

CLOVIS VETERANS MEMORIAL DISTRICT

REQUEST FOR PROPOSALS (RFP)

LEASE OF 299 CLOVIS AVE PROPERTY

OCTOBER 24, 2021

RFP SUBMISSION DEADLINE: 5 P.M. ON FRIDAY, DECEMBER 3, 2021

ANTICIPATED MILESTONES

Issue RFP	October 24, 2021
Requests for Information Due.....	November 15, 2021
RFP Responses Due	December 3, 2021
Board Decision on RFP Responses	December 9, 2021
Notify Selected Tenant.....	December 10, 2021
Tenant Submits Executed Lease	January 7, 2022
Board Approves Lease and CVMD/Landlord signs	January 13, 2022

Proposal Contact:

Amy Whitacre
Director of Operations
Clovis Veterans Memorial District
808 4th St.
Clovis, CA 93612

O: (559) 299-0471
F: (559) 299-2151

Email: AmyW@cvmdistrict.org

RFP: LEASE OF 299 CLOVIS AVE PROPERTY

1. **INTRODUCTION**

The Clovis Veterans Memorial District ("District") is requesting proposals from qualified companies ("Company(ies)") to lease the 299 Clovis Ave, Clovis, CA building and property.

2. **PROJECT GOALS**

The District is seeking a responsible responsive applicant to lease the 299 Clovis Avenue, Clovis, CA property (APNs: 492-010-17) for a five (5) year lease with a five (5) year extension option.

3. **SUBMITTAL OF PROPOSALS**

Proposals will be received by the District at the Rex Phebus Veterans Building, 808 Fourth Street, Clovis, CA 93612 **until 5 p.m. local time on December 3, 2021**. Late proposals shall not be accepted. Companies assume all risks of failure of proposals to be timely delivered if proposals are mailed or sent by messenger. The District's time stamp shall be conclusive as to the time of receipt of any proposal.

The District will respond to any requests for clarification to the RFP in RFP Addendum(s) as it deems necessary. Inquiries should be directed to Amy Whitacre, Director of Operations, at amyw@cvmddistrict.org. All requests for clarification must be in writing and received by November 15, 2021 at 5 p.m.

Proposals must be submitted in a sealed envelope, addressed to the Director of Operations at the above-referenced address. The sealed envelope containing a proposal must be plainly marked on the outside as "299 Lease Proposal" and include the Company's name and address. One (1) unbound original and two (2) copies of the proposal must be submitted. The Company's proposals for rent, willingness to sign proposed form of lease if selected, and all other material business terms must be included, or the proposal may be deemed incomplete and nonresponsive.

Following proposal submittal and review, it is anticipated that contract will be awarded by the District Board, if at all, on December 10, 2021.

4. **PROPOSAL EVALUATION AND SELECTION**

A Selection Committee of District staff will evaluate and rank all proposals meeting the requirements of this RFP. Responses must include:

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- Confirmation of Minimum Requirements:
 - Statement of Agreement to execute proposed form of lease attached as Exhibit A to RFP.
 - Confirmation of insurance in the amounts stated in proposed form of lease attached as Exhibit A to RFP.
 - Confirmation that Company has never been found liable, criminally or civilly, of fraud or theft involving a public agency.
 - Confirmation of no conflict of interest.
- Rent Proposal: Minimum rent must be \$14,498.90 per month.
- Security Deposit amount: Minimum of one months rent.
- Land Use Confirmation Form (Exhibit B) from City of Clovis.
 - Please review the Permitted Land Use (Exhibit C)
- Scope and quality of the proposed tenant improvements.
- Prior landlord references.
- Information showing financial capability to perform under the lease.

In an effort to provide as much objectivity in the selection process as possible, the District will use a scoring system, with a 100% score being the highest. The scoring will be weighted as follows:

Rent	40%
Past performance on similar leases and financial capability	30%
Scope and quality of tenant improvements	20%
Responsiveness to RFP	10%

The District reserves the right to negotiate further with the top two or three scoring Companies to select one Company whose proposal provides the greatest benefit to the District.

If staff is not willing to recommend approval, the negotiations/process shall cease.

The District reserves the right to waive any errors or irregularities in any proposals and to accept or reject any or all proposals and may, at its sole discretion, negotiate with one or more Companies concurrently during the period in which the District is selecting one Company/proposal.

The District also reserves the right to reject all proposals, revise the specifications, and issue a new RFP.

The Selection Committee reserves the right to request additional information from Companies, to negotiate terms and conditions, to request demonstrations or oral presentations, to visit other sites leased by a Company, or to ask Companies to appear before the Selection Committee to clarify points of their proposals.

The District reserves the right to consider any minor deviations and determine the acceptance or rejection of such deviation. The District reserves the right to seek

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supplementary information from any Company at any time after official proposal and before board approval of the lease. Such information will be limited to clarification or amplification of information provided in the original proposal.

Each Company agrees that the District has up to 90 days to accept or reject any proposal. It is further understood that, if the Company to which any award is made fails to enter into the District's lease, an award may be made to another Company, which shall be bound to perform as if it had received the award in the first instance.

Upon District staff's delivery of a lease to Company for execution, the Company will be required to execute and return the lease and reasonable evidence of the due authorization/approval and execution of the lease, all required documents, security deposits, first month rent, and all certificates of insurance by the agenda deadline for the District board meeting at which the lease will be considered for approval by the District. Should the Company fail or refuse to timely return any such items, the District reserves the right to negotiate a lease with the Company offering the next best value to the District as determined by the District.

5. PROPOSAL FORMAT

The proposal shall include the following information:

Binding Transmittal Letter

Company must provide a cover letter (two pages maximum) signed by a party authorized to contractually obligate the Company, with evidence of such authority. The letter must also identify the name, title, address, telephone number, and e-mail address of the individual(s) responsible for negotiations and execution of the lease, if the Company is selected. The letter shall also constitute certification, under penalty of perjury, that the Company will meet all District rules and regulations, and State and Federal nondiscrimination laws. An unsigned cover letter, or a letter signed by a representative unauthorized to bind the Company, may be rejected.

Company Overview and Qualifications

- A Statement of Qualifications
- Evidence of financial capability to perform under the lease.
- A confirmation of ability to meet each of the Minimum Requirements listed above in Section 4 of this RFP, with each item listed separately in response.
- The Company shall disclose any financial, business or other relationships with the District that may have an impact on the outcome of the lease.

Rent and Security Deposit Proposal

- Provide a monthly rent proposal and security deposit proposal.

Property Use Proposal

- A description of how the property would be used during the term of the lease.

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- A description of proposed improvements (including both scope and quality).

Assignment and Subletting

- Describe any desired assignment and subletting rights.

References

- Provide a minimum of three (3) references for similar leases within the past five (5) years. Include location of property, dates of lease, type of use, and contact information for references.

6. GENERAL CONTRACT TERMS AND CONDITIONS

Contract (Lease) Requirement

The successful Company shall enter into a lease with the District containing the terms and conditions set forth in Exhibit A attached hereto and incorporated by reference herein. A statement must be made in the Company's proposal that the terms and conditions of the lease are acceptable. By submitting a proposal, the Company represents that it will enter into the form of lease set forth in Exhibit A.

Confidentiality and Ownership of Proposal Materials, Reports, and Data

Each proposal and work documents submitted to the District shall become property of the District and shall be subject to disclosure pursuant to the California Public Records Act once the District has selected a Company for the Project, if at all, or upon the District rejecting all proposals or terminating this RFP process. No notice or warning by Company regarding disclosure of any proposal or portion thereof shall have any force or effect. Any and all notices of "trade secret", and/or any other kind of notice of proprietary rights in any of the proposal materials, shall be disregarded. This includes, but is not limited to, documents for projects for which all proposals are rejected and projects for which an award is not made for any reason.

Amendments to the RFP

The District reserves the right to modify this RFP at any time prior to the proposal submittal deadline. Modifications or revisions to the RFP shall be issued only as a written amendment or addenda issued by the District. In the event the District modifies or revises this RFP, a copy of such changes will be issued to each recipient of the RFP.

Withdrawal or Modification of Proposals

Proposals may be withdrawn or modified at any time prior to the deadline for proposals, provided that a request in writing executed by the Company or duly authorized representative for the withdrawal or modification of such proposal is filed with the Director of Operations. The withdrawal or modification of a proposal shall not invalidate the right of a Company to submit a new proposal prior to the time and date set for the submittal deadline. After the expiration of the time and date for receipt of proposals, a proposal may not be withdrawn or modified.

Validity of Proposals

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Proposals shall remain valid for at least 120 days after the opening.

Right to Reject All Proposals

The District reserves the right to reject any or all proposals submitted, and no representation is made hereby that any lease will be awarded or approved pursuant to this RFP or otherwise.

Cost of Proposals

All costs incurred in the preparation of the proposal, the submission or additional information, and/or any aspect of the proposal will be borne by the Company. The District will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any other cost or obligation of any kind that may be incurred by the Company.

* * *

RFP: LEASE OF 299 CLOVIS AVE PROPERTY

EXHIBIT "A"
FORM OF LEASE AGREEMENT

RFP: LEASE OF 299 CLOVIS AVE PROPERTY

EXHIBIT "B"
LAND USE CONFIRMATION FORM

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GROUND AND BUILDING LEASE

between

CLOVIS VETERANS MEMORIAL DISTRICT

("Landlord")

and

("Tenant")

_____, 202__

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EXHIBITS

EXHIBIT "A"	DESCRIPTION OF LAND
EXHIBIT "B"	INITIAL TENANT IMPROVEMENTS

GROUND AND BUILDING LEASE

THIS GROUND AND BUILDING LEASE (the “Lease”) is dated for reference purposes and entered into as of _____, 202__, by and between the CLOVIS VETERANS MEMORIAL DISTRICT, a memorial district organized under Division 6, Chapter 1, of the California Military and Veterans Code (“Landlord”), and _____, a _____ (“Tenant”).

