shall pay an entire month's

Monthly Rent calculated in accordance with this Section 8.2 for any portion of a month it holds over and remains in possession of the Premises pursuant to this Section 8.2.

8.3 **No Effect on Landlord's Rights**. The foregoing provisions of this Section 8 are in addition to, and do not affect, Landlord's right of re-entry or any other rights of Landlord hereunder or otherwise provided at law or in equity.

9. Taxes.

9.1 **Real Property Taxes**. Tenant agrees to pay all general and special real property taxes, assessments (including, without limitation, change in ownership taxes, or assessments), liens, bond obligations, license fees or taxes, commercial rent taxes and any similar impositions in-lieu of other impositions now or previously within the definition of real property taxes or assessments and any and all assessments under any covenants, conditions and restrictions affecting the Premises (collectively "**Real Property Taxes**") which may be now or hereafter levied or assessed against the Premises applicable to the period from the Commencement Date until the expiration or sooner termination of this Lease. Real Property Taxes shall include, by way of illustration but not limitation, the following: (a) any tax on Landlord's "right" to rent or "right" to other income from the Premises or as against Landlord's business of leasing the Premises; any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "Real Property Taxes" for the purposes of this Lease; (c) any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or the Rent payable by Tenant hereunder, including, without limitation, any gross receipts tax or excise tax levied by state, city or federal government, or any political subdivision thereof, with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant and of the Premises; (d) any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and/or (e) any assessment, tax, fee, levy or charge by any governmental agency related to any transportation plan, fund or system (including assessment districts) instituted within the geographic area of which the Premises make a part.

All Real Property Taxes for the tax year in which the Commencement Date occurs and for the tax year in which this Lease terminates shall be apportioned and adjusted so that Tenant shall not be responsible for any Real Property Taxes for a period of time occurring prior to the Commencement Date or subsequent to the expiration of the Lease Term.

Tenant agrees to pay to the taxing authority entitled thereto the total Real Property Taxes due. Any of said payments to be made directly to the taxing authority shall be made at least fifteen (15) days prior to the delinquency date established by the taxing authority, and Tenant shall, concurrently with such payment, deliver evidence of such payment to Landlord. Failure of Tenant to pay said Real Property Taxes as and when herein specified shall, in addition to all other rights and remedies of Landlord hereunder, subject Tenant to any fine, penalty, interest, or cost which Landlord may incur as a result thereof. Tenant shall, within thirty (30) days after demand, reimburse Landlord for any such fine, penalty, interest, or cost, together with interest thereon at the Interest Rate. Alternatively, Landlord may elect to pay the Real Property Taxes due prior to delinquency directly to the taxing authority, in which event Tenant shall reimburse Landlord for the Real Property Taxes paid by Landlord within fifteen (15) days after receipt of an invoice from Landlord.

In the event the Premises is sold, transferred, or disposed of by Landlord, the Parties agree that any and all assessments and transfer tax relating to the sale, transfer, or disposal shall not be the responsibility of Tenant.

9.2 **Personal Property Taxes**. Tenant shall be liable for, and shall pay before delinquency, all taxes and assessments (real and personal) levied against (a) any personal property or trade fixtures placed by Tenant in or about the Premises (including any increase in the assessed value of the Premises based upon the value of any such personal property or trade fixtures); and (b) any Improvements or alterations in the Premises (whether installed and/or paid for by Landlord or Tenant). If any such taxes or assessments are levied against Landlord or Landlord's property, Landlord may, after written notice to Tenant (and under proper protest if requested by Tenant) pay such taxes and assessments, and Tenant shall reimburse Landlord therefor within thirty (30) days after demand by Landlord; provided, however, Tenant, at its sole cost and expense, shall have the right, with Landlord's cooperation, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes and assessments so paid under protest.

10. Repairs.

10.1 **Tenant's Maintenance and Repair Obligations**. Except for Landlord's express obligations under this Lease (including, but not limited to, Section 10.2 below), Tenant shall at all times and at Tenant's sole cost and expense, keep, maintain, clean, repair, renovate, retrofit, replace and preserve the Premises and all parts thereof, in good condition and repair to maintain the Premises in substantially the same condition delivered to Tenant on the Commencement Date, reasonable wear and tear excepted ("**Tenant's Maintenance**"). Tenant shall at all times during the Term make all changes, repairs and improvements to the Premises of every kind and nature, whether ordinary or extraordinary, foreseen or unforeseen, which may be required by any laws or for the safety of the Premises; provided, however, Tenant shall not be required to make any structural changes, repairs and improvements to the Premises unless triggered by (a) any improvements or alterations made to the Premises by Tenant or on behalf of Tenant when made at Tenant's written request, or, (b) any acts or omissions of Tenant or any of Tenant's employees, agents, contractors, subtenants or licensees ("**Tenant's Repairs**"). Such Tenant's Maintenance and Tenant's Repairs shall be performed with due diligence, lien-free and in a good and workmanlike manner, by Tenant's employees, or licensed contractor(s) which are selected by Tenant and approved by Landlord only under the conditions identified in Section 11.1(a), which approval Landlord shall not unreasonably withhold or delay.

10.2. **Landlord's Repair Rights and Obligations**. Except as provided in this Lease, including, but not limited, to Sections 10.1 and 10.3 herein, Landlord has no obligation whatsoever to alter, remodel, improve, repair, renovate, retrofit, replace, redecorate or paint all or any part of the Premises. Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect (including the provisions of California Civil Code Section 1942 and any successive sections or statutes of a similar nature). If Tenant fails to perform Tenant's obligations under Section 10.1 hereof, or under any other provision of this Lease, then Landlord shall have the option (but not the obligation) to enter upon the Premises after ten (10) days' prior written notice to Tenant, or in the case of an emergency immediately without prior notice, to perform such obligations on Tenant's behalf necessary to return the Premises to good order, condition and repair, whereupon the costs incurred by Landlord shall become due and payable to Landlord, upon demand, together with a fee of fifteen percent (15%) of the costs of such work for Landlord's managing agent and the provisions Section 21.1.

10.3 **Compliance with Applicable Laws**. Notwithstanding the foregoing or anything to the contrary contained in this Lease, Landlord hereby warrants to Tenant that the Building and all portions thereof including the Tenant Improvements shall be in compliance with the requirements of all Applicable Laws, including, but not limited to, the Americans with Disabilities Act ("**ADA**") on the Commencement Date. Following the Commencement Date, Tenant shall be responsible for making alterations or repairs to the Building resulting from or necessitated by any change in Applicable Laws, including

ADA. In addition, notwithstanding anything to the contrary contained in this Lease, Tenant, at Tenant's sole cost and expense, shall promptly make all repairs, replacements, alterations or improvements needed to comply with all Applicable Laws to the extent (a) triggered by any improvements or alterations made to the Premises by or on behalf of Tenant when made at Tenant's written request, (b) triggered by any acts or omissions of Tenant or any of Tenant's employees, agents, contractors, subtenants or licensees, and/or (c) the required repairs, replacements, alterations or improvements relate to Tenant's furniture, fixtures, equipment and other personal property or items that will not remain in the Building following the expiration or earlier termination of this Lease.

11. Alterations.

11.1 **Tenant Changes; Conditions**.

(a) Tenant shall not make any alterations, additions, improvements or decorations to the Premises (collectively, "**Tenant Changes**," and individually, a "**Tenant Change**") unless Tenant first obtains Landlord's prior written approval thereof, which approval Landlord shall not unreasonably withhold or delay. Notwithstanding the foregoing, Landlord's prior approval shall not be required for any Tenant Change which satisfies all of the following conditions (hereinafter a "**Pre-Approved Change**"): (i) the costs of such Tenant Change does not exceed Fifty Thousand Dollars ($50,000.00) individually; (ii) the costs of such Tenant Change when aggregated with the costs of all other Tenant Changes made by Tenant do not exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in any three (3) year period; (iii) Tenant delivers to Landlord final plans, specifications and working drawings for such Tenant Change at least ten (10) days prior to commencement of the work thereof; (iv) Tenant and such Tenant Change otherwise satisfy all other conditions set forth in this Section 11.1; and (v) the Tenant Change does not affect the structural, electrical, mechanical, life-safety or exterior elements of the Premises.

(b) After Landlord has approved the Tenant Changes and the plans, specifications and working drawings therefor (or is deemed to have approved the Pre-Approved Changes as set forth in Section 11.1(a) above), Tenant shall: (i) enter into an agreement for the performance of such Tenant Changes with licensed and bondable contractors and subcontractors selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld; and (ii) before proceeding with any Tenant Change, provide Landlord with at least ten (10) days' prior written notice thereof. In addition, before proceeding with any Tenant Change, Tenant's contractors shall obtain, on behalf of Tenant and at Tenant's sole cost and expense: (A) all necessary governmental permits and approvals for the commencement and completion of such Tenant Change; and (B) at Landlord's request, a completion and lien indemnity bond, or other surety, satisfactory to Landlord for such Tenant Change. Landlord's approval of any contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability for any conduct or acts of such contractor(s) and/or subcontractor(s). Further, Landlord's approval of Tenant Changes and the plans therefor will create no liability or responsibility on Landlord's part concerning the completeness of same or their design sufficiency or compliance with laws.

(c) All Tenant Changes shall be performed: (i) in accordance with the approved plans, specifications and working drawings; (ii) lien-free and in a good and workmanlike manner; (iii) in compliance with all laws, rules and regulations of all governmental agencies and authorities including, without limitation, applicable building permit requirements and the provisions of Title III of the ADA; (iv) by licensed and/or bondable contractors and subcontractors approved by Landlord and (v) at such times, in such manner and subject to such rules and regulations as Landlord may from time to time reasonably designate.

(d) Throughout the performance of the Tenant Changes, Tenant shall obtain, or cause its contractors to obtain, workers compensation insurance, auto liability

insurance and commercial general liability insurance in compliance with the provisions of Section 19 of this Lease.

11.2 **Removal of Tenant Changes**. Except in the event this Lease terminates pursuant to Section 33 (Option to Purchase) herein, all Tenant Changes and the Improvements in the Premises (whether installed or paid for by Landlord or Tenant), shall become the property of Landlord and shall remain upon and be surrendered with the Premises at the end of the Term of this Lease; provided, however, Landlord may, by written notice delivered to Tenant on or before the expiration of the Lease Term (or upon any sooner termination of this Lease) identify those items of the initial Improvements and Tenant Changes which Landlord shall require Tenant to remove at the end of the Term of this Lease. If Landlord requires Tenant to remove any such items as described above, Tenant shall, at its sole cost, remove the identified items on or before the expiration or sooner termination of this Lease and repair any damage to the Premises caused by such removal (or, at Landlord's option, shall pay to Landlord all of Landlord's costs of such removal and repair).

