



**Regular Meeting Agenda
9:00 AM**

SEPTEMBER 9, 2021

**REX PHEBUS VETERANS
MEMORIAL BUILDING**

CALL TO ORDER
FLAG SALUTE
ROLL CALL
WELCOME GUESTS

808 4TH STREET
CLOVIS, CA

1. Public Comments/Presentations on Non-Agenda Items

2. Consent Agenda

- 2.a** Approval of Agenda
Approval of Minutes
Approval of Warrants
[8.5.21 Minutes.docx](#)
[8.10.21 Ed Committee Minutes.docx](#)

3. Agenda Items

- 3.a** Third Street Right of Way Approval
Review and approve the updated purchase price for the Third Street Right of Way purchase by the City of Clovis.
[3rd Street ROW.pdf](#)
- 3.b** 299 Lease Agreement & RFP
Review and approve the 299 Lease agreement and RFP to release for bids.
[299 Clovis Form Lease \(w_blanks\).docx](#)
- 3.c** District Chief Executive Officer (CEO) Employment Agreement
Recommended Actions: Approve "Amendment No. 1 to Employment Agreement Between the Clovis Veterans Memorial District and Lorenzo Rios" and authorize Chairman and Secretary of the District's Board of Directors to execute Amendment No. 1.
[Resolution - Amendment 1 to CEO Employment Agreement \(1\).docx](#)
[Clovis - Amendment 1 to CEO Employment Agreement.docx](#)

3.d District Appreciation Policy & Handbook Update
Review and approve the District Appreciation Policy and handbook update.
[Employee Recognition Program_V2.docx](#)

3.e Veterans Day
Discuss and approve plans for Veterans Day.

4. Administrative Reports

4.a CEO Updates
Update the Board of Directors on current meetings and projects.

4.b Administrative/Operational Updates.
Update the Board of Directors on current administrative and operational updates.

4.c Calendar of Updates
Update the Board of Directors on upcoming events.

5. Board Items

5.a Education Committee Update

6. Adjournment

Note:

This agenda is posted pursuant to the provisions of the Government Code commencing at Section 54950. Posting locations are: 1) CVMD Website; and 2) Front doors of 808 4th Street, Clovis, CA (24 hour access available on CVMD website and on front doors).

In accordance with California Government Code Section 54957.5, any writing or document that is a public record, relates to an open session agenda item and is distributed less than 72 hours prior to a regular meeting, will be made available for public inspection in the District offices during normal business hours. If, however, the document is not distributed until the regular meeting to which it relates, then the document or writing will be made available to the public at the location of the meeting.

The board meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modification in order to participate in the meeting shall make a request no later than (5) working days before the meeting to the Board by contacting the Clovis Veterans Memorial District's main office at (559) 299-0471 or sending a written request Clovis Veterans Memorial District, 808 4th Street, Clovis, CA 93612.



Item Cover Page

BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Consent Agenda

AGENDA SECTION: Consent Agenda

SUBJECT: Approval of Agenda
Approval of Minutes
Approval of Warrants

SUGGESTED ACTION:

ATTACHMENTS:

[8.5.21 Minutes.docx](#)

[8.10.21 Ed Committee Minutes.docx](#)

CLOVIS VETERANS MEMORIAL DISTRICT
BOARD OF DIRECTORS
REGULAR MEETING MINUTES

A Regular Meeting of the Clovis Veterans Memorial District Board of Directors was held on Thursday, August 5, 2021. The Chairman called the meeting to order at 9:00 AM followed by the flag salute.

1. Public Comments/Presentations on Non-Agenda Items

Tom Gritton, VFW Post 3225, thanked the Board for their participation in the VFW fireworks stand. Gerald Hayden, Past VFW Post 3225 Commander, thanked the board for their participation in the American Legion Baseball State Tournament.

Alan Fry, American Legion Post 147, presented a plaque to the Board for the District's participation in the Memorial Day Golf Tournament.

