

AGENDA ITEM NO.

COUNCIL MEETING 2/6/07

APPROVED BY _____

DEPARTMENT DIRECTOR _____

CITY MANAGER _____

February 6, 2007

FROM: KENNETH A. NERLAND, Director
General Services Department

BY: DOUG DOW, Facilities Manager
Facilities Management Division

SUBJECT: APPROVE LEASE AGREEMENT BETWEEN RAQUEL PALACIOS dba AJUA BAIL BONDS AND THE CITY OF FRESNO FOR 1237 VAN NESS AVENUE, A COMMERCIAL PORTION OF THE VAN NESS AND MERCED GARAGE FACILITY.

KEY RESULT AREA

Customer Service

RECOMMENDATIONS

Staff recommends that Council approve a lease agreement between the City of Fresno and Raquel Palacios dba Ajua Bail Bonds at 1237 Van Ness Avenue, and that Council authorize the City Manager or his designee to sign the lease agreement as approved.

EXECUTIVE SUMMARY

Raquel Palacios, dba Ajua Bail Bonds, proposes to lease a vacant space located at 1237 Van Ness Avenue, to house a bail bond business. This proposed rental space is located within the commercial portion of the City-owned property known as the Van Ness and Merced Parking Facility (Garage No. 9) and has been vacant for two years. The rental rate of \$1.10 per square foot has been independently verified to be competitive relative to the downtown commercial rental space market.

Council approval of this lease agreement, which has been approved as to form by the City Attorney's Office and the Risk Management Division, is requested.

KEY OBJECTIVE BALANCE

Council approval of this lease agreement balances the Key Objectives of Customer Satisfaction, Financial Management and Employee Satisfaction. The lease agreement provides future security to the tenant which will improve Customer Satisfaction. The leasing of this space will enhance City revenues for needed reserve funding for building repairs and improvements which will improve the Financial Management of the property. Leasing this space will improve the revenue stream for maintenance funding which will result in reduced calls for service to improve Employee Satisfaction.

BACKGROUND

Ms. Palacios is a new business owner within the City of Fresno and the proposed lease space will allow her to operate her business in the Downtown area. The property is located within the Van Ness and Merced Parking Facility (Parking Garage No. 9). The space is shown on the attached map as Exhibit "A". Also attached, as Exhibit "B", is the Lease Agreement. Details of the lease agreements are as follows:

<u>Street Address</u>	<u>Square Footage</u>	<u>Space Usage</u>	<u>Annual Lease Amounts</u>
1237 Van Ness Avenue	918	Bail Bond office	Year 1 = \$12,120.00 Year 2 = \$12,492.00 Year 3 = \$12,852.00

Facilities has obtained the opinion of a professional leasing agent that is familiar with lease rates in the Downtown area. In her opinion, the rental rate for this space could lease between \$1.10 and \$1.45 per square foot depending on the improvements made to the space. We have chosen to lease the space in "as is" condition, without any interior improvements at \$1.10 per square foot. A copy of the opinion letter is attached.

The proposed lease space is comprised of approximately 918 square feet and includes the use of two vehicle parking spaces on the ground floor level (rear) of the parking structure. The proposed lease period is for three (3) years with two, one (1) year options to extend the lease period at a rental rate to be negotiated later, and would expire February 28, 2010.

The lease agreement requires the Tenant to provide proof of liability insurance of not less than one million dollars face amount and to maintain workers' compensation insurance. The Tenant shall be responsible for the cost of all utilities, routine maintenance associated with the Premises, and for any possessory interest taxes imposed by the County of Fresno.

FISCAL IMPACT

It is anticipated that this lease agreement will generate approximately \$37,452.00 in lease revenue over the term of the lease.

Attachment:
Exhibit "A"
Exhibit "B"

**FORTUNE ASSOCIATES***Commercial Real Estate Brokerage*

January 12, 2007

Pam Parr
City of Fresno
2600 Fresno Street
Fresno, CA 93721

Dear Ms. Parr:

This is in response to your request for current lease rates of commercial retail/office space in various parts of Downtown Fresno, in particular the City owned suites below Garage Nine at Van Ness and Merced.

As you know, that area of Downtown is currently in transition. The owners behind the subject building have spent a substantial amount of money in renovating their property. The property diagonally across from the subject property was recently purchased and is currently being remodeled. There is already a new upscale Mexican restaurant which just opened in one of the suites. The property at 2140 Merced was also recently purchased and remodeled. Each suite offers first class amenities benefiting the tenants and the area.

Therefore, it is my professional opinion that the vacant space located in Garage Nine could lease between \$1.10 and \$1.45 per square foot depending on the improvements made to the space. In addition, the tenant should be responsible for their own PG& E and janitorial services. Regardless of the base lease rate, all of the operational systems need to function properly. The HVAC and electrical systems, lighting fixtures, plumbing etc. need to be serviced and operational before a tenant moves in.

