City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.	9:30am D
COUNCIL MEETING	8/28/07
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

August 28, 2007

FROM: RENENA SMITH, Budget Manager
Budget & Management Studies Division

SUBJECT: AUTHORIZE THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT BETWEEN THE CITY OF FRESNO AND TUTELIAN HOLDINGS I, L.L.C., A CALIFORNIA LIMITED LIABILITY COMPANY FOR OFFICE SPACE AT 2440 TULARE STREET,CIVIC CENTER SQUARE, FOR THE BUDGET & MANAGEMENT STUDIES DIVISION

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 11TH AMENDMENT TO THE ANNUAL APPROPRIATIONS RESOLUTION NO. 2007-214 TO INCREASE APPROPRIATIONS IN THE ENTERPRISE ZONE FUND BY $50,000 FOR ADDITIONAL RENT AND FACILITY EXPENSES RELATED TO INCREASING SPACE AND RELOCATING OPERATIONS

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING THE 12TH AMENDMENT TO THE ANNUAL APPROPRIATIONS RESOLUTION NO. 2007-214 TO INCREASE APPROPRIATIONS IN THE BUDGET & MANAGEMENT STUDIES FUND BY $145,400 AND THE INTERNAL AUDIT FUND BY $34,600 FOR RELOCATION EXPENSES

KEY RESULT AREA

Customer Service and Resource Management

Presented to City Council
Date 8/28/07
Disposition rec/approved; Resos 2007-292, & 2007-293 adopted

RECOMMENDATIONS

It is recommended that the Council authorize the City Manager to enter into a lease agreement with Tutelian Holdings I, L.L.C., a California limited liability company for office space at 2440 Tulare Street, Fresno, California, Civic Center Square, for the Budget & Management Studies Division (BMSD). The attached lease is in substantial form; by approving this action Council is delegating final provision negotiations to the City Manager in collaboration with the City Attorney. Additionally, it is recommended that Council approve the 11th and 12th amendments to the Annual Appropriations Resolution for Economic Development and BMSD for relocation expenses.

EXECUTIVE SUMMARY

Due to the creation of the Business Assistance Center (BAC) and its proposed location there is a need to find space for the Economic Development Department (ED). The BAC will occupy the current Economic Development Department area. After reviewing several areas within City Hall the space currently occupied by BMSD is ideal for ED's current and future space needs. Since BMSD has outgrown its current location and could not identify enough appropriate space within City Hall, BMSD will relocate to 2440 Tulare Street. This is a window of opportunity to address the space needs of all three organizations in addition to meeting the January 2008 goal to open the BAC to the community.

*SUBJECT TO MAYOR'S VETO

KEY OBJECTIVE BALANCE

This plan fulfills the City's vision for our customers by providing an environment that will streamline Planning & Development processes, improve employee satisfaction by providing needed work space and tools. This plan also is fiscally prudent because it does not impact the General Fund and allows BMSD to inhabit the appropriate amount of functional space at an overall cost savings. Additionally, the departments that need to provide the highest level of public access will remain at City Hall while BMSD will maintain access to their customers through proximity and technology.

BACKGROUND

As the City continues to grow it is inevitable that programs will expand and staff will increase to support the demands for service. As Planning & Development strives to find the most efficient way to provide services to their customers and the community as a whole, they have determined that the popular Application Assistance Center (AAC) needs to be expanded and relocated. Along with this relocation will come additional services and change in name to the Business Assistance Center. Upon review of the various locations in City Hall it has been determined that the area currently occupied by the Economic Development Department is ideal for the BAC. The cost of the BAC will continue to be funded by the Planning & Development Enterprise Fund. The department will return to Council with a comprehensive plan for the BAC.

The Economic Development Department has outgrown its current space and must find a new location shortly. They currently have staff scattered throughout the third floor and in some cases staff are sharing desks. Further exacerbating this situation is that the Economic Development Department is adding staff in the fall consistent with the Adopted Budget. The ED is funded by the Enterprise Zone Fund and the General Fund. The area currently occupied by the Budget & Management Studies Division will meet the needs of the expanding Economic Development Department by providing sufficient offices, cubicles, reception and conference room space. It also provides the public, Council and Administration easy access to the Economic Development staff. The ED staff person identified for the BAC will still have easy access to the Department Director, their supervisors and colleagues.

The Budget & Management Studies Division has also outgrown its space. There is no storage space or a dedicated work room which requires files and boxes to be maintained in individual work spaces and often requires using floor space when compiling documents. In addition, the Budget Library serves as the conference room, break room, copy room, print area, document storage, and BRASS computer area. All of the BMSD staff, which includes the Budget Office, Internal Audit and CDBG Administration, no longer fit into the library for meetings. Finally, there is also a lack of security related to the sensitive information that is continually worked on within the Division.

BMSD has a unique window of opportunity right now to relocate to 2440 Tulare Street, a building at the Civic Center Square. This location provides BMSD with adequate space to address current and future needs, it has easy access to City Hall (less than a 3 minute walk), and connectivity to all the City systems, security and parking. The service provided to BMSD customers will be maintained due to the proximity of the office space to City Hall and technology.

FISCAL IMPACT

The relocation recommendation has no fiscal impact to the General Fund.

The Economic Development Department will increase its space by approximately one-third at an incremental increase in cost of $13,400 in annual City Hall Rent and Facility fees which is currently charged to BMSD. The Economic Development will not incur any build-out or furniture costs as these will be left behind by BMSD. ED

will need to reconfigure cubicles and will need to move phones and computers. Therefore, an additional $36,600 of appropriations is requested to address the moving costs and cubicle reconfiguration. The $50,000 in additional appropriations will be funded from the Enterprise Zone Fund reserves.

BMSD's internal service funds have sufficient carryover to pay for the one-time moving expenses related to technology and furniture for the new location. BMSD is appropriating an additional $180,000 for the one-time relocation expenses from existing reserves. The cost per square foot is less per square foot than what BMSD is currently paying at City Hall for rent and facility services. The usable square footage assumed in the lease will increase BMSD's space by 2,570 square feet. BMSD will assume this additional expense without impacting current year rates or the funding that has been designated for the Budget System-BRASS upgrade planned in FY 2010. Finally, BMSD will continue to maintain a modest reserve throughout the length of the 15 year lease.

Attachment: Lease Agreement
11th Amendment to the AAR
12th Amendment to the AAR

CITY OF FRESNO
City Clerk's Office (Original)

7:30am D
8/28/07

2400 BUILDING AT CIVIC CENTER SQUARE

2440 Tulare Street
Fresno, California

Office Lease
[Triple Net]

Tenant:
City of Fresno, California,
a Municipal Corporation
through its
Budget and Management Studies Division

Landlord:
Tutelian Holdings I, LLC.

Lease Date: September 5, 2007

Premises Address: 2440 Tulare Street, Suite 100

Security Deposit N/A

Adv rent_____

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OFFICE LEASE

2440 TULARE BUILDING

THIS TRIPLE NET OFFICE LEASE IS MADE AS OF THE 5th DAY OF **September 2007**

BY AND BETWEEN

TUTELIAN HOLDINGS I, L.L.C., a California limited liability company ("LANDLORD"),
AND
CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its
Budget and Management Studies Division ("TENANT")

NOW THEREFORE, in consideration of the payment of rent and the performance of the covenants contained herein on the part of Tenant and Landlord, the parties hereto agree as follows:

ARTICLE 1 - INTRODUCTORY PROVISIONS

1.01 Fundamental Lease Provisions.

The following fundamental lease provisions are presented in this Paragraph to facilitate convenient reference by the parties hereto, and, unless otherwise hereinafter defined, the terms set forth below, whenever elsewhere referred to in this Lease, shall have the meaning set forth in this Paragraph 1.01.

(a) Premises:

The "Premises" shall mean a portion of an office building located at 2440 Tulare Street, Fresno, California (the "Building") on land legally described on **Exhibit "A"** attached hereto (the "Land"). **Exhibit "A-1"** is a site plan indicating the current location of Landlord's improvements upon the Land, including the Building, Parking Structure and common areas, together the "Project". The Premises shall be on the **first** floor in the approximate location shown on **Exhibit "A-2".** The Premises as herein contemplated shall contain **6,499** square feet of rentable Floor Area in the Building (5,555 square feet usable). The Premises is anticipated to have a street address of 2440 Tulare Street, Suite **100**, Fresno, California 93721.

(b) Landlord's Work and Delivery of the Premises:

Landlord's Work and delivery of the Premises shall be as set forth in **Exhibit "C",** as may be amended by **Exhibit "H".** The procedure for the Tenant Improvement work is as set forth in **Exhibit "C"**, as may be modified by the provisions of **Exhibit "H"**. Tenant's Improvement Work, as defined in Exhibit "C" to this Lease, will be accomplished in accordance with Exhibit "C" to this Lease.

(c) Rent Commencement Date:

The procedure for Tenant's Improvement Work is as set forth in **Exhibit "C"**, and the Rent Commencement Date shall be upon delivery by Landlord of the Premises to Tenant with Landlord's work and the Tenant Improvement Work substantially complete. The tentative Rent Commencement Date is **December 15, 2007**. The firm and actual Rent Commencement Date under this Lease shall be as set forth in **Exhibit "B".** If the Rent Commencement Date is not the first day of a calendar month, the first month's rent shall be prorated, and shall be payable with the first full monthly rental due hereunder.

(d) Term:

The "Term" of this Lease shall mean the period of time commencing as of the date Landlord delivers and Tenant accepts possession of the Premises and continuing thereafter until **Fifteen (15) years** following the Rent Commencement Date (plus, if the Rent Commencement Date is not the first day of a calendar month, the partial calendar month including and immediately following the Rent Commencement Date). The Rent Commencement Date and Expiration Date of this Lease shall be set forth in Landlord's Notice of Certain Term Dates, which shall be in the form

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set forth in **Exhibit "B"** and shall be delivered to Tenant by Landlord promptly following the determination of the Rent Commencement Date.

(e) Minimum Annual Rent:

Minimum Annual Rent for the first fifty-six months following the months for which rent is abated (the "Abated Rent Period") shall be at the rate of **$24.48** per square foot of Rentable Area in the Premises per year, payable in monthly installments of **$2.04** per square foot of Rentable Area in the Premises. Tenant's annual rent during the fifty-six (56) months following the months for which rent is abated shall be at the rate of **$159, 096.00 annually**, payable in monthly installments of **$13,258.00**. Minimum Annual Rent shall be adjusted as set forth in Paragraph 1.01(f), hereof below. Minimum Annual Rent is what is commonly known as Triple Net (NNN) rent. Minimum Annual Rent is therefore net of Tenant's proportionate share of Building Operating Costs, as hereinafter defined, which such proportionate share is to be paid monthly as Additional Rent, in addition to Tenant's payment of Minimum Annual Rent. Minimum Annual Rent shall be abated during the first **Four (4)** months of the Term.

(f) Adjustments to Minimum Annual Rent:

Minimum Annual Rent following the Rent Commencement Date shall be paid by Tenant as follows:

Year	Months	Rent/SF per Month	Rent/SF per Year	Monthly Rent	Annual Rent
1	1-4	$0.00	$0.00	$0.00	$0.00
1	5-12	$2.04	$24.48	$13,258	$106,064
2		$2.04	$24.48	$13,258	$159,096
3		$2.04	$24.48	$13,258	$159,096
4		$2.04	$24.48	$13,258	$159,096
5		$2.04	$24.48	$13,258	$159,096
6		$2.09	$25.03	$13,556	$162,675
7		$2.13	$25.59	$13,861	$166,335
8		$2.18	$26.17	$14,173	$170,078
9		$2.23	$26.76	$14,492	$173,905
10		$2.28	$27.36	$14,818	$177,818
11		$2.33	$27.98	$15,152	$181,818
12		$2.38	$28.61	$15,492	$185,909
13		$2.44	$29.25	$15,841	$190,092
14		$2.49	$29.91	$16,197	$194,369
15		$2.55	$30.58	$16,562	$198,743

Minimum Annual Rent as set forth in this Subparagraph (f) is based upon the rentable square feet as set forth in Subparagraph 1.01(a).

(g) Tenant Improvements:

Landlord to provide turn-key build-out of Premises in accordance with the provisions of Exhibit "C" to this Lease.

(h) Use:

Limited to **general administrative office** use and purposes incidental thereto as more fully set forth in Article 7 of this Lease.

(i) Security Deposit:

Not applicable.

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(j) Advance Rent:

One month of Minimum Annual Rent plus triple net ("NNN") expenses ($.65/SF rentable) in the sum of **$17,482.00**, to be paid at Lease execution. Advance Rent shall be applied to the first full month's rent when first due under this Lease.

(k) Option(s) to Extend:

Two (2) Options to Extend of **Five (5)** years each, in accordance with provisions set forth in Paragraph 3.02 and **Exhibit "H"** of this Lease.

(l) Tenant's Proportionate Share:

Tenant's Proportionate Share for Building Operating Expenses which relate to the Project, as defined in Paragraph 1.03, is the percentage determined by computing the proportion that the rentable square feet of the Premises bears to the total rentable square footage in the Project. Tenant's Proportionate Share of the Project, is estimated to be **Seven and 55/100 percent (7.55%) [i.e. 6,499/86,117].** Tenant's Proportionate Share as set forth in this Subparagraph (l) is based upon the rentable square feet as set forth in Subparagraph 1.01(a). Tenant shall pay its Proportionate Share of Project Operating Costs monthly as Additional Rent commencing upon the earlier of the Rent Commencement Date or the date Tenant first opens for business in the Premises.

(m) Building Operating Costs:

Tenant shall pay its Proportionate Share of Operating Costs ("NNN Expenses"), including Project real estate taxes, Project insurance and Building/Project operating expenses as set forth in Article 5 of this Lease, monthly as Additional Rent commencing upon the earlier of the Rent Commencement Date or the date Tenant first occupies the Premises. Operating Costs during the First Lease Year are estimated by the Landlord to be approximately **$.65** per square foot per month of rentable area.

(n) Parking:

Included in the Minimum Annual Rent herein is Tenant's right to FIFTEEN (15) non-exclusive parking spaces within the adjacent parking structure. Tenant, or employee of Tenant, shall have the ongoing right, subject to availability, to rent additional parking spaces within the parking structure at the rate then available to tenants. Current Tenant Rates per space per month are as follows:

Non-exclusive, covered	$65.00
Non-exclusive, uncovered (roof only)	$40.00
Reserved, covered	$100.00
Reserved, uncovered	$50.00

Parking in Civic Center Square surface lots, subject to availability, is currently $40.00 per space per month.

The provisions of this Subparagraph 1.01(n), when in conflict with Article 25 hereof, shall control and take precedence over Article 25.

Brokers:

Landlord and Tenant each represent, warrant, acknowledge and agree that they have dealt only with **Fortune Associates** in connection with this Lease. Landlord is responsible for the commission pursuant to provisions set forth in the listing agreement between Landlord and **Fortune Associates**.