2. Consent Agenda

Patrick Ruth moved to approve the consent agenda as presented, Susan Frantzich seconded the motion. Motion Carried 4-0.

Ayes: Tom Wright, Don Watnick, Susan Frantzich, Patrick Ruth

Nayes: None

2.a Approval of the Agenda

Approval of the Warrants

Approval of the Minutes

3. Agenda Items

3.a Project Updates

The Community Heritage Center (CHC) shade structure is up. The trees in front of the mural have been trimmed. They will be trimmed with a high enough canopy to not block the mural and still cast a shade. The materials for the fencing around the utilities' area have shipped this week. They plan to begin installation next week.

The City of Clovis has given a list of acceptable uses for the property on 299 Clovis Ave. District staff is currently finalizing the RFP with the legal counsel. To submit a bid, the applicant will apply at the City as well for the facility usage and an approval form will be included in their bid to the District. The bid must have a minimum threshold (according to an amount the District has set), and the highest bid will be awarded based on the most responsive responsible bidder.

July 8th, 2014, the District and the City of Clovis entered into the Hughes Ave. Old Town Trail Agreement plan. The City agreed to install district improvements in conjunction with City improvements. Improvements included conduit added to the west side of the street connected to the solar parking lot. City agreed to prepare all plans, necessary bid documents, award the contract, and oversee construction. In exchange, the District agreed to pay its share of the project's costs, which equals \$121,606.54. The District didn't pay the amount, so they created a 10-year payment plan of \$12,160.65 per year beginning FY22 without interest.

Director Watnick asked if there was a solar requirement for the CHC. CEO Lorenzo Rios said yes, but once the facility is open District Staff will look at the load requirement for that building and plan accordingly.

3.b Arts Committee

District Staff proposed developing a visual and performing arts (VAPA) committee. Clovis has a long history with art through district memorials, annual art contest with CUSD, City trail sculptures, Art Guild partnership, Fresno County Office of Education (FCOE) annual art contests, performing arts, etc. The District also increased community engagement through the arts with the annual Sweethearts Dance, Spooktacular, quarterly AUSA Sounds of Freedom band concerts, and Veterans Day/Memorial Day concerts. Currently, there is no city arts council.

There are many healing benefits for Veterans in art therapy. The VA also incorporates art and wellness programs as a way for Veterans to express themselves and encourage healing. It benefits the community by providing public health, belonging, social cohesion, and cultural understanding. It also helps create a shared story. It helps everyone remember the story of Clovis and build on it.

District Staff has a proposal to establish a performing arts committee. The proposed members would include members/participants from the following organizations: Clovis Rodeo, Arts Guild, Clovis Senior Center, CenterStage Clovis, CUSD Visual and Performing Arts, Clovis Community College VAPA, VFW, American Legion, Blue Star Moms, Fresno VA Medical Center, and Culinary Arts. It would facilitate the creation of a clearinghouse of "Arts in Clovis". This would promote visual and performing arts by raising awareness. The District would support through facility use and operation funding of up to \$20,000. The programs would have external sponsorships. The District would also help establish community-wide festivals, including jazz, food, and art festivals.

The proposed mission is to promote a celebration of "art in the every day" by cultivating a diversity of creative exploration that includes military service and artistic expression through community collaboration, events and art-based initiatives that promote our

community's and country's foundational ideals. The committee will highlight local talents, enrich the cultural and creative lives of all residents. The proposed pillars are to engage, support and expand the existing rich and diverse artistic community within the district boundaries; engage Veterans and Veterans organizations in sharing their stories through artistic avenues; nurture and foster creativity in the community; support local artists and artisans and showcase the breadth of talent that exists in the district boundaries; increase appreciation and accessibility of the arts to the public; shine a spotlight on the fun, celebratory, and accessible-for-all aspects of art; explore, expand and enrich opportunities for arts education for all residents; facilitate programs, events, and community spaces that support the visual, performing, musical, literary, and culinary arts; make the arts accessible to all members of our diverse community, specifically addressing traditional barriers to participation including disability and financial limitations; and to connect and collaborate with neighboring art and cultural organizations and opportunities.