It is my suggestion to renovate this space and any other space that comes available in order to increase the value of all of the properties in the area and support the surrounding property owners that have invested so much into that section of Downtown.

Please call me at (559) 490-2500 if you need any additional information.

Sincerely,

Victoria Gonzales

Commercial Properties – Downtown Fresno

LEASE AGREEMENT
1237 Van Ness, Fresno, California 93721

THIS LEASE AGREEMENT ("Lease") is entered, as of the Effective Date, between the CITY OF FRESNO, a municipal corporation ("Landlord"), and Raquel Palacios dba Ajua Bail Bonds, ("Tenant").

Agreement:

- 1 Effective Date.** The effective date of this Lease shall be March 1, 2007.
- 2 Lease and Description of Premises.** The Landlord leases to Tenant, and Tenant leases from Landlord on the terms and conditions set forth herein, that part of the ground floor commercial space, shown as "Unit B" on the building floor plan attached as Exhibit "A", (the "Premises"). The Premises, containing approximately 918 gross square feet, are commonly known as 1237 Van Ness Avenue, Fresno, California, and are part of a structure known as Parking Structure No. 9. The Premises include Tenant's license to use, at no additional charge, two (2) vehicle parking space(s) on the ground floor of Parking Structure No. 9, accessible from the alley behind the Parking Structure located at 1237 Van Ness Avenue, Fresno, Exhibit "B" herewith.
- 3 Tenant's Acceptance of Premises "AS IS".** Neither Landlord nor any agent for Landlord has made any representation or promise regarding the Premises or Parking Structure No. 9, except as expressly set forth herein. Landlord is leasing the Premises to Tenant in "AS IS" condition, subject to Landlord's obligations to maintain only those parts of the Premises as set forth in this Lease. Tenant has inspected the Premises and by taking possession accepts the Premises "AS IS," having exercised reasonable due diligence to discover any facts or conditions regarding the Premises that are within Tenant's attention, observation, actual and constructive notice.
- 4 Term.** The term of this Lease is thirty six (36) months, beginning on March 1, 2007 and ending at 12:01 A.M. on February 28, 2010, unless terminated earlier as provided in this Lease. Upon Tenant's written request to extend the lease for an additional one year term, delivered to Landlord at least two months before the expiration of the foregoing term, Landlord, without obligation to do so, will consider the request. Any such extension may be on the same terms and conditions set forth herein, except that the monthly rent shall be renegotiated or, Landlord and Tenant may renegotiate the lease provisions including, without limitation, the rent. Any such extension shall be set forth in a writing that shall be approved by City Council. If negotiations result in a one year extension, then at least two months before the expiration of the extended term, Tenant may again request to negotiate an additional one year extension. If Tenant requests an extension and Landlord and Tenant do not reach agreement in time for the

extension to be effective before the initial term or any extended term expires, this Lease shall terminate according to its terms, and Tenant's possession shall be subject to the holdover provision hereof.

5 Rent. During the thirty six (36) month term of the Lease, Tenant shall pay rent as follows:

Year 1 = \$1,010.00 per month

Year 2 = \$1,041.00 per month

Year 3 = \$1,071.00 per month

5.1 Rent Calculation Acknowledgments. The initial calculation was determined based on a square foot charge of sixty cents (\$1.10) a square foot, with annual increases of 3.0%

5.2 Rent Due Date and Proration. Rent shall be paid on the first day of each month, in advance, beginning on the Effective Date, and continuing for the Lease term, unless earlier terminated. Rent shall be prorated for any partial month, based on a 30-day month. Tenant acknowledges that if Tenant fails to pay the Rent or any other amounts within 10 days of its due date under this Lease, Tenant will be in default under Section 14.2. Failure of the Tenant to pay Rent as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain.

Accordingly, if any Rent, or any other amount due under this Lease is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to 1.5 percent (1.5%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant. Acceptance of the late charge by Landlord shall neither constitute a waiver of Tenant's default for the overdue amount, nor prevent Landlord from exercising the other rights and remedies granted under this Lease.

All sums of money due to Landlord under this Lease, not specifically characterized as rental, shall constitute additional Rent. Nothing contained in this Lease shall be deemed to suspend or delay the payment of any sum of money at the time it becomes due and payable under this Lease.

_____ [Initials of Tenant]

5.3 First and Last Month's Rent. On the Effective Date, Tenant shall pay two thousand eighty one and 00/100 dollars (\$2,081.00), on account of first and last month's rent under this Lease. The last month's rent may be applied as security for any default by Tenant under this Lease. If any part of the last month's rent is used for these security purposes, Tenant shall pay an additional amount within ten days of written demand by Landlord, to restore the balance of the one thousand seventy one and 00/100 Dollars (\$1,071.00) last month's prepayment held by Landlord.

6 Utilities. Tenant will pay, defend, and hold the Landlord free and harmless from, all charges for utility services to the Premises including, without limitation, gas, water, sewer, electricity, telephone service, garbage pickup and disposal, and other public utilities. Tenant shall pay the service provider directly before charges are delinquent.

