

Agenda Item: ID#18-0217 (1-N)

Date: 2/8/18

FRESNO CITY COUNCIL

City of



Supplemental Information Packet

REC'D FEB 2 '18 PM 4:38
FRESNO CITY CLERK

Agenda Related Item(s) – ID#18-0217 (1-N)

Contents of Supplement: Lease Agreement
Item(s)

Actions pertaining to the Lease Agreement between the City of Fresno and Fresno Football Club, LLC., to lease space in the Historic Bee Building located at 1555 Van Ness (Council District 3)

1. Adopt a finding of a Categorical Exemption pursuant to Class 1 of the California Environmental Quality Act (CEQA) Guideline Section 15301 (Existing Facilities) for lease
2. Approve Lease Agreement between the City of Fresno and Fresno Football Club, LLC. to lease space in the Historic Bee Building located at 1555 Van Ness

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.

LEASE

1555 Van Ness Avenue
Fresno, California 93721

THIS LEASE AGREEMENT (Lease) is entered into and effective as of 2/2/18, 2018, between the CITY OF FRESNO, a California municipal corporation (Landlord), and Fresno Football Club, LLC (Tenant).

1. LEASE SUMMARY

- a. **Leased Premises.** The leased commercial real estate consists of the agreed upon area of approximately 7,500 square feet on the 5th floor and approximately 2,000 square feet on the first floor, as outlined on the floor plan attached as Exhibit "A" (the Premises), in the building commonly known as 1555 Van Ness Avenue, Fresno, California, 93721, which is part of a structure known as the Historic Bee Building (the Building). The Premises do not include, and Landlord reserves, the exterior walls and roof of the Premises, the pipes and ducts, conduits, wires, fixtures, and equipment above the suspended ceiling or structural elements of the building in which the Premises are located. The Building, the land upon which it is situated, all other improvements located on such land, and all common areas appurtenant to the Building are referred to as the Property.
- b. **Lease Commencement Date.** The term of this Lease shall commence on February 15, 2018, or such earlier or later date as provided in the Lease (the Commencement Date).
- c. **Lease Termination Date.** The term of this Lease shall terminate at midnight on February 14, 2019, or such earlier or later date as provided in the Lease (the Termination Date).
- d. **Rent.** Beginning on the Commencement Date and throughout the term of the Lease, Tenant shall pay base rent (Rent) of \$4,000 per month.
- e. **Security Deposit.** Tenant shall not be required to provide a security deposit.
- f. **Permitted Use.** The Premises shall be used only for administrative offices and the sale of tickets and merchandise and for no other purpose without the prior written consent of Landlord.
- g. **Parking.** Tenant's lease of the Premises does not include parking. Landlord shall provide a City-standard parking contract for the use of up to 15 parking stalls pursuant to rates as set forth in the Master Fee Schedule.

- h. **Brokerage Fee.** Landlord shall pay a brokerage commission equal to six percent of the Rent paid over the term of the lease to Cushman & Wakefield/ Pacific upon mutual execution of the Lease as provided in the Lease.

2. PREMISES

- a. **Lease of Premises.** Landlord leases to Tenant and Tenant leases from Landlord the Premises upon the terms specified in this Lease.
- b. **Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises and the condition of all mechanical, electrical, and other systems on the Premises. Tenant shall be responsible for performing any work necessary to bring the Premises into condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had adequate opportunity to investigate the Premises, acknowledges responsibility for making any corrections, alterations and repairs to the Premises, and acknowledges that the time needed to complete any such items shall not delay the Commencement Date.
- c. **Tenant Improvements.** All tenant improvements to be performed on the Premises are to be completed by Tenant (Tenant's Work). Responsibilities for design, payment and performance of all such work shall be the responsibility of Tenant. Tenant, at its own cost and expense, will independently secure all land use and other entitlements, permits, and approvals that may be required by the City or any other governmental agency with jurisdiction over the Building related to Tenant's Work. Tenant is responsible for all permitting, design, construction, finishing, and other improvement related items. Landlord is not responsible for any physical improvements or any planning, design, construction, architectural, historical or environmental review related to the improvements.
- d. **Parking.** Tenant's lease of the Premises does not include parking. Landlord shall provide a City-standard parking contract for the use of up to fifteen parking stalls pursuant to rates as set forth in the Master Fee Schedule.