Director Watnick asked if there could be a "VAPA" newsletter inserted as a section in the local newspaper. CEO Rios stated the committee could partner with the Clovis Roundup to improve marketing. Director Frantzich expressed her concern it might fizzle, since a few members of the Board participated in a VAPA committee in the past created by the City of Clovis, and it was dismantled after a year. CEO Rios said, since this is a committee created by the District, another organization wouldn't be able to take over unless the Board allows. Chairman Wright explained this is an excellent opportunity and could help spread the positive community atmosphere. Director Frantzich proposed Chairman Wright and Director Watnick to be a part of the committee. Community member, Tom Gritton, asked who would bear the costs of all events. CEO Rios gave the example of American Legion Baseball (ALB), and how the initial cost to host was \$70,000, but it was a collaborative effort. The District leveraged various partners, resources, and relationships to reduce the cost. The same can be done through the arts committee and their respective events. Just as they accomplished it with ALB, the same would be done with this committee. Chairman Wright also questioned what the \$20k would be spent on. Community member, Gerald Hayden, will take the idea of this committee to his post and inquire how to get the families involved.

Don Watnick moved to approve

Whereas Clovis does not have an Arts Council, and Clovis Veterans Memorial District is already organizing and working with local artists for purposes of promoting a healthy community;

Whereas the mission statement of the district is to support programs that promote a

legacy of service for preserving our community's and country's foundational ideals;

Whereas the arts both promote healing opportunity for our veterans and community residents through creative expression, and provide an artistic outlet that helps tell our community story while preserving it for future generations;

I move to establish an enduring committee that works with staff and serves as advisors to the board with the mission to promote a celebration of "art in the every day" by cultivating a diversity of creative exploration that includes military service and artistic expression through community collaboration, events and art-based initiatives that promote our community's and country's foundational ideals. The committee will highlight local talents, enrich the cultural and creative lives of ALL residents.

With an operational budget of \$20,000 that comes from the memorials line item, and is established as a standing line item for future district budget planning, and is made available only after a proposed budget is developed by committee members and approved by the district board.

Susan Frantzich seconded the motion. Motion Carried 4-0.

Ayes: Tom Wright, Don Watnick, Susan Frantzich, Patrick Ruth

Nayes: None

3.c Board Meeting Dates

District Staff proposed to change the meeting dates to the second Thursday of the month, beginning in September, with the exception of October (October 12th, 2021). This change would be due to Chairman Wright's new position as a member of the SDRMA Board.

Susan Frantzich moved to approve revised Board Meeting dates for current fiscal year., Patrick Ruth seconded the motion. Motion Carried 4-0.

Ayes: Tom Wright, Don Watnick, Susan Frantzich, Patrick Ruth

Nayes: None

3.d American Legion Baseball AAR

The Board members watched a video recap of the event. The Board was asked what went well and what could be improved. Director Watnick was greatly impressed by the

Friday night dinner and had many compliments. He did ask that the team jerseys include the city they are from. Mr. Gritton asked if there could be a shuttle to and from the parking lots. Chairman Wright stated all the facilities thoroughly impressed the families. CEO Rios stated the location was a good halfway point for families to drive.