Recitals

A. Landlord owns the land more particularly described in Exhibit “A” attached hereto and the improvements thereon (collectively, the “Property”).

B. Tenant desires to lease the Property from Landlord, and complete the construction of the initial tenant improvements described on Exhibit “B”, and Landlord desires to lease the Property to Tenant, and permit Tenant to complete the construction of such improvements (subject to Tenant obtaining applicable permits and governmental approvals, and constructing in compliance with such permits and approval and applicable law), upon and subject to the terms and conditions in this Lease.

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises contained herein, Landlord and Tenant agree as follows:

1. Lease of Property.

1.1 Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, upon and subject to the terms hereinafter set forth.

2. Term of Lease; Possession.

2.1 Term. The term of this Lease shall commence on the date of this Lease and shall continue until the date that is five (5) years thereafter, subject to extension by Tenant under Section 2.2 below. Such term is hereinafter referred to as the “Term”.

2.2 Tenant Extension Option. Tenant shall have the right to extend the initial five year term of this Lease for one (1) period of five (5) years (the “Extension Term”) by giving Landlord written notice of its election to so extend the initial five year term on or before the date that is six (6) months before the scheduled expiration of the initial five year term (time being of the essence).

2.3 Possession; Condition. Tenant shall be entitled to take possession of the Property as of the date of this Lease. Tenant acknowledges and represents that Tenant has previously inspected the Property and a title report for the Property, and Tenant accepts the Property in its existing condition, “AS IS”, without representation or warranty (express or implied) and subject to all matters of record and all defects and conditions, whether patent or latent, and subject further to all legal requirements such as taxes, assessments, zoning, use permit requirements and building codes, based solely on Tenant’s own inspection, analysis and evaluation and not in reliance on any information provided by or on behalf of Landlord.

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The Property (including the building thereon) has not been inspected by a Certified Access Specialist (CASp). A Certified Access Specialist (CASp) can inspect the Property and determine whether the Property complies with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Property, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Property for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

In that regard, the parties agree that in the event Tenant requests a CASp inspection, Tenant shall pay any such inspection fees and the cost of making any such repairs.

3. Rent; Security Deposit.

3.1 Base Rent. As used in this Lease, the term “Lease Year” means the period commencing on _____ (the “Rent Commencement Date”), to the first anniversary of the Rent Commencement Date, and thereafter each year commencing on an anniversary of the Rent Commencement Date and ending one calendar year thereafter. Tenant shall pay to Landlord the sum of _____ per month for the Property subject to adjustment under Section 3.2 below (and the Base Rent for the Extension Term, if any, shall be the Base Rent in effect immediately prior to the beginning of the Extension Term, subject to adjustment under Section 3.2 below, which shall continue during the Extension Term). Tenant shall pay such sums to Landlord, without prior notice or demand and without abatement, deduction, offset or credit, as minimum base rent for the Property (“Base Rent”), in lawful money of the United States at the time of payment. Each installment of the Base Rent shall be payable on the first business day of each calendar month. All other sums payable under this Lease by Tenant to Landlord shall also be deemed rent.

3.2 Periodic Adjustment of Base Rent. The Base Rent shall be increased during the initial Term and the Extension Term, if any, by the percentage increase in the CPI on each two year anniversary of the date of this Lease (an “Adjustment Date”), not to exceed five percent (5%) for any single increase. Such adjustments shall be determined as follows, using the following definitions.

(i) The term “Adjustment Index” shall mean, for the first adjustment, the Consumer Price Index for the month of _____ [CALENDAR MONTH THAT IS TWO MONTHS PRIOR TO MONTH CONTAINING DATE OF LEASE], and for subsequent adjustments, shall mean the Consumer Price Index for such calendar month occurring every two years after such month.

(ii) The term “CPI Increase” shall mean the percentage increase in the Consumer Price Index, calculated by subtracting the Prior Index from the Adjustment Index and then dividing the result by the Prior Index.

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(iii) The term “Consumer Price Index” shall mean the Consumer Price Index for All Urban Consumers for the West urban statistical area (CPI-U; All Items) (1982-84 =100) (the “Index”) published by the United States Department of Labor, Bureau of Labor Statistics.

(iv) The term “Prior Index” shall mean on each Adjustment Date, the Consumer Price Index used as the Adjustment Index on the prior Adjustment Date (or in the case of the first adjustment, the Consumer Price Index for the month of _____ [SAME AS IN (I) ABOVE]).

On each Adjustment Date, the then existing Base Rent shall be increased (but not decreased) by the lesser of (i) the CPI Increase (rounded to the nearest hundredth); or (ii) five percent (5%).

If the Consumer Price Index is changed so that the base year differs from that used for the Prior Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this Lease, such other governmental index or computation with which it is replaced shall be used.

3.3 Place for Payment. All Base Rent, utility charges and other sums that become payable to Landlord under this Lease (collectively, “Rent”) shall be paid to Landlord on or before the due date in lawful currency of the United States at Landlord’s offices located at 808 4th Street, Clovis, CA 93612, Attn: Lorenzo Rios, or at any other place that Landlord may designate by written notice to Tenant.

3.4 Security Deposit. Concurrently with its execution of this Lease, Tenant shall deposit with Landlord the sum of _____ (the “Security Deposit”). Upon any increase in the Base Rent, Tenant shall promptly deliver to Landlord additional funds sufficient to increase the Security Deposit to an amount of one (1) month of Base Rent, and such additional funds shall become part of the Security Deposit. Tenant hereby grants to Landlord a security interest in the Security Deposit in accordance with applicable provisions of the California Commercial Code. The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof. If Tenant defaults with respect to any provisions of this Lease, including but not limited to the provisions relating to the payment of rent, landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any rent or other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant’s default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant’s default. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after demand therefore, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the ten required amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such Security Deposit. TENANT WAIVES ANY RIGHTS IT MAY HAVE UNDER SECTION 1950.7 OF THE CALIFORNIA CIVIL CODE WITH RESPECT TO THE SECURITY DEPOSIT. Within thirty (30) days following the expiration of the Term or earlier termination of this Lease and Tenant’s performance of all of its obligations under this Lease, the Security Deposit or any balance thereof shall be returned to Tenant. If Landlord sells

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its interest in the Project during the Term hereof and deposits with the purchaser thereof the then unappropriated funds deposited by Tenant as aforesaid, Landlord shall be discharged from any further liability with respect to such Security Deposit accruing after the date Landlord delivers such Security Deposit to such purchaser or gives a credit to the purchaser based on the Security Deposit and obtains an agreement from such purchaser to assume the obligations of Landlord with respect to the Security Deposit.

4. Utilities. Tenant shall obtain, at Tenant's expense, all electricity, gas, potable water, fire suppression water, sewer, waste water services and other services and utilities needed to operate the Improvements during the Term.

5. Net Lease. This Lease is a "triple-net" lease; all Rent shall be paid to Landlord absolutely net of all costs and expenses, except to the extent otherwise expressly provided in this Lease. Without limiting the generality of the foregoing, Tenant shall be responsible for all aspects of maintaining and operating the Property, including the payment when and as due of all real property taxes and assessments from time to time assessed against the Property or Tenant's possessory interest therein, and of all charges for gas, electricity, telephone service, water, sewer service, trash removal and other utilities and services furnished to the Property during the Term; provided, however, that Landlord may at any time, in its discretion, pay any such taxes, assessments and charges that Tenant fails to pay when and as due, including, in Landlord's discretion, any fees, penalties and charges assessed by reason of Tenant's failure to make timely payment, in which case Tenant shall reimburse Landlord within five (5) business days after Landlord delivers written request for reimbursement. Tenant shall indemnify and hold Landlord Landlord's property, including the Property and any improvements now or hereafter on the Property, free and harmless from any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Lease to be paid by Tenant and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

LANDLORD HEREBY GIVES TENANT NOTICE, AND TENANT ACKNOWLEDGES RECEIPT OF SUCH NOTICE, AS REQUIRED PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 107.6, THAT THE LEASEHOLD INTEREST CREATED BY THIS LEASE MAY RESULT IN A **POSSESSORY INTEREST TAX** BEING LEVIED AGAINST THE PROPERTY AND/OR TENANT'S LEASEHOLD INTEREST, AND THAT TENANT SHALL BE OBLIGATED TO PAY SUCH TAX.

6. Use; Hazardous Materials; Compliance with Laws; Inspection.

6.1 Use of Property. Tenant may use the Property for [STATE THE LEGALLY PERMITTED USE DESIRED; MUST NOT INVOLVE USE, TRANSPORTATION, OR STORAGE OF HAZARDOUS MATERIALS] and for no other use without the prior written consent of Landlord in its sole and absolute discretion. Notwithstanding the foregoing, however: (a) Tenant shall not use or permit the Property or any portion of the Property to be used or occupied in any manner or for any purpose that is in any way in violation of any federal, state or local law, ordinance, or regulation; and (b) Tenant shall not maintain, commit or permit the maintenance or commission of any fire or health hazards, or

any nuisance, as now or hereafter defined by any statutory or decisional law applicable to the Property, on the Property or any part of the Property.

6.2 Hazardous Materials.

(a) Definitions.

“Hazardous Materials” shall mean any substance that now or in the future requires investigation or remediation under, or is regulated or defined as a hazardous waste or hazardous substance, by any governmental authority or instrumentality or any law, regulation, rule or order, or any amendment thereto, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et seq., or that is otherwise toxic, explosive, corrosive, flammable, infectious, mutagenic, radioactive, carcinogenic, a pollutant or a contaminant, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

“Environmental Requirements” shall mean all present and future governmental laws, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials, including common law tort principles (such as public and private nuisance and strict liability for conducting abnormally dangerous activities).

