

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made and entered into this 8th day of May, 2016, by and between the City of Merced, a California Charter Municipal Corporation (hereinafter referred to as "Tenant"), and James G. Moulton and Lynda S. Moulton (hereinafter referred to as "Landlord").

WITNESSETH:

- 1. LEASED PREMISES.** Landlord hereby leases to Tenant and Tenant hereby hires from Landlord those certain premises outlined on Exhibit "A" attached hereto and made a part hereof (hereinafter called "Premises"), together with those appurtenances specifically granted in this Lease. The Premises are a part of an industrial parcel known as Assessor's Parcel Number 059-430-033 (Building 1) and commonly referred to as 107 Heron Way, Merced, California. The Leased Premises shall consist of the exclusive use of the building, designated parking for spaces as delineated on the attached Exhibit "A," as well as the non-exclusive use of the common area parking lot as well as the common driveway used for ingress and egress to / from Heron Way that services both 107 Heron Way and 115 Heron Way as delineated on said 'Exhibit "A"'.
- 2. TERM.** The term of this Lease shall be for a period of three (3) years (said term hereinafter called the "Lease Term"). The Lease Term and the rent shall commence two (2) days subsequent to the date of mutual execution of this Lease, and shall continue for thirty-six (36) months thereafter ("Commencement Date"). In the event that the Commencement Date is other than the first day of the month the Lease Term shall be thirty-six (36) months plus the number of days remaining in the month that the Lease commences. Tenant shall pay Landlord in advance of occupancy the first month's rent as well as the prorated rent, if applicable, for the number of days in the month that the Commencement Date occurs if other than the first day of the month.
- 3. EARLY TERMINATION.** Tenant shall have the option to be released from its lease obligation by first giving Landlord a written NOTICE OF INTENTION TO VACATE THE PREMISES. Tenant shall provide Landlord with a minimum of one hundred twenty (120) days written notice prior to the effective date of the early lease termination date and shall reimburse Landlord for unamortized tenant improvements, if any, and the unamortized leasing commission paid by Landlord from the effective date of the early lease termination to the then applicable lease termination date.



4. RENT. The rent during the first twelve (12) months of the lease shall be Five Thousand Dollars (\$5,000) NNN and shall be paid to James G. Moulton at 1388 West Dickinson Ferry Road, Merced, CA 95341, or at any other location specified by Landlord in writing to Tenant.

5. COST OF LIVING ADJUSTMENT. The annual rent shall be adjusted upon the first day immediately following the expiration of 12 full calendar months from the Commencement Date and upon the expiration of each 12 months thereafter (including any lease renewal terms), in accordance with the changes in the State of California Consumer Price Index – All Urban Consumers (CPI). The monthly rent will be increased to an amount equal to the current monthly rent of \$5,000 multiplied by a fraction the numerator of which is the CPI for the month of February immediately preceding the adjustment date, and the denominator of which is the CPI for the month of February 2016; provided, however, that the annual rent adjustment increase shall not be less two percent (2%) per year or greater than five percent (5%) per year regardless of the actual change in the CPI.

6. OPTION TO RENEW. Provided that Tenant is not in default in the performance of this Lease, Tenant shall have an option to renew the Lease for three (3) consecutive one (1) year renewal terms commencing at the expiration of the initial lease term and, if applicable, the expiration of subsequent renewal terms. All of the terms and conditions of the Lease will apply during the renewal term, except that the rent will be increased to an amount equal to the rent for the period immediately prior to the commencement of the renewal term in question multiplied by a fraction the numerator of which is the Consumer Price Index ("CPI") for the State of California-All Urban Consumers for the month of February immediately preceding the adjustment date and the denominator of which is the CPI for the month of February 2016 provided however that the rent shall be adjusted upward by no less than two percent (2) and no more than five percent (5%) on each adjustment date. In order to exercise the lease renewal option Tenant must notify Landlord in writing no more than six months prior to, nor less than four months prior to, the expiration of the then current lease term of Tenant's intent to exercise the lease renewal option.

7. HOLDING OVER. If after expiration of the term, Tenant remains in possession of the premises, at the option of the Landlord, Tenant shall become a Tenant from month-to-month only, upon all provisions of this Lease (except as to term and base rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to an amount equal to one hundred and twenty percent



(120%) of the rent being paid for the month the Lease expires. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month-to-month tenancy, he shall give the other party not less than thirty (30) days advance written notice of the date of termination. Any option to renew, extend or purchase, or other options, do not survive the expiration of this Lease.