4. Administrative Reports

4.a CEO Updates

CEO Rios attended the following meetings in July: meeting with Chad McCollum (City of Clovis), an interview with Kasia for Happy Life Magazine, the Veterans Roundtable, Meeting with DSS Security, CSDA Zoom Meeting, lunch with Jake from Sebastian, a meeting with the Clovis Big Band, meeting with Renee Mathis, Commander's Breakfast, a meeting with Donna & Billy from the Clovis Roundup, an interview with Sevag Tateosian (CMAC), CBMC Meeting, a meeting with Kem Gambrell, Kiwanis Elks Lodge, lunch with Rollow Adams and Alan Fry, American Legion Baseball (07/23-07/27), AUSA Summer Sounds Concert, Area Agency Executives Meeting (CA High-Speed Rail Authority), a meeting with Gene Day, 144th Fighter Wing Cities of Honor Ceremony & Jet Dedication, American Legion Baseball After Action Review, VA Check Presentation, a meeting With Captain Bracey.

4.b Administrative/Operational Updates.

The District is looking for Operations Team Members, a Receptionist (part-time) and Marketing Associate (full time).

District Staff has begun the annual financial audit they hope to conclude by the end of 2021.

The District was able to live stream the AUSA summer concert and will be moving forward with the live streams for upcoming events, including the Veterans Day concert, Here Comes Santa concert, etc. The live streams will be made available online (for community members/senior homes/VA), as well as other rooms in the facility.

4.c Calendar of Updates

The calendar updates are as follows: August 5th: Board Meeting, 9AM; August 10th: Education Committee Meeting, 2PM; CSDA Annual Conference: 08/30 – 09/02 in Monterey, CA; September 14th: Education Committee Meeting, 2PM; September 17th: Military Appreciation Night & POW/MIA Recognition Day; September 18th: Air Force Birthday; September 21st & 22nd: Central Valley Veterans Stand Down, 8AM – 4PM located at the VFW Post 8900 on 3585 N Blythe Ave, Fresno CA 93722; September 25th and 26th: ClovisFest & Hot Air Balloon Fun Fly.

Director Watnick asked if there was any way to move the Education Committee back to

August 10th. District staff will look into it and get back to him by the end of the day.

5. **Board Items**

Director Watnick had positive comments for the American Legion Baseball State Tournament.

Chairman Wright wished CEO Lorenzo Rios a happy birthday.

6. **Closed Session**

6.a **Conference with Labor Negotiators**

The Board entered into closed session at 11:32am and ended at 11:57am.

7. **Adjournment**

With no further business to discuss, the meeting was adjourned at 11:58am.

Reviewed by
Lorenzo Rios
CEO

Approved by
August Flach
Board Secretary

CLOVIS VETERANS MEMORIAL DISTRICT
EDUCATION COMMITTEE
SPECIAL MEETING MINUTES

A Special Meeting of the Clovis Veterans Memorial District Board of Directors was held on Tuesday, August 10, 2021. The Chairman called the meeting to order at 2:00 PM followed by the flag salute.

1. Public Comments/Presentations on Non-Agenda Items

Delilah and Mike Bethel from Boy Scouts of America
Rick Farnelli

2. Consent Agenda

2.a Approval of Agenda

August Flach moved to approve the consent agenda as presented, Alan Fry seconded the motion. Motion Carried 3-0.

Ayes: Don Watnick, August Flach, Alan Fry
Nays: None

3. Agenda Items

3.a Educational Program

Director Watnick suggested to have a three day day-camp in the District in the winter and summer to help tell the story of our community and country. The basis of the camp would be to teach civic education and patriotism. His concern was how to attract and peak interest in the students. Director Watnick also invited Matthew White who is a part of Turning Point USA which is a youth organization which mirrors what the committee wants to achieve. Mike Bethel works full time at the VA and suggested to incorporate a work element where the youth can volunteer at the VA to understand the price of our freedom visibly. He suggested to work with Mary Golden who is the coordinator for the CDCE. He also suggested that the youth that participates could buddy with a Veterans and the Veteran could write a letter of recommendation for them to use for college applicants. Potential places to market would be the key club, kiwanis, and various volunteer groups on High School campuses. Mr. Fry stated that Lorenzo Rios, CEO, is planning to schedule a meeting with Dr. Eimar O'Farrell (CUSD) who will help coordinate a liaison that will advocate for this program on campus. Director Flach stated that a goal of the committee is to train the students who've been through the course so they can teach the incoming students. A lot of the programs would be leadership and patriot based.