“Handle,” “Handled” or “Handling” shall mean any installation, handling, generation, storing, treatment, use, disposal, discharge, release, manufacture, refinement, emission, abatement, removal, transportation, presence or migration of any Hazardous Materials brought on the Property by Tenant or Tenant’s Representatives, or any other activity or any type in connection with or involving Hazardous Materials.

Permitted Hazardous Materials. Hazardous Materials normally and customarily used in the construction of the initial tenant improvements described on Exhibit “B” and in the use, cleaning and maintenance of the improvements leased hereunder, that are used, stored, transported and disposed of in accordance with all applicable laws.

“Tenant’s Representatives” shall mean all Tenant’s officers, employees, contractors, representatives, assignees, sublessees, licensees, agents, invitees, and any trespassers on the Property.

(b) Indemnification by Tenant. In addition to, and not in derogation of any other indemnification contained in this Lease, Tenant agrees to indemnify, defend and hold harmless Landlord, its successors and assigns, and its and their directors, officers, shareholders, employees, agents and affiliates from all costs, expenses, damages, liabilities, claims, fines, penalties, interest, judgments, and losses of any kind arising from or in any way related to Tenant’s or Tenant’s Representatives’ Handling of Hazardous Materials during the Term or failure to comply in full with this Section 6.2 (collectively, “Environmental Losses”), including consequential damages, damages for personal or bodily injury, property damage, damage to natural resources occurring on or off the Property, encumbrances, liens, costs and expenses of investigations, monitoring, clean up, removal or remediation of Hazardous Materials, defense costs of any claims (whether or not such claim is ultimately defeated), good faith settlements,

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attorneys' and consultants' fees and costs, and losses attributable to the diminution of value, loss or use or adverse effects on marketability or use of any portion of the Property, whether or not such Environmental Losses are contingent or otherwise, matured or unmatured, foreseeable or unforeseeable. If Landlord is ever made a party to any action or proceeding by reason of a matter for which Tenant is obligated to indemnify Landlord, then Tenant, upon notice from Landlord, shall, at Landlord's option, either defend that action or proceeding on behalf of Landlord at Tenant's expense with counsel satisfactory to Landlord or reimburse Landlord for all defense costs Landlord actually incurs in defending against such action or proceeding, whether or not the action or proceeding is ultimately defeated. This indemnity is intended by the parties to be as broad and comprehensive as possible under law and shall apply regardless of the fault (including active or passive negligence) of either Tenant or Landlord.

(c) Permitted Hazardous Materials. Tenant and Tenant's Representatives shall not Handle any Hazardous Materials at or about the Property except for the Permitted Hazardous Materials without Landlord's prior written consent, which consent may be granted, denied, or conditioned upon compliance with Landlord's requirements, all in Landlord's sole and absolute discretion.

(d) Release of Hazardous Materials. In the event of any release or discharge of Hazardous Materials or other event caused or contributed to by the acts or omissions of the Tenant or Tenant's Representatives which poses a threat of damage or contamination to the Property or the environment, whether discovered by Landlord or Tenant, Tenant shall fully document the facts relating to the event, including the circumstances existing prior to and after the occurrence of the event, the precise nature of the release, discharge or event, including specific compounds and quantities involved, and all actions Tenant has taken and will take to remediate the release, discharge or event. Tenant shall provide such documentation to Landlord promptly after the occurrence in question. Tenant shall pay the reasonable costs and fees charged by Landlord's environmental consultants to review such documentation and provide peer review confirming the adequacy of the measures, past and future, taken by Tenant to remediate the problem.

6.3 Compliance with Applicable Requirements. Tenant, shall, at Tenant's sole expense, fully, diligently and in a timely manner, comply with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record (collectively, "Applicable Requirements"), without regard to whether such Applicable Requirements are now in effect or become effective hereafter. Tenant shall, within ten (10) days after Landlord delivers written request to Tenant, provide Landlord with copies of all permits and other documents, and other information evidencing Tenant's compliance with any Applicable Requirements specified by Landlord. Tenant shall immediately notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Tenant or the Property to comply with any Applicable Requirements.

6.4 Inspection. Landlord and Landlord's consultants and contractors shall have the right, but not the obligation, to enter into the Property at any time in the case of an emergency, and otherwise at reasonable times upon at least forty-eight (48) hours advance notice (which may be given by telephone to Tenant to _____ **[INSERT PHONE**

NUMBER], including by message left on voicemail at that number, for the purpose of: (a) inspecting the condition of the Property and reviewing all permits, reports, plans and other documents regarding the Handling of Hazardous Materials, (b) verifying compliance by Tenant with this Lease and (c) performing Tenant's obligations under Section 6.2 if Tenant has failed to timely do so. The cost of any such inspections shall be paid by Landlord, unless a significant and material violation of Applicable Requirements or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority other than Landlord. In such case, Tenant shall upon request reimburse Landlord for the reasonable cost of such inspections, so long as such inspection is reasonably related to the significant and material violation or contamination. Tenant shall pay, in any case, all such costs incurred pursuant to clause (c) above.

7. Construction and Installation of Improvements.

7.1 Initial Improvements; Subsequent Alterations. At no cost to Landlord, Tenant shall cause to be performed all construction, alterations, additions and installations, required to complete the work described in Exhibit "B" (the "Improvements" or "initial Tenant improvements") provided, however, that Tenant must first deliver plans and specifications for such Improvements to Landlord for Landlord's reasonable approval. Any other improvements or alterations shall require Landlord's prior written consent.

7.2 Construction Contracts. All Improvements and any alterations thereto ("Work") shall be performed only by competent and qualified contractors duly licensed under the laws of the State of California pursuant to written contracts with such contractors. Tenant shall enter into a general construction contract for any Work (the "General Construction Contract") with a contractor reasonably acceptable to Landlord requiring the contractor to cause the Work to be performed in a manner and timeframe consistent with the terms of this Lease. Without limiting the conditions on which Landlord may grant its consent to any contractor, Landlord may require that such contractor furnish performance and payment bonds issued by a licensed corporate surety on terms and conditions and in amounts satisfactory to Landlord.

7.3 Review of Plans and Permits. Landlord shall not be deemed to have reviewed any plans, drawings or specifications from an engineering or technical standpoint, and Landlord shall have no liability whatsoever to Tenant or any third party based on or arising out of any patent or latent defect in the design or construction of the Work, whether or not such defect is actually known or apparent to Landlord.

7.4 Compliance with Law and Quality. Tenant shall cause all Work (a) in a workmanlike manner with only new and high quality building materials, (b) in compliance with all applicable building codes and other applicable laws, ordinances, regulations, and orders of all federal, state, county, and local governmental agencies or entities having jurisdiction over the Property, and (c) in compliance with all applicable insurance requirements. Without limiting the generality of the foregoing provisions, Tenant shall not permit any component of any Work to be commenced until all building permits and other governmental permits, licenses and approvals required in connection with such component of the Work have been issued.

7.5 Notices of Non-responsibility. Landlord shall, at any and all times during the Term, have the right to post and maintain on the Property and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California. Tenant shall give Landlord not less than thirty (30) days' written notice prior to the commencement of any Work (including site preparation work) or the delivery of building materials to the Property.

7.6 Mechanics' Liens. At all times during the Term, Tenant shall keep the Property and all building and improvements now or hereafter located on the Property free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Property. Should Tenant fail to pay and discharge or cause the Property to be released from any such lien or claim of lien within thirty (30) days after service on Tenant of written request from Landlord to do so, Landlord may pay, adjust, compromise and discharge any such lien or claim of lien on such terms and manner as Landlord may deem appropriate. In such event, Tenant shall, on or before the first day of the next calendar month following any such payment by Landlord, reimburse Landlord for the full amount paid by Landlord in paying, adjusting, comprising, and discharging such lien or claim of lien, including any attorneys' fees and other costs expended by Landlord, together with interest as provided in Section 14.5 from the date of payment by Landlord to the date of repayment by Tenant.

7.7 Ownership of Improvements. Any and all improvements placed or erected on the Property as well as any and all other alterations, additions, improvements and fixtures (except for improvements that are excluded from the Property and also except for Tenant's furniture and trade fixtures) made or placed in or on the Property by Tenant shall be considered part of Property, and shall remain on the Property and, without compensation to Tenant, on the expiration or any earlier termination of this Lease shall become the sole property of Landlord or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant from the Property at Tenant's sole expense. Tenant shall not remove any improvements from the Property, commit or permit any waste, or destroy or modify any improvements on the Property except as expressly permitted by this Lease.

8. Maintenance and Repairs.

8.1 Maintenance by Tenant. At all times during the Term, Tenant shall, at Tenant's own cost and expense, keep and maintain the Property (including all structural, non-structural, interior, exterior, landscaped areas, systems, equipment, facilities, driveways, parking lots, fences, and signs) in good order, condition and repair (whether or not the portion of the Property requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Property). Tenant's maintenance obligations shall include restorations, replacements and renewals when necessary to keep the Property and all improvements thereon in good order, condition and repair. Tenant shall, during the Term, keep the exterior appearance of all improvements on the Property in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, exterior repainting. In keeping the Property in good order, condition and repair, Tenant shall exercise and perform good maintenance practices, specifically including the procurement and maintenance at Tenant's

expense of service contracts for HVAC equipment, any boiler and pressure vessels, fire protection systems, landscaping and irrigation systems, the roof and drains, and asphalt and parking lots, each with a contractor specializing and experienced in the maintenance of the applicable equipment or improvements. Upon the request of Landlord, Tenant shall provide Landlord with a complete and correct copy of each such service contract and any amendments thereto. Tenant's maintenance obligations under this Section shall not be construed as limiting any right or requirement expressly provided for elsewhere in this Lease for Tenant to alter, modify, demolish, remove or replace any improvement. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section shall entitle Tenant to any offset, abatement or reduction in rent nor to any termination or extension of the Term.