- 3. **TERM.** The term of this Lease shall be one year beginning February 15, 2018, through February 14, 2019, with an option to extend this lease for six months (Renewal Option). Tenant's Renewal Option shall be exercised, in writing, no later than two months prior to the expiration of the Term of this Lease. The monthly Rent during the Renewal Option shall remain the same.

4. RENT

- a. **Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction, or offset, the Rent stated in Section 1(d). The Rent shall be paid in advance to Landlord at the address of the Landlord stated on the signature page of this Lease or at another location the Landlord may designate. Rent is due on or before the first day of each month, with the first month's payment due upon execution of the Lease. Tenant acknowledges that Tenant's failure to pay the Rent or any other amounts within ten days of its due date under this Lease shall constitute a default under Section 21(a).
- b. **Late Charges; Default Interest.** Any amount, including Rent, which Tenant fails to pay to Landlord when due under this Lease shall incur interest at the rate of one and one-half percent (1.5%) per annum (the Late Charge). Acceptance of past-due payments or the Late Charge by Landlord shall not constitute a waiver of Tenant's default for the overdue amount, nor prevent Landlord from exercising other rights and remedies granted under this Lease.
- c. **Less Than Full Payment.** Landlord's acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims.
- d. **Brokerage Commission.** The Landlord shall pay a brokerage commission equal to six percent of the Rent paid over the term of the Lease to Cushman & Wakefield/ Pacific (Landlord's Broker), upon mutual execution of the Lease. Landlord shall defend and indemnify Tenant from any claims for commissions or fees arising from Landlord dealing with any other broker or agent other than Landlord's Broker.

5. SECURITY DEPOSIT. No security deposit is required.

- 6. **USES.** The Premises shall be used only for the use(s) specified in Section 1(f) above, and for no other business or purpose without the prior written consent of Landlord. No act shall be done on or around the Premises that is unlawful. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done in the Premises or on the Property which will obstruct or interfere with the rights of other tenants or occupants of the Property, or their customers, clients and visitors, or to injure or annoy such persons.

7. **COMPLIANCE WITH LAWS.** Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. If the enactment or enforcement of any law, ordinance, regulation or code during the Lease term requires any changes to the Premises during the Lease term, the Tenant shall perform all such changes at its expense if the changes are required due to the nature of Tenant's activities at the Premises, or due to alterations that Tenant seeks to make to the Premises; otherwise Landlord shall perform all such changes at its expense.

8. **UTILITIES AND SERVICES.** Landlord shall provide the Premises the following services, to the extent they are not separately metered to the Premises: water, gas and electricity for the Premises seven days per week, twenty-four hours per day, and HVAC from 9 a.m. to 9 p.m. seven days per week, and shall provide janitorial service to the Common Areas of the Building three nights each week, exclusive of holidays. HVAC services will also be provided by Landlord to the Premises during additional hours on reasonable notice to Landlord, at Tenant's sole cost and expense, at an hourly rate reasonably established by Landlord from time to time and payable by Tenant, and billed in addition to Rent.

Tenant shall furnish janitorial services for the Premises and all other utilities (including but not limited to, telephone, data and cable service if available) and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord as described above. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above ordinary usage, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof, except to the extent due to the intentional misconduct or gross negligence of Landlord.

9. **TAXES.** Tenant acknowledges that any possessory property interest arising by entering into this Lease may be subject to property taxation and that Tenant shall pay any property taxes levied on such interest. NOTIFICATION TO TENANT PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 107.6: A POSSESSORY INTEREST SUBJECT TO PROPERTY TAXATION MAY BE CREATED BY ENTERING INTO THIS LEASE AND TENANT MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON SUCH INTEREST.

10. **COMMON AREAS**

a. **Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant

with other tenants and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common heating ventilating and air conditioning systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas, erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of the exterior walls and the roof and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.