11.3 **Removal of Personal Property**. Except in the event this Lease terminates pursuant to Section 33 (Option to Purchase) herein, all articles of personal property owned by Tenant or installed by Tenant at its expense in the Premises (including business and trade fixtures, furniture and movable partitions) shall be, and remain, the property of Tenant, and shall be removed by Tenant from the Premises, at Tenant's sole cost and expense, on or before the expiration or sooner termination of this Lease. Tenant shall repair any damage caused by such removal.

11.4 **Tenant's Failure to Remove**. Except in the event this Lease terminates pursuant to Section 33 (Option to Purchase) herein, if Tenant fails to remove by the expiration or sooner termination of this Lease all of its personal property or any Tenant Changes identified by Landlord for removal pursuant to Section 11.2 above, then such failure shall constitute a holding over of the Premises pursuant to Section 8.2 and Landlord may, (without liability to Tenant for loss thereof), at Tenant's sole cost and in addition to Landlord's other rights and remedies under this Lease, at law or in equity: (a) remove and store such items in accordance with Applicable Laws; and/or (b) upon ten (10) days' prior notice to Tenant sell all or any such items at private or public sale for such price as Landlord may obtain as permitted under Applicable Laws. Landlord shall apply the proceeds of any such sale to any amounts due to Landlord under this Lease from Tenant (including Landlord's attorneys' fees and other costs incurred in the removal, storage and/or sale of such items), with any remainder to be paid to Tenant.

12. <u>Liens</u>.

Tenant shall not permit any mechanic's, materialmen's or other liens to be filed against all or any part of the Premises, nor against Tenant's leasehold interest in the Premises, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Tenant or any other act or omission of Tenant or Tenant's agents, employees, contractors, licensees or invitees. Tenant shall, at Landlord's request, provide Landlord with enforceable, conditional and final lien releases (and other reasonable evidence reasonably requested by Landlord to demonstrate protection from liens) from all persons furnishing labor and/or materials with respect to the Premises. Landlord shall have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Tenant shall, at its sole cost, immediately cause such lien to be released of record or bonded so that it no longer affects title to the Premises. If Tenant fails to cause such lien to be so released or bonded within twenty (20) days after filing thereof, Landlord may, without waiving its rights and remedies based on such breach, and without releasing Tenant from any of its obligations, cause such lien to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Tenant shall pay to Landlord within five (5) days after receipt of invoice from Landlord, any sum paid by Landlord to remove such liens, together with interest at the Interest Rate from the date of such payment by Landlord. Notice is hereby given that Landlord shall not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Premises through or under Tenant, and that no mechanics' or

other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in the Premises.

13. Assignment and Subletting.

13.1 **Restriction on Transfer**. Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Premises (collectively and individually, a "**Transfer**"), without the prior written consent of Landlord, which consent Landlord will not unreasonably withhold, except as provided in this Section 13. In no event may Tenant encumber or hypothecate this Lease. The consent by Landlord to any assignment, encumbrance or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. Irrespective of any assignment or sublease, Tenant shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. Without limiting in any way Landlord's right to withhold its consent on any reasonable grounds, it is agreed that Landlord will not be acting unreasonably in refusing to consent to an assignment or sublease if, in Landlord's opinion, (i) the net worth or financial capabilities of such assignee is less than that of Tenant at the date hereof, (ii) the proposed assignee or subtenant does not have the financial capability to fulfill the obligations imposed by the assignment or sublease, (iii) the proposed assignment or sublease involves a change of use of the Premises from that specified herein, or (iv) the proposed assignee or subtenant is not, in Landlord's reasonable opinion, of reputable or good character. If Tenant is a corporation, limited liability company, or an unincorporated association or partnership, the transfer, assignment or hypothecation of any stock or interest in such entity in the aggregate in excess of forty-nine percent (49%) shall be deemed an assignment within the meaning and provisions of this Section 13.1.

13.2 **Transfer Notice**. If Tenant desires to effect Transfer, then at least thirty (30) days prior to the date when Tenant desires the Transfer to be effective (the "**Transfer Date**"), Tenant agrees to give Landlord a notice (the "**Transfer Notice**"), stating the name, address and business of the proposed assignee, sublessee or other transferee (sometimes referred to hereinafter as "**Transferee**"), reasonable information (including references) concerning the character, ownership, and financial condition of the proposed Transferee, the Transfer Date, any ownership or commercial relationship between Tenant and the proposed Transferee, and the consideration and all other material terms and conditions of the proposed Transfer, all in such detail as Landlord may reasonably require.

13.3 **Landlord's Options**. Within fifteen (15) days of Landlord's receipt of any Transfer Notice, and any additional information requested by Landlord concerning the proposed Transferee's financial responsibility, Landlord will notify Tenant of its election to do one of the following: (i) consent to the proposed Transfer subject to such reasonable conditions as Landlord may impose in providing such consent; refuse such consent, which refusal shall be on reasonable grounds; or (iii) terminate this Lease as to all or such portion of the Premises which is proposed to be sublet or assigned and recapture all or such portion of the Premises for reletting by Landlord.

13.4 **Additional Conditions**. A condition to Landlord's consent to any Transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer or hypothecation, in form and substance reasonably satisfactory to Landlord. Tenant agrees to pay to Landlord, as additional Rent, one hundred percent (100%) of all sums and other consideration payable to and for the benefit of Tenant by the assignee or sublessee in excess of the rent payable under this Lease for the same period and portion of the Premises. In calculating excess rent or other consideration which may be payable to Landlord under this Section 13.4, Tenant will be entitled to deduct commercially reasonable third-party brokerage commissions and attorneys' fees and other amounts reasonably and actually expended by Tenant in connection with such assignment or subletting if acceptable written evidence of such expenditures is provided to Landlord. No Transfer will release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and

to perform all other obligations to be performed by Tenant hereunder. Landlord may require that any Transferee remit directly to Landlord on a monthly basis, all monies due Tenant by said Transferee, and each sublease shall provide that if Landlord gives said sublessee written notice that Tenant is in default under this Lease, said sublessee will thereafter make all payments due under the sublease directly to or as directed by Landlord, which payments will be credited against any payments due under this Lease. Tenant hereby irrevocably and unconditionally assigns to Landlord all rents and other sums payable under any sublease of the Premises; provided, however, that Landlord hereby grants Tenant a license to collect all such rents and other sums so long as Tenant is not in default under this Lease. Tenant shall, within ten (10) days after the execution and delivery of any assignment or sublease, deliver a duplicate original copy thereof to Landlord. Consent by Landlord to one Transfer will not be deemed consent to any subsequent Transfer. In the event of default by any Transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor. If Tenant effects a Transfer or requests the consent of Landlord to any Transfer (whether or not such Transfer is consummated), then, upon demand, and as a condition precedent to Landlord's consideration of the proposed assignment or sublease, Tenant agrees to pay Landlord a non-refundable administrative fee of Five Hundred Dollars ($500.00), plus Landlord's reasonable attorneys' fees and costs (whether attributable to Landlord's in-house attorneys or paralegals or otherwise) and other costs incurred by Landlord in reviewing such proposed assignment or sublease. Acceptance of the administrative fee and/or reimbursement of Landlord's attorneys' fees and costs shall in no event obligate Landlord to consent to any proposed Transfer. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed Transfer or otherwise has breached its obligations under this Section 13, Tenant's and such Transferee's only remedy shall be to seek a declaratory judgment and/or injunctive relief, and Tenant, on behalf of itself and, to the extent permitted by law, such proposed Transferee waives all other remedies against Landlord, including without limitation, the right to seek monetary damages or to terminate this Lease.

14. Entry by Landlord.

Due to State mandated security requirements, all employees or agents of Landlord must be escorted by an authorized employee of Tenant while in the Premises. Upon giving reasonable notice to Tenant, and no less than forty-eight hours' notice, and subject to being escorted by Tenant (except in the event of an emergency, in which event an "authorized employee or agent of Landlord" may enter the Premises subject to following the Tenant approved entry requirements more particularly described above, including in Section 5.3.1 herein), Subject to Tenant approved entry requirement set forth above and in Section 5.3.1, Landlord and its employees and agents shall have the right to enter the Premises to inspect the same, to exhibit the Premises to prospective lenders or purchasers (or during the last twelve (12) months of the Term, to prospective tenants), to post notices of non- responsibility, to alter, improve or repair the Premises or perform certain services, all as contemplated by this Lease and/or to otherwise exercise its rights and remedies under this Lease, all without being deemed guilty of or liable for any breach of Landlord's covenant of quiet enjoyment or any eviction of Tenant, and, subject to contrary provisions herein this Lease, without abatement of rent. In exercising such entry rights, Landlord shall endeavor to minimize, as reasonably practicable, the interference with Tenant's business, and shall provide Tenant with reasonable advance written notice of such entry (except in emergency situations). Landlord shall have the means which Landlord may deem proper to open Tenant's doors in an emergency in order to obtain entry to the Premises, subject to the Tenant approved entry requirements set forth above and in Section 5.3.1 herein. Any entry to the Premises obtained by Landlord by any of said means or otherwise shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof, or grounds for any abatement or reduction of Rent and Landlord shall not have any liability to Tenant for any damages or losses on account of any such entry by

Landlord except, subject to the provisions of Sections 20.1 and 22, to the extent of Landlord's gross negligence or willful misconduct.

15. Utilities and Services.

From and after the Commencement Date, Tenant shall be solely responsible for obtaining and shall promptly pay all charges for heat, air conditioning, water, gas, electricity or any other utility used, consumed or provided in, furnished to or attributable to the Premises. Subject to Section 17 herein, Landlord shall not be liable for any failure or interruption for any reason of any utility service being furnished to the Premises; provided, however, in the event that all of the following have occurred: (a) there is a material interruption in an essential utility service to the Premises; (b) the interruption is a direct result of the negligence or willful misconduct of Landlord or Landlord's employees or agents; (c) Tenant has given Landlord written notice of the interruption and a reasonable opportunity to restore utility service; and (d) the interruption materially, adversely interferes with Tenant's use and occupancy of the Premises such that Tenant cannot reasonably conduct business upon the Premises notwithstanding its commercially reasonable efforts to mitigate such interruption, then in such case there shall be an equitable abatement of Monthly Rent based upon the length of time during which such interruption continues, and the portion of the Premises which becomes unusable as a result of such interruption.