8.2 Requirements of Governmental Agencies. At all times during the Term, Tenant shall, at Tenant's own cost and expense:

(a) make all alterations, additions, or repairs to the Property (including the improvements and facilities on the Property) required by any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, county, local, or other governmental agency or entity;

(b) observe and comply with all laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Property by any federal, county, local, or other governmental agency or entity; and

(c) indemnify, defend and hold Landlord and the Property free and harmless from any and all liabilities, losses, damages, fines, penalties, claims, and actions resulting from Tenant's failure to comply with the requirements of this Section 8.

8.3 Tenant's Duty to Restore Property. Should, at any time during the Term, any buildings or improvements now or hereafter on the Property be destroyed in whole or in part by fire or other casualty required hereunder to be insured against by Tenant, Tenant, at Tenant's own cost and expense, shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the damaged or destroyed buildings or improvements according to the original final plans and specifications therefore or according to any modified plans and specifications that provide for improvements consistent in terms of size, design and quality with the original buildings and improvements. The Parties agree that events or conditions may preclude in some instances the immediate making of permanent repairs. The Parties agree that in those instances Tenant shall make interim repairs that will protect the improvements from further deterioration and permit the continued use of the Property to the extent possible for the purposes for which they were demised. In such event Tenant, upon demand, shall provide Landlord sufficient information for Landlord to satisfy itself that the time for making permanent repairs must be extended as reasonable beyond the time limits specified hereinbefore. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for the original Improvements set forth in Section 7; provided that Tenant may reconstruct such other improvements on the Property as are consistent with applicable land use regulations and which are: (i) approved by the City in its governmental

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capacity, and all other governmental agency or agencies with jurisdiction, and (ii) approved by Landlord under this Lease in its reasonable discretion. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section shall entitle Tenant to any offset, abatement or reduction in Rent or to any termination or extension of the Term.

If the buildings or improvements now or hereafter on the Property are completely destroyed or substantially damaged by a casualty for which Tenant is not required to (and has not) insured against, then Landlord shall deliver written notice to Tenant of its obligations under this Section 8.3 within thirty (30) days of such event of substantial damage or destruction, and Lessee shall not be required to repair, replace, or restore such improvements and may elect not to do so by providing Landlord with written notice of election not to repair, replace, or restore within ninety (90) days after such substantial damage or destruction. In such event, Tenant shall remove all debris from the applicable portion of the Property. In the event that the Landlord delivers such notice to Tenant but Tenant does not timely elect not to repair, replace, or restore the buildings or improvements on the Property as set forth in the first sentence of this paragraph, Tenant shall be conclusively deemed to have waived its right not to repair, replace, or restore the buildings or improvements on the Property and thereafter Tenant shall promptly commence and complete the repair, replacement, or restoration of the damaged or destroyed buildings or improvements now or hereafter on the Property in accordance with the paragraph above and continue operation of the Property during the period of repair (if practicable). In the event Tenant elects not to repair, replace, or restore, and gives Landlord notice of such election as provided herein, this Lease shall terminate.

8.4 Application of Insurance Proceeds. Any and all fire or other insurance proceeds that become payable at any time during the Term because of damage to or destruction of any buildings or improvements on the Property shall be paid to Landlord, and shall be used toward the repair, restoration and replacement of damaged or destroyed buildings or improvements in the manner required by Section 8.3 (and Landlord agrees to disburse any such proceeds held by Landlord for such improvements subject to reasonable construction loan disbursement conditions); provided, however, that any fire or other insurance proceeds remaining after the repair, restoration, reconstruction and/or replacement of the damaged or destroyed buildings or improvements has been completed to the satisfaction of Landlord (the "Remaining Insurance Proceeds") shall be retained by Tenant

8.5 Landlord's Rights of Entry. Landlord and Landlord's agents shall have the right to enter at reasonable hours after prior notice of the time and place of entry into and upon said portions of the Property as necessary for the purpose of ascertaining that the improvements on the Property are kept and maintained in good condition and repair as provided for in this Section 8 and that the terms of this Lease are observed.

9. Indemnity and Insurance.

9.1 Exculpation of Landlord. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property for any cause, except for any damage to Tenant or Tenant's property resulting from the negligence and/or willful misconduct of Landlord or its employees, officers, agents or authorized representatives; however, in no event shall Landlord be liable for consequential damages consisting of lost profits or other damages in the nature of lost

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profits. Tenant waives all claims against Landlord except as provided in the previous sentence. Subject to the foregoing provisions

9.2 **Indemnity.** Tenant agrees to, and does hereby defend, indemnify and hold Landlord and its officers, directors, employees, agents and affiliates and their respective assets, including the Property and all improvements now or hereafter on the Property, free and harmless against and from any and all liabilities, claims, losses, damages, and expenses (including attorneys' fees and court costs) resulting from or arising out of Tenant's occupation and use of the Property, and activities of Tenant and its contractors, specifically including any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including any person who is an employee or agent of Tenant, or the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatsoever while such person or property is on the Property;

(b) Any work performed on the Property or materials furnished to the Property at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(c) Tenant's failure to comply with any requirement of law or any requirement imposed on Tenant or the Property by any governmental agency or authority;

(d) Tenant's failure to perform any of Tenant's obligations under this Lease when and as required by the terms hereof;

(e) The inaccuracy of any representation made by Tenant to Landlord in this Lease; or

(f) The failure of Tenant to pay prevailing wages to its contractors under, or otherwise fail to comply with, California Labor Code 1720 et seq. to the extent applicable to Tenant's improvements.

9.3 **Liability Insurance.** Tenant shall, at Tenant's own cost and expense, secure promptly after execution of this Lease and maintain during the entire Term a broad form comprehensive coverage policy of public liability insurance issued by an insurance company acceptable to Landlord and authorized to issue liability insurance in the State of California and having a rating of not less than "A-13" as set forth in the then current Best's Insurance Guide, insuring Tenant and Landlord against loss or liability caused by or connected with Tenant's occupation, use, disuse, or condition of the Property under this Lease in amounts not less than:

(a) \$2,000,000 for injury to or death of one person and, subject to such limitation for the injury or death of one person, of not less than \$5,000,000 for injury or death to two or more persons as a result of any one accident or incident; and

(b) \$2,000,000 for damage to or destruction of any property of others. All public liability insurance and property damage insurance shall insure performance by Tenant of the indemnity provisions of this Lease. Landlord shall be named as additional insured on each

insurance policy required by this Section, and such policies shall contain cross liability endorsements.

9.4 Increase in Insurance Coverage. Not more frequently than each three years, if, in the reasonable opinion of Landlord, the amount of public liability and property insurance coverage at that time is not adequate, Tenant shall increase the insurance coverage as reasonably required by Landlord.

9.5 Fire and Casualty Insurance. Tenant shall, at Tenant's own cost and expense, at all times during the Term, keep all buildings, improvements, Tenant's personal property and other structures on the Property, as well as any and all additions thereto, insured for their actual cash, full replacement value (as defined below), by insurance companies authorized to issue such insurance in the State of California and having a rating of not less than "A-13" as set forth in the then current Best's Insurance Guide, against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the geographic area in which the Property are located. Each insurance policy shall be issued in the names of Landlord, Tenant and any Mortgagee, as their interests may appear. Each insurance policy shall provide that any loss payable under such insurance shall be payable in Trust to Landlord and Mortgagee as loss payees. Any proceeds received because of a loss covered by such insurance shall be used and applied in the manner required by Section 8.4. On termination of this Lease, such insurance policy or policies, all rights thereunder and any insurance proceeds shall be assigned to Landlord at Landlord's election; provided, however, that Landlord shall reimburse Tenant for any unearned premiums that Tenant prepaid for the year in which this Lease is terminated and for years after this Lease is terminated.

9.6 Specific Perils to Be Insured. Notwithstanding anything to the contrary contained in Section 9.5, the insurance required by Section 9.5 shall, whether or not included in the standard extended coverage endorsement mentioned in Section 9.5, insure all buildings, improvements, and other structures on the Property, as well as any and all additions thereto, against loss or destruction by windstorm, typhoon, tidal wave, explosion, riot, riot attending a strike, civil commotion, acts of terrorism, sabotage or other warlike acts, malicious mischief, vandalism, aircraft, fire, smoke damage and sprinkler leakage. Furthermore, the insurance required by Section 9.5 during the performance of the Work shall have course of construction, vandalism, and malicious mischief clauses attached insuring the Work during construction and all materials delivered to the Property for their actual cash full replacement value. For purposes of this Section 9.6, the "full replacement value" of any building or other improvements to be insured shall be determined by the company issuing the insurance policy at the time the policy is initially obtained. Every two years thereafter, either party hereto shall have the right to notify the other party hereto that it elects to have the replacement value re-determined by any insurance company. The redetermination shall be made promptly in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company, and each party shall be promptly notified of the results by such company. The insurance policy or policies shall be adjusted accordingly to reflect the re-determined value.

9.7 Evidence of Insurance. Prior to entering the Premises for any purpose, Tenant shall deliver to Landlord insurance certificates showing that Tenant has obtained and is

maintaining the insurance required by this Section 9. Upon written request of Landlord, Tenant shall deliver to Landlord a complete and correct copy of each insurance policy required by this Section 9. All insurance policies required by express provisions of this Lease shall be non-assessable and shall contain language to the effect that (a) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in the forfeiture of the insurance, (b) that the insurer waives the right of subrogation against Landlord, and (c) the policies are primary and non-contributing with any insurance that may be carried by Landlord.

9.8 Notice of Cancellation of Insurance. Each insurance policy required by this Section 9 shall contain a provision that it cannot be cancelled or materially changed for any reason unless 30 days' prior written notice of such cancellation or change is given to Landlord in the manner required by this Lease for service of notices on Landlord by Tenant.

9.9 Unavailability of Coverage. Notwithstanding anything to the contrary contained in this Section 9, should insurance coverage meeting all the requirements set forth in this Section 9 be unavailable due to circumstances beyond the control of Tenant, Tenant and Landlord shall agree as to substitute coverage which shall to the greatest extent possible meet the requirements set forth in this Section 9, provided that any substitute coverage shall not be less than insurance coverage available to and actually obtained for comparable industrial facilities in the State of California.