7 Use of Premises.

7.1 Permitted Use. Tenant will use the Premises solely as a Bail Bonds office, and uses incidental and related to that purpose. Tenant shall not use, or permit the Premises to be used for any other purpose without first obtaining Landlord's written consent.

7.2 Parking. Tenant may take reasonable steps to exercise its exclusive control over the two parking spaces shown in Exhibit "B". Tenant may erect signs to give notice of its parking rights, subject to Sections 9 and 11.

7.3 Insurance Hazards. Tenant will not use or permit the Premises to be used in any manner that will cause the cancellation of or increase the costs of any fire, liability, or other insurance policy covering the Premises or any improvements on the Premises. Tenant, at its sole cost and expense, shall comply with any requirement for or alteration to the Premises that any insurance organization or company deems necessary to maintain reasonable fire and public liability insurance rates for the Premises (as part of Parking Structure No. 9).

7.4 Waste, Nuisance, Quiet Enjoyment. Tenant will not do any of the following: (a) commit or permit any waste on the Premises, (b) maintain, commit, or permit the maintenance or commission of any nuisance, as defined in Civil Code Section 3479 on the Premises, (c) use or permit the use of the Premises for any unlawful purpose, or (d) maintain, commit, or permit any other act or condition which may disturb the quiet enjoyment of Landlord or any other Tenant of Parking Structure No. 9.

7.5 Compliance With Laws. Tenant, at its expense, will comply with all statutes, ordinances, regulations, and requirements of all governmental entities, relating to Tenant's use and occupancy of the Premises, including environmental laws. The judgment of any court of competent jurisdiction, or Tenant's admission in a proceeding brought against Tenant by any government entity that Tenant has violated any statute, ordinance, regulation, or requirement will be conclusive between Landlord and Tenant and will be grounds for the Landlord to terminate this Lease.

8 Taxes and Assessments.

8.1 Personal Property and Tenant Improvements. Tenant will pay, before delinquency, all taxes, assessments, and other charges levied or imposed by any governmental entity on the furniture, trade fixtures, appliances, and other personal property that Tenant places in, on, or about the Premises.

8.2 Real Property Taxes. Tenant will pay before delinquency, any real property taxes and assessments for or on the Premises including, without limitation, possessory interest taxes, that any governmental entity may levy or assess against the Premises. Taxes include, without limitation, any special assessments imposed on or against the Premises for any Tenant improvements to the Premises.

8.2.1 Possessory Interest. Notification to Tenant pursuant to California Revenue and Taxation Code Section 107.6: A possessory interest subject to property taxation may be created by entering into this Lease and Tenant may be subject to the payment of property taxes levied on such interest. Any interest in real property which exists because of possession, exclusive use, or a right to possession or exclusive use of land owned by Landlord, and any improvements thereon, may be a taxable possessory interest unless the possessor is exempt from taxation. Tenant should take a copy of this Lease to the Tax Assessor to learn how much Tenant will be taxed, if at all.

8.3 Landlord Protection Against Taxes. Tenant shall indemnify, defend, and hold Landlord and the Premises harmless from any liability for personal and real property taxes and assessments including, without limitation, any interest, penalty, or other expense relating to the taxes or assessments, and from any lien therefore or sale or other proceeding to enforce payment thereof.

9 Trade Fixtures, Improvements, and Alterations.

9.1 Installation and Removal of Trade Fixtures. Tenant, at Tenant's sole cost and expense, may install or affix in, to, or on the Premises, items for Tenant's permitted use of the Premises ("trade fixtures"). At the expiration or any earlier termination of this Lease, Tenant may remove those trade fixtures that are removable without damage to the Premises. Those items that are not removable without damage will remain and become the property of the Landlord. Landlord, however, has the right to require Tenant to remove all trade fixtures and to repair any damage caused by the removal. Tenant must remove any trade fixtures on or before the termination or expiration date. Any trade fixtures that remain on the Premises for 30 days after this Lease expires or terminates will be deemed abandoned by Tenant. Landlord may then elect to keep the property as its own, or require Tenant to remove same, at Tenant's sole expense, including the cost of repair of any damage to the premises caused by the removal, or Landlord may elect to remove the abandoned trade fixtures at a cost to be billed to Tenant.

9.2 Improvements. Tenant may not alter or improve the Premises without first obtaining the Landlord's written consent to and approval of the alteration or improvement. After consent and approval, Tenant will complete the alterations or improvements in strict compliance with the approved plans and specifications. Tenant will keep the Premises free and clear from any liens, claims, and demands for work done, materials furnished, or operations conducted on the Premises at the Tenant's request or direction. Landlord, in its sole discretion, may disapprove all or any part of the proposed work or improvement.