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(o) Landlord's Address for Notice:

906 "N" Street
Suite 200
Fresno, California 93721
Phone #: (559) 485-4700
Facsimile Number: (559) 485-1150

(p) Tenant's Address for Notice:

2440 TULARE ST
SUITE 100
FRESNO, CA 93721

(q) Guarantors:

Not applicable

1.02 Exhibits.

The following documents are attached hereto as exhibits and hereby made a part of this Lease:

Exhibit "A" Legal Description of the Land

Exhibit "A-1" Site Plan of the Project

Exhibit "A-2" Premises Floor Plan

Exhibit "B" Landlord's Notice of Lease Term Dates

Exhibit "C" Procedures for Premises Interior Improvements

Exhibit "C-1" Premises build-out plan by Triad, dated August 21, 2007

Exhibit "D" Rules and Regulations

Exhibit "E" Form of Subordination, Nondisturbance and Attornment Agreement

Exhibit "F" Form of Estoppel Certificate

Exhibit "G" Intentionally Blank

Exhibit "H" Addendum: Special Provisions

1.03 Additional Definitions.

In addition to the definitions set forth in Paragraph 1.01 and elsewhere in this Lease, the following terms as used in this Lease shall have the following meanings:

(a) Project Common Areas:

The common areas of the Project shall include areas within the Project which are exterior to the Building, including the Land and the Parking Structure, but not the areas within the Parking Structure which are the premises of other tenants (the "Project Common Areas"). The Project Common Areas are for the benefit of all tenants of the Building, including Tenant, and tenants of the Parking Structure, as well as, on a limited basis, users of the Parking Structure who are neither tenants of the Building nor the Parking Structure. Landlord shall have the right to reasonably regulate and restrict the Project Common Areas for the benefit of tenants of the Project and users of the Parking Structure. To the extent that all of the improvements in the Project contemplated by Landlord have not been constructed

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as of the date hereof, it is expressly understood and agreed that **Exhibit "A-1"** represents the general layout and proposed manner of development of the Project, and is not and shall not be deemed to be a warranty, representation, agreement or undertaking on the part of Landlord that the Project will be exactly as shown on **Exhibit "A-1"**. Landlord, in its sole discretion, may, as to improvements not yet constructed, make changes to the Common Areas and Building or other improvements on the Project. Notwithstanding the foregoing, Landlord shall not change the size or location of the Premises without Tenant's written consent, which consent may be granted or withheld in Tenant's sole discretion, nor may Landlord make other changes which would materially adversely affect Tenant's rights established hereunder.

(b) Building Common Areas:

The "Building Common Areas" are all floor areas within the Building which are not within the Premises, nor the premises of other tenants. Building Common Areas include lobbies of the Building, corridors, restrooms not located within any premises, stairwells, elevators, electrical and janitorial closets. Landlord shall have the right to reasonably regulate and restrict the Building Common Areas for the benefit of tenants of the Project.

(c) Parking Structure:

The term "Parking Structure" shall mean the five-level parking structure within the Project. The Parking Structure is for the use of tenants of the Building, including Tenant as provided in Paragraph 1.01(n) of this Lease, tenants of the Parking Structure and certain other non-tenant users of the Parking Structure. Landlord shall have the right to reasonably regulate and restrict use of the Parking Structure for the benefit of tenants of the Project and users of the Parking Structure.

(d) Rentable Area:

The "Rentable Area" of the Building includes the floor area within the premises of all tenants, or which are intended by Landlord to be leased to tenants of the Building, plus all Building Common Areas, but not the areas of vertical penetrations of floors within the building (elevators, stairwells and duct chases). The Rentable Area of each tenant within the Building, including Tenant, includes the floor area of the premises of such tenant plus a proportionate amount of the Building Common Area, less the vertical penetrations, allocated to each tenant. Tenant's proportionate share of Building Common Area which is a component of the Rentable Area is the equivalent of the Tenant's Proportionate Share as defined in paragraph 1.01 (l).

(e) Building:

The term "Building" shall mean the four-story office building within the project. The Building contains the Premises.

(f) Usable Area:

The "Usable Area" of each tenant in the Building includes the floor area within the premises of each tenant.

(g) Additional Rent:

"Additional Rent" as that term is used in this Lease shall mean rent Tenant pays to Landlord in addition to Minimum Annual Rent, and shall include Tenant's proportionate share of Building Operating Costs (NNN Expenses), Tenant's monthly Parking Payment and any other sums required to be paid by Tenant to Landlord hereunder.

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(h) Consumer Price Index:

The Consumer Price Index ("CPI") as that term may be used in this Lease means the Consumer Price Index – All Urban Consumers (1982-84=100) as published monthly by the United States Government Bureau of Labor Statistics.

ARTICLE 2 - PREMISES, BUILDING AND COMMON AREAS

2.01 Premises.

Upon and subject to the terms set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises set forth in Paragraph 1.01(a) of the Lease. The Premises are a part of the Building set forth in Paragraph 1.01(a) of the Lease. By occupying the Premises, Tenant acknowledges that the Premises are acceptable and as agreed upon.

2.02 Common Areas.

Tenant shall have the non-exclusive right to use in common with other tenants in the Building and Parking Structure, and subject to the rules and regulations referred to in Article 20 ("Rules and Regulations") of this Lease, those portions of the Building and Project Common Areas provided, from time to time, for use in common by Landlord, Tenant and any other tenants of the Building and Parking Structure, whether or not those areas are open for use by the general public.

2.03 Landlord's Use and Operation of the Building and Common Areas.

Landlord reserves the right from time to time with 24 hours notice to Tenant (i) to close temporarily any of the Common Areas; (ii) to make changes to the Common Areas, including without limitation, changes in the location, size, shape and number of street entrances, driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, direction of traffic, landscaped areas and walkways, and (iii) to do and perform such other acts and make such other changes in, to or with respect to the Common Areas as Landlord may, in the exercise of sound business judgment, reasonably deem to be appropriate, provided however that such changes shall not increase Tenant's Minimum Annual Rent or Additional Rent. Except in the event of an emergency, Landlord will use its reasonable efforts to insure that Tenant has continuous access.

ARTICLE 3 - LEASE TERM

3.01 Initial Term.

The term of this Lease (the "Term") shall be as set forth in Paragraph 1.01(d) of the Lease and shall commence on the Rent Commencement Date as set forth in Paragraph 1.01(c) of the Lease. The term "First Lease Year" as used herein shall mean the twelve month period of time beginning with the first day of the first full calendar month following the Rent Commencement Date, unless the Rent Commencement Date occurs on the first day of a month in which case the First Lease Year will be the first year of the Term beginning with the Rent Commencement Date. The term "Lease Year" as used herein shall mean each consecutive twelve (12) month period following the end of the First Lease Year. The Rent Commencement Date and Expiration Date of the Lease shall be set forth in Landlord's Notice of Lease Term Dates, which shall be as set forth in **Exhibit "B"** and shall be delivered to Tenant by Landlord promptly following the determination of the Rent Commencement Date.

3.02 Option to Extend.

Tenant shall have the Option to renew the Term of this Lease as set forth in Paragraph 1.01(k), on the same terms and conditions set forth herein, except that the Minimum Annual Rent shall be increased for each Option Term to the amount therefore indicated or described in **Exhibit "H"** hereto. Each renewal Option must be exercised by Tenant giving Landlord irrevocable written notice of such exercise (a) during the Term (as the same may have been previously extended pursuant hereto), and before the date that is one hundred eighty (180) days prior to, the expiration of the Term (as the same previously may have been extended pursuant hereto) (each such written notice is referred to as an "Op-

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tion Notice"); provided, however, that at Landlord's election such renewal Option shall be deemed not to be properly exercised by Tenant notwithstanding the proper giving of such Option Notice if, as of the date on which Landlord receives the Option Notice, or at any time thereafter through the end of the initial Lease Term or then current Option Term (whichever is applicable), Tenant is in default of any of its representations, warranties, covenants or obligations under this Lease. If an Option Notice is not properly given, or if a renewal Option is not exercised properly by Tenant, all subsequent Options to renew the Term of this Lease, if any, thereupon shall expire and be null and void for all purposes hereunder. If the Option to renew hereunder is properly exercised by Tenant, the Term of this Lease shall then be deemed to include the Option period for which the option has been properly exercised.

ARTICLE 4 – RENT

4.01 Minimum Annual Rent.

Tenant shall pay the Minimum Annual Rent, set forth in Paragraphs 1.01(e and f) of this Lease during the Term of this Lease (including renewals or extensions thereof, if applicable), commencing as of the Rent Commencement Date in consideration of Tenant's use and occupancy of the Premises. Tenant shall pay Minimum Annual Rent in advance on or before the first day of each calendar month during the Term (including, if applicable, Option Terms), without notice, set off or deduction, in twelve (12) equal monthly installments during each Lease Year. However, if the Rent Commencement Date is other than the first day of a calendar month, then the Minimum Annual Rent for the partial month, if any, in which the Rent Commencement Date occurs, shall be prorated on a daily basis, based on a thirty (30) day month. Tenant shall pay the installment of Minimum Annual Rent for that partial month (as so determined) on the Rent Commencement Date, and on the first day of the immediately succeeding calendar month Tenant shall pay the monthly installment of Minimum Annual Rent for such immediately succeeding calendar month.

4.02 Rental Adjustment.

Minimum Annual Rent shall be subject to upward adjustments as set forth in Paragraph 1.01(f) of this Lease.

4.03 Additional Rent.

Tenant shall pay monthly, as Additional Rent, Tenant's Proportionate Share of Building Operating Costs and the Parking Payment. The procedures for payment of Additional Rent shall be as provided for the payment of Minimum Annual Rent.

4.04 Interest and Late Charges.

If Tenant fails to pay when due and payable, any Minimum Annual Rent, Additional Rent, or other Rent due from Tenant under this Lease, the unpaid amount shall bear interest at the rate of the lesser of (i) ten percent (10%) per annum or (ii) the highest rate permitted by applicable law, from the date due to the date of payment. Tenant acknowledges that its late payment of any monthly installment of Minimum Annual Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which is extremely difficult or impractical to fix. Such costs and expenses will include, without limitation, loss of use of money, administrative and collection costs, processing and accounting expenses. Therefore, if any installment of Minimum Annual Rent is not received by Landlord from Tenant on or before the fifth (5th) day of the month for which such installment is past due, Tenant shall immediately pay to Landlord a late charge equal to Five Hundred Dollars ($500.00). Such late charge is in addition to any interest due pursuant to this Paragraph 4.04. Landlord and Tenant agree that the actual amount of costs and expenses that Landlord may have to incur and other damages that Landlord may suffer as a result of the late payment by Tenant of any such installment likely will be extremely difficult to ascertain, and that this late charge represents a reasonable estimate of such costs, expenses and other damages, and is and will be fair compensation to Landlord for its costs, expenses and damages incurred and suffered as the result of such late payment by Tenant. Acceptance of this late charge shall not constitute a waiver of Tenant's default with respect to such late payment nor prevent Landlord from exercising any other rights and remedies that may be available to Landlord under this Lease.

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4.05 Payment of Rent.

All Rent due under this Lease shall be paid by Tenant to Landlord at Landlord's management office, or at such other place as may from time to time be designated by Landlord in writing at least ten (10) days prior to the next ensuing payment date. Tenant's payment obligation shall be as to each payment installment as it falls due.

ARTICLE 5 - BUILDING OPERATING COSTS

5.01 Tenant's Obligation to Pay Tenant's Proportionate Share of Operating Costs.

In addition to the Minimum Annual Rent and the Parking Payment required to be paid under Article 4 of this Lease, Tenant shall pay monthly as Additional Rent one-twelfth ($1/12^{th}$) of Landlord's estimate of Tenant's Proportionate Share of the Building Operating Costs for the current calendar year (or portion thereof during which the Term shall occur) as set forth in this Article 5. If at any time Landlord's estimate of Tenant's Proportionate Share of the Building Operating Costs as set forth in this Article 5 for such year or portion shall change, Landlord shall advise Tenant as to the adjustment in monthly installments thereof that Tenant shall, after the giving of such notice, be required to pay. Tenant shall pay to Landlord, together with each monthly installment of Minimum Annual Rent and the Parking Payment, the amount set forth in the most recent such notice given by Landlord to Tenant.

5.02 Building Operating Costs.

Building Operating Costs shall include all of the following items:

(a) All real estate property taxes, assessments, water and sewer charges and similar governmental or quasi-governmental charges levied on, paid in connection with attributable to the Project, the parcel of real property on which the Project is located (collectively with the Building and Parking Structure, the "Property"), improvements serving or contemplated to serve the Property or any portion thereof, water, sewer, improvement and other districts of which the Property or any portion thereof is a part, or the operation of any thereof.

(b) Operating costs incurred by Landlord in maintaining, repairing and operating the Property or any portion thereof, including without limitation the following: costs of (1)utilities; (2) supplies; (3) insurance premiums and similar charges paid or incurred by Landlord in connection with the Property, any portion thereof, any events or circumstances related thereto and any perils arising in connection with any thereof, in each case for which Landlord or its insurance consultants deem insurance coverage or other protection to be desirable or appropriate; (4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons (whether employees or independent contractors) who perform duties connected with the operation, maintenance, repair and replacement of the Property and each portion thereof, and equipment, improvements and facilities located within the Property or any portion thereof, including without limitation engineers, janitors, sweepers, plumbers, electricians, handymen, engineers, painters, floor waxers, window washers, trash collectors, snow and ice removers, security personnel and gardeners; (6) management of the Property and each portion thereof, whether managed by Landlord or an independent contractor, such management fees shall not be greater than fees generally charged for such services in Fresno, California by reputable real estate management companies in managing first class office buildings; (7) personal property, including rental expenses for and personal property taxes and assessments levied on or with respect to personal property, that is used in the maintenance, operation or repair of the Property or any portion thereof; (8) expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental agency, instrumentality or other authority; (9) amortization of capital expenses made by Landlord to reduce costs that, but for such capital expenses, would be operating costs; (10) repairs and maintenance to the roof, roof membrane and exterior of the Building, but not including roof replacement (11) pest control for the Property; (12) repaving or resurfacing and restriping of parking areas, walkways and other areas servicing the Building but not within the Parking Structure; (13) repainting or resurfacing the exterior of the Building or repainting, resurfacing or replacing the interior walls or floors of the Building Common Areas; (14) losses incurred in connection with (i) the Property, (ii) any portion thereof, (iii) any events or circumstances related thereto and (iv) any perils arising in connection with any thereof. to the extent such losses are not paid for by insurance policies or third parties for any reason, (15) lighting of the Common Areas, (16) providing heat, ventilation, water, gas, sewer service and air conditioning to the Property, (17) replacement of landscape and hardscape in the Project Common Areas but not within the Parking Structure, (18) repair, maintenance and replacement of mechanical and electrical equipment,

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which would not be considered under normal accounting practices to be a capital improvement, serving the Building Common Areas (19) third parties engaged for the purpose of seeking reductions of property taxes, any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Property, (20) any other costs or expenses paid or incurred by Landlord in connection with the Property or any portion thereof and not directly reimbursed to Landlord by a single tenant of the Building, and (21) establishing and maintaining appropriate reserves for any and all of the foregoing items, as commercially reasonable.