16. Mutual Indemnification.

Tenant shall be liable for, and shall indemnify, defend, protect and hold Landlord and Landlord's partners, officers, directors, employees, agents, successors and assigns (collectively, "**Landlord Indemnified Parties**") harmless from and against, any and all claims, damages, judgments, suits, causes of action, losses, liabilities and expenses, including reasonable attorneys' fees and court costs (collectively, "**Indemnified Claims**"), arising or resulting from (a) any occurrence at the Premises following the Commencement Date, unless caused by the negligence, willful misconduct or acts or omissions of Landlord Indemnified Parties, (b) any act or omission of Tenant or any of Tenant's Parties; (c) the use of the Premises and conduct of Tenant's business by Tenant or any of Tenant's Parties, or any other activity, work or thing done, permitted or suffered by Tenant or any of Tenant's Parties, in or about the Premises; and/or (d) any default by Tenant of any obligations on Tenant's part to be performed under the terms of this Lease. In case any action or proceeding is brought against Landlord or any Landlord Indemnified Parties by reason of any such Indemnified Claims, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense, provided nothing herein shall constitute a waiver by Tenant of governmental immunities including California Government Code section 810 et seq. Landlord shall be liable for, and shall indemnify, defend, protect and hold Tenant and any of Tenant's Parties harmless from and against, any and all claims, damages, judgements, suits, cause of action, losses, liabilities and expenses including reasonable attorneys' fees and court costs, arising or resulting from any negligence or willful misconduct of Landlord or any Landlord Indemnified Parties or the any act or omission of Landlord or any Landlord Indemnified Parties. In case any action or proceeding whatsoever is brought against Tenant or the Tenant Indemnified Parties by reason of any such claims for which Landlord is responsible, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel approved in writing by Tenant, which approval shall not be unreasonably withheld. Landlord agrees that this Agreement shall in no way act to abrogate or waive any immunities available to Tenant under the Tort Claims Act of the State of California.

16.1 **Survival; No Release of Insurers**. The indemnification obligations herein this Section 16 shall survive the expiration or earlier termination of this Lease. The covenants, agreements and indemnification herein this Section 16, are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried pursuant to the provisions of this Lease.

17. Damage or Destruction. Notwithstanding anything to the contrary in this Lease, if the Premises are damaged or destroyed as a result of fire, earthquake, act of God, or

any other identifiable event of a sudden, unexpected, or unusual nature (hereinafter "**Casualty**"), then Landlord shall either promptly and diligently repair the damage at its own cost, or terminate this Lease as hereinafter provided.

17.1 **Landlord's Election to Repair.** If Landlord elects to repair the Casualty damage to the Premises, then it shall within ninety (90) days after the date of Casualty provide written notice (hereinafter "**Notice of Repair**") to Tenant indicating the anticipated time required to repair. To the extent that the appropriate insurance proceeds are available, Landlord shall bear the cost of all repairs to the Premises, including the cost to repair any alterations or fixtures installed or attached thereto by Tenant. Such repairs shall restore the Premises to substantially the same condition as that existing at the time of Casualty; such repairs shall also be made in compliance with all applicable state and local building codes. Landlord shall not be liable to Tenant for compensation for any loss of business, or any inconvenience or annoyance arising from repair of the Premises as a result of the Casualty except for abatement as hereinafter provided. Notwithstanding the foregoing or anything herein to the contrary, Tenant shall be responsible at its sole cost and expense for the replacement of its personal property.

17.2 **Landlord's Election to Terminate Due to Casualty.** Landlord may only elect to terminate the Lease due to Casualty if: (i) the Premises have been destroyed or substantially destroyed by said Casualty; and the estimated time to repair the Premises exceeds two hundred seventy (270) days from the date of the Casualty, (ii) insurance proceeds sufficient to restore the Premises as required above are not available, or (iii) the Casualty occurs in the last twelve (12) months of the Lease Term. Landlord shall provide Tenant with written notice of its election to terminate within ninety (90) days after the date of Casualty, specifying a termination date not less than thirty (30) days from the date of said notice.

17.3 **Tenant's Election to Terminate Due to Casualty.** If Tenant does not receive a Notice of Repair from Landlord within ninety (90) days after the Casualty, or if the anticipated period of repair contained in the Notice of Repair exceeds two hundred seventy (270) days, or if Landlord notifies Tenant in the Notice of Repair that there will be insufficient insurance proceeds received from Property Insurance Policy to complete the required repairs and Landlord will not agree to pay for any uninsured repairs, then Tenant may elect to terminate this Lease. Tenant shall provide Landlord with written notice of its election to terminate this Lease, specifying a termination date not less than thirty (30) days from the date of said notice. In such case, Tenant shall have the right to demand that Landlord refund any monies which were paid to Landlord pursuant to the Lease but which were not earned by Landlord by consequence of the Casualty. Upon receipt of such demand, Landlord shall promptly refund all such monies.

17.4 **Abatement.** Notwithstanding anything to the contrary in this Lease, during any period in which by reason of material damage to or destruction or casualty of the Premises, title defect, condemnation (or sale under threat of condemnation), or any taking pursuant to Section 18 herein below any portion of the Premises cannot be used and occupied by Tenant, including, but not limited to, substantial interference with Tenant's use and occupancy of the Premises, pursuant to this Lease ("**Abatement Event**"), Rent payments and any other amounts otherwise due and payable hereunder to Landlord shall be abated proportionately. Subject to Section 17.3 hereinabove, Tenant waives the benefits of Civil Code Sections 1932(2) and 1933(4) and any and all other rights to terminate the Lease by virtue of any such interference and the Lease shall continue in full force and effect. In the case of abatement relating to the Premises, the amount of abatement will be determined by the parties such that the resulting rental represents fair consideration for the use and occupancy of the portion of the Property not damaged or destroyed or otherwise affected by such Abatement Event. Such abatement shall continue for the period commencing with the date of such Abatement Event and ending with the substantial completion of the work of repair or replacement of the Premises so damaged or destroyed or affected by such Abatement Event; and the term of this Lease shall be extended by the period during which the rental is abated hereunder. Any abatement of any Rent, or any other amounts otherwise due and payable, pursuant to this Section 17.4 shall not be deemed to be an event of Default on the part of Tenant under Section 21 or any other provision herein.

Nothing contained in this Section 17.4 shall obligate Tenant for payments of Rent, and/or any other amounts otherwise due and payable hereunder if this Lease is terminated pursuant to Sections 17.2 or 17.3 herein.

18. Eminent Domain.

18.1 **Total or Partial Taking**. In case all of the Premises, or such part thereof as shall materially and substantially interfere with Tenant's ability to conduct its business upon the Premises, shall be taken for any public or quasi-public purpose by any lawful power or authority by exercise of the right of appropriation, condemnation or eminent domain, or sold to prevent such taking, Tenant shall have the right to terminate this Lease effective as of the date possession is required to be surrendered to said authority. Tenant shall not assert any claim against Landlord or the taking authority for any compensation because of such taking, and Landlord shall be entitled to receive the entire amount of any award without deduction for any estate or interest of Tenant; provided, however, in the event of such a taking, Tenant shall be entitled to such portion of the award as shall be attributable to goodwill and for damage to, or the cost of removal of, Tenant's personal property. In the event this Lease is not terminated following a taking, Landlord shall be entitled to the entire amount of the award without deduction for any estate or interest of Tenant, Landlord shall restore the Premises to substantially their same condition prior to such partial taking to the extent of any award proceeds received by Landlord, and rent shall be abated as provided in Section 17.4 above. If the award proceeds from the taking are insufficient to restore the Premises as required by the preceding sentence and Landlord does not provide its own funds to so restore the Premises, and if as a result thereof Tenant's ability to use the Premises as contemplated by this Lease is materially and substantially impaired, then Tenant may elect to terminate this Lease by giving Landlord written notice thereof; provided, however, Landlord may rescind such termination by giving Tenant written notice within ten (10) business days following Landlord's receipt of such termination notice from Tenant that Landlord will provide the necessary funds to so restore the Premises.

18.2 **Temporary Taking**. In the event of taking of the Premises or any part thereof for temporary use, (i) this Lease shall be and remain unaffected thereby and Rent shall abate as provided in Section 17.4 herein, and (ii) Landlord shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the taking which is within the Lease Term. For purposes of this Section 18.2, a temporary taking shall be defined as a taking for a period of one (1) year or less.

19. Tenant's Insurance.

19.1 **Types of Insurance**. On or before the earlier of the Early Occupancy Date or the date Tenant commences or causes to be commenced any work of any type in or on any portion of the Premises, and continuing thereafter until the expiration of the Term, Tenant shall obtain and keep in full force and effect respecting the Premises, the following insurance or self-insurance:

(a) Business personal property and personal property insurance, or self-insurance, to cover Tenant's personal property installed or placed on the Premises, including the personal property of others placed under the custody and care of Tenant.

(b) Commercial general liability insurance coverage, on an occurrence basis, including personal injury, bodily injury (including wrongful death), broad form property damage, operations hazard, owner's protective coverage, contractual liability products and completed operations liability, with not less than Three Million Dollars ($3,000,000) per occurrence and an aggregate of Five Million Dollars ($5,000,000). During the course of Tenant Improvements, Tenant will require contractors to maintain General Liability limits of at a minimum One Million Dollars ($1,000,000) per occurrence and Two Million Dollars (2,000,000) aggregate. Limits may increase dependent on the scope of work.

(c) Auto Liability requirement with not less than Five Million Dollars ($5,000,000) combined single limit.

(d) Worker's compensation and employer's liability insurance, in statutory amounts and limits, covering all persons employed in connection with any work done in, on or about the Premises for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Premises.

(e) Any other form or forms of insurance as Tenant or Landlord or the mortgagees of Landlord may reasonably require from time to time, in form, amounts and for insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

19.2 **Requirements**. Each policy required to be obtained by Tenant hereunder shall: (a) name Tenant as named insured thereunder and shall include the Landlord as additional insureds with respect to the insurance described in Section 19.1(b) and 19.1 (c) above specifically provide that the General Liability and Auto Liability insurance be primary, and any insurance carried by the additional insureds shall be excess and non-contributing; (b)Tenant agrees to deliver to Landlord, as soon as practicable after the placing of the required insurance, but in no event later than the date Tenant enters all or any part of the Premises, certificates evidencing the existence of such insurance and Tenant's compliance with the foregoing provisions of this Section 19.2. Tenant shall cause replacement certificates to be delivered upon Landlord's request. If any such initial or replacement certificates are not furnished within the time(s) specified herein, Landlord shall provide Tenant written notice of the Default, and allow Tenant to cure such default within fourteen (14) days. If Tenant fails to cure the Default within the time specified, Landlord shall have the right, but not the obligation, to procure such policies and certificates at Tenant's expense. A certificate of proof of being permissibly self-insured shall satisfy the aforementioned requirements under this Section 19.2.