9.3 Ownership of Alterations, Additions, and Improvements. All Tenant Improvements, and any other alterations, additions, and improvements, except Tenant's stock in trade, trade fixtures, furniture, and furnishings, made to or placed on the Premises by any person will become, on expiration or earlier termination of this Lease, Landlord's property and remain on the Premises. The Landlord, however, has the option on expiration or termination of this Lease, to require Tenant, at Tenant's sole cost and expense, to remove any or all such alterations, additions, and improvements from the Premises and repair any damage caused by the removal.

9.4 Permits. Tenant shall obtain and pay for all permits required by any governmental authority for any work, alteration, addition, or improvement that Tenant does or causes to be done on the Premises. Before undertaking any modifications, Tenant shall first determine the existence of toxic or hazardous materials, such as asbestos, within the proposed work area. Tenant shall secure or remove such materials following local, state and federal regulations at Tenant's sole cost and expense.

9.5 Liens and Encumbrances. Tenant shall keep the Premises and Parking Structure No. 9 free from any liens and encumbrances because of work done, materials furnished, or obligations incurred by Tenant in connection with any alteration, addition, or improvement on or to Premises. Tenant shall indemnify, defend, and hold Landlord harmless from any cost or expense which Landlord shall incur because of any such lien or encumbrance.

9.6 Asbestos Notice and Agreement. Tenant acknowledges receiving, and shall abide by the conditions of the Notice of Asbestos Containing Construction Materials, attached to this Lease as Exhibit "C" dated December 7, 1998. Tenant acknowledges that the Premises are referred to in the report as "Vacant Space".

9.7 Landlord Improvements. From time to time, the Landlord may construct improvements to the Premises or to Parking Structure No. 9. Upon reasonable notice (at least 24 hours), Tenant will allow Landlord any access needed to complete the work.

10 Maintenance of Premises.

10.1 Tenant's Obligations.

10.1.1 Tenant's Maintenance and Renovations. At its sole cost and expense, Tenant shall undertake the cleaning, maintenance, and renovation to the Premises set forth in Exhibit "D," attached.

10.1.2 Maintenance. Tenant, at its sole cost and expense, shall keep and maintain the Premises in good order, condition, and repair. Tenant's obligations to maintain shall include, without limitation, windows (interior and exterior), doors (interior and exterior), skylights, the storefront, and the interior walls, floors, and ceilings, all plumbing and sewage facilities that exclusively serve the Premises, and those maintenance items listed in Exhibit "D", attached. Tenant's maintenance obligations do not extend to the parts of the Premises that the Landlord is obligated to repair and maintain. In an emergency, the Landlord may make the necessary repairs for the Tenant or perform the maintenance for the Tenant. Tenant will reimburse the Landlord for such repairs or maintenance on demand, with interest, at the maximum rate then permitted by law.

10.1.3 Air Conditioning and Heating. Landlord has installed air conditioning and heating equipment to adequately heat and cool the Premises. Tenant has accepted the equipment in good operating condition. Tenant, at its sole cost and expense, shall maintain the air conditioning and heating equipment in good operating condition and repair. Tenant shall enter and maintain a service contract on the equipment with an individual or firm that regularly engages in the business of servicing and maintaining air conditioning and heating equipment of the type installed in the Premises. The contract shall provide for periodic servicing and maintenance. Tenant shall file a copy of the service contract, and each amendment and renewal of it, if any, with the Facilities Management Division of the Department of Administrative Services at 2101 "G" Street, Building A, Fresno, CA 93706.

10.2 Tenant's Waiver of Civil Code Sections 1942 and 1941. Tenant hereby waives all rights under Section 1942 of the California Civil Code to make repairs at Landlord's expense, and waives any rights under California Civil Code Section 1941 regarding Landlord's obligations to maintain tenantability.

10.3 Landlord's Obligations.

10.3.1 Maintenance. Landlord, at its own cost and expense, and subject to the City Council's discretionary appropriation of funds, therefore, will maintain the structural elements of the Premises and Parking Structure No. 9 in good condition and repair. For purposes of this section, "structural elements" means the exterior roof, exterior walls (except window glass and doors), structural supports, and the foundation. Structural elements will also include plumbing pipes to the extent that the pipes are an integral part of the flooring or foundation and inaccessible to Tenant.

Notwithstanding anything in this section to the contrary, Tenant, and not Landlord, shall promptly repair any structural elements that need repair because of the negligence or other fault of Tenant, its employees, agents, or invitees.

10.3.2 Major Repairs to Heating and Air Conditioning. Landlord, at its cost and expense, and subject to City Council's discretionary appropriation of funds, shall be responsible to make major (capital) repairs or replacement of the major

working components of the heating and air-conditioning system when necessary, unless the repair or replacement is necessitated by any act or omission of Tenant, its employees, agents, or invitees.

10.3.3 Notice from Tenant. Tenant shall immediately notify Landlord in writing of any repairs, replacement, or maintenance requiring Landlord's attention. Landlord shall timely carry out its maintenance and repair obligations so as not to unreasonably disrupt Tenant's use and occupancy.