5.03 Exclusions from Building Operating Costs.

Building Operating Costs shall not include the following:

a. Replacement of the roof of the Building;
b. Except for the Project insurance and Project property taxes, which shall be calculated for the Project, as set forth in Paragraph 5.02 above, and which shall be prorated to all tenants of the Project, those costs relating directly and solely to the Parking Structure;
c. Repairs or maintenance required to maintain the structural integrity of the Building (other than routine maintenance and repair of the structural elements of the Building, including warranty costs);
d. Except as specified above, expenses for any capital improvement made to the Property or other capital expenses;
e. Expenses for painting, redecorating, or other similar work which Landlord performs for Tenant or any other tenant of the Building;
f. Expenses for repairs or other work occasioned by fire, windstorm or other insured casualty, except that Landlord shall have the right to include in Operating Costs the amount of such expenses that represents landlord's insurance deductible, not to exceed $10,000;
g. Any work performed by Landlord specific to the Premises or any other premises within the Building;
h. Expense incurred in leasing or procuring new tenants, including without limitation, brokerage commissions and legal fees;
i. Legal expenses incurred in enforcing the terms and conditions of any lease;
j. Interest or amortization payments on any mortgage or obligation in the nature of a mortgage;
k. Penalties or interest resulting from late payment of taxes by Landlord;
l. Advertising expenses;
m. Any cost incurred to remedy any defect in the original construction of the Building, Project or Premises;
n. Amounts paid for services or goods supplied by a party affiliated with Landlord to the extent that the cost thereof exceeds prevailing market rates for such services or goods;

5.04 Tenant's Proportionate Share.

Tenant's Proportionate Share is set forth in Paragraph 1.01(l) of the Lease.

5.05 Calculation of Building Operating Costs and Portion thereof to be Paid by Tenant as Additional Rent.

Within a reasonable time after the end of each calendar year during the Term, estimated to be March 1st, and at the end of the Term, Landlord shall determine, and advise Tenant in writing of, the Building Operating Costs incurred during such year (or shorter period during the Term, if applicable) and Tenant's Proportionate Share thereof. Tenant shall pay any excess of Tenant's Proportionate Share of the Building Operating Costs over the amount previously paid by it therefore no later than thirty (30) days after receipt from Landlord of notice thereof. Amounts due under this Paragraph 5.05 shall survive the expiration or other termination of the Lease Term and shall be payable in all events upon the later of thirty (30) days after receipt from Landlord of notice thereof, or if Tenant has paid to Landlord more than Tenant's Proportionate Share of Building Operating Costs, any excess paid by Tenant shall be credited toward the payment of Tenant's Proportionate Share of Building Operating Costs next coming due, or if at the end of the Term, shall be paid by Landlord to Tenant not later than sixty (60) days following expiration or other termination of the Lease Term. Tenant shall have the right, within the period

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ending two (2) years following Landlord's written notice of actual Building Operating Costs, to review Landlord's records at Landlord's place of business.

5.06 Disproportionate Use.

In addition to the foregoing, if Landlord reasonably determines at any time that Tenant is using any services in quantities that are greater than the normal amount of usage for premises of the size of the Premises, or Tenant otherwise is causing Landlord to pay or incur common area costs in an amount that exceeds the usage thereof that Landlord determines to be normal for premises of the size of the Premises, Tenant shall pay to Landlord the incremental amount of the excess operating costs occasioned by such usage, as estimated by Landlord from time to time, promptly after Landlord gives Tenant notice of Landlord's estimate or computation thereof.

~~ARTICLE 6 - SECURITY DEPOSIT~~

~~6.01 Payment of Security Deposit.~~ **This Article 6 is Not Applicable**

~~Tenant has deposited with Landlord the sum specified in Paragraph 1.01(i) hereof as the "Security Deposit", receipt of which is hereby acknowledged. The Security Deposit shall be held by Landlord without liability for interest as security for the faithful performance by Tenant of all of its obligations under this Lease. The Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without the prior written consent of Landlord, and any such action by Tenant without such consent shall be without force and effect and not binding on Landlord.~~

~~6.02 Application of Security Deposit.~~

~~If any Rent herein reserved or any other sum payable by Tenant to Landlord is overdue and unpaid or paid by Landlord on Tenant's behalf, or if Tenant fails to perform any of its obligations under this Lease, or if Tenant otherwise is obligated to pay Landlord any amount of money, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have, appropriate and apply the entire Security Deposit or so much thereof as is necessary to compensate Landlord for loss of Minimum Annual Rent or Additional Rent or other Rent, or damages sustained by Landlord due to such default by Tenant, or such other amount of money that Tenant then is obligated to pay to Landlord. In that event, Tenant shall immediately restore the Security Deposit to the amount then required to have been deposited as a Security Deposit pursuant to this Lease, as adjusted pursuant to Paragraph 6.05. If Tenant complies with all of the terms of the Lease and promptly pays when due all Rent and all other sums payable by Tenant under this Lease, the unapplied Security Deposit (or the balance thereof remaining, if any) shall be returned in full to Tenant not later than thirty (30) days following the end of the Term and delivery of possession of the Premises to Landlord in the condition required by this Lease.~~

~~6.03 Bankruptcy.~~

~~In the event of bankruptcy or other proceedings against Tenant under any Laws for the protection of debtors from creditors, the Security Deposit shall be deemed to be applied first to the payment of Rent and other charges due Landlord for the earliest periods prior to the filing of such proceedings.~~

~~6.04 Transfer of Landlord's Interest.~~

~~Landlord may deliver the funds deposited hereunder by Tenant and not previously applied by Landlord pursuant to this Lease to the purchaser of Landlord's interest in the Premises or credit such purchaser therefore, and upon said delivery or credit Landlord shall be discharged from any further liability to Tenant for the Security Deposit. This provision shall also apply to any subsequent transfers of Landlord's interest in the Premises. In the case of such transfer of the Security Deposit, Landlord shall give written notice to Tenant of any existing claims against the Security Deposit and of the name and address of Landlord's successor.~~

~~6.05 Adjustment.~~

~~When the Minimum Annual Rent is increased, from time to time, as provided herein, Tenant shall thereupon deposit with Landlord an additional cash security deposit, so that the amount of the Security Deposit held by Landlord shall at all times bear the same proportion to the currently effective Minimum~~

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~~Annual Rent as the original Security Deposit bears to the original Minimum Annual Rent. Landlord's failure to give notice of demand for additional Security Deposit under this Paragraph 6.05 shall not constitute a waiver of Landlord's right to do so or relieve Tenant of such obligation hereunder. Landlord shall not be required to keep the Security Deposit separate from its general accounts, and may commingle said funds with the general funds of Landlord.~~

ARTICLE 7 - USE OF PREMISES

Tenant shall use the Premises solely for the purposes set forth in Paragraph 1.01(h) of the Lease and consistent with the character of the Building as a first-class office building, and Tenant shall not use or permit the Premises to be used for any other purpose whatsoever. Tenant further covenants and agrees that Tenant shall not use, or suffer or permit any person or persons to use, the Premises or any part thereof for any purpose contrary to the provisions of the Rules and Regulations set forth in **Exhibit "D"**, attached hereto, or in violation of federal or state laws, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction, and that Tenant shall conduct its business or profession in the manner and according to the generally accepted written or unwritten code of ethics or business principles of the business or profession in which it is engaged. Tenant shall comply with all recorded covenants, conditions, and restrictions now or hereafter affecting the Building and any amendments thereto. Landlord shall provide Tenant with a copy of all recorded covenants, conditions and restrictions prior to execution of this lease. Tenant shall not use or allow another person or entity to use any part of the Premises for the storage, use, treatment, manufacture or sale of "Hazardous Material," as that term is defined in Paragraph 26.18 of this Lease.

ARTICLE 8 - UTILITY, JANITORIAL AND OTHER SERVICES

8.01 Service to be Provided by Landlord.

Landlord agrees to provide at Tenant's expense utilities service (gas and electricity) water, sewer, disposal, repair and maintenance of all building systems and equipment, yard work, and five day-per-week janitorial service including supplies to the Building as follows:

(a) Heat and air conditioning as each season may require to provide a temperature condition necessary in Landlord's reasonable judgment (but subject to applicable governmental restrictions) for comfortable occupancy, Monday through Friday,7:00 a.m. to7:00 p.m. except for President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas and New Year's Day, and any other national holiday;

(i) Landlord shall furnish HVAC beyond the above stated hours, as "Additional Service" provided that notice requesting such service is delivered to Landlord before noon on a business day when such service is required for that evening, and by noon of the preceding business day when such service is required on a Saturday, Sunday or holiday as above defined;

(ii) Landlord's costs (including labor costs) of supplying such Additional Service plus reasonable amounts for equipment depreciation and administrative overhead shall be paid separately by Tenant to Landlord. Landlord shall bill Tenant on or before the last day of the month following the month in which such charges are incurred, and shall submit with its invoice a tabulation of the hours and the dates on which the overtime HVAC was furnished. Tenant shall reimburse Landlord therefore within thirty (30) days after receipt of the invoice. The current cost per hour (or any part thereof), based on the cost per Kwh as of the date hereof, shall be $50.00 for first hour and $25.00 thereafter, and may be increased in proportion to the increase in the cost per Kwh. In the event another tenant is concurrently using after-hours HVAC, Tenant's cost therefore may be proportionately reduced.

(b) Sufficient electrical power for lighting and general purpose office use throughout the Premises. If Tenant's electricity usage exceeds 3.5 watts per usable square foot, excluding HVAC use, Tenant shall pay Landlord for all electrical current excesses. Alternatively, Landlord may, at Landlord's option, install an "E-Mon" meter serving the Premises at Tenant's cost, as part of

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Tenant's improvement work, and said electrical service to the Premises shall be metered separately to Tenant, and shall be paid for by Tenant at the then rate charged to Landlord by the providing utility company;

(c) Hot and cold water for drinking, lavatory and toilet purposes;

(d) Janitorial services in and about the Premises and Common Areas, Saturdays, Sundays and holidays excepted, and refuse collection and disposal;

(e) Window washing, inside and outside, as may be necessary, but not less frequently than once every three (3) months;

(f) Elevator service in common with other tenants and Landlord in common with other tenants and Landlord, on a daily 24-hour basis. Operatorless automatic elevator service shall be deemed "elevator service" within the meaning of this Paragraph;

(g) Fire protection to the Building consistent with the protections required by local code.

(h) Ingress and egress to the Premises on a twenty-four (24) hours basis, seven (7) days a week

Landlord shall maintain the Building in first class condition and repair, free of defects in materials and workmanship. All costs and expenses paid or incurred by Landlord in connection therewith shall be included in Building Operating Costs pursuant to Article 5 of this Lease

8.02 Services to be Provided by Tenant.

Tenant shall provide Tenant's telephone service and cabling for computers and modems, and other similar services, at its own cost.

ARTICLE 9 - ALTERATION AND REPAIRS

Landlord and Tenant agree that:

a) Upon occupancy, Tenant accepts the Premises as being in a tenantable and good condition;

b) Tenant shall take good care of the Premises and shall not alter, improve or otherwise change the Premises or any portion thereof in any respect, or permit the same to occur, without in each instance the prior written consent of Landlord, which Landlord may grant or withhold in Landlord's sole and absolute discretion;

c) Tenant shall cause all alterations, improvements and changes that may be performed by Tenant or on Tenant's behalf to be performed (i) in a good and workmanlike manner by licensed contractors approved by Landlord in advance and with new, first-class materials, and (ii) either by or under the direction of Landlord, but at the cost of Tenant, unless otherwise provided by written agreement between Landlord and Tenant;

d) All alterations, additions and improvements made in and to the Premises shall be the property of Landlord, and shall remain upon and be surrendered with the Premises, unless Landlord otherwise directs at any time;

e) All damage or injury done to the Premises by Tenant, or by any person who may be in or upon the Premises with or without the consent of Tenant, other than Landlord, its agents or employees, shall be repaired by Landlord and Tenant shall reimburse to Landlord on demand as additional Rent all costs and expenses paid or incurred by Landlord in connection therewith or allocable thereto; and

f) Tenant shall, at the termination of this Lease, surrender the Premises to Landlord in the same condition as that in which the Premises exist on the date of occupancy by Tenant, ordinary wear and tear excepted.

In connection with clause (c), above, Tenant shall pay all costs for or related to work done by or for Tenant in the Premises, and Tenant shall keep the Premises and Property free of all mechanics' liens and other liens on account of work done for Tenant. Tenant shall indemnify, defend and hold Landlord

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harmless from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. In addition, Tenant shall keep Tenant's leasehold interest and any of those improvements to the Premises which are or become property of Landlord pursuant to this Lease free of all attachment or judgment liens. Prior to commencing any work in or to the Premises (including the supply of any labor, services or materials for the construction of improvements in the Premises), Landlord may require Tenant to provide demolition and/or lien and completion bonds from bonding companies, and in form and amount, satisfactory to Landlord. If Tenant is in default in paying any charge for which a mechanics' lien claim has been filed and Tenant has not provided a bond pursuant to *California Civil Code* Section 3143 in form and substance, and issued by a bonding company, satisfactory to Landlord or given Landlord adequate security to protect the Premises, the Property and Landlord from liability for such claim of lien, Landlord may (but shall not be required to) pay the claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees and costs incurred in connection with such payment shall be immediately due and owing from Tenant to Landlord. Tenant shall pay the amounts so owed to Landlord with interest at the Interest Rate specified in Paragraph 4.04 from the date of Landlord's payment. Landlord or its representative shall have the right to enter and inspect the Premises upon reasonable prior notice (or without notice, in the case of an actual or perceived emergency) and at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord deems proper for the protection of Landlord's interest in the Premises and Property. Tenant shall, not less than ten (10) days prior to commencing any work which might result in the filing of a lien, give Landlord written notice of its intention to so commence work in sufficient time to enable Landlord to post such notices.

Landlord may, but is not required to, enter the Premises in accordance with Article 22 herein, by pass keys or otherwise at all reasonable times and from time to time to make such repairs, alterations, improvements or additions to the Premises or to the Building, or to any equipment located in the Building as Landlord shall desire or deem necessary or as Landlord may be required to do by governmental or quasi-governmental authority or court order or decree, and for that purpose to erect in or about the Premises any necessary scaffolding or other temporary structures, and Landlord shall not be liable to Tenant for any damage or inconvenience thereby suffered by Tenant. Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civic Code or under any similar law, statute, or ordinance now or hereafter in effect, unless following Landlord's failure to substantially make all necessary repairs and failure to substantially perform all necessary maintenance in accordance with Article 8 of this Agreement within 30 days of receipt of Tenant's written notice that Landlord is not in compliance with Article 8, or if such repair or maintenance cannot be completed within such 30 day period, Landlord's failure to commence and diligently pursue such repair or maintenance to completion, Tenant provides Landlord with a second notice to repair expressly stating that if such repair or maintenance is not completed within 5 days of the second notice or if such repair or maintenance cannot be completed within such 5 day period, fails to commence and diligently pursue such repair or maintenance to completion, Tenant shall exercise its right to repair and offset the cost against rent.

ARTICLE 10 – INSURANCE

10.01 Tenant Insurance.

Tenant shall, at all times during Tenant's tenancy and at Tenant's expense, carry and maintain coverages in the amounts set forth in this Article 10.

10.02 Comprehensive General Liability Insurance.

Comprehensive General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising of Tenant's operations, assumed liabilities or use of the Premises, including a Broad Form Comprehensive General Liability endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Paragraph 10.09 of this Lease, for limits of liability not less than: **Two Million and No/100 Dollars ($2,000,000.00)** each occurrence or annual aggregate for bodily injury and property damage liability; and **Two Million and No/100 Dollars ($2,000,000.00)** each occurrence or annual aggregate for personal injury liability.

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10.03 Physical Damage Insurance.

Physical Damage Insurance covering all office furniture, trade fixtures, office equipment, merchandise, improvements to the Premises originally paid for by Tenant and all other items of Tenant's property on the Premises installed by, for, or at the expense of Tenant. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement, and sprinkler leakage coverage.

10.04 Worker's Compensation and Employer's Liability Insurance.

Worker's Compensation and Employer's Liability Insurance.

