

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (“LEASE”) is made and entered into this 13th day of September 2016, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "LESSEE", and FRESNO-AIR LTD , a California Limited Partnership, whose address is 8050 N. Palm, Suite 300, Fresno, CA 93711, hereinafter referred to as "LESSOR".

1. **LEASED PREMISES** – LESSOR hereby leases to LESSEE office space of approximately 5,620 square feet and adjacent warehouse space of approximately 5,313 square feet, a total of 10,933 square feet, shown on Exhibit “B”, which is by this reference incorporated herein, together with common area parking at the location commonly known as \_\_\_\_\_ (hereinafter “Premises”). The parties agree that their respective duly authorized representatives shall initial their acknowledgement of their agreement to and receipt of Exhibit “B”, and that they shall each retain a duplicate original thereof separate and apart from this LEASE. LESSEE’s Director of Internal Services/Chief Information Officer (hereinafter “LESSEE’s Director”) is hereby authorized to give such acknowledgement on behalf of LESSEE.
2. **TERM** – The term of this LEASE shall be for five (5) years commencing July 1, 2016 through June 30, 2021.
3. **RENT** – LESSEE agrees to pay rent to LESSOR for the Premises on or about the first of each month according to the following schedule:

Date	Total Monthly Rent	Total Annual Rent
July 1, 2016	\$ 6,630.05	\$ 79,560.60
July 1, 2017	\$ 6,795.80	\$ 81,549.60
July 1, 2018	\$ 6,965.70	\$ 83,588.40
July 1, 2019	\$ 7,139.84	\$ 85,678.08
July 1, 2020	\$ 7,318.34	\$ 87,820.08

4. **UTILITIES** – LESSEE is responsible for water, sewer, garbage, electricity, natural gas and telephone services.

1       **5. USE** - LESSEE shall use the Premises as office and warehouse space by the Sheriff or for  
2       any other County of Fresno department, office, or agency. LESSEE agrees to comply with  
3       all applicable laws, ordinances and regulations in connection with such use.

4               LESSOR covenants that the Premises are suitable for the LESSEE's intended use.  
5       LESSOR further covenants that the Premises shall be in compliance with all applicable  
6       laws, ordinances and regulations, including but not limited to safety regulations, health and  
7       building codes.

8       **6. MAINTENANCE** – LESSOR shall, at its sole cost and expense, be responsible for all  
9       exterior and interior maintenance, including all maintenance and repair of air conditioning,  
10      heating units, plumbing systems, fire sprinkler systems, electrical systems, and roof, and all  
11      maintenance of landscape and parking and the common area parking. LESSOR is also  
12      responsible, at its sole cost and expense, for the structural condition of the building and  
13      agrees that the building will always be maintained in a condition acceptable for the  
14      LESSEE'S intended use of the Premises. This will include exterior and interior painting as  
15      needed due to normal wear and tear. LESSEE shall provide interior janitorial service and  
16      supplies.

17      **7. LESSOR IMPROVEMENTS** – LESSOR will be responsible, at its sole cost and expense,  
18      for improvements to include touch up painting throughout the office space and warehouse  
19      space as needed and as mutually agreed upon by the parties, professional cleaning of all  
20      carpets and replacing carpet in areas mutually determined by the parties to be beyond  
21      cleaning, installing a new water heater in the break room, and installing a 110v (dedicated  
22      30 amp) electrical outlet on the south wall of the warehouse at a location mutually agreed  
23      upon by the parties. LESSEE's Director is hereby authorized to act on behalf of LESSEE  
24      under this Section 7.

25      **8. TENANT IMPROVEMENTS** – LESSOR will provide LESSEE with written plans and  
26      specifications, a written work schedule, and a written quote from a qualified and licensed  
27      contractor, for the LESSOR's proposed build-out of new showers and washer and dryer  
28      connections ("Tenant Improvements"), all of which shall be subject to the review and

1 written approval by LESSEE through LESSEE's Director, provided however, in no event  
2 shall the amount payable by LESSEE to LESSOR as additional rent herein for such Tenant  
3 Improvements exceed \$30,000.00 ("Maximum Additional Rent").

4 LESSOR, at its sole cost and expense, shall provide all labor, material and  
5 equipment, and obtain all necessary approvals and permits from governmental agencies,  
6 and pay all applicable taxes, fees and charges (the "Construction Costs"), for the  
7 satisfactory completion of the foregoing tenant improvements in strict accordance with the  
8 plans and specifications, work schedule, and Construction Costs, all as approved by  
9 LESSEE herein. LESSOR and LESSEE shall mutually agree as to the hours when  
10 construction of the tenant improvements shall take place in order to avoid unnecessary  
11 inconvenience to LESSEE or its invitees.

12 As additional rent payable by LESSEE for the use of the Premises, as improved by  
13 such tenant improvements, during the term of this LEASE, LESSEE shall reimburse  
14 LESSOR for the actual Construction Costs, only in the amount approved by LESSEE  
15 herein up to the Maximum Additional Rent, for LESSOR's satisfactory completion of the  
16 tenant improvements herein, within forty-five (45) days from LESSEE's receipt of  
17 LESSOR's bi-weekly progressive invoices for same, provided however, such bi-weekly  
18 progressive invoices shall represent the reasonable approximate portion of such  
19 construction completed to date of the bi-weekly progressive invoices, and LESSEE shall be  
20 entitled to retain ten percent (10%) of the amount of each such bi-weekly progressive  
21 invoice, and pay such retained amounts upon the final satisfactory completion of such  
22 tenant improvements, and removal of all waste and debris from the work site.

23 **9. INDEPENDENT CONTRACTOR** – In performance of the work, duties and obligations  
24 assumed by LESSOR under this LEASE, it is mutually understood and agreed that  
25 LESSOR, including any and all of the LESSOR'S officers, agents, employees, contractors  
26 and subcontractors, will at all times be acting and performing as an independent contractor,  
27 and shall act in an independent capacity and not as an officer, agent, servant, employee,  
28 joint venture, partner, or associate of the LESSEE. Furthermore, LESSEE shall have no

1 right to control or supervise or direct the manner or method by which LESSOR shall  
2 perform its work and function. However, LESSEE shall retain the right to administer this  
3 LEASE so as to verify that LESSOR is performing its obligations in accordance with the  
4 terms and conditions thereof.

5 LESSOR and LESSEE shall comply with all applicable provisions of law and the  
6 rules and regulations, if any, of governmental authorities having jurisdiction over matters  
7 the subject thereof.

8 Because of its status as an independent contractor, LESSOR shall have absolutely  
9 no right to employment rights and benefits available to LESSEE'S employees. LESSOR  
10 shall be solely liable and responsible for providing to, or on behalf of, its employees all  
11 legally-required employee benefits. In addition, LESSOR shall be solely responsible and  
12 save LESSEE harmless from all matters relating to payment of LESSOR'S employees,  
13 including compliance with Social Security withholding and all other regulations governing  
14 such matters. It is acknowledged that during the term of this LEASE, LESSOR may be  
15 providing services to others unrelated to the LESSEE or to this LEASE.

16 **10. COMPLIANCE WITH ALL LAWS** – As to the Premises, LESSOR shall comply with, and  
17 ensure compliance by all contractor and subcontractors with, all applicable laws and  
18 regulations, including the payment of prevailing wages pursuant to Section 1770 et. seq. of  
19 the Labor Code.

20 **11. BREACH OF OBLIGATION** – In the event LESSOR breaches any of its obligations herein  
21 provided, LESSEE shall give written notice to LESSOR within fifteen (15) days of the  
22 discovery of such breach. LESSOR shall then have thirty (30) day from the date of notice to  
23 cure its breach, provided, however, that if the breach involves an item of maintenance that  
24 is of such a nature that it requires more than thirty (30) days to complete, then LESSOR  
25 shall have such additional time as is necessary to complete such maintenance as long as  
26 LESSOR commences work on such maintenance within said thirty (30) day period and  
27 diligently prosecutes such maintenance to completion. Subject to the foregoing, if the  
28 period for cure expires and if, in LESSEE'S reasonable determination, LESSOR has failed

1 to cure, then LESSEE may, at its election:

2 A. Terminate this LEASE upon thirty (30) days written notice to LESSOR. In such case,  
3 LESSEE shall have the right to demand LESSOR refund any monies which were paid  
4 to LESSOR pursuant to the LEASE but which were not earned by LESSOR by  
5 consequence of its breach. Upon receipt of such demand, LESSOR shall promptly  
6 refund all such monies; or

7 B. Cure LESSOR'S breach and deduct the cost of such cure, together with reasonable  
8 administrative cost, from LESSEE'S future rent obligation. LESSEE'S decision to cure  
9 LESSOR'S breach shall not constitute a waiver of any rights or remedies that LESSEE  
10 may have arising from this LEASE or by operation of law.

11 **12. DESTRUCTION OR DAMAGE FROM CASUALTY** – If the Premises are damaged or  
12 destroyed as a result of fire, earthquake, act of God, or any other identifiable event of a  
13 sudden, unexpected, or unusual nature (hereinafter "Casualty"), then LESSOR shall either  
14 promptly and diligently repair the damage at its own cost, or terminate this LEASE as  
15 hereinafter provided.

16 A. LESSOR'S Election to Repair: If LESSOR elects to repair the Casualty damage to the  
17 Premises, then it shall within thirty (30) days after the date of Casualty provide written  
18 notice (hereinafter "Notice of Repair") to LESSEE indicating the anticipated time  
19 required to repair. LESSOR shall bear the cost of all repairs to the Premises, including  
20 the cost to repair any alterations or fixtures installed or attached thereto by LESSEE.  
21 Such repairs shall restore the Premises to substantially the same condition as that  
22 existing at the time of Casualty; such repairs shall also be made in compliance with all  
23 applicable state and local building codes. LESSOR shall not be liable to LESSEE for  
24 compensation for any loss of business, or any inconvenience or annoyance arising from  
25 repair of the Premises as a result of the Casualty except for rent reduction as  
26 hereinafter provided. LESSEE shall be responsible at its sole cost and expense for the  
27 replacement of its personal property.

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1 B. LESSOR'S Election to Terminate Due to Casualty: LESSOR may only elect to  
2 terminate the LEASE due to Casualty if: the Premises have been destroyed or  
3 substantially destroyed by said Casualty; and the estimated time to repair the Premises  
4 exceeds ninety (90) days from the date of the Casualty. LESSOR shall provide  
5 LESSEE with written notice of its election to terminate within thirty (30) days after the  
6 date of Casualty, specifying a termination date not less than thirty (30) days from the  
7 date of said notice.

8 C. Rent Reduction Due to Casualty: In the event of Casualty, LESSEE'S obligation to pay  
9 the rent shall be reduced beginning on the date of the Casualty. Such reduction shall be  
10 proportional to the damage caused to the Premises by the Casualty as mutually  
11 determined by LESSEE and LESSOR. If LESSOR elects to repair the Premises  
12 pursuant to the terms of this LEASE, then the rent reduction shall continue until the date  
13 of substantial completion of repair.

14 D. LESSEE'S Election to Terminate Due to Casualty: If LESSEE does not receive a Notice  
15 of Repair from LESSOR within thirty (30) days after the date of Casualty, or if the  
16 anticipated period of repair contained in the Notice of Repair exceeds ninety (90) days  
17 from the date of Casualty, then LESSEE may elect to terminate this LEASE. LESSEE  
18 shall provide LESSOR with written notice of its election to terminate this Lease,  
19 specifying a termination date not less than thirty (30) days from the date of said notice.  
20 In such case, LESSEE shall have the right to demand that LESSOR refund any monies  
21 which were paid to LESSOR pursuant to the LEASE but which were not earned by  
22 LESSOR by consequence of the Casualty. Upon receipt of such demand, LESSOR  
23 shall promptly refund all such monies.

24 **13. HOLD HARMLESS** - LESSOR agrees to indemnify, save, hold harmless, and at  
25 LESSEE'S request, defend the LESSEE, its officers, agents, and employees from any and  
26 all costs and expenses (including attorney's fees and costs), damages, liabilities, claims,  
27 and losses occurring or resulting to LESSEE in connection with the performance, or failure  
28 to perform, by LESSOR, its officers, agents, or employees under this LEASE, or by

1 LESSOR's contractors or subcontractors in connection with this LEASE, and from any and  
2 all costs and expenses (including attorney's fees and costs), damages, liabilities, claims,  
3 and losses occurring or resulting to any person, firm, or corporation who may be injured or  
4 damaged by the performance, or failure to perform of LESSOR, its officers, agents, or  
5 employees under the LEASE, or by LESSOR's contractors or subcontractors in connection  
6 with this LEASE. This LEASE is made upon the expressed condition that the LESSEE is to  
7 be free of all liability, damages or injury arising from structural failures of the Premises  
8 including external walls, doors, roof and floor, unless caused by the negligence or willful  
9 misconduct of LESSEE, its officers, agents or employees.

10 LESSEE agrees to indemnify, save, hold harmless, and at LESSOR'S request,  
11 defend the LESSOR, its officers, agents, and employees from any and all costs and  
12 expenses (including attorney's fees and costs), damages, liabilities, claims, and losses  
13 occurring or resulting to LESSOR in connection with the performance, or failure to perform,  
14 by LESSEE, its officers, agents, or employees under this LEASE, and from any and all  
15 costs and expenses (including attorney's fees and costs), damages, liabilities, claims, and  
16 losses occurring or resulting to any person, firm, or corporation who may be injured or  
17 damaged by the performance, or failure to perform of LESSEE, its officers, agents, or  
18 employees under the LEASE.

19 The parties acknowledge that as between LESSOR and LESSEE, each is  
20 responsible for the negligence of its own employees and invitees, and that LESSOR is  
21 responsible for its contractors and subcontractors.

22 **14. INSURANCE** - LESSOR shall, at its sole cost and expense, maintain in full force and  
23 effect during the term of this LEASE the following policies of insurance:

- 24 A. Commercial General Liability insurance with limits of not less than One Million Dollars  
25 (\$1,000,000) per occurrence and an annual aggregate limit of not less than Two Million  
26 Dollars (\$2,000,000). This policy shall be issued on an occurrence basis; and  
27 B. Fire insurance and extended coverage.  
28 C. Automobile Liability-Comprehensive Automobile Liability Insurance with limits for bodily

1 injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person,  
2 Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages  
3 of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined  
4 single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage shall include  
5 owned and non-owned vehicles used in connection with this LEASE.

6 D. Worker's Compensation-A policy of Worker's Compensation insurance as may be  
7 required by the California Labor Code.

8 Within thirty (30) days of the execution of this LEASE, the LESSOR shall provide  
9 LESSEE with certificates of insurance with proper endorsements. LESSOR shall mail the  
10 certificates of insurance to: County of Fresno, Attn: Lease Services (L-286), Internal  
11 Services, 333 Pontiac Way, Clovis, CA 93619. The policy is to be written by an admitted  
12 insurer licensed to do business in California and with an AM Best rating of A FSC VII or  
13 better.

14 LESSEE shall maintain during the term of this LEASE the following policies of  
15 insurance, which coverages may be provided in whole or in part through one or more  
16 programs of self-insurance:

17 A. Commercial General Liability insurance with limits of not less than One Million  
18 Dollars (\$1,000,000) per occurrence and an annual aggregate of not less than Two  
19 Million Dollars (\$2,000,000). This policy shall be issued on an occurrence basis.

20 B. All-Risk property insurance covering the personal property of LESSEE.

21 **15. NON-FUNDING TERMINATION** – This LEASE is contingent on the allocation of funds by  
22 a governmental agency. Should funds not be allocated, this LEASE may be terminated by  
23 the Board of Supervisors by giving at least thirty (30) days prior written notice to LESSOR.  
24 Should LESSEE terminate this LEASE pursuant to this Section 15, LESSEE shall pay to  
25 LESSOR any unpaid rent due LESSOR within forty-five (45) days after the LEASE  
26 termination date.

27 **16. SURRENDER OF POSSESSION** - Upon the expiration or termination of this LEASE,  
28 LESSEE will surrender Premises to LESSOR in such condition as existing at the



1 commencement of this LEASE, less reasonable wear and tear, less the effects of any  
2 Casualty as herein defined, and less the effects of any breach of LESSOR'S covenants to  
3 maintain or repair the Premises, or cause the Premises to comply with laws, herein.  
4 LESSEE will not be responsible for any damage which LESSEE was not obligated  
5 hereunder to repair.

6 **17. FIXTURES** – LESSOR agrees that any equipment, fixtures or apparatus installed in or on  
7 the Premises by LESSEE shall continue to be the property of LESSEE and may be  
8 removed by LESSEE at any time. LESSEE shall pay for the repair of any damage caused  
9 by the removal of fixtures. Any fixtures not removed when LESSEE surrenders possession  
10 shall become the property of LESSOR.

11 **18. RIGHT OF ENTRY** – LESSOR, or its representative(s), upon twenty-four (24) hour notice,  
12 shall have the right to enter the Premises at any time during business hours, or at such  
13 other time as LESSEE deems appropriate, to make any alterations, repairs or  
14 improvements to the Premises. The normal business of LESSEE or its invitees shall not be  
15 unnecessarily inconvenienced.

16 **19. AMENDMENT** - This LEASE may be amended in writing by the mutual consent of the  
17 parties without in any way affecting the remainder.

18 **20. NON-ASSIGNMENT** - LESSEE shall not assign or transfer its rights or obligations under  
19 this LEASE, or sub-lease said Premises or any portion thereof, without the prior written  
20 consent of the LESSOR.

21 **21. GOVERNING LAW** – Venue for any action arising out of or relating to this LEASE shall be  
22 in Fresno County, California. This LEASE shall be governed by the laws of the State of  
23 California.

24 **22. NOTICES** - All notices to be given under this LEASE by either Party to the other Party  
25 shall be in writing, and given by any one of the following methods:

26 A. Personal delivery;

27 B. Sent by certified United States mail, first class postage prepaid, with return receipt

28 requested, to the applicable addresses as set forth below, in which case such notice

1 shall be deemed given three (3) business days of the recipient party after such deposit  
2 and postmark with the United States Postal Service;

3 C. Sent by a reputable overnight commercial courier, in which case such notice shall be  
4 deemed given one (1) business day of the recipient party after such deposit with that  
5 courier to the applicable addresses as set forth below; or

6 D. Sent by facsimile to the applicable telephone number set forth below, provided that the  
7 Party sending such notice retains a legible written copy of documents transmitted and a  
8 legible, accurate, written confirmation of the time and date that such facsimile was  
9 transmitted (it being agreed that the burden of proving timely receipt will be on the Party  
10 sending such notice, and that if such sending Party's confirming document contains an  
11 inaccurate time or date, it shall be deemed to have been received by the other Party at  
12 9:00a.m. on the next succeeding business day of the recipient Party after transmission),  
13 and provided further that if such transmission is otherwise completed in compliance with  
14 this Section 22 after 5:00 p.m. on any day, it shall not be deemed given until the next  
15 succeeding business day of the recipient party. The addresses and telephone numbers  
16 of the Parties for purposes of giving receiving notices under this LEASE are as follows:

17 LESSEE:

18 The County of Fresno  
19 Director of Internal Services/  
20 Chief Information Officer  
333 Pontiac Way  
Clovis, CA 93612

LESSOR:

Fresno-Air Ltd  
C/O Managing Member of  
High Sierra Development, LLC  
8050 N. Palm, Suite 300  
Fresno, CA 93711

21 Provided however, such notices may be given to such person or at such other place as  
22 either of the Parties may from time to time designate by giving written notice to the other  
23 Party, and provided further however, in any event notices of changes of address, facsimile  
24 numbers, or termination of this LEASE shall not be effective until actual delivery of such  
25 notice. Notices given hereunder shall not be amendments or modifications to this LEASE.

26 **23. ENTIRE AGREEMENT** - This LEASE is the entire agreement between the LESSOR and  
27 LESSEE with respect to the subject matter of this LEASE, and it supersedes all previous  
28

1 negotiations, proposals, commitments, writings, advertisements, publications, and  
2 understandings of any nature unless those things are expressly included in this LEASE.

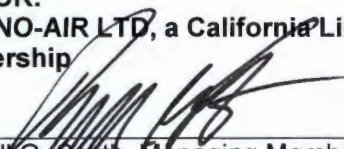
3 **24. DISCLOSURE OF SELF DEALING TRANSACTIONS** - This provision is only applicable if  
4 the LESSOR is operating as a corporation (a for-profit or non-profit corporation) or if during  
5 the term of this LEASE, the LESSOR changes its status to operate as a corporation.

6 Members of LESSOR'S Board of Directors shall disclose any self-dealing  
7 transactions that they are a party to while LESSOR is providing goods or performing  
8 services under this LEASE. A self-dealing transaction shall mean a transaction to which the  
9 LESSOR is a party and in which one or more of its directors has a material financial  
10 interest. Members of the Board of Directors shall disclose any self-dealing transactions that  
11 they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form  
12 Exhibit "A", attached hereto and by this reference incorporated herein, and submitting it to  
13 the County of Fresno prior to commencing with the self-dealing transaction or immediately  
14 thereafter.

15 [NEXT PAGE IS SIGNATURE PAGE]  
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1 IN WITNESS WHEREOF, the parties hereto have executed this LEASE as of the day and  
2 year first hereinabove written.

3 LESSOR:  
4 FRESNO-AIR LTD, a California Limited  
5 Partnership

6   
Russel G. Smith, Managing Member of High Sierra  
Development, LLC, General Partner

7 DATE: 8-16-2016

LESSEE:  
COUNTY OF FRESNO

8   
Ernest Buddy Mendes, Chairman  
Board of Supervisors

9 DATE: September 13, 2016

10 ATTEST: BERNICE E. SEIDEL, CLERK  
BOARD OF SUPERVISORS

11 By: Susan Bishop  
Deputy

12 APPROVED AS TO LEGAL FORM:  
DANIEL C. CEDERBORG, COUNTY COUNSEL

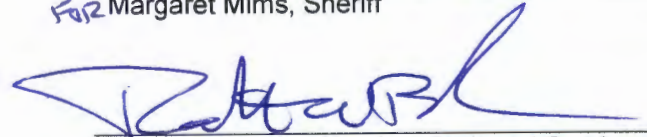
13 By: Juan I. [Signature]  
Deputy

14 APPROVED AS TO ACCOUNTING FORM:  
VICKI CROW, C.P.A.  
AUDITOR-CONTROLLER/TREASURER-TAX  
COLLECTOR

15 By: Alan E. [Signature]  
Deputy

16 REVIEWED & RECOMMENDED FOR APPROVAL

17 S. Wilkins  
18 For Margaret Mims, Sheriff

19   
20 Robert W. Bash, Director of Internal Services/Chief  
21 Information Officer

22 FOR ACCOUNTING USE ONLY:

23  
24 ORG No.: 3110  
25 Account No.: 7340  
26 Fund: 0001  
27 Subclass: 10000  
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1 **Exhibit "A"**

2 **SELF-DEALING TRANSACTION DISCLOSURE FORM**

3 In order to conduct business with the County of Fresno (hereinafter referred to as "County"), members  
4 of a contractor's board of directors (hereinafter referred to as "County Contractor"), must disclose any  
5 self-dealing transactions that they are a party to while providing goods, performing services, or both for  
6 the County. A self-dealing transaction is defined below:

7 *"A self-dealing transaction means a transaction to which the corporation is a party and in which one or  
8 more of its directors has a material financial interest"*

9 The definition above will be utilized for purposes of completing this disclosure form.

10 **INSTRUCTIONS**

11 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

12 (2) Enter the board member's company/agency name and address.

13 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the  
14 County. At a minimum, include a description of the following:

15 a. The name of the agency/company with which the corporation has the transaction; and

16 b. The nature of the material financial interest in the Corporation's transaction that the  
17 board member has.

18 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable  
19 provisions of the Corporations Code.

20 (5) Form must be signed by the board member that is involved in the self-dealing transaction  
21 described in Sections (3) and (4).

22 **Mail the completed form to:**

County of Fresno

Attn: Lease Services (L-286)

Internal Services Division

333 Pontiac Way

Clovis, CA 93612

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**(1) Company Board Member Information:**

<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			

**(2) Company/Agency Name and Address:**

**(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):**

**(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):**

**Authorized Signature**

<b>Signature:</b>		<b>Date:</b>	
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**Exhibit "B"**

**(On file with each of the Parties)**

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