8. **LATE CHARGE; INTEREST; NSF CHECKS.** Tenant acknowledges that either late payment of rent or issuance of a NSF check may cause Landlord to incur costs or expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and Late Charge imposed on Landlord. If any installment of rent due from Tenant is not received by Landlord within ten (10) calendar days after due date, or if a check is returned NSF, Tenant shall pay to Landlord, respectively, TWO HUNDRED FIFTY DOLLARS (\$250) as late charge, plus 10% interest per annum on the delinquent amount and \$40 dollars as a NSF fee, any of which shall be deemed additional Rent. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any late charge, delinquent interest or NSF fee due shall be paid with the current installment of Rent. Landlord's acceptance of any late charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due or prevent Landlord from exercising any other rights and remedies under this agreement and as provided by law.

9. **ALTERATIONS, REPAIRS AND MAINTENANCE.** Tenant shall not make any alterations to, or changes to, the Premises without the prior written consent of Landlord. Tenant shall give fifteen (15) days prior written notice to Landlord before contracting for any work or repairs to the Premises that might subject the Premises to any mechanic's, materialmen's, or other lien, for the purpose of enabling Landlord to post notices of non-responsibility, and Tenant shall cause any such lien which secures any labor, services, materials or supplies alleged to have been furnished Tenant to be fully discharged and released at the time performance of the secured obligation matures or becomes due, except for furnishings, trade fixtures, signs and equipment. All alterations, improvements and changes to the Premises made by Tenant shall be the property of Tenant and may be removed upon termination at Tenant's option and the premises returned to its original condition at the time of possession reasonable wear and tear excepted.



Unless otherwise indicated upon the date of possession, Tenant acknowledges that the Premises are in good order and repair. Tenant shall at its own expense maintain the Premises in good and safe condition, including glazing, electrical wiring, and plumbing. Tenant shall be responsible for changing filters on the HVAC system as needed but no less than once every three (3) months and for having the HVAC system serviced annually. Tenant shall also be responsible for providing the Merced City Fire Department with required flow test reports. The costs incurred for normal routine maintenance of the HVAC system and fire sprinkler system, as well as any costs occasioned by Tenant's negligence and improper usage of the HVAC system and fire sprinkler system shall be borne by the Tenant. Any other costs associated with repairs to the HVAC system and fire sprinkler system shall be the responsibility of the Landlord.

The Premises shall be surrendered, at the termination of the Lease, in as good as condition as received, normal wear and tear excepted.

10. INSURANCE.

(a) Landlord Insurance. Landlord shall maintain hazard insurance (excluding flood and earthquake insurance) covering one hundred percent (100%) replacement cost of the improvements throughout the Lease Term. Tenant shall reimburse Landlord for the cost of said insurance. As of 2016, said insurance cost is One Thousand Five Hundred Fifty-One Dollars (\$1,551.00) a year.

(b) Tenant Insurance. Tenant shall at Tenant's expense (unless self-insured in which case Tenant shall provide Landlord with a certified letter so stating) maintain public liability insurance, including bodily injury and property damage, insuring Tenant and Landlord with a minimum coverage of one million dollars (\$1,000,000) combined single limits. If not self-insured, Tenant shall provide Landlord with a Certificate of Insurance showing Landlord as additional insured. The policy shall require ten (10) days written notice to Landlord prior to cancellation or material change of coverage.

11. TAXES. Landlord shall pay all property taxes when they become due. Tenant shall reimburse Landlord, within sixty (60) days of receipt of a copy of the tax bill, for one hundred percent (100%) of the real property taxes

attributable to the Property. For the 2015/2016 tax year, the property tax was Four Thousand One Hundred Forty Dollars (\$4,140.00) which shall be prorated based upon the Lease Commencement Date and paid with the first month's rent.

12. **DEFAULT.** The happening of any of the following events shall constitute a default of this Lease by Tenant:

(a) Tenant's interest, or any part of its interest, in this Lease is assigned or transferred, either voluntarily or by operation of law; or

(b) A voluntary or involuntary petition in bankruptcy, or for reorganization, or for an arrangement, is filed by or against Tenant, or any member of Tenant if Tenant is a partnership or joint venture, or Tenant is adjudicated bankrupt or insolvent, or a receiver is appointed of the business or of the assets of Tenant, or Tenant makes a general assignment or any assignment for the benefit of its creditors; or

(c) Tenant, after notice, fails to remedy any default in the payment of any sum due under this Lease within fifteen (15) days after such notice or in keeping of any term, covenant or condition of this Lease with all reasonable dispatch, in any event not exceeding thirty (30) days after such notice; or

(d) Tenant abandons or vacates the Premises.