10.05 Form of Policies.

The insurance required herein shall (i) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Article 11; (ii) be insured by an insurance company having a rating of not less than A+ in Best's Insurance Guide or which is otherwise reasonably acceptable to Landlord (iii) be primary insurance as to all claims thereunder, provide that any insurance carried by Landlord is excess and is noncontributing with any insurance requirement of Tenant; (iv) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord and any mortgagee of Landlord; and (v) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. For purposes of General Liability only, Tenant's insurance will name as an additional insured Landlord its officers, employees and agents and such other parties as Landlord, in its sole discretion, shall name. Tenant shall deliver said policy or policies or certificates thereof to Landlord on or before the Lease Commencement Date and at least thirty (30) days before the expiration dates thereof.

10.06 Subrogation.

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

10.07 Additional Insurance Obligations.

Tenant shall carry and maintain during the entire Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10, and such other reasonable types of insurance coverage and in such reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord or Landlord's lender.

10.08 Tenant's Compliance with Landlord's Fire and Casualty Insurance.

Tenant shall, at Tenant's expense, comply with all insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase.

10.09 Indemnification and Waiver.

Landlord, its officers, agents, servants, employees, and independent contractors shall not be liable for any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant unless caused by the gross negligence or willful misconduct of Landlord. Tenant shall indemnity, defend, protect, and hold harmless Landlord, its officers, agents, servants, employees, and independent contractors from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorney's fees) incurred in connection with or arising from any

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cause in, on or about the Premises, either prior to, during, or after the expiration of the Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord. The provisions of this Paragraph 10.09 shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

ARTICLE 11 - CASUALTY DAMAGE AND RECONSTRUCTION

11.01 Definitions.

(a) "Premises Damage" shall mean if the Premises are damaged or destroyed to a material extent, making them substantially untenantable by Tenant for the conduct of its business.

(b) "Office Building Partial Damage" shall mean if the Office Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is less than forty percent (40%) of the then Replacement Cost of the Office Building.

(c) "Office Building Total Destruction" shall mean if the Office Building of which the Premises are a part is damaged or destroyed to the extent that the cost to repair is forty percent (40%) or more of the then Replacement Cost of the Office Building.

(d) "Insured Loss" shall mean damage or destruction caused by an event required to be covered by the insurance described in Article 10. If damage or destruction is cause by an event not covered by the insurance described in Article 10, it is an "Uninsured Loss." The fact that an Insured Loss has a deductible amount shall not make the loss an uninsured loss.

(e) "Replacement Cost" shall mean the amount of money necessary to be spent in order to repair or rebuild the damaged area to the condition that existed immediately prior to the damage occurring, excluding all improvements made by Tenant.

11.02 Insured Loss.

Subject to the provisions of Paragraphs 11.05 and 11.06, if at any time during the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage (a) that is an Insured Loss (b) that falls into the classifications of either Premises Damage or Office Building Partial Damage, (c) for which Landlord's mortgagees of record make the proceeds of insurance available to Landlord for repair, and (d) the proceeds so made available to Landlord are and will be sufficient, in Landlord's judgment, to complete the repair, then Landlord shall, as soon as reasonably possible, and to the extent the required materials and labor are readily available through usual commercial channels, at Landlord's expense, use reasonable efforts to repair such damage (but not Tenant's Fixtures or Personal Property and equipment) substantially to its condition existing immediately prior to the time of the damage (to the extent permitted by applicable laws, statutes, regulations, codes and ordinances), and this Lease shall continue in full force and effect; provided, however, if Landlord reasonably determines that more than 270 days from the date of the damage or destruction to so complete the repair, Landlord may, within thirty (30) days of making such determination, terminate this Lease by giving notice of such termination to Tenant, in which event the Term of this Lease shall terminate thirty (30) days after the date on which Landlord shall have given such a termination notice to Tenant.

11.03 Uninsured Loss.

Subject to the provisions of Paragraphs 11.05 and 11.06, if at any time during the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage that is an Uninsured Loss and which falls into the classifications of either Premises Damage or Office Building Partial Damage, unless caused by a negligent or willful act of Tenant, or any officer, agent, employee, guest, or invitee of Tenant (in which event Tenant shall make the repairs as soon as reasonably possible at Tenant's sole cost and expense and this Lease shall continue in full force and effect), which damage prevents Tenant from making any substantial use of the Premises, Landlord may at its option either (i) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to cancel and terminate this Lease, in which event this Lease shall terminate as of the date of the occurrence of such damage.

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11.04 Office Building Total Destruction.

Subject to the provisions of Paragraphs 11.05 and 11.06, if at any time during the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage, whether or not it is an Insured Loss, that falls into the classification of Office Building Total Destruction, then Landlord may at its option either (i) repair such damage or destruction as soon as reasonably possible at Landlord's expense (to the extent the required materials and labor are readily available through usual commercial channels) to its condition existing at the time of the damage, but not Tenant's fixtures, equipment or Tenant improvements, and this Lease shall continue in full force and effect, or (ii) if Landlord elects not to repair such damage or destruction give written notice to Tenant within thirty (30) days after the date of occurrence of such damage of Landlord's intention to cancel and terminate this Lease, in which event this Lease shall terminate as of the date of the occurrence of such damage.

11.05 Damage Near End of Term.

(a) Subject to Subparagraph (b), below, if at any time during the last two (2) years of the Term of this Lease (including renewal or extension Option periods, if applicable) there is damage to the Premises for which the Replacement Cost is greater than forty percent (40%) of the then Replacement Cost of the total Premises, Landlord may at its option cancel and terminate this Lease as of the date of occurrence of such damage, by giving written notice to Tenant of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage.

(b) Notwithstanding Subparagraph (a) above, in the event that Tenant has an Option to extend or renew this Lease, and the time within which said Option may be exercised has not yet expired, Tenant shall irrevocably exercise such Option, if it is to be exercised at all, no later than twenty (20) days after the occurrence of an Insured Loss falling within the classification of Premises Damage during the last two (2) years of the Term of this Lease (including renewal or extension Option periods, if applicable). If Tenant duly exercises such Option during said twenty (20) day period, Landlord shall, at its expense, repair such damage, but not Fixtures or Tenant's Personal Property, equipment or Tenant improvements originally paid for by Tenant, as soon as reasonably possible, and this Lease shall continue in full force and effect. If Tenant fails to irrevocably exercise such Option during such twenty (20) day period, then, for the purpose of Subparagraph (a), above only, the remaining Term of this Lease shall be determined as though Tenant has no Option to extend or renew the Term of this Lease. If Landlord elects to repair the Premises, Tenant's rights to the Option shall not be affected.

11.06 Abatement of Rent.

In the event of loss to Tenant of any portion of, or the total square footage of, the Rental Area of the Premises under this Article 11, the Minimum Annual Rent and Additional Rent otherwise payable under this Lease shall be abated proportionately with the degree to which Tenant's use of the Premises is impaired. Such abatement shall commence on the date of destruction and continue during any period of reconstruction and replacement provided for herein until substantial completion thereof, as determined by Landlord's architect, and Tenant's ability to conduct business is restored. Tenant shall continue to operate its business on the Premises during any such abatement period to the extent practical, as a matter of prudent business management. Regardless of whether or not Tenant shall be entitled to an abatement of Minimum Annual Rent pursuant to this Paragraph 11.06, in no event shall Tenant be entitled to any compensation or damages from Landlord for (a) loss of the use of the whole or any part of the Premises, Office Building or Tenant's Personal Property, (b) any lost revenues, business opportunities or profits, (c) any costs paid or incurred by Tenant in connection with the damage or destruction, or (d) any inconvenience or annoyance, suffered by reason of damage or destruction to the Premises or other portions of the Office Building, or the reconstruction or replacement of all or any portion thereof.

11.07 Release From Liability.

Upon any termination of this Lease as permitted by any of the provisions of this Article 11, payment of the Base Rent and Additional Rent apportioned up to the date of damage, and surrender of possession of the Premises to Landlord, each party shall be released from further obligations to the other party under this Lease, except for any obligations which have previously accrued and except as other-

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wise provided in Paragraph 10.09 above. In the event of termination of this Lease, all proceeds from Tenant's fire and extended coverage insurance covering the items set forth as "Tenant's Work" in **Exhibit "C"** and Tenant's leasehold improvements, but excluding proceeds for trade fixtures, furnishings, furniture, merchandise, signs and other Personal Property, shall be paid to Landlord.

11.08 Waiver of Statutory Rights of Termination.

The provisions of this Lease constitute an express agreement between Landlord and Tenant with respect to any and all damage to or destruction of, all or any part of the Premises or the Office Building. Tenant hereby waives any statutory right of termination which may arise by reason of any partial or total destruction of the Premises or Office Building which Landlord is obligated to restore or may restore under any of the provisions of this Lease, and specifically waives all rights under *California Civil Code* Section 1933.

ARTICLE 12 - DEFAULT; REMEDIES

12.01 Tenant's Default.

The occurrence of any of the following shall constitute a default by Tenant:

(a) Failure to Pay Rent.

Any failure to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, within three (3) days after written notice from Landlord to Tenant that such payment is due.

(b) Failure to Perform.

Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for fifteen (15) days after written notice thereof from Landlord to Tenant. If the default cannot reasonably be cured within fifteen (15) days, Tenant shall not be in default upon expiration of the fifteen-day period provided Tenant diligently and in good faith commenced and has thereafter continued and does diligently continue to cure the default.

(c) Assignment for the Benefit of Creditors or Bankruptcy.

To the extent permitted by law, a general assignment by Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within thirty (30) days; or

(d) Assignment of Lease.

The hypothecation or assignment of this Lease or subletting of the Premises, or attempts at such actions, in violation of Article 13 hereof.

12.02 Landlord's Remedies Upon Default.

Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(a) Tenant's Right to Possession Not Terminated.

Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

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During the period Tenant is in default, Landlord can enter the Premises and relet them, or any part of them, to third parties for Tenant's account. Tenant shall be liable immediately to Landlord for all costs Landlord incurs in reletting the Premises, including, without limitation, brokers' commissions, expenses or remodeling the Premises, consistent with typical professional office space or other similar use, as required by the reletting, and like costs and interest thereon at the maximum statutory rate. Reletting can be for a period shorter or longer than the remaining Term. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting. No act by Landlord allowed by this Paragraph 12.02 shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

(b) Termination of Tenant's Right to Possession.

In the event of Tenant's default under this Lease, Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

(1) The worth, at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease;

(2) The worth, at the time of the award of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

(3) The worth, at the time of the award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

(4) Any amount, including attorneys fees and costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

(c) The term "rent" as used in this Paragraph 12.02 shall be deemed to be and mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in this Paragraph 12.02, "the worth, at the time of the award," shall be computed by allowing interest at the rate set forth in Paragraph 4.04 of this Lease, but in no case greater than the maximum amount of such interest permitted by law. As used in Paragraph 12.02(b)(3) above, "the worth at the time of award" 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%).

12.03 Appointment of a Receiver.

If Tenant is in default of this Lease, Landlord shall have the right to have a receiver appointed to collect rent from Tenant's accounts receivable. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

12.04 Landlord's Right to Cure Tenant's Default.

All covenants and agreements to be kept or performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. If Tenant shall fail to perform any of its obligations under this Lease, Landlord may, but shall not be obligated to, after reasonable prior notice to Tenant (except in the case of an emergency), make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

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12.05 Tenant's Reimbursement.

If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord at the time the sum is paid, and if paid at a later date shall bear interest at the rate set forth in Paragraph 4.04 of this Lease from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. The sum, together with interest on it, shall be Additional Rent.

ARTICLE 13 - SUBORDINATION AND MORTGAGES

This Lease shall be subject and subordinate to the lien of any first mortgage or trust deed, now or hereafter in force against the Building, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deed, unless the holders of such mortgages or trust deeds, require in writing that this Lease be superior thereto. Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof, to attorn, without any deductions or set-offs, to the purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof if so requested to do so by such purchaser, and to recognize such purchaser as the lessor under this Lease. Tenant shall, within five (5) days of request by Landlord, execute such further instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages or trust deed, including but not limited to, the Subordination, Non- Disturbance and Attornment Agreement attached hereto as **Exhibit "E"**. Landlord agrees and warrants to Tenant that in the event of any proceedings for the foreclosure of any mortgage or deed in lieu thereof or any trustees sale pursuant to a deed of trust against the Building, and so long as Tenant shall have complied with its obligations under this Article 13, Landlord will take whatever necessary steps to assure appropriate recognition and attornment agreements are executed by the holder of the mortgage to assure Tenant's leasehold interest shall not be terminated or extinguished by such action and shall remain in full force and effect except and unless Tenant is in default of this Lease.

ARTICLE 14 - NONWAIVER

No waiver of any provision of this Lease shall be implied by any failure of Landlord to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently, and any waiver by Landlord of any provision of this Lease may only be in writing. Additionally, no express waiver shall affect any provision other than the one specified in such waiver and then only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and payment of said Rent shall not waive or affect said notice, suit or judgment.

ARTICLE 15 - ASSIGNMENT AND SUBLETTING

15.01 Tenant shall not, without the prior written consent of Landlord (which consent shall not be unreasonably withheld), assign or otherwise transfer this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, or sublet the Premises or any part thereof (all of the foregoing are hereinafter sometimes referred to as a "Transfer"). Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under Article 12 of this Lease. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's review and processing fees, as well as any reasonable legal fees incurred by Landlord, within thirty (30) days after written request by Landlord. Landlord may withhold consent to a proposed Transfer and such withholding of consent shall be deemed to be reasonable if, in Landlord's reasonable business judgment, any one or more of the following is true: (i) the proposed Transfer may result in a material deterioration in the quality of tenants occupying premises in the Property; (ii) the proposed Transferee lacks a good

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business reputation; (iii) the financial worth of the proposed Transferee is less than the financial worth of Tenant as of the date of this Lease; (iv) the proposed Transferee's proposed use of the Premises may be other than the use permitted hereby; (v) the proposed Transfer would breach any covenant of Landlord respecting any financing or other agreement relating to the Property.

15.02 No Transfer, whether with or without Landlord's consent, shall relieve Tenant of Tenant's or any guarantor of Tenant's obligations under or related to this Lease, from its covenants and obligations arising hereunder during the Term.

15.03 Each Transfer to which Landlord shall have consented shall be evidenced by a written instrument in form satisfactory to Landlord, and executed by Tenant and the sublessee, assignee or transferee, as applicable (each, a "Transferee"). Each Transferee shall agree in writing for the benefit of Landlord to assume, be bound by, and perform the terms, covenants and conditions of this Lease to be performed, kept or satisfied by Tenant, including the obligation to pay to Landlord all amounts coming due under this Lease. One (1) fully executed copy of such written instrument shall be delivered to Landlord. If Tenant fails to obtain in writing Landlord's prior consent or otherwise comply with the provisions of this Article 15, any attempted Transfer shall, at Landlord's option, be null and void and of no further force or effect whatsoever.

15.04 Any sums or other economic consideration received by Tenant as a result of a Transfer, however denominated, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased), plus (ii) the unamortized value of leasehold improvements to the Premises paid for by Tenant prior to the date of the Transfer, depreciated on a straight-line basis over the remaining balance of the then-current Term, plus (iii) any real estate brokerage commissions or fees payable by Tenant in connection with such Transfer, plus (iv) costs of renovation or construction of improvements to the Premises for the benefit of the Transferee required to be paid for by Tenant as a part of the Transfer, shall be divided between Landlord and Tenant such that Landlord receives fifty percent (50%) and Tenant receives fifty percent (50%) of that excess. Landlord's share of such profit shall be paid to Landlord promptly following its receipt, as Additional Rent under this Lease. Such payments shall not affect or reduce any other obligations of Tenant hereunder. Landlord shall have the right to audit Tenant's books and records relating to the subletting or assignment during normal business hours at either the Premises or Tenant's principal place of business upon three (3) days' advance written notice for the purpose of verifying Tenant's compliance with its obligations hereunder.