In the event Tenant qualifies and elects to self-insure pursuant to the provisions hereof, (a) Tenant shall agree to assume all duties, obligations and responsibilities of an insurance company with respect to any claim made under such program, (b) to the extent otherwise required under this Lease, Tenant shall indemnify, defend, protect and hold harmless Landlord and any other person that Tenant may be required hereunder to name as additional insured against and from any and all losses or liabilities as to which this Lease otherwise requires Tenant to carry insurance, and (c) if Tenant thereafter elects to terminate such self-insurance program, Tenant shall give at least thirty (30) days' prior written notice thereof to Landlord along with copies of replacement policies of insurance or certificates in accordance with the requirements set forth in this Section 19.2.

19.3 **Effect on Insurance**. Tenant shall not do or permit to be done anything which will violate or invalidate any insurance policy maintained by Tenant hereunder. Except for Tenant's permitted use as provided in Section 1.7 in Summary, if Tenant's occupancy or conduct of its business in or on the Premises results in any increase in premiums for any insurance carried by Landlord, Tenant shall pay such increase as additional Rent within Sixty (60) days after being billed therefor by Landlord. If any insurance coverage carried by Landlord shall be cancelled or reduced (or cancellation or reduction thereof shall be threatened) by reason of the use or occupancy of the Premises by Tenant or by anyone permitted by Tenant to be upon the Premises except for Tenant's permitted use as provided in Section 1.7 in Summary, and if Tenant fails to remedy such condition within Thirty (30) days after notice thereof, Tenant shall be deemed to be in default under this Lease, without the benefit of any additional notice or cure period specified in Section 21.1 below, and Landlord shall have all remedies provided in this Lease, at law or in equity, including, without limitation, the right (but not the obligation) to enter upon the Premises and attempt to remedy such condition at Tenant's cost.

19.4 **Landlord's Insurance**. Landlord shall obtain and maintain the Special Form (aka All Risk) insurance covering the Premises (other than Tenant's personal property, furniture and equipment, which Tenant shall continue to insure) in an amount not less than the full replacement cost thereof, which insurance shall also include rental loss insurance covering Tenant's rental obligations hereunder for a period of at least twelve (12) months and such other coverages as may be customarily carried by owners of similar office buildings in Fresno. Landlord shall provide the Tenant with a Certificate of Insurance prior to execution of this agreement. Landlord shall give Tenant at least thirty (30) days' notice prior to any changes in Property Insurance. In the event Landlord's Insurance coverage is threatened to be cancelled because of the nature of the tenancy as provided in Section 1.7, Landlord agrees to make reasonable efforts to secure alternative property insurance. In the event Landlord fails to keep in effect at all times insurance coverage as herein provided, or Landlord's insurance premium increases to an amount deemed cost prohibitive by Tenant, then Tenant may obtain such insurance on Landlord's behalf and offset monthly Rent by the amount of such insurance premiums incurred by Tenant after providing written notice of such amounts and proof of insurance to Landlord. All sums expended by Landlord in performing its obligations under this Section 19.4 shall be reimbursed by Tenant within thirty (30) days upon receipt of an invoice from Landlord.

20. Waiver of Subrogation.

20.1 Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, so long as the insurance carried by Landlord and Tenant, respectively, is not invalidated thereby. As long as such waivers of subrogation are contained in their respective insurance policies, Landlord and Tenant hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, or other similar insurance.

21. Tenant's Default and Landlord's Remedies.

21.1 **Tenant's Default**. The occurrence of any one or more of the following events shall constitute a default under this Lease by Tenant:

(a) the vacation or abandonment of the Premises by Tenant. "**Abandonment**" is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) business days or longer while in material default of any other provision of this Lease. "**Vacation**" shall mean vacating the Premises without providing a reasonable level of security to minimize the potential for vandalism, or where the coverage of the property insurance under Section 19.1(a) is jeopardized as a result thereof;

(b) the failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, within five (5) days of written notice from Landlord that such payment was not received;

(c) the failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 21.1(a) or (b) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it may be cured but more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said thirty (30) day period and thereafter diligently prosecute such cure to completion;

(d) (i) the making by Tenant or any guarantor hereof of any general assignment for the benefit of creditors, (ii) the filing by or against Tenant or any guarantor hereof of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a

petition filed against Tenant or any guarantor hereof, the same is dismissed within sixty (60) days), (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease or of substantially all of any guarantor's assets, where possession is not restored to Tenant within sixty (60) days, or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of substantially all of any guarantor's assets or of Tenant's interest in this Lease where such seizure is not discharged within sixty (60) days.

Any notice given under this Section 21.1 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure (CCP), Section 1161.

21.2 **Landlord's Remedies; Termination**. This Section 21.2 shall be subject to Section 21.12 herein. In the event of any such default and failure to timely cure by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom including, but not limited to: unamortized Tenant Improvement costs; attorneys' fees; unamortized brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, Tenant Changes, Improvements and any other items which Tenant is required under this Lease to remove but does not remove. This section shall not apply to all Landlord-approved Tenant Improvements.

As used in Sections 21.2(a) and 21.2(b) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate set forth in Section 1.9 of the Summary. As used in Section 21.2(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

21.3 **Landlord's Remedies; Re-Entry Rights**. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right as permitted by Applicable Laws, after formally terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to Section 11.4 of this Lease or any other procedures permitted by Applicable Laws. No re-entry or taking possession of the Premises by Landlord pursuant to this Section 21.3, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.

21.4 **Landlord's Remedies; Continuation of Lease**. This Section 21.4 is subject to Section 21.12 herein. In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the right described in California Civil Code Section 1951.4 (lessor may

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continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations), whether or not Tenant shall have abandoned the Premises. In the event Landlord elects to continue this Lease in full force and effect pursuant to this Section 21.4, then Landlord shall be entitled to enforce all of its rights and remedies under this Lease, including the right to recover rent as it becomes due. Landlord's election not to terminate this Lease pursuant to this Section 21.4 or pursuant to any other provision of this Lease, at law or in equity, shall not preclude Landlord from subsequently electing to terminate this Lease or pursuing any of its other remedies.

21.5 **Landlord's Right to Perform**. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of rent. If Tenant shall fail to pay any sum of money (other than Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for fifteen (15) days with respect to monetary obligations (or thirty (30) days with respect to non-monetary obligations) after Tenant's receipt of written notice thereof from Landlord (except that no notice will be required in the event of an emergency), Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within fifteen (15) days after demand therefor as additional Rent.

21.6 **Interest**. If any monthly installment of Rent, or any other amount payable by Tenant hereunder is not received by Landlord by the date when due, it shall bear interest at the Interest Rate set forth in Section 1.9 of the Summary from the date due until paid. All interest, and any late charges imposed pursuant to Section 21.7 below, shall be considered additional Rent due from Tenant to Landlord under the terms of this Lease.

21.7 **Late Charges**. Tenant acknowledges that, in addition to interest costs, the late payments by Tenant to Landlord of any Rent or other sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such other costs include, without limitation, processing, administrative and accounting charges and late charges that may be imposed on Landlord by the terms of any mortgage, deed of trust or related loan documents encumbering the Premises. Accordingly, if any installment of Rent or any other amount payable by Tenant hereunder is not received by Landlord by the due date thereof, Tenant shall pay to Landlord an additional sum of ten percent (10%) of the overdue amount as a late charge, but in no event more than the maximum late charge allowed by law. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of any late payment as hereinabove referred to by Tenant, and the payment of late charges and interest are distinct and separate in that the payment of interest is to compensate Landlord for the use of Landlord's money by Tenant, while the payment of late charges is to compensate Landlord for Landlord's processing, administrative and other costs incurred by Landlord as a result of Tenant's delinquent payments. Acceptance of a late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or at law or in equity now or hereafter in effect.

21.8 **Costs Upon Default and Litigation**. Tenant shall pay to Landlord and its mortgagees as additional Rent all the expenses incurred by Landlord or its mortgagees in connection with any default by Tenant hereunder or the exercise of any remedy by reason of any default by Tenant hereunder, including reasonable attorneys' fees and expenses. If Landlord or its mortgagees shall be made a party to any litigation commenced against Tenant or any litigation pertaining to this Lease or the Premises, at the option of Landlord and/or its mortgagees, Tenant, at its expense, shall provide Landlord and/or its mortgagees with counsel approved by Landlord and/or its mortgagees and shall pay all costs incurred or paid by Landlord and/or its mortgagees in connection with such litigation.

21.9 **Rights and Remedies Cumulative**. This Section 21.9 shall be subject to Section 21.12 herein. All rights, options and remedies of Landlord contained in this Section 21 and elsewhere in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Lease. Nothing in this Section 210 shall be deemed to limit or otherwise affect Tenant's indemnification of Landlord pursuant to any provision of this Lease.

21.10 **Waiver of Redemption**. Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have under any present or future law to redeem any of the Premises or to have a continuance of this Lease after termination of this Lease or of Tenant's right of occupancy or possession pursuant to any court order or any provision hereof, and (ii) the benefits of any present or future law which exempts property from liability for debt or for distress for rent.

21.11 **No Event of Default.** It is understood that Tenant shall not be considered in default hereunder for Tenant's failure to pay any rent whatsoever or any other sums due from Tenant hereunder to the extent Tenant is not required to pay such sums as a result of the abatement provisions of this Lease, including, but not limited to, Section 17 herein. Further, the purchase option (Section 33) herein shall also terminate and be of no further force and effect in the event this Lease is terminated for any reason.

21.12 **No Acceleration of Future Rent or Other Payments/Amounts.** Notwithstanding anything to the contrary contained herein this Lease or any right or remedy of which Landlord may otherwise avail itself pursuant to Applicable Laws, any right of Landlord to recover any rents (including Rent) and/or any other amounts to be paid by Tenant as provided in this Lease shall be without acceleration of any future Rent and/or any future amounts to be paid by Tenant herein, before they are due and payable hereunder. Landlord hereby expressly waives its right to accelerate rent in the event of a termination of this Lease for any reason whatsoever pursuant to California Civil Code Section 1951.2; provided, however, Landlord shall retain Landlord's other rights and remedies available under this Lease or at law or equity, including, but not limited to, Landlord's rights under California Civil Code Section 1951.4, as more particularly provided above.