11 Rules and Regulations. Tenant, and Tenant's employees, agents, business invitees, and licensees shall faithfully observe and strictly comply with the Landlord's Rules and Regulations set forth in Exhibit "E," attached, and such other and further rules and regulations as Landlord may, from time to time, adopt and deliver to Tenant in writing.

12 Landlord's Access to Premises. Tenant will permit Landlord, or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times to inspect the Premises, to learn whether Tenant is complying with the terms of this Lease, to do other lawful acts that may be necessary to protect the Landlord's interest in the Premises, or to perform Landlord's duties under this Lease.

13 Force Majeure -- Unavoidable Delays. If any event, other than financial inability on the part of Tenant, delays or prevents the Tenant from performing any obligation under this Lease, the parties will extend the time for performance by the period of delay. Delay events that permit extension include, without limitation, acts of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations. However, nothing contained in this subsection will excuse Tenant's prompt payment of rent or the performance of any act rendered difficult solely because of Tenant's financial condition.

14 Default, Assignment and Termination.

14.1 Restriction Against Subletting or Assignment. Tenant will not encumber, assign, sublet, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any improvements on the Premises, without first obtaining the Landlord's written consent. The Landlord's consent in one instance will not be consent to any subsequent encumbrance, assignment, subletting, or transfer of the Premises. Any encumbrance, assignment, transfer, or subletting without the Landlord's prior written consent, whether voluntary or involuntary, by operation of law or otherwise, is void and, at the Landlord's option, will terminate this Lease.

14.2 Default Defined. The occurrence of any of the following will be a material breach and a default of this Lease:

14.2.1 Payment of Money. Tenant's failure to pay rent or to make any other payment under this Lease within 10 days of the due date.

14.2.2 Abandonment. Tenant's abandonment or vacation of the Premises. Tenant's absence from or failure to conduct business on the Premises for more than 30 consecutive days will be abandonment or vacation for purposes of this Lease.

14.2.3 Other Breach. Tenant's failure to observe and perform any other provision of this Lease when the failure continues for 30 days after written notice from the Landlord. If, however, the nature of the default is such that Tenant cannot reasonably cure it within the 30-day period, Tenant will not be in default if Tenant begins to cure the default within the 30-day period and after that diligently prosecutes it to completion.

14.2.4 Insolvency. Tenant does any of the following: (a) Tenant makes any general assignment for the benefit of creditors, (b) Tenant files bankruptcy, or a third party petitions to have Tenant adjudged bankrupt, and does not dismiss the petition within 60 days, (c) Tenant files a petition for reorganization or arrangement under any law relating to bankruptcy, (d) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets at the Premises, or of Tenant's interest in this Lease, and possession is not restored to Tenant within 30 days, or (e) the attachment, execution, or other judicial seizure of substantially all of Tenant's assets at the Premises, or of Tenant's interest in this Lease, and that seizure is not discharged within 30 days.

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

14.4 Landlord's Right to Relet. If Tenant breaches this Lease, Landlord may enter the Premises and relet it to a third party for any term, at any rental, and on any other conditions that Landlord in its sole discretion may deem

advisable. The Landlord may also make alterations and repairs to the Premises.

14.5 Landlord's Right to Cure Tenant Defaults. If Tenant breaches or fails to perform any provision of this Lease, the Landlord, at its option, may cure Tenant's breach. Tenant will reimburse the Landlord, on demand, for the Landlord's costs to cure the default.

14.6 Cumulative Remedies. The Landlord's remedies in this Section are not exclusive but cumulative, and in addition to all remedies now or after this allowed by law, or provided elsewhere in this Lease.

14.7 Waiver of Breach. If the Landlord waives any Tenant breach or default of any Lease provision, the waiver will not be a continuing waiver or a waiver of Tenant's subsequent breach of the same or any other provision. The Landlord's acceptance of rent shall not be a waiver of any preceding breach by Tenant, other than the failure to pay the particular rental so accepted.

15 Indemnification Tenant will protect, indemnify, defend, and save Landlord, its officials, officers, agents, employees, and volunteers harmless from and against any liability to third parties resulting from Tenant's occupation or use of the Premises including, without limitation, any claim, liability, loss, damages, and attorneys' fees and litigation expenses arising from: (a) The death or injury of any person or persons including, without limitation, any person who is an employee or agent of Tenant, or (b) the damage to or destruction of any property including, without limitation, property owned by Tenant or any person who is an employee or agent of Tenant, and caused or allegedly caused by the condition of the Premises, (c) any act or omission of Tenant or of some agent, Tenant, employee, servant, subtenant, or concessionaire of Tenant, or (d) any work done on, or materials furnished to, the Premises at the Tenant's request, or the request of Tenant's agent or employee, or (e) Tenant's failure to perform any provision of this Lease, or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision, relating to the Tenant's use or occupancy of the Premises, or (f) Tenant's use or occupancy of the parking spaces in Parking Structure No. 9, or (g) Tenant's use of the adjoining sidewalk. Tenant's foregoing obligations apply even if the Landlord is actively or passively negligent. Tenant obligations under this paragraph shall not include any claims, costs, damages, demands, or liability caused solely by the active negligence or willful misconduct of Landlord, its officials, officers, volunteers, agents or employees.