15.05 Tenant shall not, without the prior written consent of Landlord (which consent may be granted or withheld in Landlord's sole discretion), mortgage, pledge, encumber or hypothecate this Lease or any interest herein. Tenant shall not permit the Premises to be used by any party other than Tenant, Tenant's employees or a permitted Transferee. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease.

ARTICLE 16 - SURRENDER OF PREMISES

16.01 Surrender of Premises.

No act or thing done by Landlord or an agent or employee of Landlord during the Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and not withstanding such delivery. Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

16.02 Removal of Trade Fixtures.

Upon the expiration of the Term, or upon ay earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 16, quit and surrender possession of the Premises to Landlord in

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as good order and condition as when Tenant took possession and as thereafter improved by Landlord and/or Tenant, reasonable wear and tear and repairs which are specifically made the responsibility of Landlord hereunder excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris, and such items of furniture, equipment, and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and such similar articles of any other persons claiming under Tenant, as Landlord may, in its sole discretion, require to be removed, and Tenant shall repair at its own expense all damage to the Premises and Building resulting from such removal.

ARTICLE 17 - HOLDING OVER

If Tenant holds over after the expiration of the Term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate equal to one-hundred fifty percent 150% of the Base Rent applicable during the last rental period of the Term under this Lease. Such monthly tenancy shall be subject to every other term, agreement, covenant, and condition herein contained. Nothing contained herein shall be construed as consent by Landlord to any holding over by tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 17 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant founded upon such failure to surrender and any lost profits to Landlord resulting therefrom.

ARTICLE 18 - ESTOPPEL CERTIFICATE

Tenant shall at any time and from time-to-time upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge, and deliver to Landlord an estoppel certificate (a) Certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease is so modified, is in full force and effect) and the date to which the rental and other charges are paid in advance, if any; and (b) acknowledging that there are not, to said party's knowledge, any uncured defaults on the part of Landlord or Tenant or if any such defaults are claimed, specifying such defaults, and such other information reasonably requested by Landlord or Landlord's mortgagee or prospective mortgagee. The estoppel certificate shall be substantially in the form of **Exhibit "F"** (or such other form as may be required by any prospective mortgagee or purchaser of the Building), provided Tenant may modify such form as necessary to state any modifications to the Lease or any defaults of Landlord or Tenant. Any such statement may be relied upon by a prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part. Tenant shall execute and deliver whatever other instruments may be reasonably required for such purposes. Failure of the Tenant to timely execute and deliver such estoppel certificate or other instruments shall constitute a default and acceptance of the Premises and an acknowledgement by Tenant that statements included in the estoppel certificate are true and correct, without exception.

ARTICLE 19 - CONDEMNATION

If the whole or any part of the Premises or Building shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose, or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation, Landlord shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking, condemnation, reconfiguration, vacation, deed or other instrument. If more than twenty percent (20%) of the Premises is taken, or if access to the Premises is substantially impaired, Tenant shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred eighty (180) days after the date of such taking. Landlord shall be entitled to the entire award or payment in connection therewith, except that Tenant shall have the right to file any separate claim available to

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Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Term pursuant to the terms of this Lease, and for moving expenses, so long as such claims do not diminish the award available to Landlord or its mortgagee, and such claim is payable separately to Tenant. All Rent shall be apportioned as of the date of such termination, or the date of such taking, whichever shall first occur. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of the California Code of Civil Procedure.

ARTICLE 20 - RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the Rules and Regulations as set forth in **Exhibit "D"** attached hereto as revised and amended a from time-to-time by Landlord. Landlord reserves the right from time to time to make all reasonable modifications to said rules. The additions and modifications to those rules shall be in effect upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the nonperformance of any said rules by any other tenants or occupants.

ARTICLE 21 – SIGNS

Landlord's Signage Program shall consist of Tenant's name and suite number being installed on the main lobby directory and on or about the main door to Tenant's Premises. Additionally, at Landlord's election, Landlord may install directional signage, including Tenant's name and suite number, at elevator lobbies and elsewhere. This standard signage shall be installed at Landlord's expense. If Tenant desires that additional information or logo be included on the main lobby directory or on or about the door to Tenant's Premises, such additional information or logo shall be subject to Landlord's review and approval, and shall be at Tenant's sole cost and expense. Modifications requested by Tenant shall be at Tenant's expense and shall be subject to Landlord's review and approval. Tenant shall not place any signs, advertisements, awnings, etc. upon the Premises in any areas visible to the general public without the prior written approval of Landlord which Landlord may grant or withhold in Landlord's sole discretion.

ARTICLE 22 - ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times to enter the Premises , with 24 hours notice, except in the case of emergency, to (i) perform services required of Landlord (ii) inspect them; (iii) show the Building, the Premises, the Property and each portion thereof to prospective tenants, mortgagees, purchasers, ground lessors or other third parties and their respective engineers, architects, appraisers, space planners and other consultants; (iv) post notices of non-responsibility; or other applicable laws, or for structural alterations, repairs or improvements to the Building. Notwithstanding anything to the contrary contained in this Article 22, Landlord may enter the Premises at any time to (A) respond to an emergency; (B) take possession due to any breach of this Lease in the manner provided herein; and (C) perform any covenants of Tenant that Tenant fails to perform. Landlord may make any such entries without the abatement of Rent and may take such reasonable steps as required to accomplish the stated purposes. Tenant hereby waives any claims for damages or for any injuries or inconvenience to or interference with Tenant's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the above purposes, Landlord shall at all times have a key with which to unlock all the doors in the Premises, excluding Tenant's vaults, safes and special security areas designated in advance by Tenant. In an emergency, Landlord shall have the right to use any means that Landlord may deem proper to open the doors in and to the Premises. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainee of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises.

ARTICLE 23 - ATTORNEY FEES

If either party commences litigation against the other for the specific performance of this Lease, for damages for the breach hereof, or otherwise for enforcement of any remedy hereunder, the parties

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hereto agree to and hereby do waive any right to trial by jury, and in the event of any such commencement of litigation, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred.

ARTICLE 24 - ARBITRATION OF DISPUTES

IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES UNDER THIS LEASE, OR IN THE EVENT ANY DISPUTE IS ANTICIPATED AS TO WHICH EITHER PARTY DESIRES TO OBTAIN DECLARATORY RELIEF, THE DISPUTE OR ANTICIPATED DISPUTE SHALL BE SUBMITTED TO BINDING ARBITRATION, UPON THE APPLICATION OF EITHER PARTY, IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE, SECTIONS 1282-1284.2.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. EACH OF THE UNDERSIGNED HAS READ AND UNDERSTANDS THE FOREGOING AND AGREES TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Landlord's initials **Tenant's initials**

ARTICLE 25 - TENANT PARKING

This Article 25 may be amended and modified by the provisions of **Exhibit "H"** to this Lease. Tenant shall be assigned, commencing on the Rent Commencement Date, on a nonexclusive basis, together with other tenants and their respective employees, the number of undesignated, unreserved spaces specified in Paragraph 1.01(n) of the Lease, available in the Parking Structure. Commencing on the Rent Commencement Date, and monthly thereafter throughout the Term of the Lease as it may be extended, the Parking Payment, set forth in Paragraph 1.01(n) of this Lease, and as it may be increased from time to time, will be due and payable under terms and provisions set forth in the Lease. Tenant and Tenant's employees shall abide by all rules and regulations which are prescribed from time to time for the orderly operation and use of the Parking Structure. Such rules and regulations shall provide that Tenant shall pay Landlord's then reasonable current charge for any replacement of any Tenant access card which is lost, stolen, damaged or destroyed. Landlord specifically reserves the right to reasonably modify, change the size, configuration, design, layout and all other aspects of the Parking Garage at any time and Tenant acknowledges and agrees that Landlord may, without incurring any liability to Tenant and without any abatement of Rent under this Lease, from time to time, close-off or restrict access to the Parking Structure or portions thereof, or other parking areas for purposes of permitting or facilitating any such construction, alteration or improvements. Landlord may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Landlord. When there is an event at the convention center, baseball stadium or other downtown facility, for which Landlord, or a parking operator designated by Landlord, gives prior notice to Tenant, Tenant's entry into the garage after 6:00 PM may be conditioned or restricted. The parking privileges provided to Tenant pursuant to this Article 25 are solely for use by Tenant's own personnel and such privileges may not be transferred, assigned, subleased or otherwise alienated by Tenant without Landlord's prior written approval. Tenant's invitees and guests may use parking spaces in the Parking Garage that are otherwise allocated or reserved on a first-come, first-serve basis, upon payment of Landlord's then prevailing parking rate. A validation or other system determined, in Landlord's reasonable judgment, shall be made available to Tenant to enable Tenant to pay for customer parking. The parking privileges made available to Tenant are not for long term (i.e., more than 48 hours) storage of automo-

biles, or for short or long term storage of boats, trailers, recreational vehicles, motorcycles or other vehicles or equipment. Such vehicles will be removed from the Parking Structure at Tenant's expense.

ARTICLE 26 - GENERAL PROVISIONS

26.01 Captions.

The captions of the Articles and Paragraphs of this Lease are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Paragraphs.

26.02 "Landlord" and "Tenant".

The words "Landlord" and "Tenant" whenever used herein shall be applicable to one (1) or more persons as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one as to any given leasehold estate arising hereunder, the obligations of this Lease applicable thereto shall be joint and several.

26.03 "Persons".

The word "persons" wherever used shall include individuals, firms, associations, and corporations.

26.04 Nonexclusive Remedies.

Various rights, options, elections, powers and remedies of either party contained in this Lease shall be construed as cumulative, and no one of them exclusive of any others, or of any other legal or equitable remedy which such party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not in anyway impair such party's right to any other right or remedy until all obligations imposed upon the other have been fully performed.

26.05 Independent Covenants.

Except as otherwise limited by the last paragraph of Article 9, this Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any setoff of the Rent or other amounts owing hereunder against Landlord; provided, however, that the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Building of any portion thereof, whose address has been given to Tenant, and a reasonable opportunity is granted to Landlord and such holder to correct such violations as provided above.

26.06 Successors and Assigns.

Subject to all other provisions of this Lease, each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 15 of this Lease.

26.07 Entire Agreement.

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supercedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease and any separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith, contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use occupancy of the

Initials: _____ // _____
LANDLORD TENANT

Premises and shall be considered to be the only agreements between the parties hereto and their representatives and agents. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto.

26.08 Time.

Time is of the essence of each item and provision of this Lease.

26.09 Severance.

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

26.10 Notices.

All notices shall be deemed delivered on the date of delivery if delivered personally or by facsimile and on the second day after mailing if deposited in the United States Post Office, properly addressed as set forth in Paragraph 1.01(p) or 1.01(q) of the Lease (or as redesignated in accordance with this Paragraph 26.10), with postage fully prepaid for delivery by registered or certified mail.

26.11 Authority of Parties.

If Tenant or Landlord is a corporation, partnership or other form of entity, each individual executing this Lease on behalf Landlord or Tenant hereby represents and warrants that such party is a dully formed and existing entity qualified to do business in California and that it has full right and authority to execute and deliver this Lease and that each person signing on behalf of such party is authorized to do so.

26.12 Brokers.

Tenant hereby warrants that it has had no dealing with any real estate broker or agents in connection with the negotiation of this Lease, excepting only the real estate broker(s) or agent(s) specified in Paragraph 1.01(o) of the Lease, and that it knows of no real estate broker or agent who is entitled to a commission in connection with this Lease. Tenant agrees to indemnify and defend Landlord against and hold Landlord harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than Broker, occurring by, through, or under Tenant.

26.13 Integration.

This Lease, including the Rules and Regulations attached hereto and incorporated herein by reference and including any addendum attached hereto and executed by the parties, contains the entire understanding between the parties and supersedes any prior understandings and/or written or oral agreements between them respecting the within subject matter. There are no representations, agreements, arrangements, or understandings, oral or written between and among the parties hereto relating to the subject matter of this Lease which are not fully expressed herein.

26.14 Joint and Several.

If there is more than on Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

26.15 Force Majeure.

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefore, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated

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LANDLORD TENANT

to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

26.16 Building Name and Signage.

Landlord shall have the right at any time to change the name of the Building or Civic Center Square and to install, affix and maintain any and all signs on the exterior and on the interior of the Building as Landlord may, in Landlord's sole discretion, desire. Tenant shall not use the name of the Building or Civic Center Square, or use pictures or illustrations of the Building or Civic Center Square in advertising or other publicity, without the prior written consent of Landlord.

26.17 Landlord Exculpation.

It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, the liability of Landlord hereunder (including any successor landlord hereunder) and any recourse by Tenant against Landlord shall be limited solely and exclusively to the interest of Landlord in and to the Building, and neither Landlord, nor officers, directors, shareholders or members shall have any personal liability thereof, and Tenant, on behalf of itself and all persons claiming by, through or under Tenant, hereby expressly waives and releases Landlord and such officers, directors, shareholders or members from personal liability.

26.18 Hazardous Material.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by, or is dealt with in, any local governmental authority, the State of California or the United States Government.

26.19 No Discrimination.

Tenant covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or group of persons, on account of race, solar, creed, sex, religion, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, or enjoyment of the Premises.

26.20 Governing Laws.

This Lease shall be governed by and construed in accordance with the laws of the State of California.

26.21 Submission of Lease.

Submission by Landlord of this instrument for review or signature by Tenant does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

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IN WITNESS WHEREOF, Landlord and Tenant have executed this agreement the date set forth above.

LANDLORD:

TUTELIAN HOLDINGS I, L.L.C.,

By: Civic Center Square, Inc., a California Corporation, Managing Member

By: R. Stan Martin, President

Date: 9/5/07

TENANT:

CITY OF FRESNO, CALIFORNIA a municipal corporation, through its **Budget and Management Studies Division**

By:

Printed Name: Jon R. Ruiz

Title: Assistant City Manager

Date: 9/5/07

APPROVED AS TO FORM
CITY ATTORNEY'S OFFICE
BY:
Chief ASSISTANT CITY ATTORNEY

ATTEST:
REBECCA E. KLISCH
CITY CLERK
By Elvira Sommerville
Deputy (9/11/07)

Initials: //
LANDLORD TENANT

EXHIBIT "A"
2440 TULARE BUILDING – Office Lease
Legal Description of Land

Parcel 1: (Building Parcel)

Lots 27 that portion of Lots 1 through 8, inclusive, 28 through 32, inclusive, in Block 126 of the Town (now City) of Fresno, in the City of Fresno, County of Fresno, County.

Excepting therefrom the Northeasterly 50 feet of Lots 31 and 32 and the Northeasterly 50 feet of the Northwesterly 12 1/2 feet of Lot 30 of said Block 126.

92-168784, together with the portion of the alley located within said Block 126 (abandoned) which would pass by a conveyance of said land under Section 831 and 1112 of the Civil Code, described as follows:

Beginning at a point on the Northwest line of said Lot 32, a distance of 146.40 feet from the most Westerly corner of said Lot 32; thence North 48°03'23" East, along the Northwest line of said Block 126, a distance of 173.70 feet to the most Northerly corner of said Lot 1;
thence South 42° 01'00" East, along the Northeast line of said Block 126, a distance of 180.04 feet; thence South 48°06'32" West, a distance of 99.60 feet; thence North 41°53'28" West, a distance of 53.85 feet; thence South 89°21'51" West, a distance of 27.52 feet; thence South 48°06'32" West, a distance of 53.81 feet; thence North 41°53'28" West, a distance of 107.88 feet to the Point of Beginning.