22. Landlord's Default.

Landlord shall not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord has failed to perform such obligation within thirty (30) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed in default if it commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion. Subject to Section 17 herein, upon any such uncured default by Landlord, Tenant may exercise any of its rights provided in law or at equity; provided, however: (a) Tenant shall have no right to offset or abate Rent in the event of any default by Landlord under this Lease except as provided in Section 17 herein; (b) Tenant's rights and remedies hereunder shall be limited to the extent (i) Tenant has expressly waived in this Lease any of such rights or remedies, and/or (ii) this Lease otherwise expressly limits Tenant's rights or remedies, including the limitation on Landlord's liability contained in Section 29 hereof; (c) Tenant shall not have the right to terminate this Lease as a result of any such default; and (d) in no event shall Landlord be liable for consequential damages or loss of business profits.

23. Compliance with all Laws and Prevailing Wages.

Landlord agrees to indemnify, defend (upon written request of Tenant) and hold harmless Tenant, including it boards, officials officers, agents, and employees from any and all claims, costs, expenses, penalties, causes of action, attorneys' fees damages or liability from the failure of Landlord or Landlord's contractors and/or subcontractors to comply with Article 2 of Chapter 1 of Part 7 of the California Labor Code with respect

to any work performed on the Premises by Landlord to prepare the Premises for occupancy by the Tenant. It is Landlord's sole responsibility to ensure compliance with California Labor Code §§1770-1780 and any regulations or directions promulgated thereunder by the DIR to the extent legally applicable to said work. To the extent legally applicable to said work, Landlord shall insert in any contract with its contractor(s) and further will require its contractor(s) to insert in any subcontract, the requirements contained in California Labor Code §§1770-1780. Tenant has made no representations upon which Landlord has relied and under no circumstances shall Tenant be responsible for any violation of any wage or employment law, regulation or DIR requirement. Compliance with said laws, regulations and DIR requirements is the sole responsibility of the Landlord and its contractor(s).

24. Subordination.

At the request of Landlord or any mortgagee of a mortgage or a beneficiary of a deed of trust now or hereafter encumbering all or any portion of the Premises, or any lessor of any ground or master lease now or hereafter affecting all or any portion of the Premises, this Lease shall be subject and subordinate at all times to such ground or master leases (and such extensions and modifications thereof), and to the lien of such mortgages and deeds of trust (as well as to any advances made thereunder and to all renewals, replacements, modifications and extensions thereof); provided, however, no subordination of this Lease to a future ground or master lease or mortgage or deed of trust shall result in Tenant being disturbed in its possession of the Premises or in the enjoyment of its rights under this Lease so long as Tenant is not in default with respect to its obligations hereunder, and any subordination agreement which Landlord, any mortgagee, beneficiary or lessor requests Tenant to execute to effect or confirm such subordination shall so provide. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any or all ground or master leases or the lien of any or all mortgages or deeds of trust to this Lease. In the event that any ground or master lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, at the election of Landlord's successor in interest, Tenant shall attorn to and become the tenant of such successor. Tenant hereby waives its rights under any current or future law which gives or purports to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any such foreclosure proceeding or sale. Subject to the foregoing, Tenant covenants and agrees to execute and deliver to Landlord within ten (10) business days after receipt of written demand by Landlord and in the form reasonably required by Landlord and acceptable to Tenant, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground or master lease or the lien of any such mortgage or deed of trust or Tenant's agreement to attorn. Should Tenant fail to sign and return any such documents within said ten (10) day period, Tenant shall be in default hereunder without the benefit of any additional notice or cure periods specified in Section 21.1 above.

Subject to the executed Purchase and Sale Agreement and Joint Escrow Instructions pursuant to Section 33.3 herein, if Tenant acquires the Property in connection with Tenant's exercise of the Option to Purchase as provided in Section 33 below, then any such mortgage or deed of trust shall be released and reconveyed prior to or concurrent with the Close of Escrow.

25. Estoppel Certificate.

25.1 **Tenant's Obligations**. Within ten (10) business days following Landlord's written request, Tenant shall execute and deliver to Landlord an estoppel certificate, in a form substantially similar to the form of Exhibit "E" attached hereto or such other form that is reasonably acceptable to Tenant, certifying: (a) the Commencement Date of this Lease; (b) that this Lease is unmodified and in full force and effect (or, if modified, that this Lease is in full force and effect as modified, and stating the date and nature of such modifications); (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) that there are not, to the best of Tenant's knowledge, any defaults under this Lease by either Landlord or Tenant, except as specified in such certificate; and (e) such other matters as are set forth in Exhibit "E" or are reasonably

requested by Landlord. Any such estoppel certificate delivered pursuant to this Section 25.1 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of any portion of the Premises, as well as their assignees.

25.2 **Tenant's Failure to Deliver**. Tenant's failure to deliver such estoppel certificate within such time shall constitute a default hereunder without the applicability of notice and cure periods specified in Section 21.1 above and shall be conclusive upon Tenant that: (a) this Lease is in full force and effect without modification, except as may be represented by Landlord; (b) there are no uncured defaults in Landlord's or Tenant's performance (other than Tenant's failure to deliver the estoppel certificate); and (c) not more than one (1) month's rental has been paid in advance. Tenant shall indemnify, protect, defend (with counsel reasonably approved by Landlord in writing) and hold Landlord harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) attributable to any failure by Tenant to timely deliver any such estoppel certificate to Landlord pursuant to Section 25.1 above.

26. Modification and Cure Rights of Landlord's Mortgagees and Lessors.

26.1 **Modifications**. If, in connection with Landlord's obtaining or entering into any financing of the Premises, the lender shall request modifications to this Lease, Tenant shall, within ten (10) days after request therefor, execute an amendment to this Lease including such modifications, provided such modifications are reasonable, do not increase the obligations of Tenant hereunder, or adversely affect the leasehold estate created hereby or Tenant's rights hereunder.

26.2 **Cure Rights**. In the event of any default on the part of Landlord, Tenant will give notice by registered or certified mail to any beneficiary of a deed of trust or mortgagee covering the Premises or ground lessor of Landlord whose address shall have been furnished to Tenant, and shall offer such beneficiary, mortgagee or ground lessor a reasonable opportunity to cure the default (including with respect to any such beneficiary or mortgagee, time to obtain possession of the Premises, subject to this Lease and Tenant's rights hereunder, by power of sale or judicial foreclosure, if such should prove necessary to effect a cure).

27. Quiet Enjoyment.

Landlord covenants and agrees with Tenant that, upon Tenant performing all of the covenants and provisions on Tenant's part to be observed and performed under this Lease (including payment of rent hereunder), Tenant shall and may peaceably and quietly have, hold and enjoy the Premises, in accordance with and subject to the terms and conditions of this Lease, as against all persons claiming by, through or under Landlord.

28. Transfer of Landlord's Interest.

The term "Landlord" as used 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 fee title to, or a lessee's interest in a ground lease of, the Premises. In the event of any transfer or conveyance of any such title or interest (other than a transfer for security purposes only) and upon the execution of a written assumption by the transferee of Landlord's obligations and covenants under this Lease, the transferor shall be automatically relieved of all covenants and obligations on the part of Landlord contained in this Lease. If any security has been given by Tenant to secure the faithful performance of all or any of the covenants of this Lease on the part of Tenant, or if any Rent has been prepaid by Tenant, then Landlord may transfer and/or deliver the security and such prepaid Rent to the transferee, and upon proper written notice to Tenant, as provided by law, Landlord shall be discharged from any liability arising thereafter in reference thereto. Landlord and Landlord's transferees and assignees shall have the absolute right to transfer all or any portion of their respective title and interest in the Premises and/or this Lease, subject to all provisions of this Lease including the Option to Purchase, without the consent of Tenant, and such transfer or

subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

29. Limitation on Landlord's Liability.

Notwithstanding anything contained in this Lease to the contrary, the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual partners, directors, officers or shareholders of Landlord or Landlord's partners, and Tenant shall not seek recourse against the individual partners, directors, officers or shareholders of Landlord or Landlord's partners, or any of their personal assets for satisfaction of any liability with respect to this Lease. In addition, in consideration of the benefits accruing hereunder to Tenant and notwithstanding anything contained in this Lease to the contrary, Tenant hereby covenants and agrees for itself and all of its successors and assigns that the liability of Landlord for its obligations under this Lease (including any liability as a result of any actual or alleged failure, breach or default hereunder by Landlord), shall be limited solely to, and Tenant's and its successors' and assigns' sole and exclusive remedy shall be against, Landlord's interest in the Premises, and no other assets of Landlord. The provisions of this Section 29 shall not preclude an action for specific performance by Tenant to enforce the Purchase Option contained in this Lease.

30. Miscellaneous.

30.1 **Governing Law**. This Lease shall be governed by, and construed pursuant to, the laws of the state in which the Premises are located.

30.2 **Independent Contractor.** In performance of the work, duties and obligations assumed by Landlord under this Lease, it is mutually understood and agreed that Landlord, including any and all of the Landlord's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of Tenant. Furthermore, Tenant shall have no right to control or supervise or direct the manner or method by which Landlord shall perform its work and function. However, Tenant shall retain the right to administer this Lease so as to verify that Landlord is performing its obligations in accordance with the terms and conditions thereof.

Landlord and Tenant shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, Landlord shall have absolutely no right to employment rights and benefits available to Tenant employees. Landlord shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, Landlord shall be solely responsible and save Tenant harmless from all matters relating to payment of Landlord's employees, including compliance with Social Security withholding and all other law and regulations governing such matters. It is acknowledged that during the term of this Lease, Landlord may be providing services to others unrelated to Tenant or to this Lease.

30.3 **Disclosure of Self-Dealing Transactions.** This provision is only applicable if the Landlord is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Lease, the Landlord changes its status to operate as a corporation.

Members of Landlord's Board of Directors shall disclose any self-dealing transactions that they are a party to while Landlord is providing goods or performing services under this Lease. A self-dealing transaction shall mean a transaction to which the Landlord is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form Exhibit "F", attached hereto and by this reference incorporated herein, and submitting it to the City of Fresno (Tenant) prior to commencing with the self-dealing transaction or immediately thereafter.

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30.4 **Successors and Assigns**. Subject to the provisions of Section 28 above, and except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives and permitted successors and assigns; provided, however, no rights shall inure to the benefit of any Transferee of Tenant unless the Transfer to such Transferee is made in compliance with the provisions of Section 13.