16 Insurance.

16.1 Insurance. Tenant will maintain the following insurance policies in effect with one or more insurers that are either (a) admitted by the California Insurance Commissioner to do business in California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (b) approved by the Landlord's Risk Manager:

16.1.1 Commercial General Liability insurance, including contractual, products and completed operations coverages, liquor liability coverage (if Tenant is permitted hereunder to sell or serve liquor on the Premises) and bodily injury and property damage, with combined single limits of not less than \$1,000,000 per occurrence, and endorsed to include owner's, landlord's, and tenant's fire and legal liability coverage.

16.1.2 Workers' Compensation insurance as required under the California Labor Code.

The general liability policy will be endorsed to require an unrestricted 30-day written notice to the Landlord of any cancellation or a change in terms or coverage. Tenant will obtain an endorsement to the workers' compensation policy giving the Landlord an unrestricted ten-day written notice of any cancellation or change in terms or coverage. **Tenant will deliver a new certificate of insurance to the Landlord as follows: (a) not less than 15 days before any policy expires, and (b) each time Tenant or the insurer cancels or changes a policy.**

Tenant will maintain general liability insurance policies, written on an occurrence basis, which name the Landlord, its officers, officials, agents, employees and volunteers as additional insured. Tenant will obtain endorsements to the policies confirming that the insurance is primary and the policy does not require the Landlord to contribute. **The Tenant will furnish the Landlord with insurance certificates and applicable endorsements for ALL required insurance before the Landlord signs this Lease.** Whenever the Landlord's Risk Manager requests one, the Tenant will give the Landlord a certified copy of any policy.

16.2 Tenant's Personal Property. Tenant will maintain at its cost and expense an insurance policy for the full insurable value of all Tenant's fixtures and equipment and, to the extent possible, all merchandise that is in or on the Premises against damage or destruction by fire, theft, or the elements.

17 Damage to or Destruction of Premises

17.1 Partial Damage or Destruction. Landlord, at its sole option, and subject to budget appropriations, may repair the Premises or terminate this Lease upon written notice to Tenant if the Premises are partially destroyed or damaged from any cause. If Landlord elects to terminate this Lease, termination shall be effective immediately. If Landlord elects to repair or restore the Premises, it will notify Tenant within 20 business days, and shall complete the work within 120 days after, the casualty date, and this Lease will not terminate. Tenant shall be entitled to a proportionate rent reduction based on the extent to which the damage and the repair work interfere with Tenant's use and occupancy of the Premises for the use intended.

17.2 Tenant Waiver of Right to Terminate. Respecting any partial destruction that Landlord elects to repair, Tenant waives any right to terminate the Lease under California Civil Code Sections 1932 (2), or 1933 (4).

17.3 Total Destruction. If the Premises are totally destroyed, this Lease shall terminate as of the date of the casualty.

18 Eminent Domain. "Condemned" and "right of eminent domain" mean the right of the government to take property for public use, and shall include the intention to condemn expressed in writing as well as the filing of any action or proceeding for condemnation. If a body or entity, having the power to do so, condemns, begins an action or proceeding to condemn, or advises Landlord or Tenant in writing of its intent to condemn, all or part of the Premises, then the following shall apply:

18.1 Landlord May Convey or Sell To Condemnor. Landlord, without any obligation or liability to Tenant, and without affecting the validity and existence of this Lease other than as expressly provided herein, may agree to sell or convey the Premises or any part of it to the condemnor, without first requiring that any action or proceeding be instituted in court. If an action or proceeding has been instituted, Landlord may convey or sell without requiring any trial or hearing. Landlord may stipulate to judgment therein for the taking of the Premises, or part of it, as sought by the condemnor, free from this Lease and the rights of Tenant.

18.2 Condemnation Proceeds. Tenant shall have no claim against Landlord for, and shall not be entitled to, any part of the sale or conveyance proceeds or any condemnation award. Tenant hereby assigns such interest, if any, that Tenant may have under this Lease to any proceeds or condemnation award to Landlord. Tenant, however, may seek to recover against the condemnor for Tenant's trade fixtures and any removable

Tenant improvements that Tenant is entitled to remove upon the expiration or termination of this Lease and Landlord will not have a claim to the recovery.

18.3 Effect of Condemnation on Continuation of Lease. If 25 percent or more of the interior floor area of the Premises is condemned, or if the condemnation renders the Premises unusable, this Lease shall terminate without further notice on the date that the condemnor takes physical possession.