Parcel 2: (Parking Structure)

That portion of Lots 24 through 32, inclusive, in Block 126 of the Town (now City) of Fresno, recorded in Book 1, page 2 of Plats, Fresno County Records and Parcel B and Outlot A of Parcel Map No. 83-46, recorded in Book 42, pages 30 through 33, inclusive, of Parcel Maps, Fresno County Records, described as follows:

Beginning at the most Westerly corner of said Lot 32, thence North 48°03'23" East, along the Northwest line of said Lot 32, a distance of 123.62 feet; thence South 42°01'14" East, a distance of 102.16 feet; thence North 47°58'46" East, a distance of 12.00 feet; thence South 42°01'14" East, a distance of 4.80 feet; thence South 51°33'26" East, a distance of 29.91 feet; thence South 38°26'34" West, a distance of 17.19 feet; thence South 42°01'14" East, a distance of 82.81 feet to the intersection with the Northwest line of said Parcel B; thence South 42°01'14" East, a distance of 52.00 feet; thence South 48°01'33" West, parallel with and 52.00 feet from the Northwest line of said Parcel B, a distance of 143.62 feet to the intersection with the Southwest line of said Parcel B; thence North 42°01'14" West, along the Southwest line of said Parcel B, a distance of 52.00 feet to the most Westerly corner of said Parcel B; thence North 48°01'33" East, along the Northwest line of said Parcel B, a distance of 20.00 feet to the intersection with the Southwest line of Lot 24; thence North 42°01'14" West, along the Southwest line of Lots 24 through 32 inclusively, a distance of 222.18 feet to the Point of Beginning.

Parcel 3: (Common Area)

That portion of Lots 1 through 9, inclusive, 24 through 32, inclusive, in Block 126 of the Town (now City) of Fresno, recorded in Book 1, page 2 of Plats, Fresno County Records, together with that portion of the alley located within said Block 126 (abandoned) which would pass by a conveyance of said land under Section 831 and 1112 of the Civil Code, and Parcel B and Outlot A of Parcel Map No. 83-46, recorded in Book 42, pages 30 through 33, inclusive, of Parcel Maps, Fresno County Records, described as follows:

Beginning at a point on the Northwest line of said Lot 32, a distance of 123.62 feet from the most Westerly corner of said Lot 32; thence North 48°03'23" East, along the Northwest line of said Lot 32, a distance of 22.78 feet; thence South 41°53'28" East, a distance of 107.88 feet; thence North 48°06'32" East, a distance of 53.81 feet, thence North 89°21'51" East, a distance of 27.52 feet; thence South 41°53'28" East, a distance of 53.85 feet; thence North 48°06'32" East, thence a distance of 99.60 feet to the intersection with the Northeast line of said Block 126; thence South 42°01'00" East, along the Northeast line of said Block 126, a distance of 41.97 feet to the most Northerly corner of Parcel A of said Parcel Map No. 83-46; thence South 48°01'33" West, along the Northwest line of Parcels A and B

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of said Parcel Map No. 83-46, a distance of 196.46 feet; thence North 42°01'14" West, a distance of 82.82 feet; thence North 38°26'34" East, a distance of 17.19 feet; thence North 51°33'26" West, a distance of 29.91 feet; thence North 42°01'14" West, a distance of 4.80 feet; thence South 47°58'46" West, a distance of 12.00 feet; thence North 42°01'14" West, a distance of 102.16 feet to the Point of Beginning.

Situated in Fresno County, California.

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EXHIBIT "A-1"
2440 TULARE BUILDING & PARKING STRUCTURE - Office Lease
Site Plan of Project

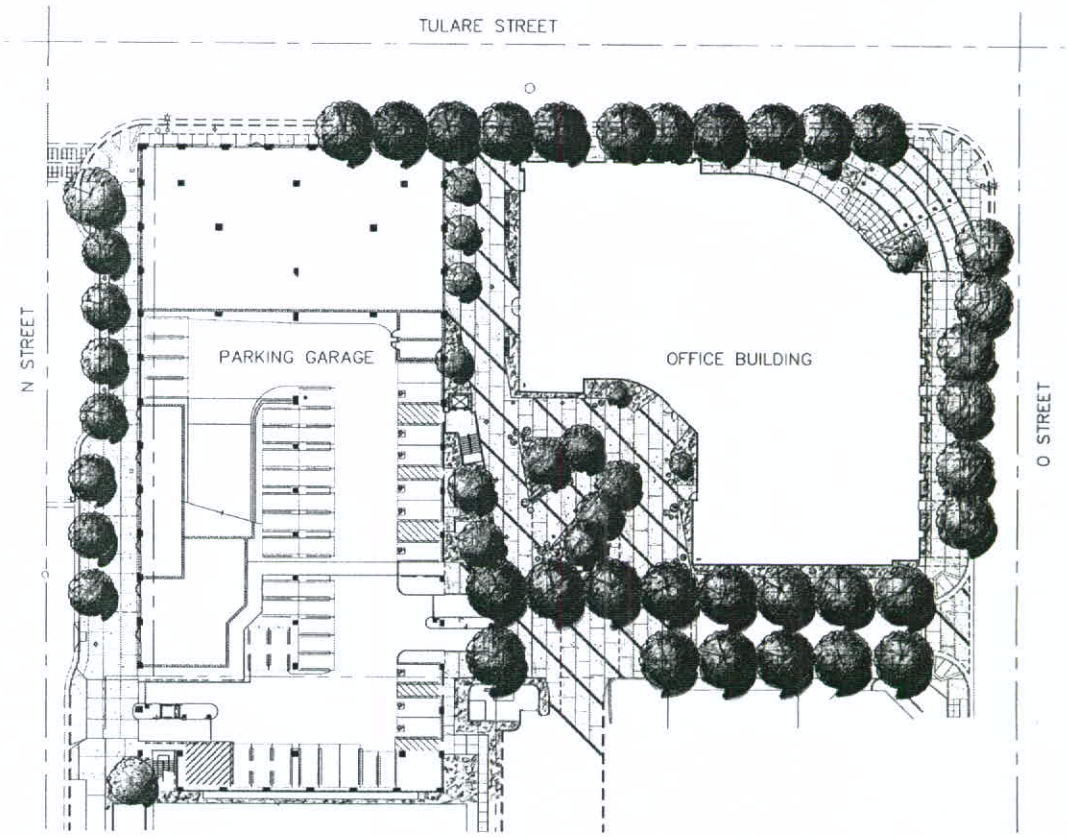

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EXHIBIT "A-2"
2440 TULARE BUILDING – Office Lease
Premises Floor Plan
First Floor

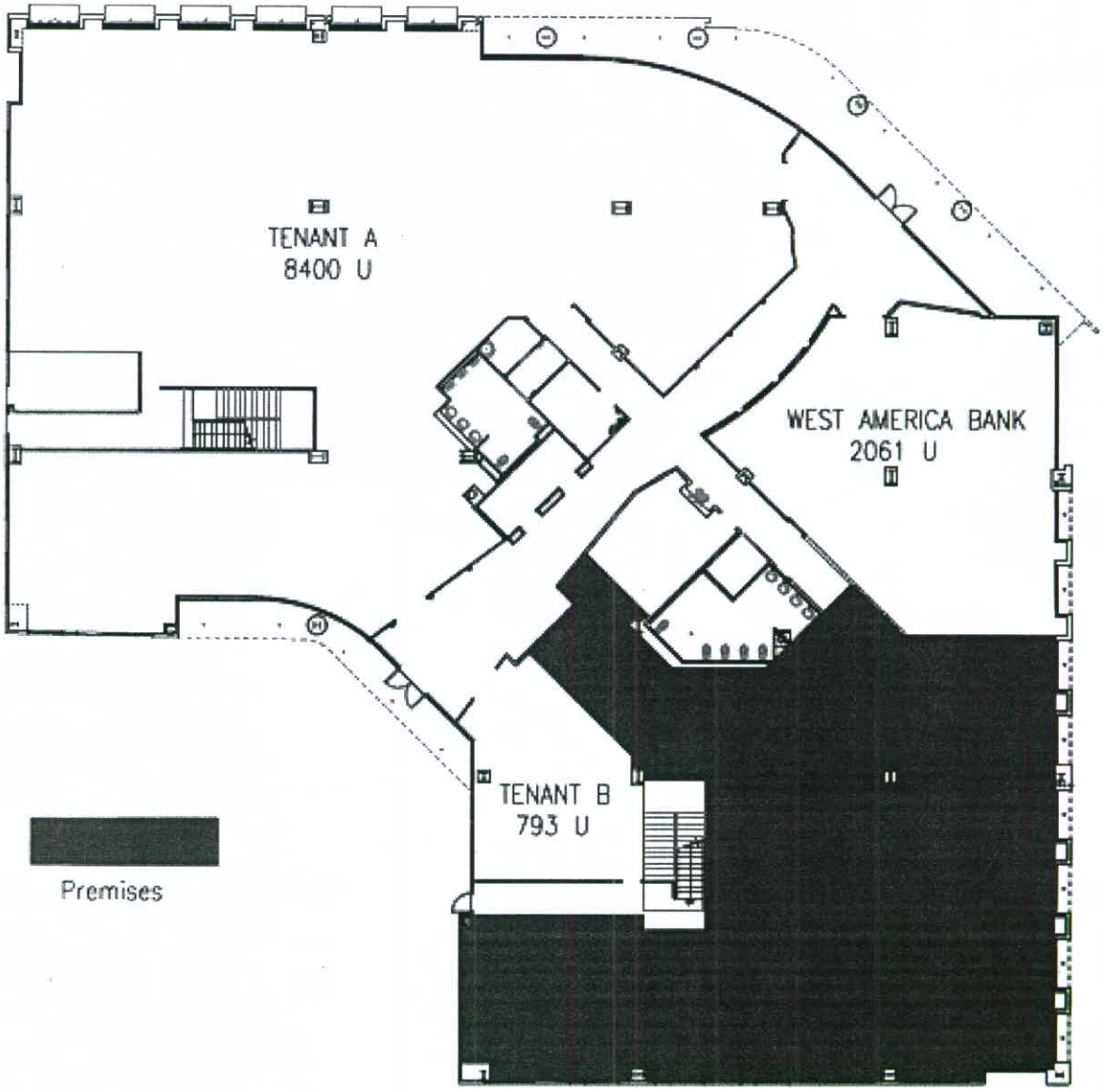

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EXHIBIT "B"

2440 TULARE BUILDING – Office Lease

LANDLORD'S NOTICE OF CERTAIN TERM DATES

This Exhibit "B" when delivered by Landlord to Tenant is attached to and made part of the Lease dated the ___ day of **September, 2007** by and between **Tutelian Holdings I, L.L.C.,** a California limited liability company ("Landlord"), and **City of Fresno, California,** a municipal corporation, through its **BUDGET AND MANAGEMENT STUDIES DIVISION** ("Tenant").

1. The Premises have been accepted by the Tenant as of _____, 2007, which shall be initial date of the Term.

2. Pursuant to the provisions of Paragraph 1.01 of the Lease, the Rent Commencement Date is ____ _____, 2007. Pursuant to the provisions of Paragraph 1.01(d) of the Lease, the expiration date of the Term of this Lease is _____, 200__, unless Tenant properly and timely exercises its renewal Options pursuant to Paragraph 1.01 of the Lease.

3. Under the terms of Paragraph 1.01 of the Lease, Tenant shall commence paying its proportionate share of Building Operating Costs as Additional Rent on the _____ day of _____ _____, 2007.

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

5. Tenant has paid concurrently with lease execution the first full month's rent in advance, which shall be for the month of _____. Rent is due now for the partial month of _____ in the amount of $_____. The first regular payment of Minimum Annual Rent shall be for the month of _____, and is due on the first of that month.

6. Rent is due and payable in advance on the first day of each month during the Term. Tenant's Rent checks are to be made payable to Landlord and delivered to Landlord at 906 N Street, Suite 200, Fresno, CA, or at such other place designated in writing by Landlord.

LANDLORD: TUTELIAN HOLDINGS I, L.L.C.,
a California limited liability company

By: Civic Center Square, Inc., a California corporation
Managing Member

By: _____ Date: _____
R. Stan Martin, President

Initials: _____ // _____
LANDLORD TENANT

EXHIBIT "C"

2440 TULARE BUILDING at Civic Center Square

Procedure for Premises Interior Improvements

This Exhibit "C" is attached to and made a part of the Office Lease dated as of the 5th day of **September 2007**, by and between **Tutelian Holdings I, L.L.C.,** a California limited liability company, ("Landlord"), and **City of Fresno, California,** a municipal corporation, through its **BUDGET AND MANAGEMENT STUDIES DIVISION** ("Tenant").

Landlord's Build-out of Premises

Landlord shall provide under the terms of the Lease a turnkey build-out of the Premises in accordance with the drawings as set forth in Exhibit "C-1" to this Lease (the "Plans") and in accordance with the provisions of this Exhibit "C". The improvement work by Landlord shall be all the work necessary to complete the Premises, including architectural, engineering and design fees, in accordance with the Plans such that Tenant is able to install its separate fixtures and furnishings and open for business in the Premises.

Prior to the Lease Commencement Date, Landlord shall cause to be constructed, at Landlord's expense the Tenant Improvement Work in the Premises, in accordance with the Approved Construction Plans (as hereinafter defined), and in accordance with the following procedures:

The following conditions apply to Landlord's Build-out of the Premises:

1. Landlord shall use Landlord's approved Building Standard materials and finishes.

2. All of Landlord's work in the Premises shall be strictly in accordance with applicable code unless officially waived by the controlling authority.

The following required work is excluded as Landlord's work and shall be the responsibility of Tenant, both financially and as to its completion:

(a) Telephone, Internet and communication wiring, terminations, fiber optics, fixtures and equipment, including installation, required for Tenant's use from the phone/communication connection provided by Landlord in the common phone/electrical room to and throughout Tenant's Premises. Tenant's telephone and data cabling shall be in accordance with design drawings by Tenant with necessary conduit installed by Landlord's contractor for the tenant improvements. The pulling of telephone and data cables and their terminations shall be the separate responsibility of Tenant. Tenant shall be responsible for making all arrangements for telephone, data transmission and Internet service within the Premises. With Landlord's consent, Tenant may install rooftop electronic devices to enable it to connect to Tenant's internal communication network.

(b) Internet Access. High speed Internet access is available in the building through a service provided by Landlord to Tenant generally at a substantial discount for similar service otherwise available. If Tenant so elects to purchase such service from Landlord, such transaction shall be by separate agreement.

(c) Telephone. All wiring and installation charges for telephone service in the Premises from telephone connection in electrical/communication closet. Tenant shall be responsible for making all arrangements for telephone service in the Premises. Tenant's telephone and data cabling shall be in accordance with design drawings by Tenant with necessary conduit installed by Landlord's contractor for the tenant improvements. The pulling of telephone and data cables and their terminations shall be the separate responsibility of Tenant.

(d) Work Stations, Furniture, Office Equipment and Other Fixtures. These items shall be installed by Tenant and not included in the Tenant Improvement Work to be performed by Landlord.