- b. **Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants to whom Landlord has granted or may grant such rights, to use the Common Areas. Tenant shall abide by rules and regulations adopted by Landlord from time to time and shall use its best efforts to cause its employees, contractors, and invitees to comply with those rules and regulations, and not interfere with the use of Common Areas by others.
- c. **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be borne by Landlord. In performing such maintenance, Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

- 11. **ALTERATIONS.** Tenant may make alterations, additions or improvements to the Premises, including any Tenant's Work identified in the attached Exhibit "C" (collectively, Alterations), with the prior written consent of Landlord, which, with respect to Alterations not affecting the structural components of the Premises or utility systems therein, shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have thirty days in which to respond to Tenant's request for any Alterations so long as such request includes the name(s) of Tenant's contractors and reasonably detailed plans and specifications therefore. Alterations shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be performed without damaging existing improvements or the structural integrity of the Premises, and Landlord's consent shall not be required for Tenant's installation or removal of those items.

Tenant shall perform all work within the Premises at Tenant's expense in accordance with plans and specifications approved by Landlord pursuant to Exhibit "C," using contractors approved by Landlord, and in a manner so as to not unreasonably interfere with other tenants. Tenant shall pay, when due, all claims for labor or materials furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or any interest therein. Landlord shall be deemed the owner of all Alterations except for those which Landlord requires to be removed at the end of the Lease term, at Tenant's sole expense. Tenant shall immediately repair any damage to the premises caused by removal of Alterations.

12. **REPAIRS AND MAINTENANCE.** Tenant shall, at its sole expense, maintain the Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems to the extent exclusively serving the Premises. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems serving more than just the Premises, and the Common Areas. Tenant shall not damage any demising wall or disturb the structural integrity of the Premises and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, agents, contractors, or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its agents, employees, contractors or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may at Landlord's option enter upon the Premises after ten days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof together with interest thereon at the rate of one and one-half percent (1.5%) per annum shall be due and payable in addition to Rent.
13. **ACCESS AND RIGHT OF ENTRY.** After 24 hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within 180 days prior to the expiration or sooner termination of the Lease term.
14. **SIGNAGE.** Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs

upon the Premises. Tenant shall install any approved signage at Tenant's sole expense and in compliance with all applicable laws. Due to the historic nature of the Building, any work performed on any of the building's character defining features that form the basis for the Building's potential historic significance shall subject to approval by the City's Historic Preservation Manager and/or the City's Historic Preservation Commission. Tenant shall not damage or deface the Premises in installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal.

15. **RIGHT OF FIRST REFUSAL.** Tenant shall have the right of first refusal to purchase the Property during the term and any extensions of the Lease. If, during the term of this lease or any renewal term, Lessor is prepared to accept a bona fide offer (Offer) from any party to purchase the Property, Landlord shall give written notice to Tenant of the terms of such Offer and Tenant shall have a period of thirty days from the date of receipt of such notice within which to elect to purchase the Property on the identical terms and conditions of such offer, by giving written notice of such election to Landlord. If Tenant fails to give such timely written notice of election to purchase, Landlord shall have a period of one hundred twenty days from the expiration date to transfer the Property to the bona fide purchaser upon terms not more favorable to the purchaser than contained in the notice to the Tenant.

16. **DAMAGE OR DESTRUCTION OF PREMISES**

- a. **Partial Damage or Destruction.** If the Premises or the portion of the Property necessary for Tenant's occupancy are partially damaged but not rendered untenable, Landlord, at its sole option, and subject to budget appropriations, may repair the Premises or terminate this Lease upon written notice to Tenant if the Premises are partially destroyed or damaged from any cause. If Landlord elects to terminate this Lease, termination shall be effective immediately. If Landlord elects to repair or restore the Premises, it will notify Tenant within twenty business days, and shall complete the work within 180 days after the casualty date and this Lease will not terminate. Tenant shall be entitled to a proportionate rent reduction based on the extent to which the damage and the repair work interfere with Tenant's use and occupancy of the Premises for the use intended.
- b. **Tenant Waiver of Right to Terminate.** Respecting any partial destruction that Landlord elects to repair, Tenant waives any right to terminate the Lease under California Civil Code Sections 1932(2), or 1933(4).
- c. **Total Destruction.** If the Premises are totally destroyed, this Lease shall terminate as of the date of the casualty.