13. **ATTORNEY'S FEES.** If any Party or Broker brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

14. **WAIVER.** No failure of Landlord to enforce any term of this Lease shall be deemed to be a waiver. No purported waiver of any provision

of this Lease shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

15. NOTICES. Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Tenant at 678 West 18 Street, Merced, California 95340, with a copy to City Attorney, City of Merced, 678 West 18th Street, Merced, California 95340 or to Landlord at James G. Moulton and Lynda S Moulton – 1388 West Dickinson Ferry Road, Merced, California 95340 or at such other place as may be designated by the parties from time to time. Notice shall be effective five (5) days after mailing, or immediately upon personal delivery.

16. ORDINANCES AND STATUTES. Tenant shall comply with all statutes, ordinances, and requirements of all municipal, state, and federal authorities now in force or which may later be in force.

17. LANDLORD'S WARRANTY OF TITLE. Landlord represents and warrants that:

(a) Landlord is the sole owner in fee simple of the Premises and has full right and power to grant the estate demised and to execute and perform this Lease; and

(b) The Premises will remain free and clear of all encumbrances that could adversely affect Tenant's leasehold estate.

18. QUIET ENJOYMENT. Landlord covenants and agrees that so long as Tenant observes and performs all the agreements and covenants required of it hereunder, Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the term of the Lease without any encumbrance or hindrance by Landlord.

19. TENANT'S OBLIGATIONS UPON VACATING PREMISES. Upon termination of agreement, Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate Premises and surrender it to Landlord empty of all persons and personal property; (iii) vacate all parking and storage spaces; (iv) deliver Premises to Landlord in the same condition as referenced in paragraph 11; (v) clean Premises; (vi) give written notice to Landlord of Tenant's forwarding address.



20. **DAMAGE.** Tenant shall be responsible for any damage to Landlord's Premises which may result from Tenant's activities conducted on the Premises.

21. **EXHIBITS.** The Exhibits attached hereto are incorporated herein by this reference as if set forth in full.

22. **MISCELLANEOUS PROVISIONS.**

(a) *Entire Agreement.* This Lease and exhibits hereto contain the complete, final, entire and exclusive expression of the agreement between the parties hereto, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Lease shall be null and void.

(b) *Section Headings.* The section headings contained in this Lease are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(c) *No Reliance on Other Parties.* All parties to this Lease declare that, prior to the execution of this Lease, they have informed themselves of sufficient relevant data, either through experts or other sources of their own selection in order that they might intelligently exercise their own judgment in evaluating the contents of this Lease and making the decision to execute it. The parties each represent and acknowledge that in executing this Lease, they do not rely and have not relied upon any representation or statement not set forth herein made by any other party to this Lease with regard to the subject matter, basis or effect of this Lease.

(d) *Construction.* The provisions of this Lease shall be liberally construed to effectuate its purpose. The language of this Lease shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Lease. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

(e) *Governing Law.* The validity and interpretation of this Lease shall be governed by the laws of the State of California without

giving effect to the principles of conflict of laws. Any action pursuant to this Lease shall be brought exclusively in state courts for Merced County.

(f) *Counterparts.* This Lease may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Lease is in the physical possession of the party seeking enforcement thereof.

(g) *Authority to Execute.* Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Lease on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

(h) *Estoppel Certificates.*

(1) Upon Landlord's written request, Tenant shall execute, acknowledge and deliver to Landlord a written statement certifying: (i) that none of the terms or provisions of this Lease have been changed (or if they have been changed, stating how they have been changed); (ii) that this Lease has not been cancelled or terminated; (iii) the last date of payment of the Base Rent and other charges and the time period covered by such payment; (iv) that Landlord is not in default under this Lease (or, if Landlord is claimed to be in default, stating why); and (v) such other representations or information with respect to Tenant or the Lease as Landlord may reasonably request or which any prospective purchaser or encumbrancer of the Property may require. Tenant shall deliver such statement to Landlord within ten (10) days after Landlord's request. Landlord may give any such statement by Tenant to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct.

(2) If Tenant does not deliver such statement to Landlord within such ten (10) -day period, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have

Exhibit A



JM

not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Base Rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be estopped from denying the truth of such facts.

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed on the date first above written.

TENANT
CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Ken R. 5/11/16
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

LANDLORD

BY: 
James G. Moulton

BY: 
Lynda S. Moulton

Taxpayer I.D. No. 553-17-2083

Business License No.: _____

ADDRESS: 1388 W. Dickinson Ferry Rd.
Merced, CA 95341

TELEPHONE: (209) 777-6400

FACSIMILE: (209) 384-2581

E-MAIL: Jim.CCMarine@sbcglobal.net