If the part of the Premises condemned is less than 25 percent of the interior floor area, or the Premises are useable for Tenant's purposes after condemnation, at the sole option of Landlord, this Lease shall remain in effect and shall not terminate. Subject to any discretionary appropriations, if Landlord elects to continue the Lease, Landlord shall repair and reconstruct the Premises. During any repair and reconstruction and after, Landlord shall abate Tenant's rent according and to the extent that Tenant's use of the Premises for the purposes intended are impaired. If Landlord elects to terminate this Lease, the Lease will terminate on the date the condemnor takes physical possession.

19 Surrender of Lease Not a Merger. If Landlord has approved any subleases, Tenant's voluntary or other surrender of this Lease, or the parties' mutual cancellation of it, will not merge the ownership and leasehold interests. At Landlord's sole option, Tenant's surrender or any cancellation of the Lease will terminate any subleases.

20 Surrender of Premises. Tenant shall surrender the Premises, at the expiration or earlier termination of this Lease, in the same condition as when Tenant took possession, reasonable use and wear excepted. Tenant shall remove all Tenant's signs and personal property, including trade fixtures that are removable without damage to the Premises. Any Tenant property remaining on the Premises after the expiration or termination, at Landlord's sole election, shall become the property of Landlord as provided elsewhere in this Lease. Tenant shall repair any damage to the Premises or to Parking Structure No. 9 caused by Tenant's removal of its signs or trade fixtures.

21 Holding Over. If Tenant fails to vacate and surrender the Premises on or before the expiration date of the initial or any extended term, or upon any earlier termination of this Lease, the tenancy, at Landlord's option, shall be deemed a tenancy from month to month, until the tenancy is terminated in a manner prescribed by law. During any hold over Tenant shall pay, and monthly rental shall be one thousand six hundred seven and 00/100 Dollars per month (\$1,607.00).

- 22 Successors and Assigns.** This Lease shall benefit and be binding upon the parties and their successors and assigns, subject to the restrictions on Tenant's assignment and subletting.
- 23 Venue.** Venue for any action or proceeding arising under this Lease shall be Fresno County, California.
- 24 Governing Law.** California Law governs this Agreement and the legal relations between the parties.
- 25 Time of Essence.** Time is of the essence of this Lease.
- 26 Place of Payments.** Tenant shall pay all Lease payments and other sums payable to Landlord at: City of Fresno Revenue Division, 2600 Fresno Street, Fresno, California 93721-3611.
- 27 Notices.** Unless the law otherwise requires, any notice, demand, or communication hereunder, given by one party to the other, must be in writing. The notice or communication will be duly served when personally delivered or when deposited in the United States mail, first-class postage prepaid, and addressed as follows:

Tenant:

Raquel Palacios
Dba Ajua Bail Bonds
1237 Van Ness Avenue
Fresno, California 93721

Landlord:

City of Fresno
Attention: Facilities Management
2101 G Street, Building A
Fresno, CA 93706

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

- 28 Attorneys' Fees.** If either party brings an action or proceeding to enforce or interpret the provisions of this Lease, the prevailing party shall be entitled to recover reasonable attorneys' fees as fixed by the court or other tribunal.
- 29 Entire Agreement.** The exhibits referenced in this Lease are by the references incorporated into and made a part of this Lease. This Lease is the entire

agreement between Landlord and Tenant regarding the Premises. It correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises or this Lease not expressly set forth in this instrument are void.

30 Partial Invalidity. If a court finds any provision of this Lease to be invalid, void, or unenforceable, the provision will be severed from this Lease and the remaining provisions of this Lease will remain in effect.

31 Amendments. This lease may not be amended or other wise modified in any way whatsoever, except in writing signed by the parties.

32 Accord and Satisfaction. No payment by Lessee or receipt by Landlord of a lesser amount than the rent, fees and/or charges due to be made by Lessee hereunder shall be deemed to be other than on account of the rent, fees and/or charges due. No endorsement or statement on or accompanying such payment shall be deemed an accord and satisfaction or prejudice Landlord's right to the balance, or other remedies.

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IN WITNESS WHEREOF, the parties have executed this Lease on the dates and in the year set forth below.

Tenant:

Raquel Palacios
DbA Ajua Bail Bonds

Landlord:

CITY OF FRESNO
a municipal corporation

By _____

By _____

Andrew T. Souza
City Manager

Date _____

Date _____

ATTEST:

REBECCA KLISCH
City Clerk

By _____

APPROVED AS TO FORM:

James C. Sanchez
City Attorney

By _____

Senior Deputy

Attachments:

- Exhibit A: The Premises
- Exhibit B: Parking
- Exhibit C: Notice of Asbestos Containing Construction Materials
- Exhibit D: Tenant's Maintenance And Renovations Schedule
- Exhibit E: Rules and Regulations

Exhibit D

Tenant's Maintenance and Renovations Schedule

A. WORK TO BE DONE DURING FIRST SIX MONTHS OF THE LEASE

Cleaning

Interior walls
Restrooms
Entries/Exits

Painting

Where necessary to cover discoloration, fading, marks and scratches

B. PERIODIC MAINTENANCE OF THE AIR CONDITIONING SYSTEM WILL INCLUDE THE FOLLOWING ITEMS:

Monthly Service

Change air filters
Check belts, blower, motor, condensate pump and drain, and overall system operation

Semi-Annual

Clean condensate pan and drains
Service and lubricate per manufacturer's recommendations
Check freon level

Annual

Clean blower wheel assembly
Clean evaporator and condenser coils
Check condenser fan and motor
Check electrical connections, etc.