(e) City Plan Check and Building Permit Fees. All required building permits and fees, including plan check fees, and certificate of occupancy

(f) Plumbing. Other than that necessary for installation of an ice-maker in the refrigerator, a sink and automatic dishwasher in the break room.

(g) Appliances. Other than a refrigerator with ice-maker and an automatic dishwasher in the break room.

(h) Cabinetry. Except standard cabinets in the break room, conference room and workroom.

B. Tenant Improvement Work Completed by Landlord.

Strictly in accordance with the floor plan contained in Exhibit C-1, Landlord's Architect shall, at Landlord's expense, complete construction plans and specifications (the "Plans") for the tenant improvements to be installed in the Premises. Landlord shall submit such Plans and specifications for Tenant's approval, which will not be unreasonably withheld. The plans and specifications approved are hereinafter referred to as the "Approved Construction Plans."

Initials: _____ // _____
LANDLORD TENANT

The Approved Construction Plans shall be submitted by Landlord to the City for plan check and permitting.

Upon receipt of a valid building permit from the City of Fresno, Landlord, as general contractor shall construct the Tenant Improvement Work in the Premises.

Tenant Improvement Work shall be performed and completed in accordance with the Approved Construction Plans, and shall comply with the requirements of any and all governmental and quasi-governmental departments and agencies having jurisdiction over any parties to this Lease and/or the Premises in whole or in part.

Landlord and Tenant consent to any changes in Tenant Improvement Work as may be imposed by any municipal departments having jurisdiction, provided said changes do not substantially alter or modify the purposes for the Landlord's Work or the size or character of the Premises. Any additional cost of such municipally imposed modification shall be borne by Tenant.

Any change to the Approved Construction Plans required by Tenant shall be at Tenant's sole cost and expense and shall be evidenced by an approved change order executed by Landlord and Tenant prior to the changed work being commenced. Landlord shall be entitled to a reasonable mark-up of 10% on the cost of such change in the work.

When Landlord shall have completed the Tenant Improvement Work as herein provided, Landlord shall submit to Tenant a statement of Landlord's architect certifying that such work has been substantially completed in accordance with the Approved Construction Plans. If required by any applicable law, ordinance or governmental regulation, a final certificate of occupancy or other document allowing Tenant's use of the Premises for the purpose intended, covering the Premises and issued by the governmental authority having jurisdiction, or a certified copy of such certificate, shall be furnished by Landlord to Tenant prior to the delivery of possession of the Premises to Tenant. The Date of Substantial Completion of Tenant's Improvement Work (the "Substantial Completion Date") shall be the date Landlord delivers the architect's certificate of substantial completion and the certificate of occupancy, if required, provided for above, to Tenant and Landlord has delivered possession of the Premises to Tenant. The Rent Commencement Date shall be as set forth in Paragraph 1.01(c) of the Lease, provided that the Rent Commencement Date shall be accelerated by the number of days of delay caused by Tenant's late approval of any matters subject to its approval, Tenant's request for change orders, or any other actions or omissions which may delay the completion of Landlord's Improvement Work.

Tenant, its agents, contractors or representatives shall have the right to begin the installation of its fixtures and other property in the Premises before the final completion of Landlord's Improvement Work by Landlord without being deemed to have taken possession of the Premises by so doing, provided such work by Tenant does not interfere with Landlord's Improvement Work, Landlord has given written permission for such entry and Tenant assumes all risks attendant with such early entry.

TENANT: CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its **Budget and Management Studies Division.**

By: _____ Date: 9/5/07

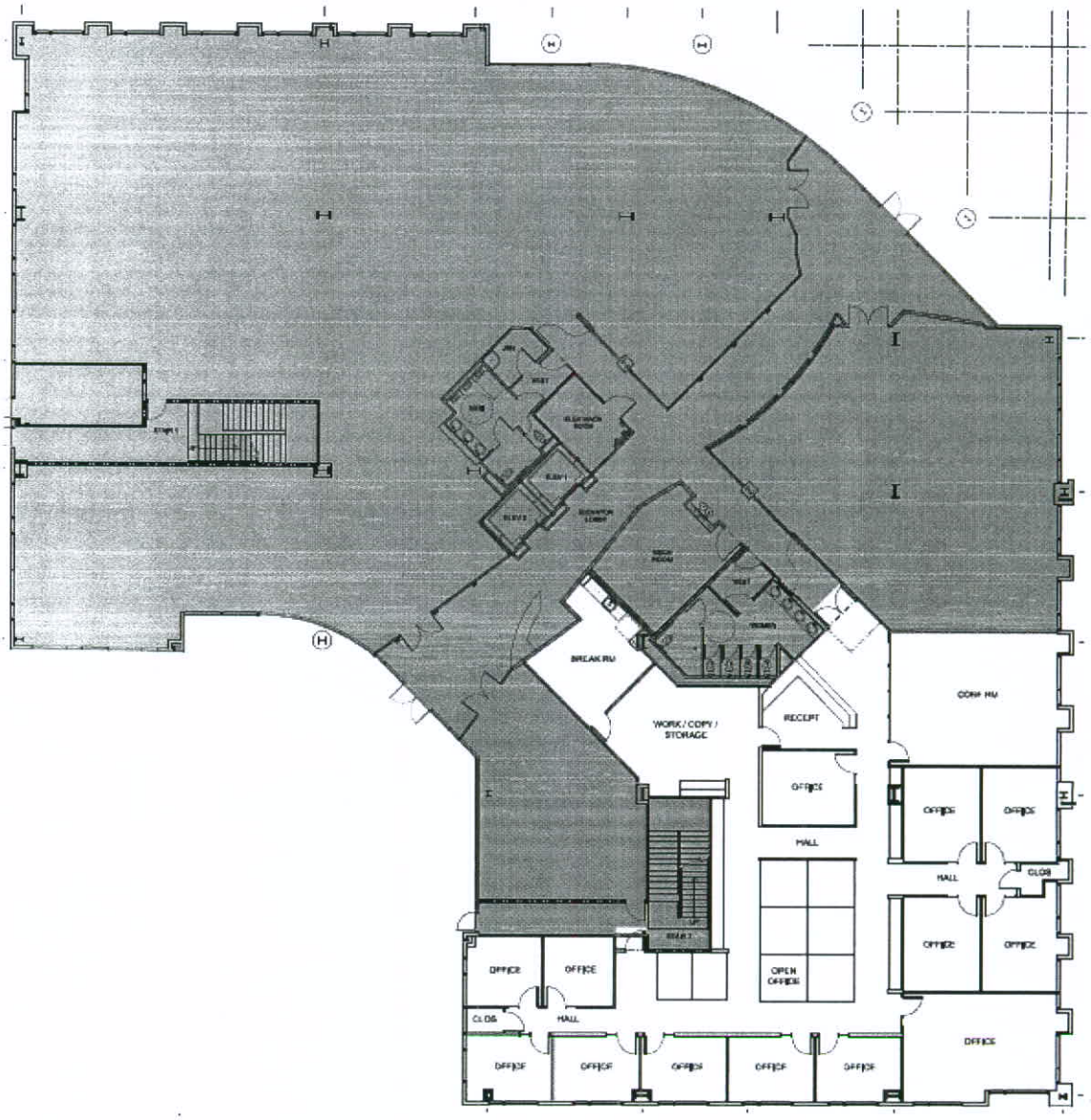
LANDLORD: TUTELIAN HOLDINGS I, L.L.C., a California limited liability company

By: Civic Center Square, Inc., a California corporation
Managing Member

By: _____ Date 9/5/07
R. Stan Martin, President

Initials: _____ // _____
LANDLORD TENANT

EXHIBIT "C-1"
Premises Build-out Plan



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LANDLORD TENANT

EXHIBIT "D"

2440 BUILDING at Civic Center Square

PROPERTY RULES AND REGULATIONS WHICH CONSTITUTE A PART OF THE LEASE

These Rules and Regulations shall be attached to and form a part of the Lease at the Building. Tenant upon execution of the Lease for space at the Building shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition to its occupancy of space in The Building. In the event of any conflict between these Rules and Regulation, or any amendments or additions thereto, and the provisions of the Lease, such Lease provisions shall control.

1. Tenant and Tenant's employees shall not loiter in the common areas of the Property nor shall they in any way obstruct the sidewalks, entry passages, driveways, entrances and exits to the Property, and they shall use same only as passageways to and from their respective work areas.

2. Tenant, his agent, clerk, employee, customers, clients or visitors shall not do anything on any premises, or bring or keep anything therein, which will in any way increase or tend to increase the risk of fire or the rate of fire insurance or which shall conflict with applicable law, rules or regulation established by any governmental body or official having jurisdiction, the regulations of the fire department or the provision or requirements of any insurance policy on such premises of any part thereof. Tenant shall not use any machinery in its premises, even though the installation may have been original permitted, which may cause any unreasonable noise or jar, or tremor to the floors or walls or which by its weight might injure the walls or floors of such premises or any other portion of the Building. Tenant shall not suffer or permit anything in or around the Premises or Building that causes excessive vibration in any part of the Building.

3. Tenant and Tenant's officers, agents and employees shall not interfere in any way with other tenants or those having business with them, nor bring nor keep in or about the Building any animal or bird (with exception of an authorized pet store or permitted by the ADA or FEHA) nor any bicycle, automobile or any other vehicle, except such vehicles as they are permitted to Park in the designated of the Building parking lot. Tenant and Tenant's officers, agents and employees shall not throw cigar or cigarette butts or other substances or litter of any kind in or about the Building, except in receptacles placed there for such purpose. Neither Tenant nor Tenant's officers or its agents and employees shall make or permit any loud, unusual or improper noises in the Building, not interfere in any way with other tenants or those having business with them. Parking in all areas about the Building is provided for the maximum convenience of the patrons of the Building. All tenant cars and tenant employee cars shall be registered with the Building Manager. Employee parking shall be in all circumstances as directed by Landlord or Building manager as Landlord's representative. Building Manager may issue parking stickers to Tenant and Tenant employees.

4. Tenant shall not make or permit any loud or improper noises or odors in the Building or otherwise interfere in any way with other tenants or persons having business within the Building.

5. Landlord shall have the right to determine and prescribe the weight and proper position of any unusually heavy equipment, including safes, large files, etc., that are to be placed in the Building, and only those with in the exclusive judgment of the Landlord will not do damage to the floors and structure may be moved into the Building.

6. No machinery of any kind will be allowed on the Premises without the written consent of Landlord. This shall not apply, however, to customary office equipment or trade fixtures or package handling equipment.

7. Tenant shall give immediate notice to the Building Manager in case of accidents on the Premises or in the Building or of defects therein or in any fixtures or equipment, or of any known emergency in the Building.

8. Landlord reserves the right to refuse access to any persons Landlord in good faith judges to be a threat to the safety, reputation, or property of the Building and its occupants.

9. Tenant shall not make any inappropriate use of any toilet rooms, plumbing or other utilities. No foreign substances of any kind are to be inserted therein.

10. No Tenant, employee or invitee shall go upon the roof of the Building.

11. No additional lock or locks to be placed by the Tenant on any door in the Building, nor shall locks be changed, unless written consent of the Landlord shall have been first obtained.

12. All window coverings must have the approval of Landlord prior to installation. No posters, signs nor any other object which can be seen from the exterior of the Building shall be placed in any window of the Building.

13. No part of the offices shall be used for lodging or sleeping purposes, and the cooking and eating of meals as a regular activity by Tenant is prohibited. The heating and consumption of food within Tenant's break-room is permitted.

Initials: _____ // _____
LANDLORD TENANT

14. All freight must be moved into, within, and out of the Premises only through the back doors and according to such regulations as may be posted from time to time by the Landlord.

15. Tenant shall not place or store in the Common Area any table, chairs, benches, or other personal property, except with written consent of Landlord.

16. No aerial shall be erected on the roof or exterior walls of the Premises, or on the grounds, without in each instance, the written consent of the Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time and at Tenant's expense.

17. Tenant shall observe all security regulations issued by the Landlord and to comply with instructions and/or directions of the duly authorized security personnel for the protection of the Building and all tenants therein.

18. Tenant shall comply will all safety, fire protection, and evacuation regulations established by Landlord or any applicable governmental agency.

19. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular Tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such Tenant or any other Tenant.

20. Landlord reserves the right to rescind any of these Rules and Regulations of the Building, and to make such other and further rules and regulations as in its judgment shall from time to time be needful for the safety, protection, care and cleanliness of the Building, the Premises and the operation thereof, the preservation of good order therein and the protection and comfort of the other tenants in the Building and their agents, employees and invitees, which rules and regulations, when made and written notice thereof is given to Tenant, shall be binding upon Tenant in like manner as if originally herein prescribed. However, no rule or regulation adopted by Landlord shall unreasonably interfere with the operation of Tenant's business.

Initials: _____ // _____
LANDLORD TENANT

EXHIBIT "E"

2440 BUILDING at Civic Center Square

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

SAMPLE — SUBJECT TO MODIFICATION UPON REVIEW OF LEASE

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

_____
_____
_____
Attn: _____

_____

Space Above for Recorder's Use

SUBORDINATION, NONDISTURBANCE AND
ATTORNMENT AGREEMENT

NOTICE: THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

This Subordination, Nondisturbance and Attornment Agreement ("Agreement") is entered into as of _____, _____, by _____ ("Lender"), _____ ("Landlord") and _____ _____ ("Tenant").

RECITALS:

A. Landlord and Tenant have entered into a lease dated as of _____ (the "Lease"), covering certain premises (the "Premises"), situated in Fresno, California, commonly known as ___ _____ and more particularly described in Exhibit "A" hereto (the "Property").

B. Lender is the beneficiary of a deed of trust (the "Deed of Trust"), dated as of _____ ___, __, and recorded on _____, _____, in the official records of _____ County, California, as _____ [insert recording information] encumbering the Property, which secures a note payable and certain other obligations of Landlord to Lender (collectively, the "Secured Obligations").

OR

B. Lender will be the beneficiary of a deed of trust (the "Deed of Trust") to be recorded in the official records of Fresno County, California, encumbering the Property, which will secure a note payable and certain other obligations of Landlord to Lender (collectively, the "Secured Obligations").

C. On the terms and conditions in this Agreement, the parties desire to subordinate Tenant's leasehold interest in the Premises to the lien of the Deed of Trust and, so long as Tenant timely performs its obligations under the Lease, to assure Tenant possession of the Premises for the entire term of the Lease, even though Lender may foreclose the lien of the Deed of Trust before expiration of the term of the Lease.

Therefore, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. Subordination. The Lease shall be subject and subordinate to the lien of the Deed of Trust and to any renewals, modifications, consolidations, restatements, replacements and extensions of the Deed of Trust to the full extent of the sums secured by the Deed of Trust including the outstanding principal balance thereof and all interest and other amounts payable in connection with the Secured Obligations.

2. Nondisturbance. Lender shall not disturb Tenant's possession of the Premises pursuant to the Lease and Tenant's rights and privileges under the Lease so long as Tenant is not in default, beyond any period given to Tenant to cure a default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease. So long as Tenant is not in default, beyond any period given to Tenant to cure such

Initials: _____ _____
LANDLORD TENANT

default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Lender will not join Tenant as a party for the purpose of terminating or otherwise affecting Tenant's interest under the Lease, in any action of foreclosure or other proceeding brought by Lender to enforce any rights arising because of any default under the Deed of Trust. Lender may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Lender under the Deed of Trust, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Premises.