Mr. Rick Farinello was interested to attend the committee meeting in order to see how Madera can be involved. In Madera they had a Big's and Little's program where Junior and Senior students would teach freshman and sophomores. They would take students from dysfunctional families and teach them civics, social skills, and aid them with academia. He suggested that the director of that program could get involved in the committee. The program has now spread to various counties and the students have received scholarships and increased their grades. The Boy Scouts of Madera have a civics day where they exchange places with leadership counterparts for a day. It's been going on for 94 years. There is a Military Story Corps where students can interview WWII Veterans and the interviews are then stored in the Library of Congress. Frank Ducar asked if a merit badge could be earned through the program to encourage participation. Mr. Bethel agreed as long as the organization/camp is first registered as a merit badge counselor with an approved curriculum. Alan Fry suggested that they redirect their focus on students who need the leadership program more than the scouts who might not need to participate as much. Delilah suggested that the 3-day camp might not be a merit badge itself but it would be a ticket towards receiving a badge. Other tickets might include to interview a WWII Veteran, visit the VA, volunteer at the Community Heritage Center, visit the American Legion Post 147, etc.

Delilah asked if the Girl Scouts were involved in planning and participating in the camp. Amy Whitacre, Director of Operations, stated that Mr. Rios did make contact but they were unable to make it to the meetings thus far. She suggested to incorporate a virtual option for the next meeting to allow more guests to attend.

Director Flach asked the other committee members if they would like to keep the concept of the camp to only include the constitution or also include the freedoms that Veterans grant to us. Director Watnick suggested to keep the camp foundation as the constitution because it is the foundation of our nation and also includes a lot of history which made this country what it is today.

Director Watnick stated how CUSD fully supports a lot of events that the District hosts. His hope is that there is a program as soon as the Christmas holiday. Director Watnick asked if the meetings can resume to every 2 weeks until there are some concrete ideas. The next meeting was agreed to August 24th, 2021 at 2PM.

4. Board Items

5. Adjournment

With no further business to discuss the committee adjourned at 3:04 PM.

Reviewed by
Lorenzo Rios
CEO

Approved by
August Flach
Board Secretary



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Agenda Items

AGENDA SECTION: Agenda Items

SUBJECT: Third Street Right of Way Approval

SUGGESTED ACTION: Review and approve the updated purchase price for the Third Street Right of Way purchase by the City of Clovis.

ATTACHMENTS:
[3rd Street ROW.pdf](#)

Appraisal Summary Sheet

Project Number/ID	SEC Hughes & Third
APN	492-173-11T
Property Address	Undefined
Date of Value	August 2, 2021
Total Parcel Size	14,810 SF
Zoning	M-U
Present Use	Public Use
Highest & Best Use	Commercial
Net Area to Be Acquired	158.24 SF

Area to be Acquired:	
Total Area = 158.24 SF @ \$15.00/SF	\$2,374.00
Adjusted To	\$2,400.00

Severance Damages: (Cost to Cure):	
None	\$00.00

Benefits:	
None	\$00.00

Total Compensation:	
Part Taken	\$2,400.00
Severance Damages	00.00
Benefits	00.00
Total Compensation	<u>\$2,400.00</u>
Note: The City is to make any repairs under separate contract	

Appraisal Summary Sheet

Project Number/ID	SWC Hughes & Third
APN	492-171-06T
Property Address	301 Hughes Avenue, Clovis, CA 93612
Date of Value	August 2, 2021
Total Parcel Size	9,583 SF
Zoning	M-U
Present Use	Public Use
Highest & Best Use	Commercial
Net Area to Be Acquired	45 SF

Area to be Acquired:

Total Area = 45 SF @ \$15.00/SF	\$675.00
Adjusted To	\$700.00

Severance Damages: (Cost to Cure):

None	\$00.00
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Benefits:

None	\$00.00
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Total Compensation:

Part Taken	\$700.00
Severance Damages	00.00
Benefits	00.00
Total Compensation	<u>\$700.00</u>



Item Cover Page

BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Agenda Items

AGENDA SECTION: Agenda Items

SUBJECT: 299 Lease Agreement & RFP

SUGGESTED ACTION: Review and approve the 299 Lease agreement and RFP to release for bids.