17. INSURANCE

- a. Throughout the life of this Lease, Tenant and each of its consultants, contractors and subcontractors shall pay for and maintain in full force and effect all insurance as required in attached Exhibit "B" or as may be authorized or required in writing by Landlord's Risk Manager or his/her designee at any time and in his/her reasonable and sole discretion. Additionally, Tenant shall maintain at its cost and expense an insurance policy for the full insurable value of all Tenant's fixtures and equipment and, to the extent possible, all merchandise that is in or on the Premises against damage or destruction by fire, theft, or the elements.
- b. If at any time during the life of the Lease or any extension, Tenant or any of its consultants, contractors or subcontractors fail to maintain any required insurance in full force and effect, all Tenant's activities under this Lease shall be discontinued immediately, until notice is received by Landlord that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Landlord. Any failure to maintain the required insurance shall be sufficient cause for Landlord to terminate this Lease. No action taken by Landlord pursuant to this Section shall in any way relieve Tenant of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by Landlord that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- c. The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to provide indemnity, as required by this Lease, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, or its consultants, contractors or subcontractors.
- d. Upon request of Landlord, Tenant shall immediately furnish Landlord with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease.
- e. Tenant and its insurers hereby waive all rights of recovery against Landlord and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Tenant or any of its officers, employees, agents, consultants, contractors, subcontractors, invitees or

volunteers, or its property or the property of others under its care, custody and control. Tenant shall give notice to its insurers that this waiver of subrogation is contained in this Lease. This requirement shall survive termination or expiration of this Lease.

- f. Tenant is also responsible for the compliance of Tenant's contractors and subcontractors with the insurance requirements in this Section, except that any required certificates and applicable endorsements shall be on file with Tenant and Landlord prior to the commencement of any work or services by the respective contractor or subcontractor.

18. INDEMNIFICATION. Tenant shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless Landlord and their officials, officers, representatives, agents, employees, volunteers, transferees, successors and assigns (each an "Indemnitee" and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise from or are in any way connected with Tenant's activities, or the entry on, occupancy or use of, the Property by Tenant or Tenant's representatives, or the exercise by Tenant of Tenant's rights hereunder, or the performance of, or failure to perform, Tenant's duties under this Agreement and Lease, including, but not limited to, Claims arising out of: (i) injury to or death of persons, including but not limited to employees of Landlord or Tenant (and including, but not limited to, injury due to exposure to Potential Environmental Hazards in, on or about the Property); (ii) injury to property or other interest of Landlord, Tenant or any third party; (iii) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to the environment and including any liability imposed by law or regulation without regard to fault.

- a. Tenant acknowledges that all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of Tenant or in connection with Tenant's use or occupancy of the Property, Tenant's activities or the activities of any of Tenant's representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.
- b. Tenant's use and occupancy of the Property shall be at Tenant's sole risk and expense. Tenant accepts all risk relating to Tenant's occupancy and use of the Property. Landlord shall not be liable to Tenant for, and Tenant hereby waives and releases Landlord and the other Indemnitees from, any

and all liability, whether in contract, tort, strict liability or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on or about the Property.

- c. Tenant shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of Tenant, or any of Tenant's consultants, contractors or subcontractors, to comply with the insurance requirements set forth in this Agreement.

The provisions of this Section shall survive the expiration or termination of this Lease.

- 19. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer (collectively referred to as a Transfer) any interest in this Lease or any part of the Premises, without first obtaining Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord's consent to such Transfer. Consent to any Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing same, including attorney's fees, upon demand of Landlord, up to a maximum of \$1,250 per request.

If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, or any change(s) in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption instruments.

- 20. LIENS.** Tenant is not authorized to subject the Landlord's estate to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify, defend and hold Landlord harmless from liability for any such liens including, without limitations, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within ten days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying

Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien(s).