10. Condemnation.

10.1 Total Condemnation. Should, during the Term, title to the Property be taken under the power of eminent domain by any public or quasi-public agency or entity, this Lease shall terminate as of 12:01 A.M. of, whichever first occurs, (a) the date legal title to the Property becomes vested in or (b) actual physical possession of the Property is taken by the agency or entity exercising the power of eminent domain, and both Landlord and Tenant shall thereafter be released from all future obligations under this Lease, except those specified in Sections 10.4 and 10.5.

10.2 Partial Condemnation. Should, during the Term, title of only a portion of the leased Property be taken under the power of eminent domain by any public or quasi-public agency or entity, all compensation and damages payable by reason the taking by eminent domain of any improvements (but not land) shall be available to and used, to the extent reasonably needed, by Tenant to replace the improvements so taken to the extent practicable under then existing laws and conditions with improvements of the same type on the remaining portion of the Property. Tenant shall submit to Landlord conceptual plans for the replacement improvements and shall consult with Landlord and keep Landlord informed concerning development and construction of replacement improvements; provided, however, that should the improvements taken by eminent domain result in a net loss of one-half or more of the total area of Tenant's improvements, after taking into consideration such improvements that could be reasonably constructed on the remaining portion of the Property, Tenant may terminate this Lease in the manner prescribed by Section 10.3.

10.3 Termination for Partial Taking. Tenant may terminate this Lease for the reasons stated in Section 10.2 by serving written notice of termination on Landlord within ninety

(90) days after Tenant has been deprived of actual physical possession of the portion of the Property taken by eminent domain. This Lease shall terminate as of 12:01 A.M. of the first day of the calendar month following the calendar month in which the notice of termination described in this Section is served on Landlord. Upon any termination of this Lease pursuant to this Section, all subleases and subtenancies in or on the Property or any portion or portions of the Property created by Tenant under this Lease shall also terminate and the Property shall be delivered to Landlord free and clear of all such subleases and subtenancies; provided, however, that Landlord may, at Landlord's option, by mailing written notice to a subtenant allow any subtenant to attorn to Landlord and continue the subtenant's occupancy of the Property as a tenant of Landlord. On termination of this Lease pursuant to this Section, however, both Landlord and Tenant shall be released from all future obligations under this Lease except those specified in Sections 10.4 and 10.5.

10.4 Condemnation Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Property by eminent domain shall be allocated between Landlord and Tenant as follows:

(a) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Property shall be paid to and be the sole property of Landlord free and clear of any claim of Tenant or any person claiming rights to the Property through or under Tenant.

(b) All compensation or damages awarded or payable for the taking by eminent domain of any improvements located on the Property where only a portion of the Property is taken by eminent domain and Tenant is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 10.2 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Property.

(c) All compensation or damages awarded or payable for the taking by eminent domain attributable to the fair market value of Tenant's leasehold interest in the Property and fee title to the Improvements pursuant to this Lease, and any separate award made to Tenant for loss of business or for the taking of Tenant's fixtures and improvements, shall belong to Tenant free and clear of any claim of Landlord or any person claiming rights to the Property through or under Landlord.

10.5 Allocation of Award Between Land and Improvements. For purposes of this Section any compensation or damages awarded or payable because of the taking by eminent domain of all or any portion of the Property that are for land or improvements shall be allocated and paid to Landlord.

10.6 Abatement of Base Rent for Partial Taking. Should, during the Term, title and possession of only a portion of the Property be taken under the power of eminent domain by any public or quasi-public agency or entity and Tenant does not or cannot under Sections 10.2 and 10.3 terminate this Lease, then this Lease shall terminate as to the portion of the Property taken under eminent domain as of 12:01 A.M. of, whichever first occurs, the date title is taken or the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Base Rent payable

under this Lease shall, as of that time, be reduced in the same proportion that the value of the portion of the Property taken by eminent domain bears to the full value of the Property at that time as reasonably determined by Landlord; provided, however, that subject to the provision of Sections 10.2 and 10.3, Tenant shall replace any improvements or facilities with equivalent new facilities on the remaining portion of the Property and do all other acts, at Tenant's own cost and expense, required by the eminent domain taking to make the remaining portion of the Property fit for the uses specified in this Lease.

10.7 Voluntary Conveyance in Lieu of Eminent Domain. Landlord reserves the right in its sole discretion to voluntarily convey title to all or a portion of the Property to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings, provided that Landlord shall give Tenant prior notice of intent or willingness to voluntarily convey title. Such voluntary conveyance by Landlord of title to all or a portion of the Property to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Property under the power of eminent domain subject to the provisions of this Section 10.

11. Assignment and Subletting.

11.1 Landlord's Consent Required. Except as expressly provided within Section 11.1 or in Section 12 below, Tenant shall not voluntarily or by operation of law assign, encumber or otherwise transfer the Leasehold Estate or any right or interest in this Lease or the Property, or sublet all or any portion of the Property, permit all or any portion of the Property to be occupied by anyone other than Tenant, without the express prior written consent of Landlord in Landlord's sole and absolute discretion. A change in the control of Tenant shall be deemed to constitute an assignment requiring Landlord's consent. The transfer, on a cumulative basis during the Term, of a majority of the voting control of Tenant shall constitute a change in control for this purpose. Any such assignment without the prior written consent of Landlord, whether voluntary or involuntary, by operation of law or otherwise, shall be void and shall constitute an Event of Default. A consent by Landlord to any one assignment or other transfer shall not be deemed to be a consent to any subsequent assignment or transfer. Without limiting the matters that may be considered by Landlord in determining whether to consent to any requested assignment or transfer, Landlord may take into account the proposed assignee's or transferee's financial strength and ability to perform all of the obligations of Tenant under this Lease.

11.2 Additional Provisions Regarding Assignment and Transfer.

(a) Each request for consent to an assignment or transfer shall be in writing, accompanied by information relevant to Landlord's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or transferee, including the intended use and/or required modification of the Property, if any, together with a fee of \$1,000.00 (increased by three percent (3%) on each anniversary of the date of this Lease) to compensate Landlord for considering and processing such request. Tenant shall also reimburse Landlord for Landlord's reasonable attorneys' fees incurred in connection with any such assignment or subletting for which Landlord's consent is required. Tenant agrees to provide

Landlord with such other or additional information and documentation as may be reasonably requested.

(b) Landlord may accept Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for Tenant's default.

(c) Landlord's consent to any assignment or transfer shall not constitute a consent to any subsequent assignment or transfer.

(d) Any assignee of this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the term of said assignment, other than such obligations as are contrary to or inconsistent with provisions of an assignment to which Landlord has specifically consented to in writing.

(e) No assignee shall have a right further to assign or sublet without complying with this Section 11.

(f) If an assignment is approved by Landlord, then the assigning Tenant shall pay to Landlord one hundred percent (100%) of the amount of any payments and other economic consideration received by Tenant (whether before or after the date of such adjustment) as a result of any assignment, less actual, documented brokerage commissions and reasonable attorneys' fees incurred and paid in connection with the assignment and all reasonable, documented out-of-pocket costs incurred by the assigning Tenant in the design or construction of the Improvements provided all relevant contracts, plans and improvements are assigned and conveyed to the assignee in writing and a copy of the assignment is delivered to Landlord. Such remittance shall be payable to Landlord as additional Rent under this Lease without affecting or reducing any other obligation of Tenant hereunder.

(g) The term of any sublease shall not extend beyond the Term.

(h) Each sublease shall by its own terms be expressly subject to all of the terms, covenants and conditions of this Lease, and Tenant shall remain fully liable to Landlord for the payment of rents and performance of all other obligations under this Lease.

(i) Each sublease shall contain a provision, satisfactory to Landlord, that upon the termination of this Lease for any reason, at Landlord's election either (i) the sublease shall terminate or (ii) the sublessee shall attorn to Landlord and pay rent and perform all of the other obligations of the sublessee under its sublease directly to Landlord.

(j) Each sublease shall contain a provision, satisfactory to Landlord, prohibiting the payment of rent more than one month in advance.

(k) Each sublease shall contain a provision, satisfactory to Landlord, that if Tenant defaults under this Lease and fails to deliver to Landlord any security deposit or prepaid rent paid to Tenant by a subtenant under such sublease, then (i) Landlord shall have no obligation or liability to such subtenant for the return of any security deposit or prepaid rent paid to Tenant, (ii) such subtenant shall be solely responsible to pursue its rights and remedies against Tenant for recovery of any security deposit or prepaid rent paid to Tenant, and (iii) such subtenant shall deliver to Landlord, within thirty (30) days after demand by Landlord, a security deposit in the same amount as set forth in such sublease, and notwithstanding any prepayment by such subtenant of rent to Tenant, shall be obligated to pay to Landlord rent set forth in such sublease commencing upon termination of this Lease and notice thereof to such subtenant by Landlord.

(l) Promptly after execution of any sublease or an amendment to any sublease, Tenant shall deliver to Landlord a complete and correct copy of the fully executed and effective sublease or amendment, including all exhibits and attachments.

(m) Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all rent payable to Tenant under any sublease, and Landlord may collect such rent and apply same toward Tenant's obligations under this Lease; provided, however, that until an Event of Default shall have occurred under this Lease, Tenant may collect such rent, subject to Section 11.2(g). Landlord shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of any rent thereunder, be deemed liable to the sublessee for any failure of Tenant to perform and comply with any of Tenant's obligations to such sublessee. Tenant hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Landlord stating that an Event of Default exists under this Lease, to pay to Landlord all rent due and to become due under the sublease. The sublessee shall rely upon any such notice from Landlord and shall pay such rent to Landlord without any obligation or right to inquire as to whether such Event of Default exists, notwithstanding any claim from Tenant to the contrary.