30.5 **No Merger**. The voluntary or other surrender of this Lease by Tenant or a mutual termination thereof shall not work as a merger and shall, at the option of Landlord, either (a) terminate all or any existing subleases, or (b) operate as an assignment to Landlord of Tenant's interest under any or all such subleases.

30.6 **Professional Fees**. If either Landlord or Tenant should bring suit or arbitration against the other with respect to this Lease, including for unlawful detainer or any other relief against the other hereunder, then all costs and expenses incurred by the prevailing party therein (including, without limitation, its actual appraisers', accountants', attorneys' and other professional fees, expenses and court costs), shall be paid by the other party, including, but not limited to, costs of appeal, subject to a Court's award of such attorneys' fees and costs.

30.7 **Waiver**. The waiver by either party of any breach by the other party of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant and condition herein contained, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of any party to insist upon the performance by the other in strict accordance with said terms. No waiver of any default of either party hereunder shall be implied from any acceptance by Landlord or delivery by Tenant (as the case may be) of any Rent or other payments due hereunder or any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in said waiver. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

30.8. **Terms and Headings; Interpretation.** The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof. Any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse of the deleted language.

30.9 **Time**. Time is of the essence with respect to performance of every provision of this Lease in which time or performance is a factor. All references in this Lease to "days" shall mean calendar days unless specifically modified herein to be "business" days.

30.10 **Prior Agreements; Amendments**. This Lease, including the Summary and all Exhibits and Riders attached hereto contains all of the covenants, provisions, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and any other matter covered or mentioned in this Lease, and no prior agreement or understanding, oral or written, express or implied, pertaining to the Premises or any such other matter shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. The parties acknowledge that all prior agreements, representations and negotiations are deemed superseded by the execution of this Lease to the extent they are not expressly incorporated herein.

30.11 **Severability**. The invalidity or unenforceability of any provision of this Lease (except for Tenant's obligation to pay Rent) shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain valid and in full force and effect to the fullest extent permitted by law.

30.12 **Exhibits and Riders**. All Exhibits and Riders attached to this Lease are hereby incorporated in this Lease for all purposes as though set forth at length herein.

30.13 **Auctions**. Tenant shall have no right to conduct any auction in, on or about the Premises.

30.14 **Accord and Satisfaction**. Except as otherwise expressly provided herein, no payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

30.15 **No Partnership**. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

30.16 **Force Majeure**. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including failure, refusal or delay in issuing permits, approvals and/or authorizations), injunction or court order, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Lease (but excluding delays due to financial inability) (herein collectively, "**Force Majeure Delays**"), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Subject to Sections 17.3 and 18, the provisions of this Section 30.16 shall not apply to nor operate to excuse Tenant from the payment of Rent strictly in accordance with the terms of this Lease.

30.17 **Counterparts**. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement.

30.18 **Non-Discrimination**. Tenant acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, assignment, occupancy, tenure, use, or enjoyment of the Premises, or any portion thereof.

30.19 **CASp Inspection.** For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Building has not, as of the date of this Lease, undergone an inspection by a Certified Access Specialist ("**CASp**"), as that term is defined in California Civil Code Section 55.52.

30.20 **Energy Usage Data.** To comply with requirements of California Public Resources Code Section 25402.10 and California Code of Regulations Sections 1680-1684, Tenant consents to the collection and disclosure of the historic and future energy use data ("**Tenant's Energy Data**") for the Premises and authorizes the release of Tenant's Energy Data to the Landlord by any utility and energy provider serving the

Premises, whether or not Landlord, Tenant, or any other third party is the party that has contracted for the provision of such utilities. Tenant shall cooperate fully with Landlord in connection with any mandatory or voluntary requirement to report or disclose Tenant's energy use. Without limiting such obligation to cooperate, Tenant shall, within ten (10) business days of Landlord's written request, supply complete and accurate data regarding Tenant's energy consumption at the Premises or authorize applicable utility and energy providers to collect and release such data.

31. Lease Execution.

31.1 **Tenant's and Landlord's Authority**. The persons executing this Lease on behalf of Tenant and Landlord represent and warrant that such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's and Landlord's behalf.

31.2 **Joint and Several Liability**. The following shall apply to Landlord and Tenant: If more than one person or entity executes this Lease on behalf of either Landlord or Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed respectively by Tenant and Landlord; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant or Landlord with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

31.3 **No Option**. The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until it has been executed by Landlord and Tenant.

32. Roof Mounted Telecommunications Equipment.

At any time during the Lease Term, subject to the terms, covenants and conditions of this Section 32 and subject to the approval of Landlord, as provided below, and all applicable governmental entities and compliance with all governmental laws, rules, regulations, codes and covenants affecting title, Tenant may install, for Tenant's own use and at Tenant's sole cost and expense, but without the payment of any Rent or a license or similar fee or charge, telecommunications and satellite equipment to service the business conducted by Tenant from within the Premises (all such equipment is defined collectively as the "**Telecommunications Equipment**") upon the roof of the Building. Such Telecommunications Equipment shall be installed pursuant to plans and specifications approved by Landlord, which approval shall not be unreasonably withheld. Such plans shall include the physical appearance, size, height and location of the Telecommunications Equipment, and sufficient detail to determine that the physical load and means of attachment do not in any way threaten the integrity of the roof structure or membrane and that such equipment can be removed without material damage and that any non-material damage can be easily repaired. If required by Landlord, such plans will include a report by a structural engineer reasonably approved by Landlord to ensure that the load, means of attachment and location of such Telecommunications Equipment is not problematic. In the event Tenant elects to exercise its right to install the Telecommunication Equipment, then Tenant shall give Landlord prior notice thereof along with a copy of such plans and specifications. Such approval may be conditioned upon Tenant installing screening around such Telecommunications Equipment at Tenant's sole cost and expense. Tenant shall reimburse to Landlord the actual costs reasonably incurred by Landlord in approving such plans for Tenant's Telecommunications Equipment. Tenant shall maintain such Telecommunications Equipment at Tenant's sole cost and expense. Tenant shall remove its Telecommunications Equipment upon the expiration or earlier termination of this Lease and shall repair any damage to the Building caused by such removal and return the affected portion of the Premises to its condition prior to the installation of the Telecommunications Equipment. The rights contained in this Section 31 shall be personal to the original Tenant and may only be exercised by the original Tenant (and

not any other assignee, sublessee or other transferee of the original Tenant's interest in this Lease) if the original Tenant occupies at least fifty percent (50%) of the Building.

33. Tenant's One-Time Right and Option to Purchase.

33.1 **Notice.** Landlord hereby grants to Tenant the one-time right and option to purchase the Premises (including the Property and the Building and all facilities, whether above or below ground, located on the Property) on the terms set forth herein by delivering written notice to Landlord of such exercise (the "**Purchase Option Notice**") at any time between the 241st and 252nd full months of the Lease Term following the Lease Commencement Date ("**Purchase Option**"). The purchase price for the Premises (including the Property and the Building and all such facilities) shall equal $1.00 ("**Purchase Price**").

Notwithstanding anything to the contrary contained in this Section 33, Tenant's exercise of the Purchase Option shall be effective only if all of the conditions precedent set forth hereinbelow are true and correct during the period commencing upon the date Tenant delivers the Purchase Option Notice and continuing until the Closing Date (as that term is defined below), unless Landlord, in Landlord's sole discretion, elects to waive any such condition precedent in writing:

(a) Tenant shall not then be in default (after expiration of any applicable notice and cure period) under the Lease; and

(b) Tenant shall not have assigned its interest in the Lease or in the Purchase Option.

33.2 **Due Diligence.**

(a) **Tenant's Due Diligence**. Tenant and Tenant's agents, employees, and representatives (collectively "**Tenant's Agent**s"), shall, prior to delivering the Purchase Option Notice perform, at Tenant's cost, all Due Diligence on the Premises (subject to the terms and conditions set forth herein), which shall include reviewing matters of title, inspecting the physical conditions of the Premises, obtaining an acceptable appraisal of the Premises, receiving an acceptable Phase 1 Environmental Assessment Report, obtaining a termite report, performing inspections, reviewing all federal tax credit documents pertaining to the Premises, reviewing agreements relating to the Premises and conducting such other due diligence as Tenant determines. Tenant's delivery of the Purchase Option Notice shall be deemed Tenant's acceptance of all aspects of and the condition of the Premises.

(b) **Due Diligence Materials.** If Landlord has not previously delivered the same to Tenant, then within fifteen (15) days after Tenant's request, Landlord shall provide (electronically or otherwise) all non-proprietary or privileged due diligence materials relating to the Premises which are in its possession and control, including but not limited to such reports, inspections, appraisals, agreements and other documentation as described in Section 33.2(a) hereinabove ("**Landlord's Due Diligence Materials**"). Landlord's Due Diligence Materials and any other such items shall be delivered to Tenant without representation or warranty by Landlord with respect to the contents, accuracy or completeness thereof, and shall be subject to any rights of third parties as to their use, reliance thereon or disclosure.

(c) **Title Matters and Review.** A preliminary title report ("**Preliminary Title Report**") shall be issued to Tenant, at Tenant's cost, within fifteen (15) days after Tenant's request for same. Except for any permitted encumbrances at the execution date and other than any mortgage or deed of trust or similar debt instrument provided the same is released and reconveyed as of the close of escrow in connection with the Purchase Option pursuant to Section 24 hereinabove, if Tenant notifies Landlord in writing of any disclosed title matters in the Preliminary Title Report which are unacceptable to Tenant, then Landlord shall have ten (10) business

days from receipt of such objection notice in which to (i) cure and/or remove from title to the Premises, at Landlord's sole cost, any such disclosed title matters, which have been caused or permitted by Landlord, including Landlord, at its sole cost, curing, and/or removing from title to the Premises any lien (other than non-delinquent taxes and assessments, a mortgage, deed of trust or other debt instrument the removal of which is addressed in Section 24 hereinabove) and (ii) as to any other disclosed title matters which were not caused or permitted by Landlord, inform Tenant in writing whether or not Landlord will agree to (and as to such items that Landlord so agrees, Landlord agrees to) cure and/or remove from title (through bonding over or otherwise) to the Premises, at Landlord's sole cost, any other title matters to which Tenant has objected prior to the close of escrow in connection with the Purchase Option (Landlord's failure to timely so notify Tenant shall be deemed Landlord's election not to so cure any of Tenant's title objections under this subsection (ii)). The foregoing title review, objection, and cure procedure shall take place prior to Tenant's delivery of the Purchase Option Notice; provided, however, Landlord's obligations under this Section 33.2(c) shall apply until the close of escrow.