21. DEFAULT. The following occurrences shall each be deemed an Event of Default by Tenant. Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

- a. **Payment of Money.** Tenant's failure to pay Rent or to make any other payment under this Lease **within ten days** of the due date.
- b. **Abandonment.** Tenant's absence from or failure to conduct business on the Premises for more than thirty consecutive days will be abandonment or vacation for purposes of this Lease.
- c. **Other Breach.** Tenant's failure to observe and perform any other provision of this Lease when the failure continues for thirty days after written notice from the Landlord. If, however, the nature of the default is such that Tenant cannot reasonably cure it within the thirty day period, Tenant will not be in default if Tenant begins to cure the default within the thirty day period and after that diligently prosecutes it to completion.
- d. **Insolvency.** Tenant does any of the following: (a) Tenant makes any general assignment for the benefit of creditors, (b) Tenant files bankruptcy, or a third party petitions to have Tenant adjudged bankrupt, and does not dismiss the petition within sixty days, (c) Tenant files a petition for reorganization or arrangement under any law relating to bankruptcy, (d) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Premises, or of Tenant's interest in this Lease, and possession is not restored to Tenant within thirty days, or (e) the attachment, execution, or other judicial seizure of substantially all of Tenant's assets at the Premises, or of Tenant's interest in this Lease, and that seizure is not discharged within thirty days.

22. REMEDIES. Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative, and none shall exclude any other right or remedy allowed by law.

- a. **Termination of Lease and Recovery of Damages.** Upon any Tenant default, the Landlord may terminate this Lease and all Tenant's rights under it by giving written notice of the termination. In addition, the Landlord may exercise any other remedies available to it at law or in equity. No act of Landlord, other than a written termination notice from Landlord to Tenant, will terminate this Lease.

- b. **Landlord's Right to Relet.** If Tenant breaches this Lease, Landlord may enter the Premises and relet it to a third party for any term, at any rental, and on any other conditions that Landlord in its sole discretion may deem advisable. The Landlord may also make alterations and repairs to the Premises.
 - c. **Landlord's Right to Cure Tenant Defaults.** If Tenant breaches or fails to perform any provision of this Lease, the Landlord, at its option, may cure Tenant's breach. Tenant will reimburse the Landlord, on demand, for the Landlord's costs to cure the default.
 - d. **Waiver of Breach.** If the Landlord waives any Tenant breach or default of any Lease provision, the waiver will not be a continuing waiver or a waiver of Tenant's subsequent breach of the same or any other provision. The Landlord's acceptance of Rent shall not be a waiver of any preceding breach by Tenant, other than the failure to pay the particular Rent so accepted.
23. **HOLDOVER.** If Tenant shall, without the written consent of Landlord, hold over after the expiration of the term, such tenancy shall be deemed to be on a month-to-month basis and may be terminated. During such tenancy, Tenant agrees to pay to Landlord 150% the rate of rental last payable under this Lease, on a monthly basis without notice, demand, deduction or offset, unless a different rate is agreed upon by Landlord in writing. All other terms of the Lease shall remain in effect. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.
24. **NOTICES.** Unless the law otherwise requires, any notice, demand, or communication hereunder, given by one party to the other, must be in writing. The notice or communication will be duly served when personally delivered or when deposited in the United States mail, first-class postage prepaid, and addressed as follows:

Tenant:
Fresno Football Club, LLC
1555 Van Ness Avenue
Fresno, California 93721

Landlord:
City of Fresno
Division Manager of Facilities & Major Projects
2101 G Street, Bldg A, Fresno Street
Fresno, CA 93706

Either party may change its address for notice purposes by delivering notice of the change as provided in this Section. Notice shall be deemed complete when personally delivered or within 48 hours after the mailing of it, postage prepaid, and properly addressed.

- 25. COSTS AND ATTORNEY'S FEES.** If either party brings an action or proceeding to enforce or interpret the provisions of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees as fixed by the court or other tribunal.
- 26. ESTOPPEL CERTIFICATES.** Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the date the Lease term commenced and the date it expires; (ii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iii) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (iv) that this Lease represents the entire agreement between the parties; (v) that all conditions under this Lease to be performed by Landlord have been satisfied; (vi) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (vii) that no Rent has been paid more than one month in advance; (viii) that no security has been deposited with Landlord (or, if so, the amount thereof); and (ix) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Any such statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest, or the assignee of any mortgage or any new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within the ten days of receipt by Tenant of a written request by Landlord as herein provided, Tenant shall be deemed to have given such certificate as above provided without modification and shall be deemed to have admitted the accuracy of any information supplied by Landlord to a prospective purchaser or mortgagee.
- 27. TRANSFER OF LANDLORD'S INTEREST.** This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for security purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.
- 28. HAZARDOUS MATERIAL.** Landlord represents and warrants to Tenant that, to Landlord's knowledge, without duty of investigation, there is no "Hazardous

Material" (as defined below) on, in, or under the Premises as of the Commencement Date except as may otherwise have been disclosed to tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Lease term as the result of such contaminations.