3. Tenant to Attorn to Lender. If Lender shall become the owner of the Demised Premises, or the Demised Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Deed of Trust or the Demised Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Demised Premises and Tenant, and Tenant hereby attorns to Lender or any other such owner as its lessor, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that Lender or such other owner shall not be

a) liable for any act or omission of any prior lessor (including Borrower as lessor), except to the extent Lender continues such act or omission, provided, however, that nothing herein shall limit Borrower's or Lender's responsibility during the time they hold title to or have possession of, the Diminished Premises for Borrower's maintenance and repair responsibilities or for breach of the covenant of quiet enjoyment under the Lease: or

b) subject to any offsets or defenses which Tenant might have against any such prior lessor, unless Tenant shall have delivered to Lender written notice of the default which gives rise to such offset or defense and permitted Lender the same right to cure such default as permitted Borrower under the Lease, or

c) bound by any prepayment of rent or additional rent which Tenant might have paid, except as otherwise expressly required by the terms of the Lease; or

d) bound by any material amendment or modification of the Lease or by any waiver or forbearance on the part of any such prior lessor made or given without the written consent of Lender or any subsequent holder of the Deed of Trust which consent shall not be unduly withheld or delayed, provided that in the event Lender fails to respond within thirty (30) days after receipt of a request for consent to a modification of the Lease, Lender will be deemed to have consented to the requested modification or amendment; or

e) bound to return any security deposit unless Lender has actually received that security deposit.

Notwithstanding anything to the contrary in this Agreement of the Lease, if Lender acquires Borrowers interest in the Demised Premises, then Lender's liability for its obligations under the Lease and this Agreement shall be limited to Lender's interest in the Premises and the rents, income and profits therefrom. Tenant shall not look to any other property or assets of Lender of the property or assets of any of the other partners, shareholders, directors, officers and principals, direct or indirect, of Lender in seeking either to enforce Lender's obligation under the Lease and this Agreement or to satisfy a judgment for Lender's failure to perform such obligations.

4. Purchase Option. Any option or rights contained in the Lease, or otherwise, to acquire any or all of the Demised Premises are hereby made subject and subordinate to the rights of the Lender under the Deed of Trust and any acquisition of any or all of the Demised Premises made by Tenant during the term of the Deed of Trust shall be made subordinate and subject to the Deed of Trust.

5. Lender's Right to Cure Borrower's Default. Tenant hereby acknowledges that, by this Agreement, it has received written notice of the name and address of Lender as holder of a first deed of trust on the Premises and other portions of the Property. Tenant agrees that, notwithstanding any right which Tenant may have immediately, or after lapse of a period of time, to cure any default of Landlord under the Lease or to cancel or terminate the Lease, or to claim a partial or total eviction due to any default by Landlord, Tenant shall not exercise such right (i) until it has given written notice of such act or omission to Lender and (ii) until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Deed of Trust to remedy the same (which reasonable period shall in any event be the same as the period to which the Landlord would be entitled under the Lease, after similar notice, to effect such remedy), provided Lender shall within thirty (30) days give Tenant written notice of Lender's intention and shall commence and continue to remedy same, but nothing herein contained shall obligate Lender to do so unless Lender so elects.

6. Rents Assignment. Whether or not Lender acquires title to or takes possession of the Premises, and during such time as the Rents Assignment remains in effect, Tenant acknowledges that all of the

Initials: _____ // _____
LANDLORD TENANT

interests of Landlord under the Lease has been or will be absolutely assigned to Lender pursuant to the Rents Assignment, but that Lender is granting to Landlord a license to collect all rental payments payable under the Lease unless and until Tenant is otherwise notified in writing by Lender, that a default has occurred under the Deed of Trust or other loan documents, or the license has been revoked. Upon receipt by Tenant of such written notice from Lender, Tenant shall timely male all rental payments directly to Lender, without the need for the consent of the Landlord. Landlord waives and releases any claim it may have against the Tenant for any sum paid by Tenant to Lender pursuant to any such notice.

7. Definitions. The term "Lender" or any similar term shall include Lender, the trustee under any deed of trust affecting the Premises, and any agents, heirs, successors or assigns, including any party that succeeds to the Landlord's interest by foreclosure of the Deed of Trust, of the deed in lieu of foreclosure, or of a sale under a private power contained in the Deed of Trust or by any other proceeding. The term "Deed of Trust" or any similar term shall include the Deed of Trust and any amendments or addenda thereto. The term "Landlord" shall include Landlord and the successors, assigns and sub lessees of Landlord. The term "Tenant" shall include Tenant and the successors, assigns or sub lessees of Tenant. This Agreement shall inure to the benefit of and be binding upon all successors, assigns and sub lessees. The term "Lease" shall include the Lease and all amendments, addenda, extensions, and renewals thereof to which Lender shall have consented in writing.

8. Modification. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.

9. Attorneys' Fees. If any legal or arbitration action or proceeding is initiated between any of the parties to enforce any provision of this Agreement or to protect or establish any right or remedy of any of the parties hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorney's fees and allocated fees and costs of any party's in-house attorney, incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees will be determined by the court or arbitration panel handling the proceeding and will be included in and as part of such judgment.

10. Notices. In this Agreement, wherever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and delivered personally, or forwarded by certified mail, or by a commercially recognized national courier service, and addressed as follows:

Landlord: _____
_____
_____
Attn: _____

Tenant: _____
_____
_____
Attn: _____

Lender: _____
_____
_____
Attn: _____

Any party may change an address given for notice by giving written notice of that change to the other parties in the manner for giving notices specified above. All notices hereunder shall be demand given upon receipt, if personally delivered, or upon the date shown for delivery or attempted delivery, if sent by national courier service, or within **3 business days** after mailing, if sent by United States mail properly addressed and with proper postage affixed thereto.

11. Successors. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns.

12. Authority. Each party represents that all individuals executing this Agreement on behalf of such party are authorized to execute and deliver this Agreement on behalf of such party, and that this Agreement is binding upon such party.

13. Headings. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument.

Initials: _____ // _____
LANDLORD TENANT

15. Governing Law. This Agreement shall be construed in accordance with and governed by California law.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

"LANDLORD"

_____

By: _____
Title: _____

LENDER"

_____

By: _____
Title: _____

"TENANT"

_____

By: _____
Title: _____

Initials: _____ / _____
LANDLORD TENANT

ACKNOWLEDGEMENTS

STATE OF _____)
) ss
COUNTY OF _____)

On _____, _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

STATE OF _____)
) ss
COUNTY OF _____)

On _____, _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

STATE OF _____)
) ss
COUNTY OF _____)

On _____, _____, before me, _____, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

Initials: _____ // _____
LANDLORD TENANT

EXHIBIT "F"

2440 BUILDING at Civic Center Square
Form of Estoppel Certificate
[To be provided at a later date]

Initials _____ // _____
Lessor Tenant

EXHIBIT "G"

2440 BUILDING at Civic Center Square

INTENTIONALLY OMITTED

Initials: _____ // _____
LANDLORD TENANT

EXHIBIT "H"

2440 BUILDING at Civic Center Square

Addendum: Special Provisions

This Exhibit "H" is attached to and made a part of the Office Lease dated as of the 5th day of September 2007 by and between **Tutelian Holdings I, L.L.C.** a California limited liability company ("Landlord"), and **City of Fresno, California,** a municipal corporation, through its **BUDGET AND MANAGEMENT STUDIES DIVISION** ("Tenant"). Whenever there is a conflict or difference in meaning between the provisions contained in the Lease and the provisions contained in this Addendum, the provisions of this Addendum shall govern the parties to this Lease.

The terms and conditions of the printed form Project Lease are amended and supplemented as follows:

1. Parking:

   a. All parking spaces on the first level of the Parking Structure, except those designated as handicap or tandem spaces, will be designated as "short-term" spaces (30 minutes or less as Landlord shall elect).
   b. Clients, visitors and invitees of tenants within the Project, including Tenant, will be subject to "preferred" parking rates, including the first thirty-(30) minutes free with the proper validation.

2440 Parking Pavilion - Parking Rates

Discount - Tenant/Visitor (1)

1st half-hour	Free
Each half-hour thereafter	$0.50
Daily maximum	$6.00

Regular - Transient

1st half-hour	$1.00
Each half-hour thereafter	$1.00
Daily maximum	$12.00

(1) Discount rate is gained by either Stamping, in which case parker pays the discounted rate, or by validation sticker in which case Tenant pays the discounted Rate

Parking rates, including preferred rates, are subject to change.

2. Option Period Rent. Rent in the first year of the first option period shall be at Fair Market Rate, as hereinafter defined. Rent for the remainder of the first option period and for the second option period shall be determined by annual increases of 2.25%.

3. Fair Market Value. Fair Market Rate shall mean the amount per rentable square foot that a willing, comparable tenant would pay and a willing, comparable landlord would accept in an arm's length transaction, for delivery on or about the applicable delivery or effective date, for comparable non-renewal, non-expansion space in the Building and in other comparable Class A buildings in the same geographic area, similarly improved, giving appropriate consideration to annual rental rates per rentable square foot (and the fact that the established Minimum Annual Rent is escalated 3% per year during the Option Term), the type of escalation clauses (including, without limitation, operating costs, real estate tax allowances or base year and rental adjustments), rental abatement or free rent concessions, if any, brokerage commissions, the length of the term, the size and location of the project, building standard work letters and/or tenant improvement allowances, if any, the extent of services provided to the leased premises, the date as of which the Fair Market Rate is to become effective, and other generally applicable terms and conditions of tenancy for comparable sized space. In no event will the Fair Market Rate impute a value upon leasehold improvements or fixtures installed by Tenant.

Initials: _____ // _____
LANDLORD TENANT

4. Department or Division Change. Tenant may elect to move a different department or division of the City of Fresno into the Premises, provided Tenant first obtains the prior written consent of Landlord, which consent shall not be unreasonably withheld.

TENANT: CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its **Budget and Management Studies Division**

By: _____ Date: 9/5/07

LANDLORD: TUTELIAN HOLDINGS I, L.L.C., a California limited liability company

By: Civic Center Square, Inc., a California corporation
Managing Member

By: _____ Date 9/5/07
R. Stan Martin, President

Initials: _____ _____
LANDLORD TENANT

NO RETURN

August 29, 2007

Council Adoption: 8/28/07
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ALAN AUTRY

FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 8/28/07, Council took legislative action entitled **Auth lease agrmnt w/Tutelian Holdings, I LLC, for 2440 Tulare Street, for BMSD**, Item No. **9:30 A.M. D-1**, by the following vote:

Ayes	:	Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong, Perea
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before September 10, 2007. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

****

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____

_____ Date: _____
Alan Autry, Mayor

COUNCIL OVERRIDE ACTION: Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:

CIVIC CENTER
SQUARE

Revitalizing Downtown Since 1975

December 10, 2007

DELIVERY/ACCEPTANCE OF PREMISES

Tenant: CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its **Budget and Management Studies Division**

Premises: 2440 Tulare Street, Suite 100

Lease Date: September 5, 2007

Rent Commencement Date: December 14, 2007

Pursuant to the referenced Lease, Landlord hereby delivers and Tenant hereby accepts possession of the Premises as of the date first written above.

AGREED AND ACKNOWLEDGED:

Landlord	Tenant
R.S. Martin	CITY OF FRESNO, CALIFORNIA, a municipal corporation, through its **Budget and Management Studies Division.**

906 N Street • Suite 200 • Fresno, CA 93721 • Ph: 559.485.4700 • Fx: 559.485.1150

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT:

PROJECT NO.: 07095

City of Fresno Budget Office
New office tenant improvement

TENANT:

City of Fresno Budget Office
2440 Tulare Street, Ste 1
Fresno, CA 93721

CONTRACTOR:

Owner Builder
Tutelian Holding I
906 "N" Street, Ste 200
Fresno, CA 93721

DATE OF ISSUANCE: December 13, 2007
PROJECT OR DESIGNATED PORTION SHALL INCLUDE:

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion thereof designated above is hereby established as

Date: December 13, 2007

Which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

A list of Punch List items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Triad Architecture and Planning Associates, Inc.
ARCHITECT

BY ROBERT TOMASEVICH

12·14·07
DATE

The Contractor will complete or correct the Work on the list of items attached hereto within 14 days from the above date of Substantial Completion.

Tutelian Holding I
CONTRACTOR

BY

12·14·07
DATE

The Owner accepts the Work or designated portion thereof as substantially complete and will assume full possession thereof on Thursday, December 13, 2007.

City of Fresno Budget Office
TENANT

BY R. Renena Smith

12/17/07
DATE

City of Fresno Budget Office
2440 Tulare Street, Suite 100
Fresno, California 93721

Punch List
12/13/07
10:00 A.M.

Typical comments all rooms:

- Clean and dust exterior windows and frames.
- Clean interior door and window frames, remove pen & pencil markings on frames.
- Check door and window frame edges to see if gypsum board walls need touch of paint.

101 Reception & Entry

- Sprinkler escutcheon missing – install.
- Clean flooring.
- Touch up paint over window trim.
- Dust counter top.
- Paper clip in light fixture.
- Tape on upper door frame.

102 Conference Room

- Clean interior windows & frames.
- Add angle edging typical.
- Wipe down large light fixtures, remove dust & debris.

103 Office

- Glue or tape on window.

104 Hall

- Sprinkler escutcheon missing – install.

105 Office

- Remove ink and pencil numbers on window frame.
- Remove debris over diffuser.
- Tile next to diffuser edge has gap, reset tile or replace.

106 Office

- Remove ink number on window frame.
- Storage #107.
- Door #7 needs floor stop.
- Touch up paint at exterior window head.

107 Storage

- Door #7 needs floor stop.
- Touch up paint at exterior window head.

108 Office

- No comments.

109 Office

- No comments.

110 Office

- Paint white grill over door / to match soffit.
- Debris on register.

111 Office

- Ceiling tile missing.

112 Office

- Paint touch up at exterior window corner.

113 Office

- Touch up edge of door frame.
- Touch up edge of window corner.

114 Office

- Set base bow at corridor wall.
- Clean and dust exterior window frames.

115 Office

- Paint touch up at base.
- Paint behind f.s. cab. rm.
- Add hinge missing door 15.

116 Storage

- Door 117: add floor stop
- Clean carpet in corners – gyp. dust.

117 Office

- Tile damaged – water spot.
- Tile missing – replace.
- Clean door.

118 Office

- No comments.

119 Hallway

- Bow in base near door / window 19.

120 Space Open Office

- Base missing between Office 111 & 112.
- Blank off cover plate for future work stations.
- Ceiling tile at wall needs to be replaced / edges broken & not set into grid along wall for Hall 121.

121 Hall

- No comments.

122 Work Copy Storage

- Stop at cab. door next to wall.
- Base is not set at 90° corner and 45° corner. Back cut base so corners are tight.
- Set base at cabinet corner.
- Outlet plate is broken & gaps around electrical box edge, left of door #21.
- Printer outlet box near base cabinet has gap at edge. Patch and Paint.

123 Lounge / Break

- Replace missing ceiling tiles.
- Base is wavy & lumpy. Corners are bad. Back cut base at corners to get a clean 90° or 45° corner.
- Dishwasher – missing water.
- Dishwasher door is hitting side of dishwasher cabinet – touch up cabinet.
- Install dishwasher.
- Add plumbing fixtures.
- Cabinet drawers – sticking.
- Add base at sink and cabinet doors.
- Dust top of refrigerator.

Project Close Out

- Provide the following:
  - Project record as built drawings.
  - Operation and Maintenance Manuals.
  - Show owner operation of mechanical unit thermostats.
  - Warranties.