(d) **Landlord's Permission.** Notwithstanding anything to the contrary in this Section 33.2, Tenant shall not perform any soil borings or other invasive testing to the land or any improvements located thereon without Landlord's prior written approval which approval shall not be unreasonably withheld, conditioned or delayed. Landlord or its representative may be present to observe any testing or other inspection performed on the Property. Tenant's right to enter upon the Premises or allow any of Tenant's Agents to enter upon the Premises to perform the due diligence investigations contemplated in this Section 33, shall be conditioned on Landlord's agreement to maintain worker's compensation and commercial general liability insurance policies to cover Tenant's and Tenant's Agents' due diligence activities on the Premises and to keep the Premises free and clear of all mechanics' and materialmen's liens or other liens arising out of any of its activities or those of its representatives, agents or contractors. If the same is not already in effect pursuant to this Lease, then at least two (2) business days before commencing such due diligence investigations on the Premises, Tenant shall deliver to Landlord a certificate of insurance evidencing insurance coverage in compliance with the terms of this subsection. Tenant shall maintain and keep in effect, at Tenant's sole expense, at all times during the period of escrow, a general commercial liability insurance policy and other insurance Tenant is required to carry under Section 19 herein.

33.3 **Actions of Parties.** Within thirty (30) days following Landlord's receipt of the Purchase Option Notice, the parties shall proceed to open an escrow for the purchase and sale of the Premises ("**Escrow**") with an escrow company reasonably acceptable to both Landlord and Tenant ("**Escrow Holder**") by delivering a fully executed copy of a definitive Purchase and Sale Agreement and Joint Escrow Instructions (the "**Purchase Agreement**") to Escrow Holder. In addition, concurrently with delivery of the Purchase Agreement to Escrow Holder, Tenant shall deliver to Escrow Holder, in cash, the balance of the Purchase Price (as defined below). The Purchase Agreement shall incorporate the terms and provisions set forth in this Section 33. **Option to Purchase**, as applicable, and any other provisions reasonably approved by the parties.

33.4 **Close of Escrow.** The close of Escrow shall occur six (6) months after Landlord's receipt of the Purchase Option Notice but in no event earlier than the first business day following the expiration of the 252nd full month of the Lease Term ("**Close of Escrow Date**").

33.5 **No Contingencies to Tenant's Obligations.** After Tenant's delivery of the Purchase Option Notice, there shall be no contingencies or conditions precedent to Tenant's obligations to close Escrow except for (i) Landlord's delivery to Escrow Holder on or before the Closing Date of a duly executed and acknowledged grant deed conveying fee title to the Premises to Tenant and (ii) the agreement by a title company reasonably acceptable to Landlord and Tenant to deliver to Tenant, on the Closing Date, the Title Policy described below.

33.6 **Title.** Title to the Premises shall be evidenced by a standard CLTA Owner's Form Policy of Title Insurance issued by a title company reasonably acceptable to Landlord and Tenant ("**Title Policy**") in the amount of the Purchase Price showing fee title to the Premises vested in Tenant. Title to the Premises shall be subject to all matters of record, matters apparent by an inspection or survey, and any other matters created or approved by, or consented to by Tenant. Notwithstanding the foregoing, title to the Premises shall be free and clear of any monetary encumbrances (other than liens for property taxes and assessments) and Landlord shall cause such liens to be eliminated at Landlord's sole cost and expense prior to the close of Escrow.

33.7 **Costs and Prorations.** Closing, title, and escrow costs shall be paid as follows:

(a) The cost of the Preliminary Title Reports and any other required title work shall be paid by Tenant.

(b) The premium for the cost of the Title Policy shall be paid by Landlord. Tenant will pay for the cost of extended coverage (if required by Tenant) and the cost of any title endorsements.

(c) Recording fees and transfer taxes, shall be paid by Landlord. Escrow document preparation fees shall be paid by Tenant, 50% and by Landlord, 50%.

(d) Escrow fees and any and all other costs necessary to achieve a successful closing of Escrow shall be paid by Tenant, 50% and by Landlord, 50%.

(e) Each Party shall bear its own legal and accounting fees and costs.

(f) Prorations to the Date of Closing shall include: all current taxes and assessments including ad valorem taxes, charges for solid waste removal and sewage, utilities, assessments for maintenance, Rent paid under the Lease, and other charges attributable to the Property. The basis for proration of taxes shall be the last known actual taxes and assessments payable unless the current year tax amounts are known and shall be based on the assessed value as shown on the assessor's record at the time of settlement. Landlord and Tenant agree to adjust the tax proration post-Closing once the final tax bill for the tax year of Closing has been received. This Section shall survive the expiration of the Lease and the Closing. Prorations shall be calculated based on a thirty (30) day month and three hundred sixty (360) day year.

33.8 **Representations**. Tenant acknowledges that the Purchase Option has been granted by Landlord to Tenant based on the understanding that exercise of the Purchase Option is entirely voluntary by Tenant, and that the conveyance of the Premises by Landlord to Tenant is and shall be on an "AS IS" basis, with absolutely no representations or warranties, express or implied, regarding the Premises.

33.9 **Deliveries to Tenant Upon Close of Escrow.** Landlord shall deliver to Tenant upon the **Close of Escrow**, originals or copies of all drawings, plans, licenses, permits and other documents pertaining to the Premises.

34. Recordation of Memorandum of Lease.

Tenant and Landlord agree to execute a Memorandum of this Lease in the form of Exhibit "G", with legal description shown as Attachment "A" thereto, which is attached hereto and incorporated herein by this reference, no later than 45 days following the Effective Date. Tenant's City Manager, or his/her designee, shall be authorized to execute the Memorandum of this Lease for Tenant. Tenant shall be authorized to record the executed Memorandum of this Lease in the Office of the Fresno County Recorder following such execution of the Memorandum of Lease. Tenant and Landlord shall cause their respective signatures on the Memorandum of this Lease to be notarized to facilitate recordation thereof. The Recorder's cost/fee for recording the Memorandum of this Lease shall be payable by Tenant.

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35. Tenant's Work.

Tenant will construct, the tenant improvements in the Building in accordance with plans and specifications to be agreed upon by Landlord and Tenant ("**Tenant Improvements**") which shall include but not limited to the programming list attached to this Lease as Exhibit "H". Said Tenant Improvements shall be completed in accordance with the plans and specifications by Tenant. Landlord and Tenant will fully and reasonably cooperate with each other to cause the Tenant Improvements to be completed in accordance with the mutually approved construction schedule. Landlord shall provide a PDF of stamped and signed as-built drawings of the building for use by the Tenant and Professional Consultants/Contractors hired by Tenant to prepare the Tenant Improvement plans. Prior to commencing Tenant Improvements, Tenant shall provide to Landlord all Plans of Improvement for approval. The Landlord shall approve the Tenant's plans within 10 days of receipt. Landlord agrees to keep all plans, emails, communications, writings, etc., relating to Tenant Improvements Confidential. Landlord agrees that the Tenant Improvements will not be published or shared without the prior written approval of both the City of Fresno City Manager's Office and the City Attorney's Office. The purpose of the confidentiality is to safeguard all parties occupying the Premises upon completion.

Within thirty (30) days following the completion of the Tenant Improvements, Tenant will provide Landlord with copies of the following: 1) a PDF of the stamped and signed "as built" set of drawings and 2) all mechanics' lien releases or other lien releases on account of Tenant's Work, unconditional and in recordable form or in such form as Landlord shall have approved (and, in connection therewith, Tenant shall provide to Landlord a list of all subcontractors and materialmen utilized by Tenant or its contractor in connection with Tenant's Work).

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

TENANT

CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne A. White
City Manager

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: Signed by: Kelsey Seib 8/12/2025
FFF87C6CE7F34DC...
Kelsey A. Seib Date
Deputy City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____ Date
Deputy

LANDLORD

RIVER PARK PROPERTIES III,
a California limited partnership

By: Lance-Kashian & Company, a California corporation, general partner

By: DocuSigned by: Edward M. Kashian 8/11/2025
C8AD25E0B1F440C...
Name: Edward M. Kashian
Title: Chief Executive Officer
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

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EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

The land referred to is situated in the County of Fresno, City of Fresno, State of California, and is described as follows:

The Northwesterly half of Lot 26 and all of Lots 27 to 32, inclusive, in Block 116 of the Town of

Fresno, according to the Map thereof filed for record in Book 1, Page 2 of Plats, Fresno County

Records.

APN: 466-122-09, (formerly 466-122-03)

EXHIBIT "B"

RENT SCHEDULE

RENTABLE SF

Years	Rate	SF	Months	Annual
1	0.00	50,545	12	$0.00
2	1.76	50,545	12	$1,067,510.40
3	1.76	50,545	12	$1,067,510.40
4	1.76	50,545	12	$1,067,510.40
5	1.76	50,545	12	$1,067,510.40
6	1.76	50,545	12	$1,067,510.40
7	1.94	50,545	12	$1,176,687.60
8	1.94	50,545	12	$1,176,687.60
9	1.94	50,545	12	$1,176,687.60
10	1.94	50,545	12	$1,176,687.60
11	1.94	50,545	12	$1,176,687.60
12	2.13	50,545	12	$1,291,930.20
13	2.13	50,545	12	$1,291,930.20
14	2.13	50,545	12	$1,291,930.20
15	2.13	50,545	12	$1,291,930.20
16	2.13	50,545	12	$1,291,930.20
17	2.34	50,545	12	$1,419,303.60
18	2.34	50,545	12	$1,419,303.60
19	2.34	50,545	12	$1,419,303.60
20	2.34	50,545	12	$1,419,303.60
21	2.34	50,545	12	$1,419,303.60

PARKING SF

Years	Rate	SF	Months	Annual
1	0.00	15,145	12	$0.00
2	1.20	15,145	12	$218,088.00
3	1.20	15,145	12	$218,088.00
4	1.20	15,145	12	$218,088.00
5	1.20	15,145	12	$218,088.00
6	1.20	15,145	12	$218,088.00
7	1.32	15,145	12	$239,896.80
8	1.32	15,145	12	$239,896.80
9	1.32	15,145	12	$239,896.80
10	1.32	15,145	12	$239,896.80
11	1.32	15,145	12	$239,896.80
12	1.45	15,145	12	$263,523.00
13	1.45	15,145	12	$263,523.00
14	1.45	15,145	12	$263,523.00
15	1.45	15,145	12	$263,523.00
16	1.45	15,145	12	$263,523.00
17	1.60	15,145	12	$290,784.00
18	1.60	15,145	12	$290,784.00
19	1.60	15,145	12	$290,784.00
20	1.60	15,145	12	$290,784.00
21	1.60	15,145	12	$290,784.00

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TOTAL ANNUAL RENT

Years	Monthly	Annual
1	$0.00	$0.00
2	$107,133.20	$1,285,598.40
3	$107,133.20	$1,285,598.40
4	$107,133.20	$1,285,598.40
5	$107,133.20	$1,285,598.40
6	$107,133.20	$1,285,598.40
7	$118,048.70	$1,416,584.40
8	$118,048.70	$1,416,584.40
9	$118,048.70	$1,416,584.40
10	$118,048.70	$1,416,584.40
11	$118,048.70	$1,416,584.40
12	$129,621.10	$1,555,453.20
13	$129,621.10	$1,555,453.20
14	$129,621.10	$1,555,453.20
15	$129,621.10	$1,555,453.20
16	$129,621.10	$1,555,453.20
17	$142,507.30	$1,710,087.60
18	$142,507.30	$1,710,087.60
19	$142,507.30	$1,710,087.60
20	$142,507.30	$1,710,087.60
21	$142,507.30	$1,710,087.60
Total		$29,838,618.00

EXHIBIT "C"

NOTICE OF LEASE TERM DATES

To: City of Fresno

Date: To Be

Determined

Re: Lease dated_____, 2025, between River Park Properties II, a California limited partnership (Landlord), and City of Fresno (Tenant), concerning 2314 Mariposa Street, Fresno, California (Premises).