ATTACHMENTS:

[299 Clovis Form Lease \(w_blanks\).docx](#)

GROUND AND BUILDING LEASE

between

CLOVIS VETERANS MEMORIAL DISTRICT

("Landlord")

and

("Tenant")

_____, 202__

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EXHIBITS

EXHIBIT "A"	DESCRIPTION OF LAND [INCLUDE LOT]
EXHIBIT "B"	PERMITTED 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 (“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 in compliance with such permits and approval and applicable law), upon and subject to the terms and conditions set forth in this Lease.

NOW THEREFORE, in consideration of 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 (the “Term”) 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.

2.2 Tenant Extension Option. Tenant shall have the right to extend the initial 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 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 _____ [immediately upon the date of this Lease]. Tenant acknowledges that Tenant has 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.

DRAFT

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.

Tenant will be required to purchase leasehold title insurance.

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. Tenant shall pay such rent 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.

3.2 Annual Adjustment of Base Rent. Except as otherwise provided in Section 3.3, the Base Rent for the second and subsequent Lease Years shall be increased by CPI biannually, not to exceed 5%.

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

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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 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**

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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 [REDACTED] 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.

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(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, 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

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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's consultants 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 48 hours advance notice, 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.

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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-

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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

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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 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

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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 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

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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

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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

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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.

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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.

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(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.

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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

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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

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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 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.

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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 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

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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.

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13.9 Consents. Whenever the consent, approval, judgment or determination of Landlord is required or permitted under any provision of this Lease, Landlord's _____ 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.

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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 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

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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.

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

TENANT:

_____,
a _____

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By: _____
Print Name: _____
Title: Chairman, Board of Directors

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: Secretary, Board of Directors

By: _____
Print Name: _____
Title: _____

**[SIGNATURE BLOCK WILL DEPEND
ON COPY OF FORM OF BUSINESS
ENTITY; WILL NEED DOCUMENTS]**

EXHIBIT "A"

DESCRIPTION OF LAND

(Attached.)

[EXHIBIT "B"]

DESCRIPTION OF INITIAL TENANT IMPROVEMENTS

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



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Agenda Items

AGENDA SECTION: Agenda Items

SUBJECT: District Chief Executive Officer (CEO) Employment Agreement

SUGGESTED ACTION: Recommended Actions: Approve "Amendment No. 1 to Employment Agreement Between the Clovis Veterans Memorial District and Lorenzo Rios" and authorize Chairman and Secretary of the District's Board of Directors to execute Amendment No. 1.

ATTACHMENTS:

[Resolution - Amendment 1 to CEO Employment Agreement \(1\).docx](#)
[Clovis - Amendment 1 to CEO Employment Agreement.docx](#)

BOARD OF DIRECTORS OF THE
Clovis Veterans Memorial District
FRESNO COUNTY, STATE OF CALIFORNIA

Resolution of the Board of Directors)
of the Clovis Veterans Memorial District)
Authorizing Amendment to Chief Executive Officer's)
Employment Agreement) **RESOLUTION NO. 2021-XYZ**

WHEREAS, Clovis Veterans Memorial District (District) desires to recognize Chief Executive Officer Lorenzo Rios for his job performance and contribution to the District; and

WHEREAS, the District has increased other District staff wages in anticipation of minimum wage increases in the coming year, and wishes to do so for the Chief Executive Officer as well.