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises by Tenant, its agents, employees, contractors or invitees, except with Landlord's prior consent and then only upon strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Premises, damages for the loss or restriction of use of rentable or usable space or of any amenity of the Premises, or elsewhere, damages arising from any adverse impact on marketing of space at the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Lease term, which is caused by or in any way related to such breach. These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of sites conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees, results in any unlawful release of Hazardous Materials on the Premises or any other property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or any other effected property, to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion.

As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the

State of California, or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. The provisions of this Section shall survive expiration or termination of this Lease,

29. **QUIET ENJOYMENT.** So long as Tenant pays the Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.
30. **SURRENDER OF LEASE NOT A MERGER.** If Landlord has approved any subleases, Tenant's voluntary or other surrender of this Lease, or the parties' mutual cancellation of it, will not merge the ownership and leasehold interests. At Landlord's sole option, Tenant's surrender or any cancellation of the Lease will terminate any subleases.
31. **SURRENDER OF PREMISES.** Tenant shall surrender the Premises, at the expiration or earlier termination of this Lease, in the same condition as when Tenant took possession, reasonable use and wear excepted. Tenant shall remove all of Tenant's signs and personal property, including trade fixtures that are removable without damage to the Premises. Any Tenant property remaining on the Premises after the expiration or termination, at Landlord's sole election, shall become the property of Landlord as provided elsewhere in this Lease. Tenant shall repair any damage to the Premises caused by Tenant's removal of its signs or trade fixtures.
32. **SUCCESSORS AND ASSIGNS.** This Lease shall benefit and be binding upon the parties and their successors and assigns, subject to the restrictions on Tenant's assignment and subletting.
33. **VENUE.** Venue for any action or proceeding arising under this Lease shall be Fresno County, California.
34. **GOVERNING LAW.** California Law governs this Lease and the legal relations between the parties.
35. **MEMORANDUM OF LEASE.** Neither this Lease nor any memorandum or "short form" thereof shall be recorded without Landlord's prior written consent.
36. **TIME OF ESSENCE.** Time is of the essence in the performance of this Lease.
37. **PLACE OF PAYMENTS.** Tenant shall pay all Lease payments and other sums payable to Landlord at:

City of Fresno Revenue Division
2600 Fresno Street
Fresno, California 93721-3611

38. **ENTIRE AGREEMENT.** The exhibits referenced in this Lease are by the references incorporated into and made a part of this Lease. This Lease is the entire agreement between Landlord and Tenant regarding the Premises. It correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises or this Lease not expressly set forth in this instrument are void.
39. **SEVERABILITY.** If a court finds any provision of this Lease to be invalid, void, or unenforceable, the provision will be severed from this Lease and the remaining provisions of this Lease will remain in effect.
40. **AMENDMENTS.** This lease may not be amended or otherwise modified in any way whatsoever, except in writing signed by the parties.

[SIGNATURES ON FOLLOWING PAGE.]

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

Landlord:

CITY OF FRESNO,
a California municipal Corporation

By: _____
Wilma Quan-Schechter, City Manager

Tenant:

FRESNO SOCCER CLUB, LLC

By: Raymond L. Beshoff
Name: Raymond Beshoff
Title: President

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvavian
Tracy N. Parvavian
Deputy City Attorney
Date: 2-2-18