In accordance with the subject Lease, we wish to advise and/or confirm as follows:

1. That on the date of_____, 2025 (Commencement Date), the Tenant has taken possession of the Premises under the provisions of the subject Lease and the Premises have been accepted herewith by the Tenant containing 63,035 total rentable square feet. Tenant's percentage of the Building is 100%.

2. That under the provisions of the subject Lease, the Lease Expiration Date is , 202__, subject to Section 33 of the Lease (Option to Purchase).

3. That in accordance with the subject Lease, Rent commenced to accrue on _____, 202__.

4. If the Commencement Date of the subject Lease is other than the first day of the month, the first billing will contain a pro rata adjustment for Rent. Each billing thereafter shall be for the full amount of the Rent as provided for in said Lease.

Rent is due and payable in accordance with the subject Lease. All Rent checks should be payable to:

River Park Properties III
255 E. River Park Circle,
Suite 120 Fresno, CA
93711

AGREED AND ACCEPTED:

LANDLORD: RIVER PARK PROPERTIES III, a California limited partnership	**TENANT:** CITY OF FRESNO
By:_____	By: _____ Name:
Title:_____	Title:
Address: 255 E River Park Circle, Suite 120 Fresno, CA 93711	Address:
Phone: (559) 438-4800	Phone:
Date of execution:_____	Date of execution: _____

SAMPLE ONLY **[NOT FOR EXECUTION]**

EXHIBIT "D"

ENVIRONMENTAL REPORTS

- Phase I Environmental Site Assessment prepared by Technicon Engineering Services, dated October 16, 2016.

- Phase I Environmental Site Assessment prepared by Partner Engineering and Science, Inc., dated August 24, 2011.

- Asbestos and Lead Survey Report by Leon Environmental, dated August 5, 2016.

- Asbestos Survey Report by Krazan & Associates, Inc., dated April 2, 2014.

- Final Asbestos Air Clearance Report by Bovee Environmental Management, dated May 22, 2017.

- Notice of Completion of work completed per asbestos survey by Leon Environmental Services, dated May 10, 2018.

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EXHIBIT "E"

SAMPLE FORM OF TENANT ESTOPPEL CERTIFICATE

The undersigned ("**Tenant**") hereby certifies to _____ ("**Landlord**"), and _____, as follows:

1. Attached hereto is a true, correct and complete copy of that certain Lease dated _____, between Landlord and Tenant (the "Lease"), which demises Premises which are located at _____. The Lease is now in full force and effect and has not been amended, modified or supplemented, except as set forth in Section 6 below.

2. The term of the Lease commenced on_____.

3. The term of the Lease is currently scheduled to expire on_____.

4. Tenant has no option to renew or extend the Term of the Lease except: _____.

5. Tenant has an option to purchase the Premises.

6. The Lease has: (Initial One)

( ) not been amended, modified, supplemented, extended, renewed or assigned.

( ) been amended, modified, supplemented, extended, renewed or assigned by the following described agreements, copies of which are attached hereto: _____.

7. Tenant has accepted and is now in possession of the Premises and has not sublet, assigned or encumbered the Lease, the Premises or any portion thereof except as follows:_____.

8. The current Monthly Rent is $_____.

9. The amount of Security Deposit (if any) is $_____. No other security deposits have been made.

10. All rental payments payable by Tenant have been paid in full as of the date hereof. No rent under the Lease has been paid for more than thirty (30) days in advance of its due date.

11. All work required to be performed by Landlord under the Lease has been completed and has been accepted by Tenant, and all tenant improvement allowances have been paid in full.

12. To the best of Tenant's knowledge, as of the date hereof, there are no defaults on the part of Landlord or Tenant under the Lease.

13. Tenant has no defense as to its obligations under the Lease and claims no set-off or counterclaim against Landlord.

14. Tenant has no right to any concession (rental or otherwise) or similar compensation in connection with renting the space it occupies, except as expressly provided in the Lease.

15. All insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.

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16. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought pursuant to such bankruptcy laws with respect to Tenant.

17. Tenant pays rent due Landlord under the Lease to Landlord and does not have any knowledge of any other person who has any right to such rents by collateral assignment or otherwise.

The foregoing certification is made with the knowledge that_____is about to [fund a loan to Landlord or purchase the Premises from Landlord], and that_____is relying upon the representations herein made in [funding such loan or purchasing the Premises].

Dated:_____, .

"TENANT"

By: _____

By: _____

SAMPLE ONLY (NOT FOR EXECUTION)

EXHIBIT "F"

SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the City of Fresno (hereinafter referred to as "City"), members of a contractor's board of directors (hereinafter referred to as "City Contractor"), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the City. A self-dealing transaction is defined below:

"A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest"

The definition above will be utilized for purposes of completing this disclosure form.

INSTRUCTIONS

(1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

(2) Enter the board member's company/agency name and address.

(3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the City. At a minimum, include a description of the following:

a. The name of the agency/company with which the corporation has the transaction; and

b. The nature of the material financial interest in the Corporation's transaction that the board member has.

(4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.

(5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Mail the completed form to: City of Fresno
Fresno Police Department
2600 Fresno Street
Fresno, CA 93721-3600
Attn: Georganne A. White
City Manager

With a copy to: Brian Barr
General Services Department
2101 G Street, Bldg. A
Fresno, CA 93706

(1) Company Board Member Information:			
Name:		**Date:**	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			

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(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233
(5) Authorized Signature

Signature:		Date:	

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EXHIBIT "G"

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE (the "Memorandum") is made as of _____, 2025, by and between RIVER PARK PROPERTIES III, a California limited partnership ("Landlord"), and CITY OF FRESNO, a California municipal corporation ("Tenant").

1. This Memorandum is executed in connection with that certain Single-Tenant Lease (Triple Net) dated_____, 2025 ("Lease") by and between Landlord and Tenant.

2. The real property which is the subject of this Memorandum and of the Lease is described on Exhibit "A" attached hereto (the "Real Property").

3. Landlord hereby leases to Tenant a total of approximately 63,035 rentable square feet located in that certain office building ("Building") situated on the Real Property, and Tenant hereby leases said premises from Landlord, for the rent and on the terms and conditions set forth in the Lease.

4. The term of the Lease is twenty-one (21) years following the Lease Commencement Date (as defined in the Lease).

5. The Lease grants to Tenant a one-time Option to Purchase the Real Property and Building at the 252nd month of the Lease term.

6. The terms and conditions of the Lease are incorporated herein by reference. This Memorandum is prepared for the purpose of recordation and in no way modifies the terms and conditions of the Lease. If there is any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

IN WITNESS WHEREOF, the parties executed this Memorandum on the date first above written.

"LANDLORD": RIVER PARK PROPERTIES III,
a California limited partnership

By: Lance-Kashian & Company, a California corporation, general partner

By: _____
Name: Edward M. Kashian
Title: Chief Executive Officer

"TENANT" CITY OF FRESNO,
a California municipal corporation

By:

_____

Name:

_____

Title:

_____

_____

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[Signatures must be acknowledged by a notary- Notary acknowledgements on the following page]

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the documents, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF_____)
)ss.
COUNTY OF_____)

On_____, before me, (here insert name and title of the officer)_____personally appeared _____
_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature

[seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the documents, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF_____)
)ss.
COUNTY OF_____)

On_____, before me, (here insert name and title of the officer)_____personally appeared _____
_____who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[seal]

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EXHIBIT "H"

TENANT IMPROVEMENT PROGRAMMING

The below represents a draft of the potential tenant improvement programing for the Premises. The programming may include but is not limited to the following items:

1. Public Areas
Public Lobby / Reception
Public Restrooms
Records Counter / Report Writing Area
Waiting Area
Public Interview Rooms

2. Administrative and Staff Areas
Chief's Office
Deputy Chief / Command Staff Offices
Administrative Support Offices
Conference Rooms
Break Rooms
Restrooms / Showers / Locker Rooms
Wellness Room / Quiet Rooms
Training Rooms
Copy / Mail / Supply Rooms

3. Patrol Operations
Sergeants' Offices
Shared Workstations
Evidence Drop / Temporary Lockers

4. Investigations
Detectives' Offices / Cubicles
Interview Rooms
Case File Storage

5. Evidence and Property
Evidence Intake Rooms
Secure Evidence Storage
Drug Storage Vault
Firearms Storage
Property Rooms
Evidence Processing / Lab Area

6. Detention and Processing
Sally Port
Booking Area
Holding Cells
Interview / Interrogation Rooms
Fingerprinting & Mugshot Station
Prisoner Search / Processing
Detainee Restrooms
Secure Detainee Corridor / Circulation

7. Specialized Units
Special Investigations Unit Offices

8. IT and Equipment Support
IT Server Rooms / MDF / IDF
AV Equipment Rooms
Tech Workshop / Maintenance Rooms

9. Building Support & Utilities
Mechanical / Electrical / HVAC Rooms
General Storage
Loading Dock / Receiving
Records Archive / Long-Term Storage
Emergency Generator Room (external or secure enclosure)
Roof Mounted Equipment
Telecommunication / Radio Equipment