(n) Upon the occurrence of any Event of Default under this Lease, Landlord may, at its option, require sublessee to attorn to Landlord, in which event Landlord shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, that Landlord shall not be liable for any prepaid rent or security deposit paid by such sublessee (except to the extent actually paid over to Landlord) or for any prior defaults of such sublessor.

12. Default and Remedies.

12.1 Events of Default. Any of the following events shall constitute an "Event of Default" under this Lease:

(a) Tenant fails to make any payment of money called for by any provision of this Lease (whether to Landlord or any third party) within five (5) business days after delivery of written notice by Landlord that the payment is past due; or

(b) Tenant assigns this Lease or sublets in violation of Section 11; or

(c) Tenant fails to perform fully and when due any of its other covenants, conditions or obligations under this Lease and after written notice from Landlord specifying the nature of such failure of Tenant, Tenant: (i) does not promptly commence taking all necessary and appropriate actions to remedy such failure, or (ii) does not thereafter diligently and continuously pursue all such remedial actions, or (iii) does not fully cure such failure within the minimum period of time reasonably required under the circumstances to achieve a cure, but in any event within ninety (90) days after Landlord's written notice of such failure, time being strictly of the essence; provided, however, that Tenant shall not be entitled to cure the breach of any covenant that is "non-curable"; or

(d) any voluntary or involuntary assignment, transfer, encumbrance or subletting of this Lease occurs in violation of Section 11 or Section 12; or

(e) any material statement or disclosure made by Tenant to Landlord in order to induce Landlord to enter into this Lease is false or misleading; or

(f) Tenant fails or has failed to disclose any material fact which may tend to adversely affect, or which may have tended to adversely affect, Landlord's decision to enter into this Lease; or

(g) any right or interest of Tenant is subjected to attachment, execution, or other levy, or to seizure under legal process, which is not released within thirty (30) days; or

(h) a receiver is appointed to take possession or control of the Property, the Leasehold Estate, or Tenant's operations on the Property for any reason, including assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings; or

(i) Tenant makes a general assignment for the benefit of creditors or a voluntary or involuntary petition is filed by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt, or for extending time for payment, adjustment or satisfaction of Tenant's liabilities, or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency, unless such assignment or proceeding, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after such assignment, filing or other initial event.

12.2 Remedies. Upon the occurrence of any Event of Default, and without the giving of any additional notice not otherwise required hereunder or by law, Landlord may exercise the following rights and remedies in addition to all other rights and remedies provided by law or equity, either cumulatively or in the alternative:

(a) Maintain this Lease and Tenant's right to possession of the Property in effect and continue to enforce all of Landlord's rights and remedies hereunder, including the remedy described in California Civil Code Section 1951.4 (granting the landlord the right to continue a lease in effect after a tenant's breach and abandonment and to recover all rent as it becomes due if the tenant has the right to sublet or assign, subject only to reasonable limitations) provided that upon Landlord's election of such remedy, Landlord may not unreasonably withhold its consent to any assignment or subletting. Acts of maintenance or

preservation or efforts to re-let the Property or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of this Lease or Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

(b) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of California. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of Tenant's occupancy of the Property.

(c) Upon an Event of Default by Tenant, in addition to the foregoing remedies, City shall also be entitled to terminate Tenant's right to possession of the Property by written notice to Tenant, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the unpaid Rent that had been earned at the time of termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent that 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 (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (iv) any other amounts necessary to compensate Landlord for all the detriment 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 the cost of recovering possession of the Property, expenses of re-letting, including necessary renovation and alteration of the Property, reasonable attorneys' fees. The worth at the time of award of the amount referred to in clause (iii) of the immediately preceding sentence shall be 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%). If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding any unpaid Base Rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit. If any notice required under Section 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also be deemed to constitute the notice required by Section 13.1. In such case, any applicable grace period required by Section 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Tenant to cure the Event of Default within the greater of the two such grace periods shall constitute both an unlawful detainer and an Event of Default entitling Landlord to the remedies provided for in this Lease and/or by said statute. If a notice is required under Section 13.1 is given, Tenant expressly agrees that it shall satisfy the notice requirements of the unlawful detainer statutes and laws.

12.3 Landlord's Performance of Tenant's Obligations. If Tenant fails to perform any affirmative duty or obligation under this Lease within ten (10) days after written notice (or in case of an emergency, without notice), the Landlord may, at its option, perform such duty or obligation on Tenant's behalf, including the obtaining of reasonably required bonds, insurance policies, or governmental permits, licenses and approvals. The costs and expenses of any such performance by Landlord shall be due and payable by Tenant upon Landlord's written

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demand. If any check given to Landlord by Tenant shall not be honored by the bank upon which it is drawn, Landlord, at its option, may require that all future payments by Tenant to Landlord be made by bank cashier's check.

12.4 Remedies Cumulative. The remedies given to Landlord in this Section shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

12.5 Waiver of Breach. The waiver by Landlord of any breach of Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or a different provision of this Lease. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default in the payment of the particular rental payment so accepted, regardless of Landlord's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after termination constitute a reinstatement, extension or renewal of the Term or revocation of any notice or other act by Landlord.

13. Miscellaneous.

13.1 Tenant's Duty to Surrender Property. At the expiration or any earlier termination of the Term, Tenant shall surrender to Landlord the possession of the Property and all improvements and fixtures installed or constructed by or for Tenant thereon free and clear of all claims to or against them by Tenant or any third person or party. Subject to the provisions of Section 7.7, Tenant shall leave the surrendered property in good, safe and broom-clean condition. All property that Tenant is required to surrender shall become Landlord's property at termination of this Lease, or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant at Tenant's sole expense, and all property that Tenant is not required to surrender but that Tenant does not remove shall become Landlord's property at termination of this Lease, or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant at Tenant's sole expense. If Tenant fails to surrender the Property at the expiration or earlier termination of this Lease, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including claims made by any succeeding tenant or any purchaser or prospective purchaser founded on or resulting from Tenant's failure to surrender.

13.2 Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Notwithstanding Landlord's acceptance of Rent after expiration or any earlier termination of the Term, any holding over by Tenant shall not constitute a renewal or extension of the Term or give Tenant any rights in or to the Property. In the event that Tenant holds over, then the Base Rent shall be increased to one hundred and fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or earlier termination of the Term. Nothing contained herein shall be construed as a consent by Landlord to any holding over by Tenant.

13.3 Survival. Each obligation of Tenant's obligations under this Lease that, by its nature, is to be, or may need to be, performed after the expiration or any earlier termination of this Lease shall survive such expiration or termination.

13.4 Interest on Overdue Payments. All Rent and other sums of any nature that Tenant fails to pay to Landlord when due under any provision of this Lease or that Landlord pays to any third party on behalf of Tenant pursuant to any provision of this Lease shall bear interest from the date due to Landlord or paid by Landlord, as applicable (the "Due Date"), at the lesser of the maximum rate permitted by law or the rate of ten percent (10%) per annum, accruing daily but not compounded. Such interest shall be payable immediately and without the necessity of any demand by Landlord. The fact that Landlord is entitled to interest under this Section shall not be construed to excuse or mitigate any default by Tenant.

13.5 Attorneys' Fees. In the event either party brings a suit, action or other proceeding against the other party that in any way relates to or arises out of this Lease, the prevailing party (meaning the party that obtains substantially the relief sought by it) shall be entitled to have and recover from the other party all costs and expenses of the suit, action or proceeding, including attorneys' fees, from the commencement of the suit, action or proceeding through the entry of judgment. The trial court shall determine which party is the prevailing party as well as the amount of attorneys' fees and costs to be awarded immediately following the entry of judgment (and without awaiting any appeal) in a post-trial proceeding such as is conducted when a cost bill is submitted. If an appeal is timely filed and if the awarding or amount of attorneys' fees and costs is at issue in the appeal, then the appellate court (or the trial court, acting pursuant to an order of the appellate court) shall determine such issue, and the recoverable attorneys' fees and costs shall include those incurred through the entry of final judgment following the appeal.

13.6 Estoppel Certificates by Tenant. Tenant shall within ten (10) days after written notice from Landlord, execute, acknowledge and deliver to Landlord an estoppel certificate in writing, in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and statements as may be reasonably requested by Landlord. Any such statement by Tenant may be given by Landlord to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct. If Tenant does not deliver such statement to Landlord within such 10-day period, Landlord and any prospective purchaser or encumbrancer may conclusively presume that: (a) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (b) this Lease has not been canceled or terminated except as otherwise represented by Landlord; (c) not more than one month's Base Rent has been paid in advance; and (d) Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of any such presumption. If Landlord desires to finance, refinance, or sell the Property or any part thereof, Tenant shall deliver to any potential lender or purchaser designated by Landlord such financial statements as may be reasonably required by such lender or purchaser, including Tenant's financial statements for the past three years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

13.7 Limitation on Landlord's Liability. The obligations of Landlord under this Lease shall not constitute personal obligations of Landlord's councilmembers, officers, employees or affiliates, and Tenant shall not seek recourse against Landlord's individual councilmembers, officers, employees or affiliates, or any of their personal assets for such satisfaction.

13.8 Subordination; Attornment; Non-Disturbance.

(a) Subordination. This Lease shall be subject and subordinate to any deed of trust or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed by Landlord upon the Property, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Tenant agrees that the holders of any such Security Devices shall have no liability or obligation to perform any of the obligations of Landlord under this Lease.

(b) Attornment. Subject to the non-disturbance provisions of paragraph (c) below, Tenant agrees to attorn to any lender or any other party who acquires ownership of the Property by reason of a foreclosure of a Security Device, and in the event of such foreclosure, such new owner shall not (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses that Tenant might have against any prior lessor, or (iii) be bound by any prepayment of more than one calendar month's Base Rent.