Exhibit E

RULES AND REGULATIONS

1. All receiving and delivery of goods, merchandise and supplies shall be by way of the pedestrian walk and the rear entrance to the Premises. All motor vehicles used in receiving and delivery shall be loaded and unloaded in loading zones provided for that purpose. No loading or unloading shall be done in any street or alley next to the Premises or any part of Parking Structure No. 9 other than a loading zone. Vehicles may park in a loading zone only when necessary to load or unload goods from or for the Premises.

2. Neither Tenant nor any of Tenant's agents, employees, or invitees shall park or leave any vehicle standing except in a loading zone as provided in Rule 1 or in regularly provided parking stalls and upon payment of the required parking charge, if any.

3. Tenant shall cause all its employees, agents, and invitees to comply with Rules 1 and 2.

4. Tenant shall keep all pedestrian walks and sidewalks adjacent to the Premises, free and clear of all obstructions. Tenant shall not place, store, display, or leave any goods, merchandise, supplies, garbage, rubbish, waste material, signs or other property on the pedestrian walk or such sidewalks.

5. Tenant shall sweep (or wash, if necessary) the sidewalk and the pedestrian walk next to the Premises as often as necessary to keep such sidewalks and pedestrian walk in a neat, clean condition.

6. Unless the Lease specifically permits it, Tenant shall not install any additional equipment, device, or service in or to the Premises that requires cutting or boring any wall, floor, or ceiling, or that requires any duct, wire, device, or other thing to be installed on, in or outside the Premises, without first obtaining the written consent of Landlord.

Landlord may remove any Tenant installation that violates this rule without notice to, or liability to, Tenant. Tenant shall reimburse the Landlord for its costs to remove the installation and repair any damage to Premises or the structure of which the Premises are a part.

7. Tenant shall not use the Premises for lodging or sleeping accommodations for any person, or for engaging in any illegal activity.

8. Tenant shall keep the store front, front and rear entryways, and all windows in neat and clean condition, and shall maintain the interior Premises visible from the sidewalk and the pedestrian walk in such condition as to present a clean and uncluttered appearance.

9. Tenant shall not attach any awnings or other projections, except signs expressly permitted by these rules and regulations, to the store front of the Premises, without the prior written consent of Landlord. Such consent shall be in addition to any permit required by municipal or other authority.

10. Tenant shall dispose of all garbage, refuse, wastepaper, discarded packing materials and any other waste material (collectively "Waste") only in the trash bins or dumpsters. Until disposal in trash bins or dumpsters, Tenant shall store or keep any Waste within the Premises. Tenant shall not store or place Waste in the parking areas or anywhere outside the Premises except in waste bins or dumpsters.

11. Tenant shall not exhibit, inscribe, paint, or affix any sign, advertisement, notice or other lettering outside the Premises, except with the consent of Landlord and in compliance with sign regulations and ordinances, and the following:

a. General Restrictions

- 1) No billboards, roof signs or outdoor advertising permitted.
- 2) No signs permitted above canopy at second-floor line.
- 3) The Landlord shall approve all signs in writing.

b. Signs on Facade of Building

- 1) Signs shall be located between the top of the glass line and the fascia canopy, in an approved location on the store frontage of the Premises.
- 2) Signs shall be parallel with the face of the building and shall not project further than the fascia canopy.
- 3) Tenants shall be limited to one such sign per street frontage.
- 4) Signs shall be two feet in height and the length shall be in multiples of the building design module. Length shall not exceed that of a store frontage of the Premises.
- 5) Signs shall be "fascia" type with aluminum or stainless steel "can" or frame and white plastic face, internally lighted. Copy shall be limited to the plastic face.

c. Entrance Signs

- 1) Tenant may have one sign on the soffit of each entryway to the Premises.
- 2) The sign shall be pendant type, flush mounted, double-faced and shall be 10 inches by 30 inches.
- 3) Signs shall be of the type and materials specified for facade signs.

d. Window Signs

- 1) Identification signs, approved by Landlord, are permitted in or on street front windows.
- 2) Lighted signs, viewable from the exterior of the Premises, are not permitted without prior approval of the Landlord.

e. Wall Signs

- 1) Tenant may install identification signs on the solid portions of the street front wall, below the top of the glass line, as approved by Landlord.
- 2) Such signs shall be of block, or "cut out," individual letters of a material approved by Landlord.

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LEASE AGREEMENT

BETWEEN

THE CITY OF FRESNO, A MUNICIPAL CORPORATION

AND

**Raquel Palacios
Dba Ajuja Bail Bonds**