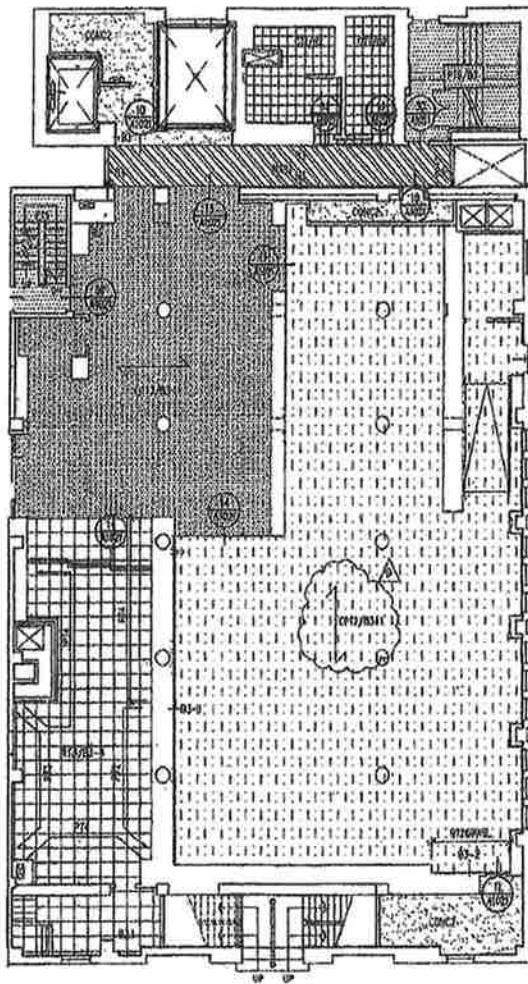
ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

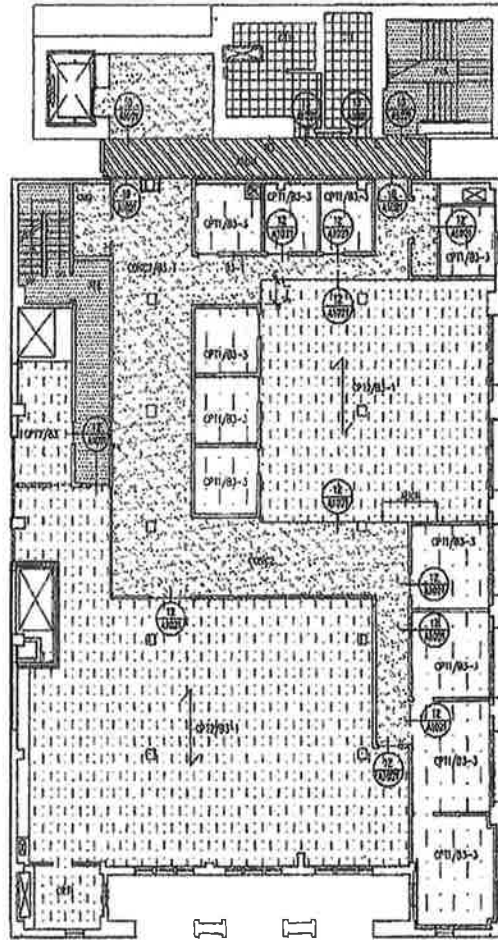
Attachments:

Exhibit A: The Premises
Exhibit B: Insurance Requirements
Exhibit C: Tenant Improvements

Exhibit A
The Premises



First Floor



Fifth Floor

Exhibit B

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

TENANT, or any party the TENANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$2,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$2,000,000 per occurrence for personal and advertising injury;
 - (iii) \$4,000,000 aggregate for products and completed operations; and,
 - (iv) \$4,000,000 general aggregate applying separately under this Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event TENANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

TENANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and TENANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) TENANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. TENANT shall establish additional insured

status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, TENANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of TENANT'S insurance and shall not contribute with it. TENANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.
4. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
5. Waiver of subrogation in favor of CITY, its officers, officials, employees, agents and volunteers.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: TENANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. TENANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, TENANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, TENANT shall provide a new certificate, and applicable endorsements,

evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

MAINTENANCE OF COVERAGE - If at any time during the life of the Lease or any extension, TENANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Lease shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Lease. No action taken by CITY hereunder shall in any way relieve TENANT of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by TENANT shall not be deemed to release or diminish the liability of TENANT, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by TENANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of TENANT, its principals, officers, agents, employees, persons under the supervision of TENANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

VERIFICATION OF COVERAGE

TENANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, TENANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Exhibit C

Tenant Improvements

- (a) Tenant will notify Landlord at least 7 days prior to the commencement of any construction. Landlord shall have the right to post and keep posted on the Property, and record, a Notice of Non-responsibility. Tenant shall keep the Property free from any and all liens and encumbrances arising out of or in any way connected with the work performed, materials furnished or obligations incurred by Tenant in connection with any alteration, addition or improvement of the Property.
- (b) Tenant shall prepare a work plan and cost estimate which describes in detail and with specificity the nature, scope, location, estimated costs and purpose of all of Tenant's improvements and activities to be performed on the Property, including, without limitation, the specific areas in which Tenant and Tenant's representatives, may have access and may conduct Tenant's activities and a schedule of Tenant's activities (the Work Plan). The Work Plan will be submitted to the following person at City for approval: Division Manager of Facilities & Major Projects, 2101 G Street, Bldg A, Fresno Street, Fresno, CA 93706, Phone No. (559) 621-1487. Tenant acknowledges and agrees that Landlord's review of the Work Plan is solely for the purpose of protecting Landlord's interests, and shall not be deemed to create any liability of any kind on the part of Landlord, or to constitute a representation on the part of Landlord that the Work Plan is adequate or appropriate for any purpose, or complies with applicable Legal Requirements, as defined herein. Tenant and Tenant's representatives shall not commence activities associated with the Tenant's improvements on the Property without the prior written consent of Landlord to the Work Plan as set forth above, which consent shall not be unreasonably withheld. Tenant agrees and covenants that all of Tenant's activities shall be performed in strict compliance to the approved Work Plan. Tenant shall not modify the Work Plan without the prior written approval of Landlord.
- (c) ***Tenant covenants and agrees to cooperate with Landlord and abide by any and all orders or instructions issued by Landlord, its employees, agents or representatives. Landlord reserves the right to restrict access to the Property in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with Landlord's response thereto, or if emergency repairs or maintenance are required to Landlord facilities within or in the vicinity of the Property, or otherwise when Landlord deems it advisable to do so.***
- (d) Tenant covenants and agrees that Tenant shall conduct Tenant's activities in compliance with the Work Plan approved by Landlord and in such a manner so as to protect the Property, Landlord's facilities, the environment and human health and safety. Except as may be expressly provided in such Work Plan, Tenant shall not cause or permit any Hazardous Material, as defined by Section

28 of the Lease, to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of, the Property. In the event Landlord determines that Tenant's activities in any way endanger the Property, Landlord's facilities, the environment, or human health and safety, Landlord may, at Landlord's sole discretion, require that Tenant halt Tenant's activities until appropriate protective measures may be taken to eliminate such endangerment to Landlord's satisfaction. Tenant shall hold Landlord harmless from any claims in any way resulting from any delay under this Section. Landlord's right to halt activities under this Section shall not in any way affect or alter Tenant's insurance or indemnity obligations under this Lease, nor shall it relieve Tenant from any of Tenant's obligations hereunder that pertain to health, safety, or the protection of the environment.

- (e) Tenant shall comply, at Tenant's sole cost and expense, with all applicable Legal Requirements when conducting Tenant's activities and Tenant shall obtain, at Tenant's sole cost and expense, any and all necessary permits, authorizations and approvals applicable to Tenant's activities. Landlord shall have a right to observe Tenant's activities at any time to confirm Tenant's compliance with the requirements of this Lease and applicable laws.
- (f) Tenant shall require that any improvement be constructed by a licensed contractor.
- (g) Notwithstanding any other provision of this Lease, Tenant shall include in any contract by Tenant for the design, construction, renovation, demolition or repair of any improvement on the Property the insurance requirements in Exhibit "B." Tenant agrees that no change order to any such contract will be issued without the prior written approval from the Landlord which affects the Work Plan for the project, would affect the size or capacity of any project component, cause a significant change in the location of any project component, affect the duration of the project, alter materials used in the project, or affects any Landlord-approved green or solar energy system component(s) of the project. Tenant also agrees to make Landlord a third-party beneficiary in any such contract.
- (h) Ownership of all structures, buildings, or improvements constructed by Tenant upon the Property and all alterations, additions, or betterments thereto, shall vest in Landlord, without compensation being paid therefore.