(c) Non-Disturbance. With respect to Security Devices entered into by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the lender to the effect that Tenant's possession of the Property shall not be disturbed so long as Tenant is not in default hereunder and attorns to the record owner of the Property.

(d) Self-Executing. The agreements contained in this Section 14.9 shall be effective without the execution of any further documents; provided, however, that, upon the written request of Landlord or any lender in connection with a sale, financing or refinancing of the Property, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document the subordination, attornment and Non-Disturbance Agreement provided for herein.

13.9 Consents. Whenever the consent, approval, judgment or determination of Landlord is required or permitted under any provision of this Lease, Landlord's Director of Operations may give the same provided it is in writing. Landlord's actual reasonable costs and expenses (including architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent, including consents to an assignment, a subletting or the presence or use of a Hazardous Materials, shall be paid by Tenant upon receipt of an invoice and supporting documentation therefor. Landlord's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Event of Default by Tenant of this Lease exists, nor shall such consent be deemed a waiver of any then-existing Event of Default, except for any waiver as may be otherwise specifically stated

in writing by Landlord at the time of such consent. The failure to specify herein any particular condition to Landlord's consent shall not preclude the imposition by Landlord at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. The review or approval by Landlord of any item to be reviewed or approved by Landlord under the terms of this Lease shall not impose upon Landlord any liability for accuracy or sufficiency of any such item or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting Landlord's interest in the Property or under this Lease, and no third parties, including Tenant or the representatives and visitors or Tenant or any person or entity claiming by, through or under Tenant, shall have any rights hereunder.

13.10 Reservations by Landlord. Landlord reserves to itself the right, from time to time and without the consent or joinder of Tenant, to grant such easements, rights and dedications as Landlord may deem necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Property by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easement rights, dedication, map or restrictions.

13.11 Authority. Each individual executing this Lease on behalf of Landlord or Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on such party's behalf. Each party shall, within thirty (30) days after written request, deliver to the other party satisfactory evidence of such authority.

13.12 Jurisdiction and Governing Law. Any action brought by Landlord against Tenant in connection with this Lease or any matter that in any way relates to the transactions contemplated by this Lease may be brought by Landlord in any court in Fresno County or in any other court of competent jurisdiction, wherever located, having personal jurisdiction over Tenant. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located. Without limiting the generality of the foregoing, Tenant hereby submits to the jurisdiction and venue of any court in Fresno County, California. In connection with any action brought by either party hereto against the other party, Landlord may take depositions in the State of California or in any other locations worldwide in which Tenant maintains an office or records; Tenant shall take depositions only in the State of California. Regardless of who initiates an action or the jurisdiction and venue in which such action is brought, this Lease and all matters that in any way relate to the transactions contemplated by this Lease shall be governed by the laws of the State of California.

13.13 Quiet Enjoyment. Tenant shall and may peacefully and quietly have, hold and enjoy the Property hereby demised, for the Term, on the terms and subject to the conditions contained in this Lease. Landlord warrants and represents that it is the sole and lawful owner of the Property in fee simple, that the Property are free and clear of all liens and encumbrances (except as specifically disclosed to Tenant in writing by Landlord), and that Landlord has the right to enter into this Lease.

13.14 Notices. All notices required or permitted by this Lease shall be in writing and may be delivered by overnight courier or may be sent by certified mail, with postage

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prepaid, and shall be deemed sufficiently given if served in a manner specified in this Section. Until changed by a notice given in accordance with the provisions of this Section, the respective addresses of Landlord and Tenant for the purpose of receiving notices required or permitted by this Lease are as follows:

Landlord: Clovis Veterans Memorial District
808 4th Street
Clovis, CA 93612
Attn: Director of Operations

Tenant: _____

Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by overnight courier that guarantee next day delivery shall be deemed given on the next business day after delivery of the same to the courier. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

13.15 Successors and Assigns. This Lease shall be binding on and enforceable by, and shall inure to the benefit of, Landlord and Tenant and their respective successors, and assigns, subject to the provisions of Section 11.

13.16 Time of Essence. Time is of the essence of each provision of this Lease in which time is a factor.

13.17 Counterparts. This Lease may be executed in counterparts, all of which together shall constitute one and the same document.

13.18 Partial Invalidity. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

13.19 Entire Agreement. This Lease constitutes the sole and complete agreement between Landlord and Tenant regarding the subject matter hereof.

13.20 Amendments. This Lease may be modified only by a written instrument signed by the parties in interest at the time of the modification. Tenant agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a lender in connection with any financing or refinancing of the Property, provided that such modifications do not materially change Tenant's obligations hereunder. Landlord agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by Tenant's lender in connection with any financing or refinancing of the Improvements or any Work (including, without limitation, a reasonable additional cure period based on the lender's need to obtain possession by receiver or foreclosure in order to cure non-monetary defaults), provided that such modifications do not materially increase Landlord's obligations hereunder or materially decrease Landlord's rights.

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13.21 Construction of Lease. This Lease shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared this Lease. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections and paragraphs of this Lease are for convenience only and do not define or limit any terms or provisions. Unless otherwise specifically provided, references in this Lease to sections, paragraphs and exhibits shall be to sections, paragraphs and exhibits of or to this Lease. All exhibits hereto are incorporated herein by the references thereto in this Lease. The use in this Lease of the word "include" or any derivative thereof shall be construed as providing examples or illustration only and shall not limited the generality of any provision in which it is used. As used in this Lease, the term "business day" means any day on which commercial banks are open for business in the State of California, and the term "day" means a calendar day when not expressly stated to be a business day. If any period or deadline specified in this Lease ends or falls on a day that is not a business day, such period or deadline shall be extended to end or fall on the next succeeding business day. Wherever used in this Lease, the symbol "\$" refers to dollars in currency of the United States of America.

13.22 Effect of Delivery. The delivery of any unexecuted draft of this Lease shall not constitute an offer by the delivering party or otherwise bind the delivering party or create any enforceable rights in favor of the other party. This Lease shall not be binding or enforceable unless and until it is executed and delivered by both Landlord and Tenant.

13.23 Effect on Landlord Governmental Capacity. Although Landlord is a governmental entity, none of Landlord's consents, approvals or performance of obligations under this Lease shall constitute consents, approvals or acts in the Landlord's governmental capacity, but shall only constitute consents, approvals and acts by Landlord in its proprietary capacity as the landlord under this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

LANDLORD:

CLOVIS VETERANS MEMORIAL
DISTRICT, a memorial district organized
under Division 6, Chapter 1, of the California
Military and Veterans Code

By: _____

Print Name: _____

Chairman, Board of Directors

By: _____

Print Name: _____

Secretary, Board of Directors

TENANT:

_____,
a _____

By: _____

Print Name: _____

Title: _____

**[SIGNATURE BLOCK WILL DEPEND
ON NATURE OF TENANT ENTITY AND
ITS ORGANIZATIONAL DOCS; PLS
PROVIDE ORG DOCS]**

EXHIBIT "A"
DESCRIPTION OF LAND

THE LAND IS SITUATED IN THE CITY OF CLOVIS, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

APN(s): 492-010-17, 53:

PARCEL 1 (APN 492-010-17S):

PARCEL. A OF PARCEL MAP NO. 87-6, IN THE CITY OF CLOVIS, COUNTY OF FRESNO, STATE OF CALIFORNIA ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 47, PAGE 20 OF PARCEL MAPS, FRESNO COUNTY RECORDS,

EXCEPTING THEREFROM, ALL MINERALS AND MINERAL RIGHTS, INTERESTS AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS, AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY.; HOWEVER, GRANTOR OR ITS SUCCESSORS AND ASSIGNS, SHALL HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH; AS RESERVED BY SOUTHERN PACIFIC TRANSPORTATION COMPANY, A DELAWARE CORPORATION IN DEED RECORDED DECEMBER 4, 1987 AS DOCUMENT NO. 87146118 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 1A:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN INGRESS AND. EGRESS OVER THE PORTION ON PARCEL B OF SAID PARCEL MAP NO. 87-6, IN THE CITY OF CLOVIS, COUNTY OF FRESNO, STATE OF CALIFORNIA ACCORDING TO THE MAP THEREOF RECORDED IN. BOOK 47, PAGE 20 OF PARCEL MAPS, FRESNO COUNTY RECORDS, LYING WITHIN THE FOLLOWING DESCRIBED LAND:

COMMENCING, AT THE POINT OF INTERSECTION OF THE EAST LINE OF CLOVIS AVENUE WITH THE EASTERLY PROLONGATION OF THE NORTHERLY LINE OF THIRD STREET, 80 FEET WIDE AS SHOWN ON THE MAP OF THE TOWN OF CLOVIS RECORDED IN BOOK 1 PAGE 1 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THENCE SOUTH 89° 59' 25" EAST ALONG THE NORTHERLY LINE OF THIRD STREET, A DISTANCE OF 69 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 168.16 FEET; THENCE NORTH 89° 59' 25" WEST, 69 FEET TO A POINT ON THE EASTERLY LINE OF CLOVIS AVENUE; THENCE NORTH ALONG THE EASTERLY LINE OF CLOVIS AVENUE, 26.00 FEET; THENCE SOUTH 89° 59' 25" EAST, 95 FEET; THENCE SOUTH 194.16 FEET TO A POINT ON THE NORTH LINE OF THIRD STREET; THENCE NORTH 89° 59' 25" WEST, 26 FEET TO THE TRUE POINT OF BEGINNING.

NOTE: IT APPEARS THE SAID EASEMENT HAS MERGED WITH THE FEE OWNERSHIP EXCEPT THE WEST 12 FEET THEREOF.

APN: 492-010-53S:

PARCEL 2:

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 13 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF CLOVIS, COUNTY OF FRESNO, STATE OF CALIFORNIA ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL A OF PARCEL MAP NO. 87-6, RECORDED IN BOOK 47, PAGE 20 OF PARCEL MAPS, FRESNO COUNTY RECORDS; THENCE SOUTH 89° 44' 16" WEST ALONG THE NORTH LINE OF SAID PARCEL A A DISTANCE OF 117.00 FEET TO THE NORTHWEST CORNER THEREOF, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF PARCEL B OF SAID PARCEL MAP NO. 87-6 AND A POINT ON THE EAST LINE OF CLOVIS AVENUE (80.00 FEET IN WIDTH); THENCE NORTH 0° 13' 17" WEST ALONG THE WEST LINE OF SAID PARCEL B AND THE EAST LINE OF SAID CLOVIS AVENUE A DISTANCE OF 184.17 FEET TO THE NORTHWEST CORNER OF SAID PARCEL B; THENCE NORTH 0° 13' 17" WEST ALONG THE EAST LINE OF SAID CLOVIS AVENUE A DISTANCE OF 34.63 FEET TO THE POINT OF INTERSECTION THEREOF WITH THE SOUTH LINE OF SECOND STREET PROJECTED THROUGH THE RAILROAD RESERVATION AS SAID SECOND STREET IS SHOWN ON THE MAP OF THE TOWN OF CLOVIS, RECORDED IN BOOK 1 PAGE 1 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS; THENCE NORTH 89° 44' 54" EAST ALONG THE SOUTH LINE OF SAID SECOND STREET PROJECTED THROUGH THE RAILROAD RESERVATION, A DISTANCE OF 116.37 FEET TO THE POINT OF INTERSECTION THEREOF WITH A LINE EXTENDING FROM THE SOUTHEAST CORNER OF PARCEL A OF PARCEL MAP NO. 84-8, RECORDED IN BOOK 43, PAGE 78 OF PARCEL MAPS, FRESNO COUNTY RECORDS, TO THE NORTHEAST CORNER OF PARCEL B OF SAID PARCEL MAP NO. 87-6; THENCE SOUTH 1° 16' 08" EAST ALONG THE LINE EXTENDING FROM THE SOUTHEAST CORNER OF PARCEL A OF SAID PARCEL MAP NO. 84-8 IN THE NORTHEAST CORNER OF PARCEL B OF SAID PARCEL MAP NO. 87-6, A DISTANCE OF 34.60 FEET TO THE NORTHEAST CORNER OF SAID PARCEL B; THENCE SOUTH 0° 13' 17" EAST ALONG THE EAST LINE OF SAID PARCEL B A DISTANCE OF 184.19 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THE WEST 12.00 FEET THEREOF.

EXCEPTING THEREFROM, ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE AND DISPOSE OF SAID MINERALS BY ANY MEANS OR METHODS SUITABLE TO GRANTEE, ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE PROPERTY, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE OF SAID LANDS OR TO INTERFERE WITH THE USE THEREOF BY GRANTOR, ITS SUCCESSORS OR ASSIGNS, AS RESERVED IN THE DEED FROM UNION PACIFIC RAILROAD COMPANY, A DELAWARE CORPORATION (FORMERLY KNOWN AS SOUTHERN PACIFIC TRANSPORTATION COMPANY, A DELAWARE CORPORATION, SUCCESSOR BY MERGER WITH SOUTHERN PACIFIC COMPANY, A DELAWARE CORPORATION, FORMERLY SOUTHERN PACIFIC RAILROAD COMPANY, A CALIFORNIA CORPORATION), RECORDED NOVEMBER 30, 1999 AS DOCUMENT NO. 1999-0170726 OF OFFICIAL RECORDS

EXHIBIT "B"

DESCRIPTION OF INITIAL TENANT IMPROVEMENTS

[If there are plans, then describe plans by Job Number; Preparer; Date; and Sheet Number(s).]

RFP: LEASE OF 299 CLOVIS AVE PROPERTY

CITY OF CLOVIS
LAND USE CONFIRMATION FORM

This form is intended to confirm that the proposed use is feasible; however, does **not** in and of itself approve or otherwise imply that the City of Clovis is approving the proposed use. Additional entitlement(s) may be required.

For completion of this form, please contact Ricky Caperton, AICP, Deputy City Planner, at rcaperton@cityofclovis.com or (559) 324-2347 and **allow at least 5 business days for completion** after completing the following information.

NAME: _____

PHONE: _____

EMAIL: _____

WILL THE USE REQUIRE AN ALCOHOL LICENSE? _____

DAYS AND HOURS OF OPERATION? _____

DESCRIPTION OF USE: _____

CITY USE ONLY

DATE SUBMITTED: _____

USE CLASSIFICATION: _____

DATE REVIEWED: _____

ENTITLEMENT REQUIRED: _____

NOTES: _____

REVIEWED BY: _____

SIGNATURE: _____

RFP: LEASE OF 299 CLOVIS AVE PROPERTY

EXHIBIT "C"
PERMITTED LAND USE AS OF 9/1/2021

Land Use (1)(2)(4)	Permit Requirement by District					
				Entitlement		See Section
Education, Public Assembly, and Recreation						
Assembly/Meeting Facilities				C		
Auditoriums and Meeting Halls				C		
Community/Cultural Centers				C		
Health/Fitness Facilities (Over 5,000 Square Feet of Gross Floor Area)				C		
Health Studios				P		
Indoor Amusement/Arcade/Entertainment Centers				C		
Libraries and Museums				P		
Membership Organization Facilities				P		
Reading Rooms				P		
Education, Public Assembly, and Recreation (Continued)						
Studios – Art, Dance, Martial Arts, Music, Photography, etc.				A		
Retail Trade						
Accessory Retail Uses				P		9.120.020
Appliance Stores				P		
Art, Antiques, Collectibles, and Gifts				P		
Bakeries, Retail				P		
Beauty, Barber Shops				P		
Body Massage				P		
Bookstores				P		
Bicycle Shops				P		
Cafeterias				P		
Carpet Sales, Retail Only				P		
Clothing Stores				P		
Coffee – Specialty Sales				P		
Confectionery Stores				P		
Delicatessens				P		
Retail Trade (Continued)						
Eating Establishment				P		

Land Use (1)(2)(4)	Permit Requirement by District					
				Entitlement		See Section
Florist Shops				P		
Fruit and Vegetable Stores				P		
Furniture Stores				P		
Furniture Upholstery Shops				P		
Garden Supply Stores, with Ancillary Equipment Sales, with Service				A		
Glass and Chinaware, Retail Only				P		
Grocery Stores				P		
Hardware Stores				P		
Health Food Stores				P		
Hobby Shops				P		
Home Furnishings				P		
Ice Cream Sales				P		
Leather Goods and Luggage Stores				P		
Mattress Stores				P		
Meat Markets				P		
Retail Trade (Continued)						
Music Stores				P		
Neighborhood Food Markets				C		
Pet Stores				P		
Photographic Studios				P		
Plant Nurseries				P		
Pottery Sales				P		
Print Shops				P		
Restaurants Including Beer and Wine with Meals				P		
Retail Stores, General Merchandise				P		
Secondhand Stores, within Completely Enclosed Structure				P		
Shoe Stores				P		
Soft Drink Fountains				P		
Sporting Goods Stores				P		
Retail Trade (Continued)						
Stamp and Coin Brokers				P		

Land Use (1)(2)(4)	Permit Requirement by District					
				Entitlement		See Section
Tasting Rooms				A		
Temporary Uses				TUP		
Tropical Fish Sales				A		
Services						
Automated Teller Machines				P		
Banks and Financial Services				P		
Business Support Services				P		
Services (Continued)						
Catering Services				A		
Day Care Centers – Child and/or Adult				C		
Churches				C		
Copy Services				A		
Employee Credit Unions				P		
Laundry and Dry Cleaning, Drop-Off/Pick-Up Only				P		
Laundries and Dry Cleaning				C		
Offices				P		
Services (Continued)						
Personal Services (No Adult Businesses)				P		
Pet Grooming				A		
Pharmacies, Prescription				P		
Post Office				P		
Repair and Maintenance, Consumer Products				P		
Shoe Repair Shops				P		
Transportation and Telecommunication Facilities						
Broadcast and Recording Studios and/or Film Studios				A		
Satellite Dishes/Antennas				C		9.42
Telephone Booths, Permanent or Temporary				A		
Residential						
Live/Work Units				C		
Mixed Use				C		

Key to Permit Requirements

Land Use (1)(2)(4)	Permit Requirement by District					
				Entitlement		See Section
Symbol	Applicable Process					See Chapter
P	Permitted use (3)					9.56
A	Administrative use permit required					9.62
C	Conditional use – Conditional use permit required					9.64
<i>Blank</i>	Use not allowed					

Notes:

- (1) See Section 9.08.030 (Allowable land uses and permit requirements).
- (2) See Division 8 of this title for definitions of the land uses listed.
- (3) A Director-approved site plan review permit shall be required. See Chapter 56 of this title.
- (4) In existing conforming structures, land uses allowed with a site plan review permit may be considered a permitted (P) use.
- (5) Any use allowed in the C-2 District not conducted entirely within an enclosed structure shall require a Director-approved administrative use permit or a conditional use permit where listed.
- (6) A conversion of a residential structure to an allowed nonresidential use involving any exterior change to the structure shall require the approval of an administrative use permit in compliance with Chapter 62 of this title.
- (7) If there is a conflict between Table 2-4 and any written description setting forth allowable uses and permit requirements elsewhere in this title, the written description shall supersede unless it is clearly evident from the record that the contrary was intended. Disputes shall be resolved pursuant to Chapter 2 of this title.

(§ 2, Ord. 14-13, eff. October 8, 2014; § 2, Ord. 15-06, eff. March 4, 2015; § 1 (Att. 1), Ord. 16-07, eff. May 4, 2016; § 1 (Att. 4), Ord. 17-03, eff. April 19, 2017; § 1 (Att. 3), Ord. 18-19, eff. September 5, 2018; § 1(2) (Atts. 1, 2), Ord. 20-18, eff. February 3, 2021)