NOW, THEREFORE, based on the foregoing recitals which are incorporated herein, IT IS HEREBY RESOLVED by the Board of Directors of the District that:

1. The Chief Executive Officer shall receive a merit increase of 3%, effective September , 2021.
2. The Chief Executive Officer shall receive an additional salary increase of 15.38%, effective September , 2021, which is equivalent to the salary increase given to all District staff.
3. The District hereby adopts Amendment No. 1 to the Employment Agreement Between the Clovis Veterans Memorial District and Lorenzo Rios, attached hereto as Exhibit A.
4. The Board Secretary shall certify to the passage and adoption of this Resolution.

PASSED AND ADOPTED at a meeting of the District Board of Directors on this ____ day of September, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

DATED:

Tom Wright, Chair, Board of Directors

ATTEST:

August Flach
Secretary, Board of Directors

Lorenzo Rios
Chief Executive Officer

AMENDMENT NO. 1 TO
EMPLOYMENT AGREEMENT BETWEEN THE CLOVIS VETERANS
MEMORIAL DISTRICT AND LORENZO RIOS

The Employment Agreement (“AGREEMENT”) between the Clovis Veterans Memorial District (“DISTRICT”) and Chief Executive Officer Lorenzo Rios (“CEO”), dated June 6, 2019, is hereby amended, as provided herein. This Amendment No. 1 to the AGREEMENT is effective as of September [REDACTED], 2021.

WHEREAS, CEO has served as Chief Executive Officer of the DISTRICT since July 1, 2015; and

WHEREAS, CEO’s current base salary is \$151,200.00 per year; and

WHEREAS, the AGREEMENT provides for a base salary merit raise up to 5% annually, at the sole discretion of the Board of the Directors of the DISTRICT (“BOARD”); and

WHEREAS, the BOARD has decided to raise DISTRICT employees’ salaries by 15.38%, effective [REDACTED]; and

WHEREAS, the BOARD desires to provide CEO with a 3% merit increase to his base salary due to his excellent service to the DISTRICT; and

WHEREAS, the BOARD desires to provide CEO with an additional 15.38% increase to his base salary in accordance with other DISTRICT staff salary raises; and

WHEREAS, the BOARD has approved a salary increase for CEO, resulting in a new base salary of \$179,688.20.

NOW, THEREFORE, the parties agree to amend the AGREEMENT as follows:

AGREEMENT

Section 1. Section 2.A of the AGREEMENT is amended to read:

CEO’s base salary shall be in the amount of \$179,688.20 per year, effective on [REDACTED], 2021. CEO has received his annual evaluation for 2021. Beginning in 2022, CEO will be evaluated annually at his anniversary date of employment and shall be eligible for a base salary raise up to and including 5% total upon a satisfactory or better annual evaluation at the sole discretion of the DISTRICT’s Board. Except as otherwise determined by the Board, such raise shall be effective as of the anniversary date. However, nothing in this paragraph is intended to limit the normal communications process between the DISTRICT Board, and the Board may review or evaluate CEO more frequently providing a majority of the Board wishes to do so.

Section 2. Except as expressly modified by this Amendment No. 1, all provisions of the AGREEMENT shall remain in full force and effect.

The DISTRICT and CEO hereby agree to the foregoing amendment to the Employment Agreement.

Date

Clovis Veterans Memorial District

Date

Chief Executive Officer

Tom Wright, Board Chairman

Lorenzo Rios

August Flach, Board Secretary



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Agenda Items

AGENDA SECTION: Agenda Items

SUBJECT: District Appreciation Policy & Handbook Update

SUGGESTED ACTION: Review and approve the District Appreciation Policy and handbook update.

ATTACHMENTS:

[Employee Recognition Program_V2.docx](#)

RULES AND REGULATIONS FOR EMPLOYEE RECOGNITION & RETENTION

1. Purpose

The purpose of this policy is to maintain and promote employee satisfaction, morale, efficiency, and initiative, and the attraction and retention of high quality employees, which in turn results in high quality service to the public served by the District. The policy is consistent with Article IV, Section 17; Article XI, Section 10; and Article XVI, Section 6 of the California Constitution and California state law.

In the normal course of District operations, the Board of Directors recognizes that the District employees will accomplish various achievements and other job related successes for which recognition is both desirable and warranted. Additionally, other significant events may occur in the lives of employees during their term of employment with the District that would also warrant District recognition.

Recognition of such accomplishments and milestones can improve employee morale and job performance. Because the District is a direct beneficiary of increased employee morale and job performance, the Board of Directors desires to establish a process for employee recognition.

2. Definitions

For the purpose of this policy the following terms shall have the respective meanings set forth herein, unless the context in which they are used clearly indicates to the contrary:

2.1. Board: The Board of Directors of the Clovis Veterans Memorial District.

2.2. District: The Clovis Veterans Memorial District

2.3. District Property: Every building, facility, or vehicle parking area owned, managed or controlled by the District.

2.4. Chief Executive Officer: The Chief Executive Officer (CEO) of the District

2.5. Employee: A team member, exempt or non-exempt who receives compensation for work completed.

3. Intent

The intent is to recognize excellence in district (and personnel) performance, personal and professional milestones; educate/inform, raise awareness of district and district personnel initiatives, programs, and activities; promote employee satisfaction, morale, efficiency, initiative, and attract/retain qualified professionals.

4. Employee Recognition Program

- 4.1.** The Board of Directors authorizes the CEO to budget monies, not to exceed \$200.00 per employee per year, for the following purposes:
 - 4.1.1.** Quarterly All-Hands District Update. Program designed to raise awareness on district performance by informing staff on all activities accomplished by district and personnel in past quarter, while promoting greater communication among all personnel by introducing team building activities.
 - 4.1.2.** Employee job-related achievement or superior performance recognition.
 - 4.1.3.** Employee recognition events. Other awards include certificates of appreciation, special certificates of merit and attendance awards for continuous attendance during any twelve (12) month period ending in the recognition year.
 - 4.1.4.** Employee retirement or farewell celebration.
 - 4.1.5.** Birth of an employee's child or other significant milestone in an employee's life.
 - 4.1.6.** Bereavement acknowledgements for the death of an employee, an employee's close family relative or District retiree to include past District Board members.
 - 4.1.7.** Seasonal District celebrations, i.e. holiday events and annual employee appreciation events.
- 4.2.** Types of expenses authorized under this policy include, but are not limited to, plaques, flowers, cards, refreshments, and other minor items.
- 4.3.** This policy will be reviewed bi-annually and will be utilized in the district's annual budget processing.



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Agenda Items

AGENDA SECTION: Agenda Items

SUBJECT: Veterans Day

SUGGESTED ACTION: Discuss and approve plans for Veterans Day.

ATTACHMENTS:



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Administrative Reports

AGENDA SECTION: Administrative Reports

SUBJECT: CEO Updates

SUGGESTED ACTION: Update the Board of Directors on current meetings and projects.

ATTACHMENTS:



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Administrative Reports

AGENDA SECTION: Administrative Reports

SUBJECT: Administrative/Operational Updates.

SUGGESTED ACTION: Update the Board of Directors on current administrative and operational updates.

ATTACHMENTS:



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Administrative Reports

AGENDA SECTION: Administrative Reports

SUBJECT: Calendar of Updates

SUGGESTED ACTION: Update the Board of Directors on upcoming events.

ATTACHMENTS:



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BOARD OF DIRECTORS AGENDA ITEM REPORT

DATE: September 9, 2021

ITEM TYPE: Board Items

AGENDA SECTION: Board Items

SUBJECT: Education Committee Update

SUGGESTED ACTION:

ATTACHMENTS: