

RESOLUTION NO. 2017-43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING THE SECOND AMENDMENT TO THE LEASE BETWEEN THE CITY AND LIGHT AND MOTION INDUSTRIES, FOR BUILDING 535 AT THE MARINA MUNICIPAL AIRPORT AND A MEMORANDUM OF AMENDMENT OF LEASE AND ESTOPPEL CERTIFICATE, SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING CITY MANAGER TO EXECUTE THE SECOND AMENDMENT AND MEMORANDUM OF AMENDMENT OF LEASE AND ESTOPPEL CERTIFICATE

WHEREAS, on March 25, 2013, the City and Light & Motion Industries (“Light & Motion”) entered into a Lease to provide for Light & Motion to remodel and construct improvements necessary for its occupancy and use of Building 535, located at 711 Neeson Road at the Marina Municipal Airport (the “Lease”), as a site for Light & Motions’ commercial manufacturing, assembling and distribution activities; and

WHEREAS, on November 5, 2013, the Lease was amended by the First Amendment to Lease to confirm certain matters regarding the course of construction of improvements to the premises; and

WHEREAS, Light & Motion has proposed that the parties now enter into a Second Amendment of the Lease (attached hereto as **Exhibit 1**) whereby the City would permit Light & Motion to pledge the leasehold estate, but not the City’s fee interest, as security for a loan or loans under a leasehold deed of trust, mortgage, personal property security agreement or other security instrument including, but not necessarily limited to, for a Small Business Administration (“SBA”) loan under the SBA’s Certified Development Company (“CDC”) 504 Loan Program (the “SBA/504 Loan”) which would be subject to all the terms and conditions of the Lease, as amended, including those related to the City’s continued eligibility for Federal Aviation Administration grant funding; and

WHEREAS, as required by the SBA 504 Loan, the City and Light & Motion are required to execute and record a Memorandum of Amendment of Lease and Estoppel Certificate (attached hereto as **Exhibit 2**).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve the Second Amendment to Lease between the City of Marina and Light & Motion Industries (the “Second Amendment”) and the Memorandum of Amendment of Lease and Estoppel Certificate, substantially in the form attached hereto, subject to final review and approval by the City Attorney.
2. Authorize the City Manager to execute the Second Amendment and the Memorandum of Amendment of Lease and Estoppel Certificate on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 2nd day of May 2017, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Morton, O’Connell, Brown, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

SECOND AMENDMENT TO LEASE
BETWEEN
THE CITY OF MARINA
AND
LIGHT & MOTION INDUSTRIES

This Second Amendment to Lease (the "Second Amendment") is entered into as of the _____ day of _____, 2017, by and between The City of Marina, a California municipal corporation ("Landlord") and Light & Motion Industries, a California corporation ("Tenant").

RECITALS

- A. Landlord and Tenant entered into a Lease as of March 25, 2013, as amended by that certain First Amendment to Lease dated November 5, 2013 (collectively referred to as "Lease") for certain real property commonly known as 711 Neeson Road, Marina, California, and as more particularly described in the Lease (the "Premises"). Capitalized terms used herein shall have the meanings set forth in the Lease, unless otherwise defined herein.
- B. Tenant is obtaining financing, which financing will be secured by the Lease and the underlying "Leasehold Estate".
- C. Tenant seeks to amend the Lease to allow for the pledging of the Leasehold Estate and the Lease, and Landlord is consenting to the pledging of the Lease and the Leasehold Estate as security for such loan.
- D. The definitions and provisions set forth in the Lease shall apply to this Second Amendment.

TERMS AND CONDITIONS

1. **Limited Amendment.** Except as specifically modified hereby, the Lease shall remain in full force and effect and shall be unimpaired. In the event of conflict between the terms of this Second Amendment and the terms of the Lease, the Second Amendment shall control.
2. **Use.** The first sentence of Section 2.01 of the Lease is amended and restated in its entirety to read as follows: "The Lease is made for the purpose of allowing Tenant's use of the Premises and for granting Tenant certain rights and privileges to occupy the Premises and to use the area designated for parking. Tenant shall be permitted to use the Leased Premises for manufacturing or other light industrial use(s), office space, storage, and other uses incidental to the aforementioned uses."
3. **Tenant's Right to Encumber Leasehold.** Tenant may, at any time during the Term of this Lease, encumber in favor of any deed of trust beneficiary or mortgagee (collectively "**Lienholder**") by deed of trust, mortgage, personal property security agreement or other security instrument (hereinafter collectively referred to as a "**Deed of Trust**") all of Tenant's right, title and interest under this Lease and the Leasehold Estate hereby created in Tenant; provided, however, (i) that no Deed of Trust incurred by Tenant pursuant to this section shall, and Tenant

shall not have power to incur any encumbrance that will, constitute in any way a lien or encumbrance on Landlord's fee interest in the Premises or any interest of Landlord in the Premises; (ii) the Deed of Trust and all rights acquired under it shall be subject to each and all of the terms, covenants, conditions and restrictions stated in this Lease and to all of the rights and interests of Landlord, except as otherwise provided in this Lease; and (iii) Tenant shall give Landlord prior notice of any such Deed of Trust and shall accompany such notice with a copy of the note and the Deed of Trust.

It is acknowledged and Landlord hereby gives its consent to the encumbrance and pledging of the Lease and the Leasehold Estate to the CDC Small Business Finance Corp., which entity assigns its rights to the United States Small Business Administration. This loan, which is an SBA 504 loan, will be junior and subordinate to one or more senior encumbrances, as is required pursuant to the SBA 504 loan program.

4. **Notice to and Service on Lienholder.** Landlord shall mail to Lienholder, a duplicate copy of any and all notices Landlord may from time to time give to or serve on Tenant pursuant to or relating to this Lease (including but not limited to notices of default, notice of rent increases, notice of operating cost pass-throughs, etc.). Tenant shall at all times keep Landlord informed in writing of the name and mailing address of Lienholder and any changes in Lienholder's mailing address. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to Lienholder by Landlord shall be given in the manner prescribed in the Lease addressed to Lienholder at the last mailing address for Lienholder furnished in writing to Landlord by Tenant or Lienholder.

5. **No Modification Without Lienholder's Consent.** Tenant and Landlord hereby expressly stipulate and agree that, without the prior written consent of all Lienholders, they will not (1) modify the Lease, as amended, in any way, and (2) cancel, terminate or avoid this Lease, except as provided under the Lease.

6. **Amendments.** Landlord shall make certain modifications to the Lease that will reasonably accommodate the Lienholder so long as the amendments do not materially change the Landlord's rights or remedies or jeopardize the economics of the transaction or Landlord's eligibility for FAA grant funding. Specifically and without limitation, no such amendment shall modify or amend (i) the monthly rent and additional rent payable under the Lease, which were determined to produce income equal to the Premises' fair market value when the Lease was entered into, or (ii) the provisions of Article 6 and Article 7 of the Lease.

7. **Right of Lienholder to Cure Defaults.** Before Landlord may terminate the Lease because of any default under or breach of this Lease by Tenant, Landlord must give written notice of the default or breach to Lienholder and afford Lienholder the opportunity after service of the notice to:

- a. **Monetary Default.** Cure the breach or default within 60 days of Lienholder's receipt of notice of default where the default can be cured by the payment of money to Landlord or some other person;
- b. **Nonmonetary Default.** Cure the breach within sixty (60) days of Lienholder's receipt

of notice of default where the breach or default must be cured by something other than the payment of money and can be cured within that time; or if the breach of default cannot be cured within sixty (60) days, commence to cure the breach or default within the time period after service of notice of default on Lienholder by Landlord and thereafter diligently pursue same to completion. Lienholder shall have the right to enter upon the property for that purpose.

8. **Rights of Lienholder.** A Lienholder shall have the right at any time during the term of the Lease and the existence of such encumbrance to:

- a. **Substitute Performance by Lienholder.** Do any act or thing required of Tenant under the Lease, and any such act or thing done and performed by Lienholder shall be as effective to prevent a forfeiture of Tenant's rights under the Lease as if done by Tenant.
- b. **Foreclosure of Deed of Trust.** Realize on the security afforded by the Leasehold Estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the Deed of Trust and to:
 - i. Transfer, convey or assign the title of Tenant to the Leasehold Estate created by the Lease to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Deed of Trust; and
 - ii. Acquire and succeed to the interest of Tenant under the Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to a court order or pursuant to a power of sale contained in the Deed of Trust.

9. **Foreclosure in Lieu of Curing Default.** Notwithstanding any other provision of the Lease, a Lienholder may forestall termination of this Lease by Landlord for a monetary or nonmonetary default or breach of the Lease by Tenant by commencing proceedings to foreclose its Deed of Trust. The proceedings so commenced may be for foreclosure of the Deed of Trust by order of court or for foreclosure of the encumbrance under a power of sale contained in the Deed of Trust. The proceedings shall not, however, forestall termination of the Lease by Landlord for the default or breach by Tenant unless:

- a. **Initiation.** They are commenced within the time provided for cure of a default by Lienholder under the Lease; and
- b. **Diligent Prosecution.** They are, after having been commenced, diligently pursued in the manner required by law to completion.

10. **Assignment and Sublease.** Lienholder and Lienholder's successors shall, upon becoming owner of the Leasehold Estate, have the right to assign and sublease the subject Leasehold Estate with the consent of Landlord, which consent shall not be unreasonably withheld.

11. **Assignment on Foreclosure.** Provided that (1) the Lienholder gives written notice of transfer to Landlord setting forth the name and address of the transferee as well as the effective date of the transfer, and (2) the transferee assumes the obligations of this Lease (including the

provisions pertaining to payment of rent and permitted uses), the written consent of Landlord shall not be required for a transfer of Tenant's interest under the Lease to:

- a. A purchaser at a foreclosure sale of the encumbrance whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale in the Deed of Trust.
- b. If (1) a Lienholder acquires Tenant's interest under this Lease at a foreclosure sale or by an assignment under this Lease in lieu of foreclosure, and (2) such Lienholder desires to assign Tenant's interest under the Lease to a third party assignee, then the following shall apply:
 - i. Except as provided in the immediately succeeding paragraph, the proposed assignment to the third party assignee shall be subject to the terms and conditions of the Lease.
 - ii. Notwithstanding the provisions of the Lease to the contrary, such Lienholder shall be obligated to perform Tenant's obligations under the Lease only during the time commencing on the date such Lienholder acquires Tenant's interest under this Lease until the date such Lienholder assigns Tenant's interest under the Lease to a third party assignee (i.e., which Lienholder shall be relieved of all obligations under this Lease which accrue after the date of such assignment).

12. **New Lease to Lienholder.** Notwithstanding any other provision of this Lease to the contrary, if the Lease terminates because of the insolvency or bankruptcy of Tenant or because of any event of default by Tenant, Landlord will execute a new lease for the Premises to the Lienholder under a Deed of Trust incurred by Tenant, provided:

- a. **Written Request.** A written request for the new lease is served on Landlord by Lienholder within ninety (90) days after the effective date of termination of this Lease;
- b. **Same Terms.** The new lease (1) is for a term ending on the same date the Term of the Lease would have ended had not this Lease been terminated, (2) provides for the payment of rent at the same rate that would have been payable under the Lease during the remaining Term of the Lease had the Lease not been terminated, and (3) contains the same terms, covenants, conditions and provisions as are contained in the Lease, including, without limitation, the provisions set forth in Article 6 and Article 7 of the Lease; and
- c. **Cure Existing Defaults.** Lienholder, on execution of the new lease by Landlord, shall pay any and all sums that would at the time of the execution of the new lease be due under this Lease but for its termination and shall otherwise fully remedy or agree in writing to remedy any other defaults or breaches of this Lease committed by Tenant that can be remedied;

13. **Title to Improvements.** Landlord and Tenant agree that title to the Reimbursable Building Improvements shall immediately vest in Landlord in the event Lienholder forecloses on the Lease

as provided in Section 9 above, subsequent to which Lienholder may assign or sublet all interest in the Lease as provided in Section 11 above. Notwithstanding title to any Improvements remaining vested in Tenant, Tenant shall not be permitted to remove any Improvements excepting fixtures, equipment, and furnishings that can be removed without materially damaging the Premises. *[This section still pending review and approval by CDC.]*

14. **Lienholder as Assignee of Lease.** No Lienholder shall be liable to Landlord as an assignee of this Lease unless and until such time as Lienholder acquires all rights of Tenant under this Lease through foreclosure or other proceedings in the nature of foreclosure or as a result of some other action or remedy provided by law or the instrument creating the encumbrance.

15. **Non-Liability of Lienholder for Hazardous Waste Contamination.** Lienholder shall have no liability for any costs arising out of hazardous waste contamination in or about the Premises which arose or began to arise prior in time to the date on which Lienholder comes into possession of the Premises or becomes the owner of the Leasehold Estate. Notwithstanding any indemnification obligation of the Tenant under the Lease, Lienholder shall have no such indemnity obligation for hazardous waste contamination, as defined in its broadest sense, which arose or began to arise prior in time to possession of the Premises by Lienholder and/or before Lienholder becomes the owner of the Leasehold Estate.

16. **Insurance Policy Provisions.** Lienholder shall be named as an additional insured under all insurance coverages of Tenant, as may be required pursuant to the Deed of Trust and related documents. Any of Tenant's insurance policies on the Leasehold Estate and/or any improvements thereon are cancelable only upon prior written notice to the Lienholder. In case of a loss, and if Tenant rebuilds or repairs the Premises or any portion thereof, all in accordance with the Lease, then the proceeds of any such insurance shall be used for such rebuilding and/or repairing. If Tenant elects to terminate the Lease in lieu of making repairs to and/or rebuilding of the Premises as permitted by terms of Article 11 of the Lease after receipt of any insurance policy proceeds, then the proceeds of insurance as pertain to Tenant's trade fixtures, equipment and other personal property shall be paid to the Lienholder up to such amount as is required to satisfy Tenant's obligation to Lienholder under Lienholder's loan, and used toward the payment of the obligation (i.e., the Deed of Trust) in favor of Lienholder. Lienholder, as a successor-in-interest to Tenant, shall not be obligated to rebuild improvements in the event the insurance proceeds are insufficient notwithstanding the provisions of Section 11.02.

17. **Condemnation.** In the event of any taking or condemnation of all or any part of Leasehold Estate, all such compensation and/or damages awarded and/or received therefore shall belong to Tenant; provided, all such compensation and proceeds shall first be applied to repay the Lienholder's loan and other Trust Deeds given by Tenant secured by the Leasehold Estate and with a lien position senior to Lienholder's Loan.

18. **Attornment and Non-Disturbance.** Upon acquisition of the Lease by Lienholder, Lienholder shall attorn to Landlord as Landlord under the Lease, which attornment shall be effective and self-operative without the execution of any other instrument on the part of any party hereto, immediately upon Lienholder's succeeding to the interest of Tenant under the Ground Lease. In the event that a Lender or successor of Landlord takes title to the Real Property, either

as a result of foreclosure of the mortgage or accepting a deed to the Real Property in lieu of foreclosure, sale or otherwise, or the Real Property shall be purchased at such a foreclosure by a third party, and Landlords' successor or such other third party shall furnish Tenant reasonably satisfactory evidence that it has acquired title to the Real Property, Tenant shall attorn to such third party and recognize Lienholder as required under the Lease. Such successor to Landlord shall attorn to the Lease and shall not disturb the tenancy of Tenant or the Deed of Trust, so long as there is no default under the Lease and then, only in accordance with the Lease as amended by the First Amendment and this Second Amendment.

19. **No Merger of Leasehold and Fee Estates.** Should Tenant incur a Deed of Trust, then there shall thereafter, during the existence of the Deed of Trust, be no merger without the consent of the Lienholder of the Leasehold Estate created by the Lease and the fee estate in the Premises merely because both estates have been acquired or become vested in the same person or entity.

20. **Lienholder as Including Subsequent Security Holders.** The term "Lienholder" shall mean and refer to the persons and/or entities that are named in any Deed of Trust as well as all subsequent assignees and holders of the security interest created by such Deed(s) of Trust. Landlord agrees that by acceptance of the Deed(s) of Trust or other encumbrance of the Lease, Lienholder has not become liable under the terms of the Lease. Tenant and Landlord agree that Lienholder shall be so liable only if Lienholder acquires ownership of the Leasehold Estate, and then only for such period of time as Lienholder holds such leasehold interest. Landlord further agrees that Lienholder's liability shall be limited to Lienholder's interest in the Premises, notwithstanding any assumption of the Lease or entering into a new lease by Lienholder.

21. **Estoppel Certificates by Landlord.** Landlord hereby agrees to provide, from time to time for a Lienholder, an estoppel certificate in a commercially reasonable form.

22. **Authority.** Tenant and Landlord have the authority to enter into this Second Amendment and have received all consents required to give effect to this Amendment.

[Signatures Continued on Next Page]

LANDLORD:

THE CITY OF MARINA,
A California municipal corporation

By: _____
Layne Long, City Manager

Attest: Pursuant to Resolution _____

By: _____
Anita Long, City Clerk

TENANT:

LIGHT & MOTION INDUSTRIES,
A California Corporation

By: _____
Daniel Emerson, President &
Secretary

Recording Requested By
And When Recorded Mail To:

U.S. Small Business Administration
c/o CDC Small Business Finance Corp.
2448 Historic Decatur Road, Ste. 200
San Diego, CA 92106

Loan No.:

APN: 031-112-025

Documentary Transfer Tax: \$0.00
Less than 35 years

MEMORANDUM OF AMENDMENT OF LEASE AND ESTOPPEL CERTIFICATE

The undersigned certify and agree as set forth in this Memorandum of Amendment of Lease and Estoppel Certificate for reliance by the CDC Small Business Finance Corporation and the U.S. Small Business Administration (sometimes collectively referred to as “Lender”):

1. Tenant has accepted possession and is in occupancy of the Premises located at 711 Neeson Road in the City of Marina, County of Monterey, as more particularly described in Exhibit A attached hereto and in that certain Lease dated March 25, 2013, between the City of Marina, as Landlord, and Light & Motion Industries, as Tenant, as amended by that certain First Amendment to Lease dated November 5, 2013, and that certain Second Amendment to Lease dated ___, 2017 (collectively, the “Lease”), which Lease is in full force and effect. Tenant’s interest in the Premises under the Lease is referred to herein as the “Leasehold Interest.”
2. This Memorandum of Amendment modifies that certain Memorandum of Lease dated March 25, 2013, recorded on March 28, 2013 in the Official Records of the County of Monterey, State of California, as Document No. 2013019529.
3. Landlord has fulfilled all of its obligations of an inducement nature under the Lease, excepting Landlord’s continuing obligation to provide the rent credit for the Tenant Allowance as set forth in Section 4.03 of the Lease.
4. As of the date of this Memorandum, there are no offsets or credits against rentals, there are no claims or defenses to enforcement of the Lease, and that rentals have not been prepaid except as provided by the Lease terms, excepting the rent credit for the Tenant Allowance as set forth in Section 4.03 of the Lease.
5. Landlord has no notice of a prior assignment, sublease, hypothecation or pledge of any interest in the Lease, except:

- a. The Deed of Trust in favor of _____ (*First Trust Deed Lender*) in the original principal amount of \$_____.00;
- b. The Deed of Trust in favor of _____ (*Interim Trust Deed Lender*) in the original principal amount of \$_____.00.
6. Tenant certifies that Tenant has made no prior assignment, sublease, hypothecation or pledge of any interest in the Lease, except as identified above.
7. That the Lease is for a term of 20 years with two consecutive five (5) year options to renew. The initial term began on February 1, 2014 (the "Lease Commencement Date").
8. The base monthly rental effective as of the Lease Commencement Date was \$10,847.60. A security deposit of \$12,000.00 has been deposited by Tenant with Landlord.
9. None of the following events has occurred: (a) the filing by or against the undersigned of (i) a petition in bankruptcy or to declare insolvency or (ii) an action for the appointment of a receiver or trustee; or (b) the making of an assignment for the benefit of creditors; or (c) the reorganization of the undersigned.
10. Neither Landlord nor Tenant are in default under the Lease, and the Lease is hereby ratified and confirmed and has not been amended or modified prior to the execution hereof except as reflected above.
11. The entity, person and/or officer executing this certification is empowered by action, resolution or at law to execute the same, and this certificate shall be binding on the undersigned, its successors and assigns.
12. Landlord has no knowledge of any processing, use, storage, disposal or treatment of any hazardous or toxic materials or substances on the Premises, except as otherwise reflected in Section 8.01 and 8.02 of the Lease.
13. All consents, if any, required to enter into and/or make effective the Lease and this Estoppel Certificate have been obtained or waived.
14. Landlord and Tenant consent to the encumbrance by deed of trust of the Leasehold Interest by Tenant in favor of CDC Small Business Finance Corp., including all rights thereunder, which interest will be assigned to the U.S. Small Business Administration to secure an obligation in the original principal amount of \$_____.00; it is anticipated that this encumbrance will be subordinate to encumbrance(s) identified hereinabove.
15. The Lease shall not be modified, amended and/or terminated without the consent of Lender, which consent Lender will not unreasonably withhold.

This Memorandum of Amendment of Lease and Estoppel Certificate may be relied upon by CDC Small Business Finance Corp., and its successors, assigns and/or transferees, including without limitation the U.S. Small Business Administration. Landlord and Tenant agree that the Lease shall remain in full force and effect and shall bind and inure to the benefit of Tenant and its successors and assigns in interest as if no purchase and/or assignment or transfer had occurred.

Executed this _____ day of _____, 2017.

LANDLORD:

The City of Marina

By: _____
Layne Long, City Manager

TENANT:

Light & Motion Industries

By: _____
Daniel T. Emerson, President
& Secretary

DRAFT

EXHIBIT A

LEGAL DESCRIPTION

The real property situate in the City of Marina, County of Monterey, State of California, described as Parcel 31, as shown on the Official Map showing the creation of Marina Municipal Airport Parcels recorded on June 17, 1996, in Volume 19 of Cities and Towns, at Page 22.

APN: 031-112-025

DRAFT

April 20, 2017

Item No. **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of May 2, 2017

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2017-,
APPROVING A SECOND AMENDMENT TO THE LEASE BETWEEN THE
CITY AND LIGHT & MOTION INDUSTRIES, INC. FOR BUILDING 535 AT
THE MARINA MUNICIPAL AIRPORT AND A MEMORANDUM OF
AMENDMENT OF LEASE AND ESTOPPEL CERTIFICATE, SUBJECT TO
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND
AMENDMENT AND MEMORANDUM OF AMENDMENT OF LEASE AND
ESTOPPEL CERTIFICATE**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2017-tbd, approving a Second Amendment to Lease between the City and Light & Motion Industries, Inc. ("Second Amendment") for Building 535 at the Marina Municipal Airport, and Memorandum of Amendment of Lease and Estoppel Certificate, subject to final review and approval by the City Attorney; and
2. Authorizing the City Manager to execute the Second Amendment and a Memorandum of Amendment of Lease and Estoppel Certificate on behalf of the City.

BACKGROUND:

The FAA having previously approved a land-use change authorization for the non aeronautical use of the premises and the lease terms, on March 25, 2013, the City and Light & Motion Industries, a California corporation, ("Light & Motion") entered into a lease for premises at 711 Neeson Road including Building 535 at the Airport (the "Lease"). On November 5, 2013, the Lease was amended by the First Amendment to Lease to confirm certain matters regarding the course of construction of improvements to the premises. (**EXHIBIT A – Lease and First Amendment w/o exhibits.**) Light & Motion is permitted by the Lease to use the premises in its business of manufacturing and assembling, warehousing and distributing LED lights, underwater camera casings and other biking and scuba diving accessories and equipment and as its administrative offices. The initial term of the Lease commenced on February 1, 2014, and continues for 20 years. Light & Motion is granted two successive 5-year options to extend the term of the Lease.

The monthly rent under the Lease was established to be fair market value by an appraisal and the rent increases each year of any term. Light & Motion receives a tenant allowance in the form of a credit against the rent payable under the Lease to provide for amortization of \$600,000 over the first 7 years of the initial term to reimburse Light & Motion for structural or building system-related improvements which were made and paid for by Light & Motion but which the City would have otherwise been required to fund in order to lease the premises to Light & Motion.

At present, without the tenant allowance, Light & Motion would be paying fair market rent of \$11,661.17 per month to the City but with the tenant allowance the rent is reduced to \$4,518.17. The amortization period continues through January 2021 and payment of the full amount of rent in the amount of \$12,745.93 per month will commence February 1, 2021.

ANALYSIS

On February 6, 2017, in an email to the City Manager, Light & Motion's CEO Daniel Emerson raised the matter of the parties entering into a second amendment of the Lease to afford Light & Motion the ability to encumber the leasehold (i.e., to pledge the leasehold as collateral) to allow Light & Motion to refinance and manage economically its debt service costs. This refinance would include replacing an existing building improvement loan obtained by Light & Motion in 2013 in the amount of \$1,900,000 at an interest rate of 4.85% with a current balance \$1,360,721 and a balloon payment due in 2021. Certain of the improvements paid for by this loan include those for which the tenant allowance is provided. The cost to Light & Motion of the improvements for which the tenant allowance is provided exceeded the \$600,000 cap provided for in the Lease.

Light & Motion proposes to refinance the 2013 loan by obtaining Small Business Administration ("SBA") loans under the SBA's Certified Development Company ("CDC")/504 loan program ("SBA/504 Loan"). There would be three loans in connection with the SBA/504 Loan, one a private lender loan that is senior to the CDC's loan, the CDC's loan (assigned to the SBA), and an Interim Loan that is taken out by the CDC loan. These loans will be in a total amount not to exceed \$1,900,000, with annual interest rates of between 4.5% and 5.25%, and would replace the building improvement loan Light & Motion obtained in 2013. The proposed refinance would result in a reduction in Light & Motion's monthly debt service by approximately 43% and Mr. Emerson has stated that this refinance would greatly enhance Light & Motion's cash flow, strengthen its business, and facilitate Light & Motion's ability to meet its increased rental obligation to the City on and after February 1, 2021. The City would receive prior notice and copies of loan documents for its file. Mr. Emerson has stated that the business continues to grow and he expects to see more significant growth in FY 2017/2018 if the refinancing plan is approved.

Light & Motion provided a letter from the attorney for the CDC in which certain amendments of the Lease were identified in order for the SBA/504 Loans to be approved (**EXHIBIT B**). The City Attorney's office has been working with the City Manager and the Airport Services Manager and with Mr. Emerson and his attorney on the details of the refinance including the terms of the proposed Second Amendment and the Memorandum of Amendment of Lease and Estoppel Certificate (**EXHIBITS C & D**). Mr. Emerson and his attorney, Virginia Howard, Esq., have been advised that this matter is scheduled to be considered by the Council at its May 2, 2017, regular meeting and have been invited to be present to provide additional information and respond to questions. In summary, if approved, the Second Amendment would provide as follows.

- (1) Change the permitted use to unspecified manufacturing and light industrial uses.
- (2) With prior notice and copies to the City, allow Light & Motion to pledge all of its interest under the Lease (i.e., its leasehold estate but not the City's ownership interest) as security for a loan or loans under a leasehold deed of trust, mortgage, personal property security agreement or other security instrument(s) which would be subject to the terms and conditions of the Lease as amended including the continued payment of fair market value rent. The City would be granting its consent for the SBA/Loan and such other senior encumbrances as required by the CDC and the SBA/504 Loan Program.
- (3) Require the City to provide notice of certain events to the holder of such security instrument(s) (i.e., to the "Lienholder" which term also refers to any and all subsequent assignee(s) or transferee(s) of a security interest).

- (4) Require the Lienholder's prior written consent for any subsequent Lease modification or Lease cancellation or termination except as provided in the Lease.
- (5) Require the City to make reasonable modifications to accommodate the Lienholder so long as the economics of the Lease and the City's ability to continue to receive fair market value under the Lease and ensure that the City's eligibility to continue to receive FAA grant funding for the Airport are unimpaired.
- (6) Provide the Lienholder with written notice, an extension of time, and the right to cure monetary and nonmonetary defaults under the Lease and to perform acts otherwise required of a tenant and/or to realize on the security interest by foreclosing judicially or under a power of sale, on the leasehold interest and to acquire and transfer or assign the leasehold interest so acquired to a third party without the City's consent.
- (7) Provide, upon the Lienholder becoming owner of the leasehold, for an assignment or sublease with the City's consent.
- (8) Provide, in the event the City sought to terminate the Lease, for a stay of termination if the Lienholder commenced foreclosure proceedings. Upon foreclosure, or receipt of a deed in lieu of foreclosure, with notice to the City allow the Lienholder to transfer the leasehold to a purchaser or to a third party, with such transferee assuming the obligations of the Lease and the Lienholder obligated under the Lease only for such time until transfer to a purchaser or other third party.
- (9) Provide that in event of termination of the Lease the City would enter into a new lease with the Lienholder for the unexpired term of the Lease under the same terms and conditions, including payment of rent, which would have existed had the Lease not been terminated and provided nonmonetary defects were remedied and all sums then in default under the Lease which was terminated were paid by Lienholder.

As proposed, the Second Amendment provides that upon foreclosure improvements for which the tenant allowance is provided that have not yet been amortized would immediately vest in the City. This provision is pending review and approval by the CDC. Improvements for which title remains vested in a tenant could not be removed if doing so would materially damage the premises. The Second Amendment would also provide that once the Lienholder came into possession of the premises it would only be liable for costs arising out of hazardous waste contamination which arose or began at the time of Lienholder's possession and then only during the term of such possession. The Lienholder would be an additional insured on the tenant's insurance coverage and could recover up to the amount required to satisfy the then outstanding balance due the Lienholder under the SBA/504 Loan for: (i) amounts paid for tenant's trade fixtures, equipment and other personal property under the property casualty insurance provided by tenant if tenant elected not to restore the premises; and (ii) amounts due to a tenant in the event of condemnation of the leasehold estate. The Second Amendment also provides for recognition (i.e., "attornment") by the City to the Lienholder and any successor of the Lienholder, as the tenant. During the period the SBA/504 Loans were in place there could be no merger of leasehold and fee estates due to both becoming vested in the City.

FISCAL IMPACT

Should the City Council approve the creation of the security interest in the Lease as provided by the Second Amendment the anticipated rent revenue to the Airport over the initial term of the Lease should be unaffected.

Building lease rent revenue is recorded to FY 2016-17 Budget, Airport Operations, Fund 555, "Facilities Rents Building Rents," Account No. 555.000.000.00-5460.220.

CONCLUSION

This request is submitted for City Council consideration for approval.

Respectfully submitted,

Jeff Crechriou
Airport Services Manager

/s/ /Robert W. Rathie
City Attorney's Office

REVIEW/CONCUR

Layne P. Long
City Manager

Exhibit A	Lease for Building 535 and First Amendment to the Lease (w/o exhibits)
Exhibit B	Letter from the attorney for the CDC
Exhibit C	Proposed Second Amendment
Exhibit D	Memorandum of Amendment of Lease and Estoppel Certificate

MARINA MUNICIPAL AIRPORT

LEASE BETWEEN

THE CITY OF MARINA

AND

LIGHT & MOTION INDUSTRIES

for

**711 NEESON ROAD
(BUILDING 535)**

LEASE

THIS LEASE (the "Lease") is made and entered into this 2nd day of March 2013, by and between the CITY OF MARINA, a California municipal corporation ("City"), and LIGHT & MOTION INDUSTRIES, a California corporation ("Tenant"), as follows:

Recitals:

This Lease is entered into with reference to the following facts and circumstances which are hereby found and determined by the parties:

- A. City owns and operates the Marina Municipal Airport (the "Airport") located in the City of Marina. The Airport was formerly known and operated by the U.S. Army as Fritzsche Airfield and was part of the Fort Ord Military Reservation.
- B. Tenant desires to lease a portion of the Airport real property which includes a structure formerly utilized by the U.S. Army as a supply, storage, and shipping facility, and by a former tenant as the site of the Monterey Sculpture Center, for use in Tenant's business of manufacturing and assembling light emitting diode (LED) lights (for scuba diving, bicycling and camping applications), underwater camera casings, and other biking and scuba diving accessories and equipment.
- C. It is mutually agreed that this Lease is upon and subject to the following terms, covenants, conditions and provisions, and Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Lease is made upon the condition of such performance and compliance.

Terms and Conditions

Conditions Precedent

- 1. Approval of the terms and conditions of this Lease by the Federal Aviation Administration ("FAA").
- 2. Approval of this Lease by the City Council of the City of Marina and the FAA. The FAA shall approve Tenant's use of the leased premises for other than airport purposes.
- 3. Approval of Tenant's plans and specifications for construction of the improvements to be made to the leased premises by the City and the Airport Commission. Approval of such plans and specifications by the Building Division of the City's Community Development Department shall constitute City approval, as provided in Section 9.01 of this Lease.

4. Receipt by Tenant and delivery to the City of a written loan commitment from a reputable lender for a loan in an amount of no less than eight hundred thousand dollars (\$800,000) for purposes of financing the improvements to be made to the leased premises by Tenant.

ARTICLE 1. LEASE OF PREMISES, EASEMENT AND RESERVATION, TERM.

1.01 Leased Premises. City hereby leases to Tenant, and Tenant hereby leases from City the real property and premises located at 711 Neeson Road, Marina, County of Monterey, California, including the building commonly known as Building 535 (the "Building"), as described in and shown on Exhibit A attached hereto and made a part hereof (the "Premises"). Tenant may, in a manner approved in advance and in writing by the City, mark or designate the parking spaces located on the Premises. The Premises are located on Monterey County Assessor's parcel number 031-112-025. The interior space leased in the Building consists of approximately 27,119 leasable square feet of space, including a mezzanine as shown on the floor plans attached hereto as Exhibit B and made a part hereof.

1.02 Easement and Reservation. The following described easement and reservation is hereby reserved by the City:

(a) **Avigation Easement.** The leased Premises shall be subject to an easement and right of way for the unobstructed passage of aircraft in the airspace above the leased Premises, which is reserved by City for the benefit of itself and all members of the general public operating aircraft which land at or take off from the Airport. Concomitant and coextensive with said easement and right of way, City and general public shall have the further right to cause, in all airspace above the surface of the leased Premises, such noise, vibrations, fumes, dust, fuel particles, and other effects that may be caused by the operation of aircraft landing at or taking off from or otherwise operating at the Airport. In connection with this easement and right of way, Tenant agrees not to cause or permit any structure, natural growth, or other object on the leased Premises to extend into the airspace over the leased Premises more than 210 feet above mean sea level, and not to use or permit the use of the leased Premises in such a manner as to create electrical interference with radio communications between aircraft and the Airport, to make it difficult for flyers to distinguish between airport lights and other lights, to impair visibility in the vicinity of the Airport, or to otherwise endanger aircraft landing at or taking off from the Airport. Tenant further agrees that, in the event it causes or permits any structure, natural growth, or other object on the leased Premises to extend into the airspace over the leased Premises more than 210 feet above mean sea level, or otherwise causes or permits any condition on the leased Premises which endangers aircraft landing at or taking off from the Airport, Tenant shall remove such structure, natural growth, object or condition as soon as possible but in no event later than within ten (10) days of receipt of written notice from the City of such structure, natural growth, object or condition. In the event Tenant shall fail to remove such structure, natural growth, object or condition within such 10-day period, then City shall have the right to enter upon the leased Premises and to remove such structure, natural growth, object or condition endangering aircraft landing at or taking off from the Airport, all at Tenant's sole cost and expense.

(b) **Utility Reservation.** City reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines, telephone, telegraph, fiber optic and electrical power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the leased Premises. No right reserved by the City in this clause shall be so exercised as to interfere unreasonably with Tenant's operations or to impair the security of any secured creditor of Tenant.

(c) **Parking.** The City reserves the right, with prior written notice to Tenant as provided in Section 2.03 below, to utilize the parking areas located on the Premises from time-to-time in conjunction with special events held at the Airport on weekends (see Section 2.03 below). In making use of the parking area, the City shall consider and make a good faith effort to alleviate adverse effects on Tenant's operations. The City and Tenant agree to reasonably cooperate concerning the City's occasional use of the parking area on weekends.

1.03 Term. The initial term of this Lease (the "Initial Term") shall be for twenty (20) years. The commencement date ("Commencement Date") of the Initial Term shall be the earlier of the date Tenant commences manufacturing operations on the Premises or sixty (60) days following the issuance of a Certificate of Occupancy, or such other date as the City and Tenant may agree in writing. When the Commencement Date has been determined, the parties shall execute an addendum to this Lease which sets forth the day, month and year of the Commencement Date. In the event the Commencement Date has not occurred on or before July 1, 2014 and the City and Tenant have not entered into a written agreement to extend the Commencement Date, the City shall have the right to terminate this Lease.

1.04 Early Access for Completion of Improvements. Prior to the Commencement Date, Tenant, its contractors, and agents shall be permitted access to the Premises for purposes of completing the Improvements (see Section 9.01 below) commencing on July 1, 2013, subject to any delays in making such Premises available beyond the City's control. During such period of early occupancy, Tenant's possession of the Premises shall be subject to all terms and conditions of the Lease, except that Tenant shall not be obligated (i) to pay Monthly Rent in accordance with Section 4.02, (ii) to pay the possessory interest real property taxes as provided in Section 5.01 below unless assessed by the County of Monterey, (iii) to maintain the Premises in accordance with Sections 2.20(g) or 10.02, or (iv) to maintain the insurance required pursuant to Sections 13.01(e) and 13.02 below. Tenant covenants and agrees that it shall not operate any business in the Premises (other than construction and preparation of the Premises for Tenant's occupancy) until the Commencement Date. Tenant acknowledges and accepts the risk of early access to the Premises during the construction of the Improvements and releases and holds harmless City, during the early possession period, from and against all injury to person or property whatsoever, except to the extent caused by the sole negligence or willful misconduct of City, its officials, officers, employees or agents.

1.05 Option(s) to Extend. Tenant is hereby granted the right and option to renew and extend the term of this Lease for an additional period of ten (10) years only, through the election and exercise of two (2) separate and successive five (5)-year options following the expiration of the Initial Term, provided that: on execution of any option, Tenant occupies the majority of the square footage of space within Building 535; that this Lease is still in full force and effect at the expiration of the Initial Term or the then applicable option period; and that Tenant is not in default under any term of this Lease. These options may be exercised by Tenant by its giving written notice of its intent to exercise the option(s) to the City Manager of the City 180 days before the expiration of the Initial Term or the then applicable option period.

1.06 Option(s) to Extend - Rent. The terms and conditions of any extended five-year extension of this Lease will be the same as are provided herein, except that the monthly rent to be paid by Tenant for the first year of each five (5)-year option period will be 100% of the prevailing fair market monthly rental rate for comparable industrial property in Monterey County for comparable uses, to be determined ninety (90) days prior to the expiration of the Initial Term or the then applicable option period by mutual agreement of the City and Tenant and, if they cannot agree, by independent appraisal as provided herein. If the City and Tenant cannot agree on the fair market rent prior to the date ninety (90) days before the expiration of the Initial Term or the then applicable option period, each party shall select an independent appraiser with no less than five (5) years experience in appraising commercial real property in the County of Monterey, who will render an opinion on the fair market monthly rental rate for the Premises, and provided the higher opinion of the fair market monthly rental rate is not more than five percent (5%) greater than the lower opinion as to the fair market monthly rental rate, the two values so derived shall be averaged, and the average shall be the monthly rent rate payable in the first year of the applicable five (5) year option period and shall be binding on the parties. If the higher opinion as to fair market rental value is more than five percent (5%) greater than the lower opinion as to value, the two independent appraisers selected by the parties shall select a third independent appraiser meeting the qualifications set forth above who shall determine which of the initial two appraisers' values is closer to the fair market monthly rental rate, and this monthly rental rate shall be the monthly rent in effect during the first year of the applicable five (5) year option period and shall be binding on the parties. Thereafter, the monthly rent shall be adjusted annually as provided in Section 4.05 of this Lease. If the two independent appraisers selected by the parties cannot agree on a third appraiser, such appraiser shall be selected by the Presiding Judge of the Monterey County Superior Court from a list of no more than five appraisers meeting the qualification set forth above submitted by each of the parties. Each party shall bear the cost of the appraiser selected by such party, and the parties shall share the cost of the third independent appraiser selected. At any time, the City and Tenant may agree in writing on the fair market monthly rent to be paid during the first year of any applicable option period.

1.07 Holding Over. Any holding over after the expiration of the initial or an extended term of this Lease with the consent of the City shall be construed to be a tenancy from month-to-month at a monthly rental equal 125% of the monthly rental for final month of the previous term. The sum so calculated will constitute the new monthly rental for the following twelve (12) months. The monthly rental shall thereafter increase on the twelve (12) month anniversary of the last increase in like manner. Tenant's occupancy during any period of holding over shall

otherwise be on the same terms and conditions herein specified so far as applicable, except that there shall be no right to extend the term of this Lease.

ARTICLE 2. USE OF LEASED PREMISES

2.01 Use. This Lease is made for the purpose of allowing Tenant use of the leased Premises and for granting Tenant certain rights and privileges to occupy the Premises and to use the area designated for parking for Tenant's use in its business of manufacturing and assembling, warehousing and distributing LED lights (for scuba diving, bicycling and camping applications), underwater camera casings, and other biking and scuba diving accessories and equipment, and as offices for Tenant's business and storage for Tenant's products and equipment. There shall be no use or storage of hazardous materials, except for the storage or use of hazardous substances and materials approved in advance and in writing by the City's Fire Chief. Tenant shall not store on the Premises equipment or materials outside of buildings in any location not approved by the City unless screened by a method approved in writing and in advance by the City, which shall not be unreasonably withheld or delayed. Tenant may not store equipment or material unrelated to its operation or business at the Airport, including, but not necessarily limited to, recreational vehicles, motor homes, boats, campers, trailers, semi-tractor trailer trucks, mobile homes and vehicles on the Premises without the prior written consent of the City, which may be given or withheld at the City's sole discretion. All loading and service operations shall take place within the confines of the Premises. Tenant shall not use the leased Premises, or any part thereof, or permit them to be used for any purpose other than the purposes specified herein without the consent of the City, such consent not to be unreasonably conditioned, delayed or withheld.

2.02 Airport Rules & Regulations. In making use of the leased Premises as specified in this Lease Tenant shall, in common with all other tenants at the Airport, comply with the following rules and regulations:

(a) Tenant acknowledges that it has received and reviewed a copy of the City's Airport Operating Ordinance and shall comply with the minimum operating standards or requirements promulgated by City and applicable to each of Tenant's activities on the Airport.

(b) Subject to the provisions of the California Code of Civil Procedure §731a, Tenant shall not do or permit to be done upon the Premises any act or thing which constitutes a nuisance, i.e., which may disturb the quiet enjoyment of City, any other tenant of City or private businesses on adjacent land or neighboring property. If City notifies Tenant that such a nuisance or disturbance exists, Tenant agrees, within 72 hours from receiving written notice by the City, to abate or otherwise cause said nuisance to be cured. In the event Tenant has not taken corrective action within 72 hours, the City may enter and abate said nuisance, including but not limited to entering the Premises and abating the nuisance or disturbance, at the expense of Tenant without any liability whatsoever to City for monetary loss or anticipated profits of Tenant or others.

(c) Tenant shall have the right, at its expense, to place on the leased Premises a sign or signs identifying Tenant. Said sign or signs shall be of a size, shape and design, and at a location or locations, approved in advance by the City and in conformance with any overall directional graphics or sign program established by the City. Tenant shall expeditiously submit its application to the City's Planning Division to process Tenant's request for a sign to be affixed to the facade of Building 535, to be readily visible from Neeson Road. City's approval shall not be delayed or withheld unreasonably. Notwithstanding any other provision of this Lease, any signs shall remain the property of Tenant. Tenant shall remove, at its own expense, all lettering, signs and placards so erected on the Premises upon termination of this Lease.

(d) Tenant shall have the right, at its expense, to place in or on the Premises trade fixtures, furnishings, personal property, equipment and materials necessary to perform any activities or services provided for or authorized hereunder. Said trade fixtures, furnishings, personal property, equipment and materials shall remain the property of Tenant.

(e) Tenant shall comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the business provided for and authorized hereunder, including rules and regulations promulgated by the City, and Tenant shall maintain in effect and post in a prominent place all necessary or required licenses or permits, including an Occupancy Permit obtained pursuant to Marina Municipal Code, Chapter 15.54, prior to commencing occupancy and commercial operations. Tenant shall prepare an Emergency Action/Fire Protection Plan. Current plan shall be kept on file with the City's Fire Department.

(f) Tenant agrees at its own expense to keep and maintain on the leased Premises portable fire extinguishers of such number, size and type as may be prescribed from time to time by the regulations of the City's Fire Department.

(g) Tenant shall be responsible for the maintenance and repair of the Premises as set forth in §10.02 of this Lease and shall keep and maintain the Premises in good condition, order and repair, and shall surrender same upon the expiration of this Lease in the condition in which the Premises are required to be kept, reasonable wear and tear and damage by the elements not caused by Tenant's negligence excepted. Tenant, by this Lease, specifically waives the provisions of §§1941 and 1942 of the California Civil Code with respect to the landlord's obligations for the tenantability of leased premise and a tenant's right to make repairs and deduct the expense of such repairs from rent.

(h) Tenant understands and agrees that its right to use the leased Premises for the purposes provided for by this Lease shall not be, and shall not be construed to be, exclusive of the right within the meaning of 49 U.S.C. 40103(e) and 49 U.S.C. 47107(a)(4) of any other person or firm to operate the same or a similar business at the Marina Municipal Airport and to lease Premises at the Airport from the City for such purposes, within the meaning of §308A of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1349a). City reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to Tenant by this Lease, excepting any rights with respect to the use or possession of the leased Premises.

(i) Tenant will conform to Airport and Federal Aviation Administration safety and security rules and regulations regarding use of the Airport operations area including runways, taxiways, aircraft aprons, by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass an airfield safe driving instruction program when offered or required by the Airport manager; and will be subject to penalties as prescribed by the Airport Operating Ordinance for violation of the Airport safety and security requirements.

2.03 Special Events. Tenant understands and acknowledges that the City will, from time-to-time, conduct special events at the Airport (e.g., the Marina Air Faire which is usually held on a weekend in October of every year) on weekends. Tenant agrees to cooperate with the City concerning these events (e.g. allowing the City to use the parking areas located on the Premises during weekends). City shall endeavor to provide not less than fourteen (14) days prior written notice to Tenant of any special event which is expected to have an impact on Tenant's operations.

ARTICLE 3. USE AND MAINTENANCE OF AIRPORT FACILITIES

3.01 Maintenance of Airport Facilities. The City reserves the right, but shall not be obligated to Tenant, to further develop, improve, maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport as it sees fit regardless of the desires or views of the Tenant and without hindrance or interference, together with the right to direct and control all activities of Tenant in this regard.

3.02 Aerial Approaches. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Tenant from erecting or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

3.03 FAR Notification Requirements. Tenant agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises. The Tenant by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit objects of natural growth or other obstructions on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77. In the event the aforesaid covenants are breached, the City reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of Tenant.

ARTICLE 4. RENTS AND FEES

4.01 Time and Place of Payment. Tenant shall pay all rental charges and all other obligations due to the City under this Lease every month in advance on or before the first (1st) day of the month during the term of this Lease at the office of the City Finance Director, City Hall, 211 Hillcrest Avenue, Marina, California 93933. The rent for any partial month during which this Lease is in effect shall be pro-rated. For purposes of calculating and pro-rating rents and other charges due for any partial month, each month shall be considered to have 30 days. The pro-ration of any charges payable on an annual basis for any partial year shall be based upon a 360-day year.

4.02 Monthly Rent: Initial Rent Amount. The monthly rent payable commencing as of the first (1st) day of the Initial Term of this Lease shall be ten thousand eight hundred forty-seven dollars and sixty cents (\$10,847.60) (at the rate of forty cents (\$0.40) per square foot of leasable space). Tenant shall also pay as additional rent, every month as provided above, (i) the amounts set forth in Article 12 herein for utility services provided under the terms of any contract between the City and a utility provider serving the Premises through existing lines and connections, and (ii) the possessory interest real property taxes arising from this Lease. The rent payable under this Lease shall be triple net; that is, except as otherwise expressly provided herein, Tenant shall pay all of expenses associated with the use, occupancy and maintenance of the Premises, insurance premiums as reflected in Article 13 below, and real and personal property taxes arising out of Tenant's use and occupancy of the Premises, including possessory interest taxes. Except as otherwise expressly provided herein, monthly rent and all triple net charges shall commence on the Commencement Date (Section 1.03).

4.03 Allowance for Reimbursable Building Improvements. The City will reimburse Tenant up to an amount not to exceed Six Hundred Thousand Dollars (\$600,000) based on the costs incurred by Tenant related to the construction of the Improvements listed as Reimbursable Building Improvements (the "Reimbursable Building Improvements") in Exhibit C attached hereto and incorporated herein by this reference. The parties agree that, upon execution of this Lease, Exhibit C represents the agreed list of the Improvements to be made to the Premises by Tenant and the agreed estimated cost for the Reimbursable Building Improvements. The actual cost to Tenant of the Reimbursable Building Improvements, as shall be established pursuant to Section 9.10 of this Lease, shall represent the City's contribution to the cost of the Improvements and is referred to herein as the "Tenant Allowance." The City's contribution shall be effected by means of a credit against the monthly rent to be paid by Tenant as provided herein. The total agreed Tenant Allowance for Reimbursable Building Improvements payable by the City shall be paid to Tenant as a credit against the monthly rent taken in equal monthly installments over the first eighty-four (84) months of the Initial Term (the "Proration Period"), except as provided herein. Prior to the determination of the final Tenant Allowance, in accordance with Section 9.10, the monthly credit shall be in the amount of Seven Thousand One Hundred Forty-Three Dollars (\$7,143.00) per month. In the event the final Tenant Allowance is less than Six Hundred Thousand Dollars (\$600,000), commencing as of the first (1st) day of the month following the determination of the final Tenant Allowance, the monthly credit shall be reduced to such amount as is determined by dividing the final Tenant Allowance (less the aggregate monthly credits taken to date) by the number of months remaining in the first eight-four (84) months of the

Lease. The monthly credit so calculated shall be taken until the Tenant Allowance has been credited in full, with the final credit against monthly rent in the 84th month to be in such amount as required to fully deplete the Tenant Allowance. For example, if the final agreed Tenant Allowance is Six Hundred Thousand Dollars (\$600,000), Tenant shall receive a monthly credit against rent in the amount of Seven Thousand One Hundred Forty-Three Dollars (\$7,143.00) for the first eighty-three (83) months of this Lease, and a credit against rent in the amount of Seven Thousand One Hundred Thirty-One Dollars (\$7,131.00) in the eighty-fourth (84th) month of this Lease, and the rent payable to the City for the first twelve (12) months following the Commencement Date would be Three Thousand Seven Hundred and Four Dollars and Sixty Cents (\$3,704.60).

4.04 City Inspection of Reimbursable Building Improvements. Notwithstanding any other provisions of this Lease, the City will have no obligation to reimburse Tenant for Reimbursable Building Improvements until the City has conducted a final inspection of the Improvements to the Premises made in accordance with the Plans and issued a Certificate of Occupancy for the Premises.

4.05 Adjustment of Monthly Rent. At the end of the first year of the Initial Term and at the end of each lease year thereafter and at the commencement of the second (2nd) year of each option period and at the end of every lease year thereafter (each, a "Rent Adjustment Date"), the monthly rent shall be increased by one cent (\$0.01) per square foot. City will not provide notice of this adjustment, and it shall be Tenant's sole responsibility to ensure the rent is adjusted and paid in accordance with this Section.

4.06 Delinquency Charge. Tenant hereby acknowledges that late payment by Tenant of rent and other sums due hereunder will cause the City to incur costs not contemplated by this Lease, the exact amount will be extremely difficult to ascertain. Should any payments due under this Lease remain unpaid ten (10) days after the due date of such payment, a penalty of 10% shall be added to any payments past due and owing. City and Tenant agree that this late charge represents a fair and reasonable estimate of costs that the City will incur by reason of the late payment of rent by Tenant. Acceptance of any such late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent the City from exercising any of the other rights and remedies available to it by reason of such default. Interest on any unpaid rents, charges and any penalty shall accrue at the rate of 10% per annum thereafter until paid.

4.07 Performance Deposit. Prior to July 1, 2013, Tenant will pay to the City the sum of twelve thousand dollars (\$12,000.00), deposited with the City's funds as partial security of future rental and other payments due. The parties agree that these funds will remain on deposit with the City and shall be considered a performance deposit under this Lease. In the event the City is required to utilize this deposit or any portion thereof during the term of this Lease for the payment of rents, charges, or fees due, Tenant within thirty days from such use of the deposit funds shall deposit with the City an additional sum sufficient to restore the performance deposit to the amount herein set forth. This performance deposit, or any remaining portion thereof, shall be returned to Tenant at the termination of this Lease, after deduction of any amounts therefrom for payment of any obligation of Tenant due and owing to the City under any of the provisions of this Lease.

4.08 Accord and Satisfaction. No payment by Tenant or receipt by the City or a lesser amount of any sum due hereunder shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or payment, or any letter accompanying any such check or payment, be deemed an accord and satisfaction, and the City may accept such check or payment and pursue any other remedy available in this Lease, at law or in equity. The City may accept any partial payment from Tenant without invalidation or any contractual notice require to be given herein (to the extent such contractual notice is required) and without invalidation of any notice require to be given pursuant to California Code of Civil Procedure section 1161 *et seq.*, or any successor statute thereto.

4.09 Commissions. The City shall not be liable for the payment of any brokerage commissions or fees associated with this Lease to engineers, contractors, or attorneys working on behalf of Tenant. The City shall pay a brokerage commission to Cassidy Turley/BT Commercial in accordance with Article 4.07 of this Agreement and the Agreement between Cassidy/BT Commercial and the City entered into on September 5, 2007, and as amended on March 14, 2008, May 12, 2009 and April 9, 2010.

4.10 Agency Disclosure. Cassidy Turley/BT Commercial ("CT/BT") is a licensed real estate company in the State of California. CT/BT represents the City as its agent concerning this Lease transaction. CT/BT shall be paid a commission by the City in accordance with its listing agreement with the City.

ARTICLE 5. TAXES AND ASSESSMENTS

5.01 Payment. Excepting expenses payable by the City as expressly provided herein, Tenant shall pay all expenses related to the maintenance, use and occupancy of the Premises and the rights and privileges herein granted, including the possessory interest real property taxes created by this Lease, and permit and license fees or assessments, it being understood by Tenant that although the public property is held in public ownership, Tenant's interest therein will be taxable as a possessory interest (California Revenue & Taxation Code §107 *et seq.*). Tenant shall pay any personal property taxes levied on Tenant's inventory, furnishings, personal property or trade fixtures. Tenant may, at its sole expense and cost, contest any tax or fee. All taxes, fees, assessments, charges, etc. shall be paid prior to their delinquency date and satisfactory evidence that such taxes have been paid shall be furnished to the City.

5.02 Assessment by the Monterey County Water Resources Agency (MCWRA). Tenant shall pay any assessment levied by the MCWRA. If the leased Premises are not separately assessed by MCWRA, Tenant's liability shall be an equitable portion of the MCWRA assessment for all of the land and improvements of which the Premises are a part included within the parcel(s) so assessed, such proportion to be determined by the City from the respective valuations assigned in the MCWRA's work sheets or such other information as may be reasonably available. The City's reasonable determination thereof, in good faith, shall be conclusive provided, however, Tenant may appeal the City's determination of the proration of any MCWRA assessments to the City Council, whose decision shall be final. In the event Tenant fails to pay any assessment when due, the City may, at its option, pay the same and

collect from Tenant's performance deposit (see Section 4.07) the amounts so disbursed, plus interest at the rate of 10% per annum or fraction thereof.

ARTICLE 6. SUBORDINATE TO FEDERAL AGREEMENT AND REGULATIONS

6.01 Subordinate to Agreements with U.S. This Lease shall be subordinate to the provisions and requirements of any right the United States government now has or any existing or future agreement between the City and the United States government or any department thereof relative to the control, development, operation, taking over, or maintenance of the Airport. Failure of Tenant or any occupant to comply with the requirements of any existing or future agreement between the City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of this Lease and the rights hereunder. Tenant acknowledges it has been given an opportunity to review the Deed of Conveyance pursuant to which title to the leased Premises was conveyed from the United States of America to the City and agrees to comply with all requirements pertinent to Tenant's activities contained in that document.

6.02 War or National Emergency. This Lease and all provisions hereof shall be subject to whatever right the United States government has affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

6.03 Conformance with Federal Aviation Administration Regulations. Tenant agrees that Tenant's use of the leased Premises, including all future construction, modifications or alterations thereon, shall comply with all applicable Federal Aviation Administration regulations now in force or that may be hereafter adopted by the Federal Aviation Administration.

ARTICLE 7. NON-DISCRIMINATION

7.01 Non-Discrimination.

(a) Tenant, for its personal representatives successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that, in the event facilities are constructed, maintained, or otherwise operated on the leased Premises for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Tenant, for its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that: (1) no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of

the leased Premises, (2) that, in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant shall use the leased Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The Tenant assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Tenant or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the City as the Airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the City as the Airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

7.02 Covenants in Other Ancillary Agreements. Tenant agrees that it shall insert in any sublease, assignment, or other agreement by which Tenant grants a right or privilege to any person, firm or corporation to render accommodations or services to the public on the Premises such non-discrimination provisions as required by the City.

ARTICLE 8. CONDITION OF THE PREMISES

8.01 Acceptance of Leased Premises. Tenant understands that the leased Premises were formerly used by the federal government as part of an Army air base, that surrounding lands which were also part of such Army air base have, in the past been found to contain concentrations of volatile organic chemicals which exceed standards prescribed by the environmental agencies and the state and federal governments. Pursuant to Health & Safety Code §25359.7(a) Tenant is provided this notice that the structure may contain asbestos containing materials and lead-based paints. Prior to the execution of this Lease, the City obtained, at the expense of the City, a Phase I Environmental Site Assessment dated May 11, 2012, prepared by Pacific Crest Engineering Inc. (referred to herein as the "Phase I Site Assessment"), and a Pre-Renovation Hazardous Materials Inspection report dated April 6, 2012, prepared by M3 Environmental Consulting LLC (the "Building Inspection Report"). Prior to Tenant accepting early possession of the leased Premises, the City shall be obligated to remediate the presence of any hazardous or toxic substances or materials present in, on or under the leased Premises as result of (i) the storage on the leased Premised of used/discarded sculpture molding material or other waste by the City or its agents, tenants or subtenants as identified in the Phase I Site Assessment, (ii) all bronze or other metal dusts or fines present in the Building as a result of the use of the leased Premises by the City or its agents, tenants or subtenants as

identified in the Phase I Site Assessment, and (iii) the presence in the Building of any radioactive metals or materials as identified in the Phase I Site Assessment (collectively, the "Remediable Conditions"). The City shall complete such remediation in accordance with such remediation plan as is approved by the County of Monterey and obtain a "no further action" letter from the County of Monterey on or before June 15, 2013. The Remediable Conditions shall be conditions that Tenant shall not be obligated to remediate, and the cost of remediating such conditions shall not be included within the Reimbursable Building Improvements.. Tenant acknowledges that the City has also provided to Tenant an asbestos survey report dated December 10, 1991 prepared by the U.S. Army Corps of Engineers for Building 535 (the "Asbestos Survey Report"). Tenant acknowledges that City has granted to Tenant the right to review all maps and records of the old Army air base presently on file in the office of the City's Planning Department as well as the right to inspect the leased Premises and perform any tests, all in order to afford Tenant a full and complete opportunity to investigate and determine whether the leased Premises can be used for the purposes for which the Premises are being leased.

8.02 No Warranty. Tenant further understands and agrees that no representation, statement, or warranty, express or implied, has been made by or on behalf of the City as to the condition of the leased Premises or improvements or the suitability of the Premises or improvements for its intended use or compliance of the Premises or any improvements with any federal, state or local building code or ordinance, save and except for the representation and warranty that no City officer, employee, contractor, subcontractor, tenant, subtenant, or other City agent has caused any condition of pollution or contamination which may now exist on, in or under the leased Premises, except as disclosed in the Phase I Site Assessment or Building Inspection Report. Upon the Commencement Date, Tenant also agrees to accept Building 535 in its present condition and "as is", with respect to all conditions which may now exist, except for (i) any condition of pollution or contamination caused by an officer, employee, agent, contractor, subcontractor, tenant or subtenant of the City, (ii) any hazardous substances or materials in the roofing materials of Building 535 (for which the City shall be solely responsible by the terms of this Lease), (iii) the Remediable Conditions (see Section 8.01), and (iv) any hazardous or dangerous condition not identified in the Phase I Site Assessment, the Building Inspection Report, or in the Plans as to which Tenant provides the City with notice of disapproval within thirty (30) days of Tenant accepting early possession of the Premises (see Section 1.04) (each a "Disapproved Condition"). Moreover, Tenant agrees to waive any claim or right of action against the City which Tenant now has or hereafter may acquire arising out of the condition of Building 535, including but not limited to any claim of indemnity which Tenant may have by reason of costs incurred by Tenant arising out of the abatement or cleanup of any hazardous substances or materials present in Building 535 save and except for (i) any claim or right of action arising out of the presence of hazardous substances or materials in the Building or any other condition of pollution or contamination caused by an officer, employee, agent, tenant, subtenant, contractor, or subcontractor of the City, (ii) any claim arising out of or relating to the presence of hazardous substances or materials in the roofing materials of Building 535, and (iii) any claim arising out of the Remediable Conditions or any Disapproved Condition. Upon delivery to the City by Tenant of a written notice of any Disapproved Conditions following Tenant's acceptance of early possession, as set forth above, Tenant shall thereafter conform all work in any area affected by the hazardous or dangerous condition in accordance with the reasonable written instructions of the City and the City shall have the right to elect to either cure

such condition or to terminate this Lease if the cost of curing such condition is estimated in good faith to exceed twenty thousand dollars (\$20,000). The City shall provide Tenant with notice of its intent to cure or terminate this Lease within ten (10) business days of receipt of Tenant's notice of disapproval. Notwithstanding anything this section 8.02, nothing in this section is intended to limit the City's obligation to reimburse Tenant for the Reimbursable Building Improvements, including, without limitation, costs incurred by Tenant related to the remediation of hazardous substances or materials in Building 535 identified in the Building Inspection Report as included therein. Nothing contained herein is intended to be construed as a waiver of any claim or claims Tenant may have arising out of or relating to the condition of, or the present of hazardous substances or materials, in the soils or groundwater in, on, under or emanating from the leased Premises.

8.03 Americans with Disabilities Act. Tenant understands and acknowledges that the City makes no representation concerning the Premises compliance with the American Disabilities Act ("ADA"), and Tenant expressly waives any duty which the City might have to make such disclosure. Tenant is solely responsible for determining whether or not Tenant's intended use of Building 535 will be or is in compliance with the ADA. Tenant acknowledges that certain portions of Building 535 remain inaccessible for some disabled individuals. By entering into this Lease, unless otherwise agreed between the parties in a writing signed by the authorized representative of each party, Tenant agrees to be responsible for all compliance with the ADA, if applicable to Tenant or the City. Further Tenant hereby releases, indemnifies, agrees to defend and hold harmless the City, its officers, employees and agents from any and all liability resulting from any claim arising under the ADA as a result of Tenant's use or activities on the leased Premises.

8.04 Disclosure to Sublessees and Assignees. Tenant agrees that in the event Tenant subleases all or any portion of the Premises or assigns its interest in this Lease, Tenant shall indemnify and defend the City for, from and against any matters which arise as a result of Tenant's failure to disclose any relevant information about the Premises or the improvements to any subtenant or assignee. It is the intention of the City and Tenant that the immediately preceding sentence shall survive any release of Tenant by the City upon any assignment of this Lease by Tenant.

ARTICLE 9. LEASEHOLD IMPROVEMENTS

9.01 Improvements to Leased Premises. During the early possession period provided under this Lease, Tenant shall construct improvements, including the Reimbursable Building Improvements (the "Improvements") to the leased Premises in accordance with plans and specifications (the "Plans") to be completed by Tenant and submitted to the City within forty-five (45) days of the execution of this Lease. The Plans must be approved by the City. The Plans shall be reviewed and approved by the issuance of a building permit by the Building Division of the City's Development Services Department. Upon approval by the City, the Plans, together with a construction schedule ("Construction Schedule") shall be initialed by each party. Tenant shall not make any other additions or alterations to the leased Premises other than as reflected in the Plans approved by the City without the prior written consent of the City, such consent not to be unreasonably conditioned, delayed or withheld. Moreover, upon receiving consent to make

any other addition or alterations to the leased Premises, Tenant shall not commence work on the construction or installation of such added or altered improvements until plans and specifications for same have been submitted to and approved by the City and a building permit issued.

9.02 Reimbursable Building Improvements. Structural or building system-related improvements to the Premises including, but not necessarily limited to, those: (1) required for compliance with an applicable federal, state or local regulations or codes, including, but not limited to, the codes adopted by the City in Title 15 of the Marina Municipal Code, the ADA, as same may be amended from time to time; or (2) to provide for the addition or restoration of a permanent structural improvement which will thereby enhance the Building's overall value or increase its useful life, including, but not limited to, the parking areas, not to include the parking area behind the Building to be improved by the City (see Section 9.05 (i)), electrical, mechanical, fire suppression, heating or ventilation system as designated on Exhibit C, as well an allocable share of architectural, engineering, planning and design services and certain other costs as reflected on Exhibit C, shall be eligible for treatment as Reimbursable Building Improvements for which Tenant will receive the Tenant Allowance to be credited against the monthly rent payable under this Lease as per Section 4.03. Reimbursable Building Improvements shall be as agreed by the City and Tenant and set forth in Exhibit C hereto. Notwithstanding Section 17.29 regarding exhibits, in the event of a conflict between this section and Exhibit C, Exhibit C shall control. Nothing herein shall alter the intent of the parties that Tenant shall be fully and completely responsible for all aspects pertaining to the construction of the Improvements on the leased Premises and for the payment of all costs associated therewith, subject to Tenant's right to the credit against monthly rent set forth in Section 4.03 hereof and the City's obligations under Section 9.05 below.

9.03 Financing. Tenant shall provide in writing to the City an expression of interest from a reputable lender with respect to a loan in the amount of no less than eight hundred thousand dollars (\$800,000) for purposes of funding the construction of the Improvements within thirty (30) days of execution of this Lease (the "Tenant Improvement Loan"). Tenant shall exercise its best efforts to obtain a loan commitment from a reputable lender for a loan in the amount of no less than eight hundred thousand (\$800,000) within forty-five (45) days of the City's approval of the Plans. In the event Tenant is unable to obtain a loan commitment within forty-five (45) days of the City's approval of the Plans, the City shall have the right to terminate this Lease.

9.04 Improvements by the Tenant.

(a) Tenant covenants and agrees and it is an express condition of this Lease that Tenant shall conduct its due diligence, at its own cost and expense, within thirty (30) days of the commencement of the early possession period provided for under this Lease, and no later than as set forth in the approved Construction Schedule commence to construct upon the Premises the Improvements in compliance with the Plans, and shall thereafter diligently prosecute to completion the Improvements in compliance with the Construction Schedule. Tenant also shall provide, at Tenant's sole cost and expense, all furniture, trade fixtures and equipment necessary to operate the Premises in accordance with the approved use (Sec. 2.01). At least two (2) weeks before the last date Tenant accepts initial bids for any construction, Tenant shall file with the

City a written list of the name of all contractors to whom Tenant has submitted a request for bids. In addition, Tenant shall file with the City the name of each contractor with whom Tenant proposes to contract, together with the name of the subcontractors of all tiers, at least five (5) business days before Tenant enters into a final contract with any contractor. Tenant shall promptly provide the City with written notice of the contractor(s) to whom Tenant has awarded any bid. Tenant's failure to strictly comply with this provision shall be a material breach of this Lease. The above provisions are intended to provide the City with notice of the contractor(s) that Tenant may engage to construct the Improvements but are not intended to give the City the right to approve or disapprove the contractor(s) engaged by Tenant.

In connection with the Improvements, the following conditions shall apply (collectively, "Basic Conditions"):

(1) The Improvements may not weaken the structural integrity of the Premises and/or other improvements.

(2) Tenant must, prior to constructing, erecting or making any Improvement, submit to the City (collectively, "Submissions") (i) complete copies of any and all architectural plans, drawings and specifications, including engineering, mechanical, structural and electrical working drawings, design calculations of and other documents ("Construction Drawings") pertaining to the proposed Improvements, in form reasonably satisfactory to the City and consistent with all Plans previously delivered to and approved by the City, (ii) complete copies of any and all authorizations or approval from any governmental agency or authority as may be required under applicable law, rules or regulations, including, without limitation, all applicable environmental laws, (iii) a complete list (including contact information) of all Tenant's representatives (including contractors, architects, engineers and other consultants) and all subcontractors, that may perform work or services related to the proposed Improvements, which must all be licensed and bonded professionals in the State of California, to the extent required under applicable law ("Tenant Contractors"), (iv) a final Construction Schedule, and (v) complete copies of the certificates of insurance required.

(3) Tenant must, prior to constructing, erecting or making any Improvement, procure and pay for all necessary permits and authorizations, and must comply with all applicable federal, state and local laws and regulations, including the conditions under such necessary permits during the construction and installation of the Improvements.

(4) The Improvements must be of new and first quality materials and all related work shall be in a proper, professional and good and workmanlike manner and conducted with all due diligence.

(5) If any such work related to the Improvements involves the replacement of fixtures or parts thereto, all replacement fixtures or parts shall have a value and useful life equal to the value and useful life on the replacement date of the fixtures being replaced.

(6) All work related to the Improvements shall be expeditiously completed in compliance with the approved schedule of completion and with all applicable laws, including those regarding disabled or handicapped persons, including without limitation the ADA.

(7) The Improvements shall strictly conform to the Plans and the final Construction Schedule.

(8) City will require Tenant or Tenant's general contractor, at Tenant's sole cost and expense, to furnish bonds or letters of credit in accordance with Sections 9.08 to assure diligent and faithful performance of all work related to the Reimbursable Building Improvements.

(9) If any Improvement impacts the structure or mechanical systems of the Premises to an extent greater than *de minimis*, or if Tenant otherwise has plans prepared for same, Tenant shall deliver "as-built" plans, including all mechanical systems (prepared using AutoCAD), to the City upon completion of the Improvements.

(10) Subject to Article 14, Tenant shall promptly discharge, remove or contest all liens filed against the Premises arising out of the construction of the Improvements.

(11) All Improvements (excepting Tenant's trade fixtures and equipment) shall be subject to this Lease. The Reimbursable Building Improvements (Exhibit C) shall become the property of the City upon the date their cost has been fully amortized and reimbursed to the Tenant by the City in accordance with Section 4.03. The remaining Improvements shall become the property of the City as of the termination date of this Lease, unless otherwise agreed upon by Tenant and the City, and Tenant shall execute and deliver to the City any document requested by the City evidencing the assignment to the City of all estate, right, title and interest (other than the interest created under this Lease).

(12) Tenant shall be responsible for the repair of any City or other facilities which are damaged as a result of Tenant's, or its contractors, subcontractors or agents construction of the Improvements.

(13) Tenant shall coordinate the timing of the Improvements with the City so that the Improvements will not in any material respect interfere with or cause a delay in any other construction activities authorized by the City.

(14) Tenant shall give the City at least seven (7) calendar days' notice prior to the commencement of construction of any Improvement so that the City may post appropriate notices of non-responsibility and agrees that such notices may remain posted until the Improvements are complete.

(15) Tenant shall comply with the City's waste reduction and recycling programs, as the same may be amended from time to time.

(16) Tenant shall comply with the Prevailing Wage Requirements, if applicable, and the other provisions under Section 9.07.

(17) Tenant shall pay all applicable fees under applicable the City ordinances and resolutions.

(18) Tenant shall be responsible for the repair of any City or other facilities which are damaged in connection with the construction of the Improvements.

(19) Tenant shall comply with any and all mitigation measures and conditions to approval applicable to the construction of the Improvements.

9.05 Improvements by the City. Except as otherwise expressly set forth in this Lease, the City is not obligated to construct or install any improvements on or off of the leased Premises. The City shall have no obligation on account of any construction or installation of any improvement by Tenant to pay for all or any portion of the costs or expenses arising out of such construction or installation, excepting the City's obligation to provide the credits against rent contemplated by Section 4.03 of this Lease. Notwithstanding the above, the City shall be responsible for (i) improving the parking area behind the Building, including all grading, paving, stripping and drainage, such that this parking area has not less than twenty-nine (29) parking stalls as shown on the Site Plan attached hereto as part of Exhibit A (ii) repair or replacement of the roof of the Building, as needed, and (iii) repairing and replacing all existing connections to the Building, as needed, for all utilities, including, gas, water (domestic and fire service), storm and sanitary sewer but excluding electrical and data transmission connections. The City shall provide City workers to paint the exterior walls of the Building upon completion of the exterior improvements by the Tenant and thereafter as needed in accordance with Section 10.01(b). All improvements that are the responsibility of the City shall be expeditiously completed with first quality materials in a proper, professional and good and workmanlike manner in compliance with Tenant's approved schedule of completion of the Improvements and all applicable federal, state and local laws, rules, regulations and ordinances. The City shall coordinate the timing of the improvement the parking area behind the Building with Tenant so that such improvements will not in any material respect interfere with or cause a delay in any other construction activities of Tenant authorized by the City.

9.06 Right of Entry for Construction and Maintenance. The City and Tenant each agree that the other shall be permitted to enter upon its property, as may reasonably be necessary in order for Tenant to make the Improvements or do other work required by this Lease or in order for the City to fulfill its responsibilities to make improvements (see Section 9.05) and for maintenance as set forth in Section 10.01, and to maintain or repair the respective party's property. The right of each party to enter the other's property or the Premises shall extend to such party's lessees, and licensees and contractors. A party's exercise of its right of entry shall not unreasonably interfere with the other party's use of its property. Any interference shall be temporary and all work on the entering party's property shall proceed expeditiously as necessary to avoid or minimize any such interference. A party intending to exercise the right of entry shall first give to the other party reasonable prior written notice before commencement of any work on the other party's property. In the event a party's entry results in any damage to the other party's property, the same shall be repaired expeditiously at the entering party's expense.

9.07 Prevailing Wage.

(a) Prevailing Wage Standards.

(1) **Basic Requirements.** Tenant agrees that, with respect to any construction at or on the Premises of Reimbursable Building Improvements, for which Tenant is to receive a credit against rent in accordance with Section 4.03, Tenant (and its contractors and subcontractors) shall comply with the then current Public Work Prevailing Wage Requirements, as the same may be amended from time-to-time (collectively, the "Prevailing Wage Requirements").

(2) **Additional Prevailing Wage Provisions.** The following provisions of this Section apply only if, and to the extent that, the Prevailing Wage Requirements are applicable:

(a) The Prevailing Wage Requirements shall apply to the employees of any employer including Tenant and any Tenant's contractor(s) or subcontractor(s), including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the operation or maintenance of the Premises.

(b) Tenant shall cause the provisions of this Section to be incorporated into each contract and subcontract for each Tenant contractor and subcontractor which would be subject to this Section. In the event the provisions are not so incorporated, Tenant shall be liable to the worker in any action for the difference between the prevailing wage rate required to be paid under the Prevailing Wage Requirements and the amount actually paid to the worker, including costs and attorney fees, as if Tenant were the actual employer.

(c) Nothing in this Lease shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the California Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Tenant and Tenant's contractors and subcontractors shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprenticeable occupations, with respect to all work covered by that section.

(d) Tenant agrees that to the extent that Tenant and its contractors and subcontractors are required to comply with the Prevailing Wage Requirements, Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with the California Labor Code), in effect at the time the work is performed. Copies of the applicable prevailing rate of per diem wages are on file at the City's Building Division office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the leased Premises.

(e) Except where the context otherwise requires, the definitions of terms and phrases contained in the California prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the Prevailing Wage Requirements of this Section 9.07.

(f) In the event a civil wage and penalty assessment is served by the Labor Commissioner, acting through the Division of Labor Standards Enforcement, on the City, the Tenant, or any contractor or subcontractor of the Tenant, as a result of the failure of Tenant or any of its contractors or subcontractors to comply with this Section 9.07, Tenant shall withhold from amounts due to the contractor or subcontractor sufficient funds to satisfy the assessment and, if the assessment becomes final, Tenant shall pay as a penalty to the City the amount determined by the Labor Commissioner in accordance with California Labor Code §1775, as the penalty assessment payable for each worker for each day, or portion thereof, such worker was paid less than the applicable prevailing wage rates for such work or craft in which such worker was employed. Further, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Tenant or by Tenant's contractor or subcontractor. Tenant, and each affected contractor and subcontractor, shall have the right to request a review by the Labor Commissioner of the civil wage and penalty assessment served by the Labor Commissioner by transmitting a written request for review to the Labor Commissioner within sixty (60) days after service of the assessment, and Tenant and its contractors and subcontractors shall not be obligated to pay the civil wage and penalty assessment to the City until a final written decision affirming, modifying or dismissing the assessment is issued by the Labor Commissioner.

(g) The prevailing wage requirements of this Section 9.07 will be monitored and enforced by the City's Building Division. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this Section shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(h) Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the City within a reasonable time not to exceed thirty (30) days from close of payroll by the respective employer. In the event Tenant or its contractor or subcontractor fails to make the certified payroll records

available for inspection within ten (10) days of a written request made by the Labor Commissioner, acting through the Division of Labor Standards Enforcement, and a penalty assessment is served or levied by the Labor Commissioner arising out of such failure, Tenant shall forfeit as a penalty to the City the penalty per calendar day, or portion thereof, for each worker determined in accordance with California Labor Code §1776, not otherwise paid to the City by the contractor or subcontractor who failed to comply with California Labor Code §1776. In accordance with California Labor Code §1813, in the event Tenant or its contractor or subcontractor requires or permits a worker to work in violation of California Labor Code Division, 2, Part 7, Chapter 1, Article 3 (payment for work in excess of eight hours in one calendar day and forty hours in one calendar week), Tenant shall forfeit as a penalty to the City the sum of Twenty-five Dollars (\$25.00) for each worker so employed, provided such penalty is not otherwise collected from the contractor or subcontractor who permitted its worker(s) to work in violation of such California Labor Code provisions..

(i) It is understood and agreed that all documents that Tenant is required to submit to or file with the City under this Section shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

(j) In the event of repetitive breach of the requirements of this Section by Tenant, the City shall be entitled, in addition to all other remedies hereunder for breach of this Lease, to appoint at Tenant's expense a special monitor to oversee Tenant's compliance. Fees for said special monitor shall be billed to Tenant, which fees Tenant agrees to pay as Additional Rent within ten days after Tenant's receipt of such bill.

(k) Tenant shall indemnify, defend (with counsel approved by the City) and hold the City, its officers, officials, employees, and agents harmless from and against all claims which directly or indirectly in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding in the construction of the Reimbursable Building Improvements, the failure to comply with any state or federal labor laws, regulations or standards in connection with the Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims. It is further agreed that City does not and will not waive any rights against Tenant that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or deposit by Tenant to City of any of the insurance policies described in this Lease. The provisions of this subsection survive the expiration or earlier termination of this Lease. The indemnification obligations of Tenant as set forth in this section shall not apply to claims arising from the gross negligence or willful misconduct of the City, its officials, officers, employees or agents.

9.08 Security Concerning Reimbursable Building Improvements – Performance and Labor and Material Bonds. Before the commencement of any construction work hereunder for the Reimbursable Building Improvements, the City will require that Tenant, or its contractors, at no cost or expense to the City, furnish to the City the following security concerning Reimbursable Building Improvements to be constructed by or on behalf of Tenant and covering any obligation of Tenant under the Prevailing Wage requirements provisions of this Lease:

(a) **Performance Bond.** A bond in cash, or securities satisfactory to the City in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the City, in a sum of not less than 100% of any construction contract (or in the event Tenant serves as its own general contractor, 100% of the anticipated construction costs of the Reimbursable Building Improvements) for the proposed Reimbursable Building Improvements, payable to the City and conditioned upon full, faithful and satisfactory performance by Tenant its contractor(s) of the such Reimbursable Building Improvements within the period of time specified in the construction schedule. Upon Tenant's or its contractor(s) full, faithful and satisfactory performance and completion of the such Reimbursable Building Improvements, said bond shall be cancelled or returned to Tenant or contractor, as the case may be; otherwise, such part of the amount of the bond as shall be required to complete such Reimbursable Building Improvements shall be payable to or retained by the City, as the case may be. In the event that said bond shall be in cash, the City shall have the right to invest and reinvest the same as it shall see fit, and any interest earned thereon during the time it is so held by the City shall accrue to and belong to the City, and Tenant or contractor shall have no interest in or claim thereto.

(b) **Labor and Material Bond.** A bond in cash or securities satisfactory to the City in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the City with Tenant's contractor(s), as principal(s), in a sum not less than 100% of any construction contract (or in the event Tenant serves as its own general contractor, 100% of the anticipated construction costs of the Reimbursable Building Improvements) for the proposed Reimbursable Building Improvements as such costs are set forth in the estimated Reimbursable Building Improvement completion costs, guaranteeing the payment for all materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of said work or labor done thereon of any kind whatsoever and protecting the City from any liability, losses or damages arising therefrom.

(c) **General.** In the event and to the extent that Tenant obtains from Tenant's contractor(s) the bonds required hereunder which are satisfactory to the City, the City, upon application by Tenant and upon naming the City as an additional obligee of Tenant's principal and surety under such bond or bonds, shall release Tenant from and consent to the cancellation of the bond or bonds originally furnished by Tenant. It is understood and agreed that any bond which, as to the City as obligee, is conditioned upon Tenant making all necessary payments to the contractor shall not be satisfactory to the City. A combination performance and labor and material bond shall satisfy the foregoing requirements of this Section.

9.09 No Right to Demolish. Notwithstanding any other provisions of this Article, Tenant has no right to demolish the Reimbursable Building Improvements, once built, or to remove any improvements, equipment or items financed by the City, in whole or in part, unless Tenant has received the prior written approval of the City.

9.10 Accounting for Reimbursable Building Improvements; Final Agreed Tenant Allowance; Title to Reimbursable Building Improvements. Tenant and its contractors and agents shall maintain records and receipts of all costs incurred by Tenant with respect to the Reimbursable Building Improvements. Tenant shall provide to the City a copy of all such records and receipts, and such records, once in the possession of the City, shall constitute public records. The final agreed Tenant Allowance shall be determined within 90 days of issuance the Certificate of Occupancy and shall be in an amount equal to the final cost to the Tenant of the Reimbursable Building Improvements, as supported by records and receipts required by this Section 9.10; provided that the Tenant Allowance shall not exceed Six Hundred Thousand Dollars (\$600,000). If the Tenant Allowance is less than Six Hundred Thousand Dollars (\$600,000) then for the remainder of the Proration Period the monthly rental credit received by the Tenant shall decrease and the monthly rent payable to the City by the Tenant shall increase accordingly. All Reimbursable Building Improvements for which the Tenant receives rental credit as reimbursement for the costs incurred to construct the same in accordance with Section 4.03, shall become the property of the City at such time as their cost has been fully credited against the rent payable by Tenant under this Lease. The remaining Improvements shall become the property of the City upon termination of this Lease.

9.11 Insurance. Before commencing any construction work and during the course of construction, Tenant agrees to obtain, and cause its contractor(s) to be obtain, with a responsible insurance carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Workers Compensation Insurance and Safety Act, compensation insurance covering full liability for compensation under said Act, for any person injured while performing any work or labor incidental to the work in or on the leased Premises. During the course of construction, Tenant shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance, including installation floater coverage, in a sum equal, from time to time, to the agreed full replacement cost of Buildings 535 prior to completion of the Improvements in the amount of two million eight hundred thousand dollars (\$2,800,000) plus the amount to be expended for construction of the Improvements in the estimated amount of one million two hundred thousand dollars (\$1,200,000). All risk of loss or damage to the Improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Tenant. The City and Tenant's general contractor, shall be additional named insureds on Tenant's builder's risk and liability insurance.

9.12 Tenant Responsible for Additional Improvement Costs. All costs incurred by Tenant in connection with the construction of the Improvements, including Reimbursable Building Improvement costs in excess of the final, agreed total estimated cost of the Reimbursable Building Improvements provided as an allowance to Tenant, as set forth on Exhibit C attached hereto in according with Section 4.03 of this Lease, shall be the sole

responsibility of Tenant, subject to the City's obligation to provide the credit against monthly rent set forth in Section 4.03 of this Agreement. All costs that are determined to be non-reimbursable under this Lease are the sole responsibility of Tenant.

ARTICLE 10. MAINTENANCE AND REPAIR

10.01 City's Obligation Under this Lease. The City shall be responsible for the following maintenance and repair of leased Premises and appurtenances, unless the condition requiring maintenance or repair is caused by the active negligence or willful misconduct of Tenant or an invitee of Tenant, for the initial and any extended term of this Lease:

- (a) Maintaining and repairing all structural elements of Building 535, including, without limitation, the building's exterior walls, surfaces, foundations, and roof supports.
- (b) Maintaining the watertight integrity of and painting the exterior walls of Building 535. Upon completion of construction of the new outer wall on the southwest side of Building 535, which replaced the exterior curtain wall, the City will paint the new wall to match the existing building colors.
- (c) Maintain, repair, or replace, as needed, roof coverings, gutters and drains, and all skylights.
- (d) Maintain and repair all underground and exterior plumbing, drains and utility connections from the boundary of the leased Premises to the exterior of Building 535, including, without limitation, all water lines, sewer connections, storm drains, and electrical conduits.
- (e) Maintaining in compliance with applicable laws, regulations and codes, the interior fire alarm system. Any damage to the interior fire alarm system resulting from tenant misuse or negligence shall be repaired or replaced by the Tenant.
- (f) Maintain all parking area and surface, and sidewalks on the real property as shown on Exhibit A.

10.02 Tenant's Obligations Under this Lease. Tenant shall be responsible for the following maintenance and repair of Tenant's leased Premises within Building 535, unless the condition requiring maintenance or repair is caused by the active negligence or willful misconduct of City or an agent of the City, for the initial and any extended term of this Lease.

- (a) Maintenance, repair or replacement of interior systems and components for the electrical, plumbing, ventilation, and mechanical systems.
- (b) Interior and exterior glass, glazing, or doors.

- (c) All interior walls, ceiling, floors, bathrooms, plumbing and drains, utility connections and other structures or components, if any.
- (d) All air conditioning, ventilation, heating systems and components, if any.
- (e) All communication systems and components.
- (f) All security alarm systems and components, if any.
- (g) Maintenance, sweeping and keeping clear of refuse, regular trash and waste removal.
- (h) Landscape maintenance.
- (i) Repair any damage to the building structure or components or paved surfaces caused by Tenant or its invitees.
- (j) General maintenance and upkeep of the trash enclosure.
- (k) Maintain all exterior lighting on the Premises as shown on and described in Exhibit A.

10.03 Surrender. On the last day of this Lease, Tenant shall surrender the leased Premises to the City in the same condition as when received on the Commencement Date, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the leased Premises occasioned by the removal of Tenant's trade fixtures, furnishings and equipment which repair shall include the patching and filling of holes and repair of structural damage.

ARTICLE 11. DAMAGE OR DESTRUCTION

11.01 Destruction or Substantial Damage of Premises.

(a) Tenant Obligation to Restore.

(i) If, during the Initial Term or any option period during this Lease, any of the improvements now or hereafter located on the leased Premises are substantially damaged or destroyed by a fire or other casualty (excluding earthquake or flood) , Tenant shall proceed with reasonable diligence to restore the leased Premises substantially to the condition thereof immediately prior to such damage or destruction; provided, however, that Tenant may elect to terminate this Lease by giving written notice of such election to the City prior to commencement of restoration and not later than forty-five(45) days after the date of loss, if either (i) the necessary restoration work would reasonably require a period longer than one hundred fifty (150) business days' to complete and the nature or extent of the damage, destruction or restoration work is such that it will materially prevent Tenant from operating it business on the Premises for such period of time, or (ii) the total cost of the necessary restoration work would reasonably require the expenditure by Tenant of more than twenty-five thousand dollars

(\$25,000.00), excluding costs covered by insurance proceeds. In no event will City be required to repair or replace Tenant's stock in trade, fixtures, improvements, furniture, furnishings and equipment.

(ii) In the event Tenant makes an election to terminate this Lease because the cost of the necessary restoration work will exceed twenty-five thousand dollars (\$25,000) excluding insurance proceeds, then the City, within ten (10) days after receiving the Tenant's notice of termination, may elect to pay the difference between the cost of repairing or restoring the damaged or destroyed improvements in excess of the insurance proceeds and twenty-five thousand dollars (\$25,000.00), in which case this Lease shall remain in full force and effect, and Tenant shall proceed with reasonable diligence to restore the Premises.

(iii) In no event will Tenant be required to make repairs for any damage to the Premises caused by the willful acts or negligence of the City or the City's employees, agents, tenants, subtenants, contractors, subcontractors or invitees, which damage is unrelated to the City's willful failure or negligence in maintaining or making repairs to the Premises and appurtenances for which the City is responsible in accordance with Section 10.01 of this Lease, which damage the City shall promptly repair, replace or restore at the City's sole cost and expense.

(b) Damage During Final 18 Months. If any substantial damage or destruction occurs to the leased Premises during the last eighteen (18) months of the Initial Term or any option period and the portion of the cost to repair the damage that is not covered by insurance exceeds fifteen thousand dollars (\$15,000.00), Tenant may terminate this Lease upon giving thirty (30) days prior written notice to the City; provided, however, that the City shall have the right to elect to pay the difference between the cost of repairing or restoring the damaged or destroyed improvements in excess of the insurance proceeds, in which case this Lease shall remain in full force and effect, and Tenant shall proceed with reasonable diligence to restore the Premises.

(c) General.

(i) In the event Tenant makes an election to terminate this Lease pursuant to subsection (i) or (ii) of Section 11.01(a) above, and the City does not make an election to contribute towards the costs of repair or restoration as provided in such subsection, this Lease shall terminate. Tenant shall be released thereby without further obligation to the City upon surrender of possession of the leased Premises to restore or repair the Premises, provided that Tenant shall remit to the City all proceeds of insurance payable to Tenant for the restoration and repair of the Premises, excepting proceeds payable with respect to the restoration of Tenant's trade fixtures, equipment or other personal property. Upon any termination of this Lease under this Article, the City and Tenant shall be released thereby without further obligation to each other, except for obligations which have theretofore accrued and are then unpaid or unperformed or as otherwise survive the termination of this Lease as set forth herein.

(ii) In the event that restoration is made pursuant to this Article, this Lease shall remain in full force and effect. In the event the damage or destruction to the leased Premises or Building 535, or the repairs thereto, materially prevents Tenant from operating its

business in all or any part of the leased Premises, Tenant shall be entitled to a proportionate reduction of monthly rent during the time that said damage or destruction or the repairs thereto interfere with Tenant's business operations and Tenant's loss of business income is not covered by Tenant's business interruption insurance (not taking into consideration any deductibles payable thereunder). Tenant's rent abatement shall be computed based upon the extent to which such damage or destruction interferes with Tenant's ability to generate revenues from its operations as shall be agreed by Landlord and Tenant. Should any dispute arise over the reduction of rent to which Tenant is entitled, such dispute shall be resolved according to the provisions of section 17.04 of this Lease. If the damage or destruction shall materially interfere with Tenant's business operations for a period in excess of twelve (12) months following the date of loss, after which period Tenant's business losses are not covered by Tenant's business interruption insurance, the City shall have the right to terminate this Lease upon notice to Tenant.

(d) Indemnification by City. During the Initial Term, and any option period, the City will indemnify and reimburse Tenant for all property damage, loss, cost, or expense suffered by Tenant to the extent the same arises out of the City's willful failure or negligence in maintaining or making repairs to the Premises and appurtenances for which the City is responsible in accordance with Section 10.01 of this Lease.

11.02 Waiver. Except as otherwise specifically provided in this section, Tenant specifically waives the provisions of §§1932 and 1933 of the California Civil Code with respect to the termination of the hiring of a thing by virtue of the perishing or destruction of the thing being hired.

ARTICLE 12. UTILITIES

12.01 Provision of Utilities. Tenant shall have the right to use the utility service facilities serving the Premises at the commencement of the early possession period under this Lease. The City will use its best efforts to continue all utility services as they presently exist, but it cannot and does not guarantee that there will be no interruptions of service, and Tenant hereby waives any rights or claims it may have resulting from temporary interruptions of service, except any claims arising out of the sole negligence or willful misconduct of the City. To the extent it has knowledge the City will provide notice of any work scheduled which may interrupt the utility service to the leased Premises. If the City is unable to provide utility service facilities due

to the imposition of any limit on consumption or any limit on the construction of additional utility facilities, or the allocation or curtailment of utility facilities or services by law or regulation, it shall have no obligation hereunder.

12.02 Payment of Utilities. Tenant agrees, upon commencement of the early possession period to contract for, and pay directly to the utility providers, all utility services provided under the terms of any contract between the Tenant and the utility provider and to the City for all utility services provided under the terms of any contract between the City and a utility provider serving the Premises through existing lines and connections. Tenant shall be responsible to provide and pay for all new connection equipment and any fees required. Tenant shall pay all utility charges

within twenty (20) days of receipt of invoice and shall provide evidence of payment when requested to do so in writing by the City. In the event Tenant fails to pay any utility bill when due, the City may, at its option, pay the same and collect from Tenant's performance deposit see Section 4.07) the amounts so disbursed, plus interest at the rate of 10% per annum.

12.03 Telephone/Internet Connectivity. Tenant shall be responsible for providing and paying directly to the provider for telephone and internet connection and service to the Premises.

12.04 Garbage/Trash Collection. Tenant agrees, upon entering into occupancy of the leased Premises, to contract and pay for garbage and trash collection and removal services. Tenant shall arrange and pay for the disposal of all hazardous waste in accordance with all applicable local, state and federal laws and regulations. In the event Tenant fails to pay any bill when due, the City may, at its option, pay the same and collect from Tenant's performance deposit (see Section 4.07) the amounts so disbursed, plus interest at the rate of 10% per annum.

12.05 Compliance with Regulations of Local Agencies. It shall be the responsibility of the Tenant under this Lease to contact, consult and comply with any regulation applicable to Tenant's activities at the Airport which are now or may be promulgated by a local public or private utility provider or regulator having jurisdiction over activities or utility services at the Airport, including, but not limited to, the Fort Ord Reuse Authority, Monterey Regional Water Pollution Control Agency, Marina Coast Water District, Pacific Gas & Electric Company and the Monterey Bay Unified Air Pollution Control District, and the Monterey County Water Resources Agency.

ARTICLE 13. INSURANCE & INDEMNIFICATION

13.01 Insurance to be Provided by the Tenant. Except as otherwise provided herein, the Tenant shall obtain the following insurance coverage, endorsed to name the City as an additional insured (as set forth below), and maintain same continuously in effect commencing as of the date Tenant accepts early possession for the Premises for purposes of completing the Improvements (see sec. 1.05) and at all times during the term of this Lease:

(a) **Commercial General Liability Insurance.** Tenant shall maintain (primary) commercial general liability insurance, including coverage for bodily injury and property damage on a form acceptable to the City's Risk Manager, including premises and operations liability, blanket contractual liability, broad form property damage, including completed personal and advertising injury liability, and products and completed operations coverage. Policy limits shall be no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate. The City shall be added as an additional insured on a form approved by the City's Risk Manager. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any employee or agent of the City and must include a severability of interest (cross liability) provision, that is, it shall act as though a separate policy were written for each insured and additional insured named in the policy.

Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured.

(b) Business Auto Coverage. If Tenant uses or causes to be used vehicles in connection with its use of the leased Premises, it shall obtain comprehensive or business automobile liability insurance with limits not less than one million dollars(\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired vehicles. Coverage shall be written on a form approved by the City's Risk Manager. Limits shall be no less than one million dollars (\$1,000,000) per accident. This policy shall be scheduled as underlying insurance to any umbrella policy required above for a total limit of no less than two million dollars (\$2,000,000) per each accident.

(c) Umbrella Liability Insurance. Tenant shall maintain (over primary) umbrella liability insurance coverage covering bodily injury/property damage, personal injury, contractual and products and completed operations at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum twenty-five thousand dollar(\$25,000.00) self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policy limits shall be not less than two million dollars (\$2,000,000) per occurrence and in the aggregate, above any limits required in the underlying policies. The policy shall have starting and ending dates concurrent with the underlying coverages.

(d) Workers' Compensation/Employer's Liability. Tenant shall maintain workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. . The City acknowledges that neither it nor the Airport Commission can be named as an additional insured on such policy.

(e) Business Interruption Insurance. Commencing as of the Commencement Date, Tenant shall obtain and maintain loss of business income and extra expense insurance coverage written on a special form coverage basis for periods of twelve (12) months in amounts as will reimburse Tenant for loss of business income.

13.02 Fire Insurance. Commencing as of the Commencement Date, Tenant shall obtain and maintain continuously in effect at all times during the term of this Lease, the following insurance coverage:

(a) Fire and extended coverage insurance (excluding smoke pollution, or damage occasioned by earthquake or flood) in the amount of the agreed full replacement cost of the structures and fixed improvements located on the Premises (i.e. Building 535, and related fixed improvements) in the amount of four million dollars (\$4,000,000) with deductibles to be paid by Tenant for insured losses, in an amount not to exceed twenty thousand dollars (\$20,000). The proceeds of any such insurance shall be used for rebuilding or repairing the improvements on the leased Premises, subject to the provisions of Article 11 of this Lease. The City shall be an additional named insured on Tenant's fire and extended coverage insurance.

(b) Tenant shall reimburse the City for the full cost, if any, of any additional insurance premiums required by City's insurer due solely to any hazardous activities conducted by Tenant on the leased Premises.

(c) Tenant hereby agrees to maintain, at its own cost and expense, during the entire term of this Lease or as said term may be extended by any option period, a policy or policies of insurance against loss or damage upon its furnishings, fixtures, inventory, personal property and equipment. A certificate or certificates of Tenant's current insurance coverage must be filed with the City's Risk Manager.

13.03 Tenant and the City further agree as follows:

(a) These provisions and this Article supersede all other sections and provisions of this Lease to the extent that any other section or provision conflicts with or impairs the provisions of this section.

(b) The insurance requirements set forth in this Article are intended to be separate and distinct from any other provision in this Lease and shall be interpreted as such.

(c) All insurance coverage and limits provided pursuant to this Lease shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Lease or any other agreement relating to the City or its operations limits the application of such insurance coverage. Nothing contained in this Article is to be construed as affecting or altering the legal status of the parties to this Lease.

(d) Requirements of specific coverage features or limits contained in this Article are not intended as a limitation on coverage limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage or a waiver of any type.

(e) All general or auto liability insurance coverage provided pursuant to this Lease or any other agreements pertaining to the performance of this Lease shall not prohibit Tenant and Tenant's employees, or agents, from waiving the right of subrogation prior to a loss. Tenant hereby waives its right of subrogation against the City and the City hereby waives its right of subrogation as against Tenant. Each party hereto shall cause each insurance policy obtained by it to provide that the insurance company waives the right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

(f) Unless otherwise approved by the City, Tenant's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A:VII." Self-insurance will not be considered to comply with these requirements.

(g) In the event any policy of insurance required under this Lease does not comply with these requirements or is canceled and not replaced, the City has the right but not the duty to obtain insurance it deems necessary and any premium paid by City will be promptly reimbursed by Tenant.

(h) Tenant agrees to provide evidence of the insurance required herein, satisfactory to the City prior to taking any steps in furtherance of this Lease and annually upon renewal of the Tenant's business license, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to Tenant's general liability and umbrella policies using a form approved by the City Risk Manager. Certificate(s) are to reflect that the insurer will provide thirty days notice of any cancellation of coverage. Tenant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Tenant agrees to provide complete certified copies of policies to City within ten days of City's request for said copies.

(i) Tenant shall provide proof that policies of insurance required herein expiring during the term of this Lease have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished within 72 hours of the expiration of the coverages.

(j) Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Lease in no way waives any right or remedy of City or any additional insured, in this or any other regard.

(k) Tenant agrees to require all contractors, subcontractors or other parties hired to perform any of Tenant's obligations under this Lease including construction related work on the leased Premises, including architects, to provide general liability insurance naming as additional insureds all parties to this Lease. Tenant agrees to obtain certificates evidencing such coverage and naming as additional insureds all parties to this Lease. Tenant agrees to require that no contract used by any contractor or subcontractor, will reserve the right to charge back to City the cost of insurance required by this Lease. Tenant agrees that upon request, all agreements with contractors or subcontractors will be submitted to City for review. Tenant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required. Failure of City to request copies of such agreements will not impose any liability on City, its Council, commissions, officers, employees and agents.

(l) Tenant agrees to provide immediate notice to the City of any claim or loss against Tenant or its contractors or subcontractors that includes the City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

(m) In the event of any loss that is not insured due to the failure of Tenant to comply with these requirements, Tenant agrees to be responsible for any and all losses, claims, suits damages, defense obligations and liability of any kind suffered by the City, or the City's employees as a result of such failure.

(n) Tenant agrees not to attempt to avoid its defense and indemnity obligations to the City and its Council, commissions, boards, employees, agents, officials and servants by using as a defense Tenant's statutory immunity under workers compensation and similar statutes.

(o) Tenant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between the Tenant and the City or between the City and any other insured or named insured under the policy, or between City.

(p) Coverage will not be limited to the specific location or individual or entity designated as the address of the leased Premises.

13.04 Approval of Insurance Coverage. Upon execution of this Lease, a copy of the insurance policy or policies required herein or, in lieu thereof, the face page of such policy or policies and any endorsements which limit or otherwise affect the coverage provided therein shall be delivered by Tenant to the City Manager, or his or her designee, for approval as to form and sufficiency. When such insurance policy or policies have been so approved, Tenant may substitute for same a certificate of insurance issued by the respective insurance company or companies certifying that such insurance policies are in full force and effect and that all liabilities arising out of this lease or Tenant's possession and use of the leased Premises are covered by such insurance policy or policies and a current copy of such certificate shall be provided to the City annually upon renewal of Tenant's business license. Notwithstanding any provisions to the contrary contained herein, Tenant shall not have the right to take possession of the leased Premises until such insurance policy or policies are filed with and approved by the City Risk Manager.

13.05 Review of Insurance Coverage. City shall have the right, at any time during the term of this Lease, to review the type, form and coverage limits of the insurance requirements. If in the reasonable opinion of the City, the insurance provisions of this Lease are not sufficient to provide adequate protection for the City and the members of the public using the Airport, the City may require Tenant to maintain insurance sufficient to provide such adequate protection. Insurance requirements shall be applied uniformly to all tenants engaged in similar-type operations at the Airport, and such requirements shall be consistent with industry standards. The City shall notify Tenant in writing of any changes in the insurance provisions necessary to provide adequate protection. If Tenant does not deposit acceptable certificates evidencing valid insurance policies acceptable in form and content to the City, incorporating such changes, within sixty(60) days of receipt of such notice, this Lease shall be in default. The procuring of such policy of insurance shall not be construed to be a limitation upon Tenant's liability nor as a full performance of its part of the indemnification provisions of this Lease; Tenant's obligation being, notwithstanding said policy or policies of insurance, the full and total amount of any damage, injury or loss caused by the negligent act or omission of Tenant.

13.06 Indemnification. Tenant and the City agree that City, its Council, boards and commissions, officers, employees, agents, and volunteers, should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuits, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the matters set forth below.

Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Tenant acknowledges that City would not enter into this Lease in the absence of the commitment from Tenant to indemnify and protect City as set forth here.

To the full extent permitted by law, Tenant shall defend, indemnify and hold harmless the City, its Council, boards and commissions, officers, employees, agents, and volunteers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorney fees incurred by the City, court costs, interest, defense costs, including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to (i) the intentional act or negligence of Tenant or Tenant's employees, agents, contractors, subcontractors or invitees, (ii) any breach or default in performance of any obligation to be performed by Tenant under this Lease, or (iii) the occupancy of the Premises by Tenant and the operation of Tenant's business thereon. All obligations under this provision are to be paid by Tenant upon receipt of notice by Tenant from the City that the City has suffered or incurred the same.

Without affecting the rights of the City under any provision of this Lease or this section, Tenant shall not be required to indemnify, defend or hold harmless City as set forth above to the extent liability is attributable to the sole negligence, gross negligence or willful misconduct of City, or officers, employees, agents, contractors, subcontractors, tenants, subtenants or volunteers of the City, provided such is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely or grossly negligent or to have engaged in willful misconduct and not in instances where Tenant is solely or partially at fault, or in instances where City's fault account for only a percentage of the liability involved. In those instances, the obligation of Tenant will be for that portion of the liability not attributable to the City's sole or gross negligence or willful misconduct.

Notwithstanding the above, or anything in the Lease, the City shall not in any event, including, without limitation, the sole or gross negligence or willful misconduct of the City or any person for whom it is responsible in law, be in any way liable or responsible to the Tenant for any consequential, indirect, special, punitive or incidental loss, injury or damages of any nature whatsoever (including, without limitation, loss of income or revenue or business interruption) that may be suffered or sustained by the Tenant or its representatives, customers or any other person for whom the Tenant is responsible in law.

Tenant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Article from any assignee, contractor, subcontractor or any other person or entity involved by, for, with or on behalf of Tenant in the performance of Tenant's obligations under this Lease. In the event Tenant fails to obtain such indemnity from such third parties, as required here, Tenant agrees to be fully responsible according to the terms of this section.

Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors and assigns of Tenant and shall survive the termination of this Lease or this Article.

ARTICLE 14. LIENS & CLAIMS

14.01 Liens and Claims. Tenant shall not suffer or permit to be enforced against the City's title to the leased Premises, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of the City).

14.02 Tenant to Pay Liens & Claims. Tenant shall pay all such liens, claims and demands before any action is brought to enforce same against said land; and Tenant agrees to hold City and said land free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith.

14.03 Payment of Liens & Claims by City. Should Tenant fail or refuse to pay any lien, claim, or demand arising out of the construction, repair, restoration maintenance and use of said Premises and the buildings and improvements thereon, or any other claim, charge or demand which Tenant has agreed to pay under the covenants of this Lease, Tenant or its authorized encumbrancers, if any, shall, within thirty(30) days written notice from City to Tenant of its said encumbrance, pay and discharge the same or shall furnish to City, in a form satisfactory to City, sufficient security for such lien, claim or demand and all costs and expenses in connection therewith. Should Tenant or its authorized encumbrancers within said thirty(30) day period, not pay and discharge said lien, claim or demand, or not provide said security to City, then City may, at its option, either treat such failure or refusal as a breach of or default under this Lease, or may pay any such lien, claim, charge or demand, or settle or discharge any action therefore or judgment thereon, and all costs, expenses and other sums incurred or paid by City in connection therewith shall be repaid to City by Tenant upon written demand, together with interest thereon at the rate of 10% per annum from the date of payment until repaid, and any default in such repayment shall constitute a breach of the covenants and conditions of this Lease.

ARTICLE 15. TRANSFERS & ENCUMBRANCES

15.01 Sales, Assignments, Transfers, Subleases, and Encumbrances. Tenant shall not sell, assign, transfer, or encumber this Lease, any interest of Tenant in and to the leased Premises, nor sublease the leased Premises, in whole or in part, except with the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Neither shall this

Lease, nor any interest of Tenant in and to the leased Premises be subject to an involuntary sale, assignment or transfer, or sale, assignment or transfer by operation of law in any manner whatsoever. Any such sale, assignment, transfer, encumbrance or sublease, without the prior written consent of the City, whether voluntary or involuntary shall be void and of no effect and shall be a default which entitles City to terminate this Lease, Tenant's rights in and to the leased Premises, in the manner hereinafter provided by this Lease.

Notwithstanding anything to the contrary set forth herein, Tenant may grant a security interest to its lender in Tenant's equipment, trade fixtures, and other fixtures which are a part of the Improvements for which title is vested in the Tenant without the consent of the City to secure the Tenant Improvement Loan, as contemplated by Section 9.03 of this Lease; provided, however, that Tenant shall remain liable hereunder for the payment of all monthly rent and the performance of all obligations of Tenant under this Lease; and (ii) Tenant or its lender shall have no right to remove any of the Improvements other than Tenant's equipment, trade fixtures, other fixtures which are a part of the Improvements constructed by Tenant for which title is vested in the Tenant and which can be disengaged without materially damaging the premises. The City shall cooperate with Tenant in the securing of the Tenant Improvement Loan but shall not be required to execute any documents in connection with the loan.

15.02 Tenant Affiliate. Notwithstanding the provisions of §15.01, Tenant may assign the Premises with the City's consent to any corporation which controls, is controlled by or is under common control with the Tenant, or to any corporation resulting from the merger or consolidation with Tenant, or to any person or entity which acquires substantially all of the assets of Tenant as a going concern, provided that said assignee assumes, in full, the obligations of Tenant under this Lease. Any such assignment shall not, in any way, affect or limit the liability of Tenant under the terms of this Lease even if after such assignment or subletting the terms of this Lease are materially changed or altered without the consent of the Tenant, the consent of whom shall not be necessary.

15.03 No Release of Tenant. Regardless of City's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary responsibility of Tenant to pay the rent and to perform all other obligations to be performed by Tenant under this Lease, without the express written consent of the City. The acceptance of rent by the City shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, City may proceed directly against Tenant without the necessity of exhausting remedies against said assignee.

ARTICLE 16. HAZARDOUS SUBSTANCES

16.01 Site Assessment and Building Materials Survey. Prior to the execution of this Lease (see Section 8.01), the City obtained, at its expense, a Phase I Environmental Site Assessment and a building materials survey for the presence of asbestos and other hazardous substances and materials within Building 535 and on the Premises. The City has provided to the Tenant the Asbestos Survey Report prepared by the U.S. Army Corps of Engineers for Building 535. (see Section 8.01.) The City shall provide Tenant any documents, drawings and data in its

possession relating to environmental condition of the leased Premises. Tenant and City agree that the City shall have no further obligation under this Lease to remove any hazardous materials in or on Building 535, including any required repairs identified in any study Tenant may choose to undertake after the thirtieth (30th) day following Tenant's acceptance of early possession of the Premises, excepting (i) the City's obligation to repair and replace the roof and to remediate or abate all hazardous substances or materials present in the roofing materials, and (ii) the City's obligation to cure the Remediable Conditions and such other hazardous or dangerous conditions as identified in accordance with Tenant's notice of disapproval provided to the City pursuant to Section 8.02 of this Lease.

16.02 Hazardous Substances. Pursuant to Health and Safety Code §25359.7(b), during the term of the Lease and the early possession period Tenant shall notify City in writing, within a reasonable period of time, of any material release of hazardous substances or materials by Tenant in the soils or groundwater of the Premises or the Airport.

16.03 Removal. Prior to the expiration of this Lease, Tenant shall at its sole expense, remove from the Premises all items of personal property, including but not limited to all flammable substances and hazardous materials and wastes as defined by state or federal law at the time of the expiration of this Lease.

16.04 Inspection of Records. Tenant shall make available for inspection to the City, all records relating to the maintenance, release, mitigation and cleanup for any hazardous substances or materials on the Premises.

16.05 Compliance. Tenant shall comply with all federal, state and local laws and regulations relating to hazardous materials and wastes, and shall timely comply with the orders of any governmental agencies relating thereto.

16.06 Notice. Upon execution of this Lease, Tenant shall provide the City Fire Department with a complete list of all hazardous substances used or to be used or stored on the Premises with total quantities of each hazardous substance. Tenant shall notify City of changes in quantity or type within fifteen (15) days of change.

16.07 Right to Inspect. The City, in its proprietary capacity, agrees to give reasonable notice in accordance with the general laws of the City, prior to entering upon and inspecting the Premises at any time.

ARTICLE 17. GENERAL PROVISIONS

17.01 Additional Rules & Regulations. The City Manager shall have the power to establish in writing such additional rules and regulations respecting operation of the Airport as are not inconsistent with provisions of this Lease or any applicable ordinances or laws, providing such rules and regulations are found to be reasonably necessary or desirable by the City Manager for the operation of the Airport or the enforcement of the provisions of this Lease, the provisions

of any and all applicable laws and ordinances, and the preservation of the public peace, health, safety and welfare; and Tenant shall comply with any and all such rules and regulations adopted in writing by the City Manager.

17.02 Compliance with Laws; Permits and Licenses. Tenant's business shall be conducted and maintained in strict compliance with all applicable laws, ordinances, regulations, and other requirements of federal, state, county, city or other governmental agencies having jurisdiction over the operation of Airports including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, California Government Code Section 4450, *et seq.*, California Government Code Section 11135 *et seq.*, and the Unruh Civil Rights Act, California Civil Code Section 51, *et seq.* Similarly, Tenant shall comply with all City ordinance and regulations relating to conduct of construction. Tenant will obtain and pay for any necessary permits, licenses and other consents for the operation of Tenant's business including a City of Marina Business License. Tenant represents and warrants that it has full power and authority to enter into this Lease and perform hereunder, and holds all permits and licenses which are required by law or regulation for complete performance in accordance with the terms of this Lease.

17.03 Independent Status. Tenant is an independent entity from the City. Tenant (and not the City) shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Lease shall be construed as creating a partnership or joint venture between City and Tenant. Neither Tenant, nor its officers, employees, agents, contractors or subcontractors, shall obtain any rights to retirement or other benefits which accrue to City employees.

17.04 Dispute Resolution. The parties agree that if any dispute arises over the interpretation or performance of this Lease, the parties will, prior to filing any claim or suit, first attempt to negotiate any such dispute informally. If such informal negotiation fails, and if the parties mutually agree at the time, the parties may then submit the dispute for formal mediation to the American Arbitration Association (AAA) or the Judicial Arbitration and Mediation Services (JAMS), or such other mediation service as the parties may mutually agree upon. Expenses of such mediation shall be shared equally between the parties.

17.05 Confidentiality. To the extent allowed by law, the City shall not disclose Tenant's financial statement or confidential financial information. Tenant acknowledges that the City is a municipal corporation and has limited powers to withhold information from the public.

17.06 Attorney's Fees and Costs. Should the dispute of the parties not be resolved by negotiation or mediation, and in the event it should become necessary for either party to enforce or interpret any of the terms and conditions of this Lease by means of court action or administrative enforcement, the laws of the State of California shall govern the interpretation of the terms and conditions of this Lease and such action shall be brought in a court of proper jurisdiction in Monterey County. The prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonable consulted by the attorneys for the prevailing party.

17.07 Litigation Involving Lease. In the event the City is made a party to any litigation concerning this Lease or the leased Premises by reason of any act or omission of Tenant, Tenant shall hold the City harmless from all loss or liability, including reasonable attorney's fees, incurred by the City in such litigation. In case suit shall be brought for an unlawful detainer of said Premises, for the recovery of any rent due under the provisions of this Lease, or because of the breach of any other covenant or provision herein contained on the part of Tenant to be kept or performed, and the City prevails therein, Tenant shall pay to the City a reasonable attorney's fee, which shall be fixed by the court.

17.08 Bankruptcy and Insolvency. If Tenant shall, at any time during the term of this Lease, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Tenant, or if Tenant shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Tenant shall be appointed in any suit or proceeding brought by or against Tenant, or if Tenant shall make any assignment for the benefit of creditors, then in each and every case, this Lease and the rights and privileges granted hereunder shall immediately cease, terminate and be forfeited and canceled; provided, however, that if Tenant shall, within fifteen (15) days after the filing and service on Tenant of any involuntary petition in bankruptcy or for appointment of a receiver, commence proper proceedings to dismiss or deny the petition or vacate the receivership and shall expeditiously pursue and diligently exhaust all proper remedies toward that end, the bankruptcy or receivership shall not constitute a default until the entry of a final determination adverse to Tenant.

17.09 Eminent Domain. In the event of a total or partial taking of the leased Premises or any interest therein by a public authority under the power of eminent domain, including but not limited to any taking of Tenant's leasehold estate by City under City's power of eminent domain, then this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession (the "Condemnation Date"). If the entire Premises are condemned, this Lease shall automatically terminate as of the Condemnation Date. If as a result of the condemnation of all or any part of the Premises leased by Tenant pursuant hereto (a) the Premises are no longer reasonably suited to the conduct of Tenant's business operations, or (b) the parking spaces available for Tenant's use are no longer sufficient for Tenant's employees and business operations (and the City does not provide alternative accessible parking), then Tenant shall have the right to terminate this Lease. Tenant shall be entitled to pursue any condemnation award to which Tenant is entitled by applicable law.

17.10 Force Majeure; Waiver. Tenant shall not be in default under this Lease in the event that the activities of Tenant are temporarily interrupted for any of the following reasons: riots; war, terrorism, or national emergency declared by the President or Congress and affecting the City of Marina; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Tenant. "Other catastrophic events" does not include the financial inability of Tenant to perform or failure of Tenant to obtain any necessary permits or licenses from other governmental agencies where such failure occurs because Tenant has failed to exercise reasonable diligence.

17.11 Abandonment. Tenant shall not vacate or abandon the leased Premises or any part thereof at any time during the term of this Lease. If Tenant shall abandon, vacate or surrender the leased Premises or be dispossessed by process of law or otherwise, any property belonging to Tenant and left on the leased Premises shall be deemed, at the option of City, to be abandoned. Upon relinquishing possession, Tenant shall be in default of this Lease and City shall be entitled to terminate this Lease and Tenant's rights in and to the leased Premises in the manner hereinafter provided by this Lease.

17.12 Default. Tenant shall be deemed in default under this Lease:

(a) Upon breach of any of the covenants and conditions of this Lease with respect to the sale, assignment, transfer, encumbrance, or subletting of the leased Premises; with respect to the bankruptcy or insolvency of Tenant; or, with respect to any other covenant or condition of this Lease, which breach cannot be cured within the period for cure provided for in this Lease.

(b) Upon failure to pay any rent or any other consideration required under this Lease to be paid by Tenant to City within ten (10) days following the date such obligation are due.

(c) Upon failure to provide written evidence of the insurance when due, within fourteen (14) days after being given notice thereof by City.

(d) Upon the breach of any of Tenant's other duties and obligations under this Lease, which breach can be cured, if such breach is not cured within thirty (30) days after being given written notice thereof by City; provided that, in the event such breach is not susceptible to cure within a thirty (30) period Tenant shall not be in default if Tenant commences to cure such default within such thirty (30) day period and diligently prosecutes such cure to completion.

17.13 Remedies on Default.

(a) **City's Right to Terminate Lease.** Upon Tenant's default of this Lease, City shall have the right, without further notice, to terminate this Lease as well as Tenant's rights in and to the leased Premises, to enter upon and retake possession of the leased Premises, including all improvements thereon and facilities appurtenant thereto, by legal proceedings or otherwise, and to recover from Tenant, at the time of such termination, the excess, if any, of the amount of rent to be paid by Tenant under this Lease for the balance of the lease term over the then reasonable rental value of the leased Premises for the same period. For the purposes of this section, City and Tenant agree that the "reasonable rental value" shall be the amount of rent which City can obtain as rent for the balance of the lease term.

(b) **City's Right to Repossess, Operate, or Relet the Leased Premises for Tenant's Account.** Upon Tenant's default under this Lease, City shall also have the right, without further notice and without terminating this Lease, to enter upon and retake possession of the leased Premises, including all improvements thereon and fixtures appurtenant thereto, by legal proceedings or otherwise, and to take, operate, or relet the same in whole or in part for the account of Tenant at such rental, on such conditions, and to such tenant or tenants as City, in good faith, may deem proper, for a term not exceeding the unexpired period of the full term of

this Lease. City shall receive all proceeds from rent accruing from such operating or reletting of the leased Premises and shall apply the same first to the payment of all costs and expenses incurred by City in the reletting of the leased Premises and any alterations or repairs reasonably necessary to enable City to relet the leased Premises, and then to the payment of all such amounts as may be due or become due under the provisions of this Lease, and the balance remaining, if any, at the expiration of the full term of this Lease or on the sooner termination thereof, by written notice of termination given by City to Tenant, shall be paid over to Tenant. In the event proceeds from rentals received by City under the provisions of this section are insufficient to pay all costs and expenses and all amounts due and becoming due hereunder, Tenant shall pay to City, on demand by City, such deficiency as may from time-to-time occur or exist. Notwithstanding any such operation or reletting without terminating this Lease, City may, at any time thereafter, elect to terminate this Lease in the event that Tenant remains in default hereunder at such time.

(c) City's Right to Perform. Notwithstanding any provisions as to notice of default in this Lease to the contrary, if, in City's judgment, a continuance of any default by Tenant for the full period of the notice otherwise provided for will jeopardize the leased Premises, including any improvements thereon or facilities appurtenant thereto, or the rights of City, City may, without notice, elect to perform those acts in respect of which Tenant is in default at Tenant's expense and Tenant shall thereupon reimburse City, with interest at the rate of 10% per annum, upon thirty days' written notice by City to Tenant.

(d) Other Remedies. All rights, options, and remedies of City contained in this Lease shall be construed and held to be cumulative and not one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided for by law, whether or not stated in this lease.

17.14 Waiver of Default. Any waiver by City of a default of this Lease arising out of the breach of any of the covenants, conditions, or restrictions of this Lease shall not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition, or restriction of this lease.

17.15 City's Right of Entry. Tenant shall permit City and any agents and employees of City to enter in and upon the leased Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for improvements, alterations, additions, or repairs, without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the leased Premises thereby occasioned.

17.16 Notices. All notices required or permitted to be given under this Lease shall be in writing and shall be personally delivered or sent by facsimile or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City of Marina
City Hall
Attention: City Manager
211 Hillcrest Avenue
Marina, California 93933
Fax Number: (831) 384-0425

Copy to: City Attorney
City of Marina
Law Offices of Robert R. Wellington
857 Cass Street, Suite D
Monterey, California 93940
Fax Number: (831) 373-7106

To Tenant: Light & Motion Industries, Inc.
Attention: Mr. Daniel Emerson
300 Cannery Row
Monterey, CA 93940
Fax Number: (831) 375-2517

With copy to: Virginia E. Howard, Esq.
Walker & Reed, LLP
215 W. Franklin Street, 5FL
Monterey, CA 93940
Fax Number: (831) 649-6805

or to such other address as either party may from time-to-time designate by notice to the other given in accordance with this section. Notice shall be deemed effective on the date personally served or sent by facsimile or, if mailed, three business days from the date such notice is deposited in the United States mail.

17.17 Corporate Authority. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within thirty(30) days after execution of this Lease, deliver to the City a certified copy of a resolution of the Board of Directors or said corporation authorizing or ratifying the execution of this Lease.

17.18 Amendment or Modification. This Lease may be amended, altered or modified only by a writing specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

17.19 Construction of Lease. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If there shall be more than one Tenant designated in or signatory to this Lease, the obligations hereunder imposed upon Tenant shall be joint and several; and the term "Tenant" as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

17.20 Covenant & Condition. Each term and provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition.

17.21 Time. Time is and shall be of the essence of each term and provision of this Lease.

17.22 Successors and Assigns. All of the covenants, agreements, conditions and undertakings herein contained shall, subject to the provisions as to assignments, apply to and bind the representatives, successors or assigns of all the parties hereto; and all the parties hereto shall be jointly and severally liable hereunder.

17.23 Further Actions. Each of the parties agree to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Lease.

17.24 Interpretation. This Lease has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Lease against the party that has drafted it is not applicable and is waived. The provisions of this Lease shall be interpreted in a reasonable manner to affect the purpose of the parties and this Lease.

17.25 Captions. Titles or captions of articles and sections contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Lease or the intent of any provision of it.

17.26 Severability. If any of the provisions of this Lease are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Lease and shall not cause the invalidity or unenforceability of the remainder of this Lease, unless this Lease without the severed provisions would frustrate a material purpose of either party in entering into this Lease.

17.27 Waiver. No waiver of any right or obligation of either party hereto shall be effective unless made in writing, specifying such waiver and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Lease on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

17.28 Counterparts. This Lease may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

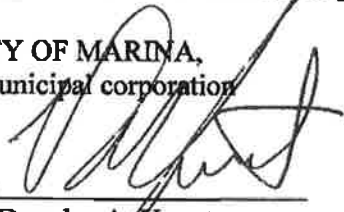
17.29 Exhibits Incorporated. All exhibits reference in this Lease and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Lease and any of the terms of any exhibit to the lease, the terms of the Lease shall control the respective duties and liabilities of the parties.

17.30 Entire Agreement. This Lease constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to the subject matter.

17.31 Memorandum of Lease. Upon the execution of this Lease, City and Tenant shall execute and record a Memorandum of Lease (the "Memorandum of Lease"), at City's sole cost and expense, in the form attached hereto as Exhibit D.

IN WITNESS WHEREOF, this Lease has been executed by the duly authorized officers or representatives of each of the parties on the date first shown above.

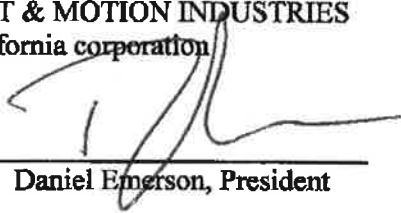
CITY OF MARINA,
a municipal corporation

By: 

Douglas A. Yount,
Interim City Manager

Dated: 3/25/13

LIGHT & MOTION INDUSTRIES
a California corporation

By: 

Daniel Emerson, President

Dated: 3-25-13

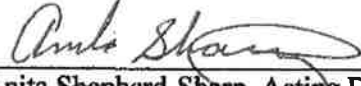
(Pursuant to Resolution 2013- 20)

By: _____

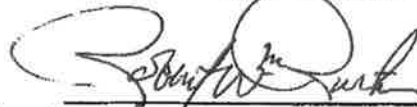
, Secretary

Dated: _____

ATTEST:


Anita Shepherd-Sharp, Acting Deputy City Clerk

APPROVED AS TO FORM:


for the City Attorney

**FIRST AMENDMENT TO LEASE
BETWEEN THE CITY OF MARINA AND LIGHT & MOTION INDUSTRIES**

THIS FIRST AMENDMENT TO LEASE BETWEEN THE CITY OF MARINA AND LIGHT & MOTION INDUSTRIES ("First Amendment") is made this 5th day of November 2013, by and between the CITY OF MARINA, a California municipal corporation (the "City"), and LIGHT & MOTION INDUSTRIES, a California corporation ("Tenant").

Recitals

- A. On March 25, 2013, City and Tenant entered into a certain Lease ("Lease") to provide for Tenant's occupancy and use of Building 535 located at 711 Neeson Road at the Marina Municipal Airport within the City.
- B. The parties now wish to enter into this First Amendment to conform the Lease to the intention of the parties concerning certain matters governing the course of construction of improvements to the premises as set forth herein.
- C. Only the numbered paragraphs of the Lease which are being amended are set forth in this Amendment.

Terms & Conditions

The above recitals are true, correct and incorporated herein by this reference.

Now, therefore, the parties agree to enter into this First Amendment, and to amend the Lease effective as of October 1, 2013, as follows:

- 1. The first two sentences of Section 4.03 of the Lease "Allowance for Reimbursable Building Improvements" are hereby amended to read as follows:

"4.03 Allowance for Reimbursable Building Improvements. The City will reimburse Tenant up to an amount not to exceed Six Hundred Thousand Dollars (\$600,000) based on the costs incurred by Tenant related to demolition and the construction of the Improvements listed as "Reimbursable Building Improvements" (the "Reimbursable Building Improvements") in Exhibit C-1 attached hereto and incorporated herein by this reference, including, without limitation, an allocable share of construction management fees; architectural, engineering, design, survey and planning costs; and financing and other costs as reflected on Exhibit C-1. The parties agree that, upon execution of this Lease, Exhibit C-1 represents the agreed list of the Reimbursable Building Improvements to be made to the Premises by Tenant for which Tenant will receive reimbursement in the form of the Tenant Allowance."

The remainder of Section 4.03 continues unchanged.

- 2. The first sentence of Section 9.01 of the Lease "Improvements to Leased Premises" is hereby replaced by the following two sentences:

“9.01 Improvements to Leased Premises. During the early possession period provided under this Lease, Tenant shall construct improvements to the leased Premises including: (1) the Reimbursable Building Improvements described in Section 9.02 and in Exhibit C-1; and (2) the tenant improvements (the “Tenant Improvements”) required in connection with the Tenant’s commercial use of the Premises, listed in Exhibit C-2, attached hereto and incorporated herein by this reference, as “Light & Motion’s Tenant Improvements”, for which the Tenant Allowance is not extended and for which the City makes no contribution, in whole or in part, of any public funds. Tenant shall construct the Reimbursable Building Improvements and the Tenant Improvements in accordance with plans and specifications (the “Plans”) to be completed by Tenant and submitted to the City within sixty (60) days of the execution of this Lease.”

The remainder of Section 9.01 continues unchanged.

3. Section 9.02 of the Lease “Reimbursable Building Improvements” is hereby amended to read in its entirety as follows:

“ 9.02 Reimbursable Building Improvements. Structural or building system-related improvements to the Premises: (1) required for compliance with an applicable federal, state or local regulations or codes, including, but not limited to, the codes adopted by the City in Title 15 of the Marina Municipal Code, the ADA, as same may be amended from time to time; or (2) to provide for the addition or restoration of a permanent structural improvement which will thereby enhance the Building’s overall value or increase its useful life, including, but not limited to, the parking areas but not to include the parking area behind the Building to be improved by the City (see Section 9.05 (i)), electrical, mechanical, fire suppression, heating or ventilation system, plumbing and other costs as designated on Exhibit C-1, as well as an allocable share of architectural, engineering, planning and design services, financing and certain other costs as reflected on Exhibit C-1, shall be eligible for treatment as Reimbursable Building Improvements for which Tenant will receive the Tenant Allowance to be credited against the monthly rent payable under this Lease as per Section 4.03. Reimbursable Building Improvements shall be as agreed by the City and Tenant and set forth in Exhibit C-1 hereto. Notwithstanding Section 17.29 regarding exhibits, in the event of a conflict between this section and Exhibit C-1, Exhibit C-1 shall control. Nothing herein shall alter the intent of the parties that Tenant shall be fully and completely responsible for all aspects pertaining to the construction of the Reimbursable Building Improvements designated on Exhibit C-1 and the Tenant Improvements designated on Exhibit C-2, on the leased Premises and for the payment of all costs associated therewith, subject to Tenant’s right to the credit against monthly rent set forth in Section 4.03 hereof, the City’s obligations under Sections 9.05 and 10.01, and the Tenant’s obligations in accordance with regulations of the Division of Labor Standards Enforcement and Section 9.07.”

4. Subsection (a)(11) of Section 9.04 is hereby amended to read in its entirety as follows:

“9.04 Improvements by the Tenant.

(11) All improvements (excepting Tenant’s trade fixtures and equipment) shall be subject to this Lease. The Reimbursable Building Improvements shall become the property of the City upon the date their cost has been fully amortized and reimbursed to the Tenant by the City in accordance with Section 4.03. The Tenant Improvements shall become the property of the City as of the termination date of this Lease, unless otherwise agreed upon by Tenant and the City, and Tenant

shall execute and deliver to the City any document requested by the City evidencing the assignment to the City of all estate, right, title and interest (other than the interest created under this Lease)."

5. Subsection (b) of Section 9.04 of the Lease "Improvements by the Tenant" is hereby added to read as follows:

"9.04 Improvements by the Tenant.

(b) Tenant shall enter into separate agreements for construction of the Reimbursable Building Improvements (Exhibit C-1) and for the Tenant Improvements (Exhibit C-2)."

6. Section 9.05 of the Lease "Improvements by the City" is hereby amended to read in its entirety as follows:

"9.05 Improvements by the City. Except as otherwise expressly set forth in this Lease, the City is not obligated to construct or install any improvements on or off of the leased Premises. The City shall have no obligation on account of any construction or installation of any improvement by Tenant to pay for all or any portion of the costs or expenses arising out of such construction or installation, excepting the City's obligation to provide the credits against rent contemplated by Section 4.03 of this Lease. Notwithstanding the above, the City shall be responsible for (i) improving the parking area behind the Building, including all grading, paving, stripping and drainage, such that this parking area has not less than twenty-nine (29) parking stalls as shown on the Site Plan attached hereto as part of Exhibit A; (ii) the items designated on Exhibit C-3, attached hereto and incorporated herein by this reference, as City-Funded Work Excluded from Reimbursable Building Improvements and Light & Motion's Tenant Improvements, including hazardous materials testing and abatement, replacement of the roof of the Building and downspouts (including, removal of abandoned equipment and piping), and repairing and replacing all existing connections to the Building, as needed, for all utilities, including, gas, water (domestic and fire service), storm and sanitary sewer but excluding electrical and data transmission connections. The City shall provide City workers to paint the exterior walls of the Building upon completion of the exterior improvements by the Tenant and thereafter as needed in accordance with Section 10.01(b). All improvements designated on Exhibit C-3 that are the responsibility of the City shall be expeditiously completed with first quality materials in a proper, professional and good and workmanlike manner in compliance with Tenant's approved schedule of completion of the Reimbursable Building Improvements and the Tenant Improvements and all applicable federal, state and local laws, rules, regulations and ordinances. The City shall coordinate the timing of the improvement the parking area behind the Building with Tenant so that such improvements will not in any material respect interfere with or cause a delay in any other construction activities of Tenant authorized by the City.

7. Section 9.11 of the Lease "Insurance" is hereby amended to read in its entirety as follows:

"9.11 Insurance. Before commencing any construction work and during the course of construction, Tenant agrees to obtain, and cause its contractor(s) to be obtain, with a responsible insurance carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Workers Compensation Insurance and Safety Act, compensation insurance covering full liability for compensation under said Act, for any person injured while performing any work or labor incidental to the work in or on the leased Premises. During the course of construction, Tenant shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance, including installation floater coverage, in a sum equal, from time to time, to the

agreed full cost for construction of the Reimbursable Building Improvements and the Tenant Improvements in the amount of one million seven hundred thousand dollars (\$1,700,000); provided that such amount shall be increased to the total contract amount for the construction of the Reimbursable Building Improvements and the Tenant Improvements in the event the contracts for construction of such Improvements exceed one million seven hundred thousand dollars (\$1,700,000). All risk of loss or damage to the Reimbursable Building Improvements and the Tenant Improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Tenant. The City and Tenant's general contractor shall be additional named insureds on Tenant's builder's risk and liability insurance."

7. Section 9.12 of the Lease "Tenant Responsible for Additional Improvement Costs" is hereby amended to read in its entirety as follows:

"9.12 Tenant Responsible for Additional Improvement Costs. All costs incurred by Tenant in connection with the construction of the Tenant Improvements and the Reimbursable Building Improvements in excess of the Tenant Allowance shall be the sole Responsibility of Tenant, subject to the City's right and obligation to provide such Tenant Allowance as a credit against monthly rent set forth in Section 4.03 of this Lease. All costs that are determined to be non-reimbursable under this Lease are the sole responsibility of Tenant."

8 Each individual executing this Amendment represents and warrants that he or she is duly authorized to execute and deliver this Amendment and that this Amendment is binding in accordance with its terms.

Except as provided above, the Lease is in all other respects shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date and year first written above.

CITY OF MARINA

By: 
Layne Long
City Manager

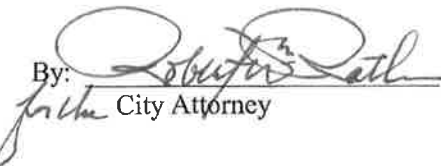
LIGHT & MOTION INDUSTRIES,
a California corporation

By: 
Daniel Emerson
President

ATTEST: Pursuant to Resolution No. 2013-137

APPROVED AS TO FORM:

By: 
Anita Sharp
Acting Deputy City Clerk

By: 
for the City Attorney

LAW OFFICES OF TODD E. KOBERNICK

2448 Historic Decatur Road, Ste. 220
San Diego, California 92106-6116
(619) 243-8680 Telephone
(619) 224-8680 Facsimile

Todd E. Kobernick
Christina Gabriel Kanelos
Rebecca L. Schaerer

January 18, 2017

Via Email

Ms. Denise Garcia
CDC Small Business Finance Corp.
2448 Historic Decatur Drive, Suite 220
San Diego, CA 92106

RE: Light & Motion Industries Ground Lease

Dear Denise:

This letter is written in relation to a review of a ground lease, dated March 25, 2013, between **The City of Marina** as Lessor and **Light & Motion Industries**, as Lessee ("Lease") and in relation to an SBA 504 Loan. In addition to the Lease, I reviewed Memorandum of Lease, dated March 25, 2013.

The following are minimum requirements of the SBA in relation to ground leases. **The Lease does not meet most of the requirements.**

- (1) **Tenant's right to encumber leasehold estate.**
 - Lessee is able to encumber the leasehold estate (Paragraph 15.02). This is acceptable.
- (2) **No modification or cancellation of lease without lender's or assignee's approval.**
 - The Lease does specify this right. **This must be amended.**
- (3) **Lender's or assignee's right to acquire the leasehold at foreclosure sale or by assignment and unqualified right of reassignment of the leasehold estate (along with right to exercise any options) by lender or successors.**
 - The Lease does specify this right. **This must be amended.**
- (4) **Lender's or assignee's right to sublease.**
 - The Lease does specify this right. **This must be amended.**
- (5) **Lender's or assignee's rights upon default of the tenant or termination of the lease. This would include notice, extended time to cure (at least 60 days), time allotted for foreclosure and sale, and procedures for non-monetary defaults.**
 - The Lease does specify this right. **This must be amended.**

- (6) **Lender's or assignee's rights to hazard insurance proceeds resulting from damage to improvements.**
 - Lease does not specify this right. **This must be amended.**
- (7) **Lender's or assignee's first right to share in condemnation proceeds.**
 - The Lease does specify this right. **This must be amended.**
- (8) **Lease on the project should be substantially longer than the term of the SBA guaranteed loan (loan term plus 10 years).**
 - Term of the Lease is 20 years with two five-year options to renew (Para. 1.03 and 1.05). **This is acceptable.**
- (9) **Enforceability of Lease.**
 - We will confirm the Lease is enforceable as between the Borrower and the Landlord. If there is an EPC, we will confirm Landlord approves of the EPC-OC lease.
- (10) **Use restrictions.**
 - The Lease contains usual and customary use restrictions (Para. 2.01). **This is acceptable.**
- (11) **Termination of Lease before stated term.**
 - Breach of Lease provisions are acceptable (Para. 17.12).
- (12) **Attornment by successors and lienholders.**
 - The lease does not specify this right.

Overall, the Lease does not meet most of the SBA requirements for ground leases. If you would like us to prepare an amendment to the Lease that would address the Lease's deficiencies, we would be happy to do so. Prior to such amendment, we should review a Preliminary Report of Title for the property and the Authorization. Additionally, we will need to prepare an Estoppel Certificate, Landlord's Consent to Encumbrance of Personal Property, and possibly a Subordination, Nondisturbance, and Attornment Agreement. Please note that if there is an EPC-OC structure, the ground must be assigned from the EPC to the OC.

Sincerely,



Christina Gabriel Kanelos

SECOND AMENDMENT TO LEASE
BETWEEN
THE CITY OF MARINA
AND
LIGHT & MOTION INDUSTRIES

This Second Amendment to Lease (the "Second Amendment") is entered into as of the _____ day of _____, 2017, by and between The City of Marina, a California municipal corporation ("Landlord") and Light & Motion Industries, a California corporation ("Tenant").

RECITALS

- A. Landlord and Tenant entered into a Lease as of March 25, 2013, as amended by that certain First Amendment to Lease dated November 5, 2013 (collectively referred to as "Lease") for certain real property commonly known as 711 Neeson Road, Marina, California, and as more particularly described in the Lease (the "Premises"). Capitalized terms used herein shall have the meanings set forth in the Lease, unless otherwise defined herein.
- B. Tenant is obtaining financing, which financing will be secured by the Lease and the underlying "Leasehold Estate".
- C. Tenant seeks to amend the Lease to allow for the pledging of the Leasehold Estate and the Lease, and Landlord is consenting to the pledging of the Lease and the Leasehold Estate as security for such loan.
- D. The definitions and provisions set forth in the Lease shall apply to this Second Amendment.

TERMS AND CONDITIONS

1. **Limited Amendment.** Except as specifically modified hereby, the Lease shall remain in full force and effect and shall be unimpaired. In the event of conflict between the terms of this Second Amendment and the terms of the Lease, the Second Amendment shall control.
2. **Use.** The first sentence of Section 2.01 of the Lease is amended and restated in its entirety to read as follows: "The Lease is made for the purpose of allowing Tenant's use of the Premises and for granting Tenant certain rights and privileges to occupy the Premises and to use the area designated for parking. Tenant shall be permitted to use the Leased Premises for manufacturing or other light industrial use(s), office space, storage, and other uses incidental to the aforementioned uses."
3. **Tenant's Right to Encumber Leasehold.** Tenant may, at any time during the Term of this Lease, encumber in favor of any deed of trust beneficiary or mortgagee (collectively "**Lienholder**") by deed of trust, mortgage, personal property security agreement or other security instrument (hereinafter collectively referred to as a "**Deed of Trust**") all of Tenant's right, title and interest under this Lease and the Leasehold Estate hereby created in Tenant; provided, however, (i) that no Deed of Trust incurred by Tenant pursuant to this section shall, and Tenant

shall not have power to incur any encumbrance that will, constitute in any way a lien or encumbrance on Landlord's fee interest in the Premises or any interest of Landlord in the Premises; (ii) the Deed of Trust and all rights acquired under it shall be subject to each and all of the terms, covenants, conditions and restrictions stated in this Lease and to all of the rights and interests of Landlord, except as otherwise provided in this Lease; and (iii) Tenant shall give Landlord prior notice of any such Deed of Trust and shall accompany such notice with a copy of the note and the Deed of Trust.

It is acknowledged and Landlord hereby gives its consent to the encumbrance and pledging of the Lease and the Leasehold Estate to the CDC Small Business Finance Corp., which entity assigns its rights to the United States Small Business Administration. This loan, which is an SBA 504 loan, will be junior and subordinate to one or more senior encumbrances, as is required pursuant to the SBA 504 loan program.

4. **Notice to and Service on Lienholder.** Landlord shall mail to Lienholder, a duplicate copy of any and all notices Landlord may from time to time give to or serve on Tenant pursuant to or relating to this Lease (including but not limited to notices of default, notice of rent increases, notice of operating cost pass-throughs, etc.). Tenant shall at all times keep Landlord informed in writing of the name and mailing address of Lienholder and any changes in Lienholder's mailing address. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to Lienholder by Landlord shall be given in the manner prescribed in the Lease addressed to Lienholder at the last mailing address for Lienholder furnished in writing to Landlord by Tenant or Lienholder.

5. **No Modification Without Lienholder's Consent.** Tenant and Landlord hereby expressly stipulate and agree that, without the prior written consent of all Lienholders, they will not (1) modify the Lease, as amended, in any way, and (2) cancel, terminate or avoid this Lease, except as provided under the Lease.

6. **Amendments.** Landlord shall make certain modifications to the Lease that will reasonably accommodate the Lienholder so long as the amendments do not materially change the Landlord's rights or remedies or jeopardize the economics of the transaction or Landlord's eligibility for FAA grant funding. Specifically and without limitation, no such amendment shall modify or amend (i) the monthly rent and additional rent payable under the Lease, which were determined to produce income equal to the Premises' fair market value when the Lease was entered into, or (ii) the provisions of Article 6 and Article 7 of the Lease.

7. **Right of Lienholder to Cure Defaults.** Before Landlord may terminate the Lease because of any default under or breach of this Lease by Tenant, Landlord must give written notice of the default or breach to Lienholder and afford Lienholder the opportunity after service of the notice to:

- a. **Monetary Default.** Cure the breach or default within 60 days of Lienholder's receipt of notice of default where the default can be cured by the payment of money to Landlord or some other person;
- b. **Nonmonetary Default.** Cure the breach within sixty (60) days of Lienholder's receipt

of notice of default where the breach or default must be cured by something other than the payment of money and can be cured within that time; or if the breach of default cannot be cured within sixty (60) days, commence to cure the breach or default within the time period after service of notice of default on Lienholder by Landlord and thereafter diligently pursue same to completion. Lienholder shall have the right to enter upon the property for that purpose.

8. **Rights of Lienholder.** A Lienholder shall have the right at any time during the term of the Lease and the existence of such encumbrance to:

- a. **Substitute Performance by Lienholder.** Do any act or thing required of Tenant under the Lease, and any such act or thing done and performed by Lienholder shall be as effective to prevent a forfeiture of Tenant's rights under the Lease as if done by Tenant.
- b. **Foreclosure of Deed of Trust.** Realize on the security afforded by the Leasehold Estate by exercising foreclosure proceedings or power of sale or other remedy afforded in law or in equity or by the Deed of Trust and to:
 - i. Transfer, convey or assign the title of Tenant to the Leasehold Estate created by the Lease to any purchaser at any foreclosure sale, whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale contained in the Deed of Trust; and
 - ii. Acquire and succeed to the interest of Tenant under the Lease by virtue of any foreclosure sale, whether the foreclosure sale is conducted pursuant to a court order or pursuant to a power of sale contained in the Deed of Trust.

9. **Foreclosure in Lieu of Curing Default.** Notwithstanding any other provision of the Lease, a Lienholder may forestall termination of this Lease by Landlord for a monetary or nonmonetary default or breach of the Lease by Tenant by commencing proceedings to foreclose its Deed of Trust. The proceedings so commenced may be for foreclosure of the Deed of Trust by order of court or for foreclosure of the encumbrance under a power of sale contained in the Deed of Trust. The proceedings shall not, however, forestall termination of the Lease by Landlord for the default or breach by Tenant unless:

- a. **Initiation.** They are commenced within the time provided for cure of a default by Lienholder under the Lease; and
- b. **Diligent Prosecution.** They are, after having been commenced, diligently pursued in the manner required by law to completion.

10. **Assignment and Sublease.** Lienholder and Lienholder's successors shall, upon becoming owner of the Leasehold Estate, have the right to assign and sublease the subject Leasehold Estate with the consent of Landlord, which consent shall not be unreasonably withheld.

11. **Assignment on Foreclosure.** Provided that (1) the Lienholder gives written notice of transfer to Landlord setting forth the name and address of the transferee as well as the effective date of the transfer, and (2) the transferee assumes the obligations of this Lease (including the

provisions pertaining to payment of rent and permitted uses), the written consent of Landlord shall not be required for a transfer of Tenant's interest under the Lease to:

- a. A purchaser at a foreclosure sale of the encumbrance whether the foreclosure sale be conducted pursuant to court order or pursuant to a power of sale in the Deed of Trust.
- b. If (1) a Lienholder acquires Tenant's interest under this Lease at a foreclosure sale or by an assignment under this Lease in lieu of foreclosure, and (2) such Lienholder desires to assign Tenant's interest under the Lease to a third party assignee, then the following shall apply:
 - i. Except as provided in the immediately succeeding paragraph, the proposed assignment to the third party assignee shall be subject to the terms and conditions of the Lease.
 - ii. Notwithstanding the provisions of the Lease to the contrary, such Lienholder shall be obligated to perform Tenant's obligations under the Lease only during the time commencing on the date such Lienholder acquires Tenant's interest under this Lease until the date such Lienholder assigns Tenant's interest under the Lease to a third party assignee (i.e., which Lienholder shall be relieved of all obligations under this Lease which accrue after the date of such assignment).

12. **New Lease to Lienholder.** Notwithstanding any other provision of this Lease to the contrary, if the Lease terminates because of the insolvency or bankruptcy of Tenant or because of any event of default by Tenant, Landlord will execute a new lease for the Premises to the Lienholder under a Deed of Trust incurred by Tenant, provided:

- a. **Written Request.** A written request for the new lease is served on Landlord by Lienholder within ninety (90) days after the effective date of termination of this Lease;
- b. **Same Terms.** The new lease (1) is for a term ending on the same date the Term of the Lease would have ended had not this Lease been terminated, (2) provides for the payment of rent at the same rate that would have been payable under the Lease during the remaining Term of the Lease had the Lease not been terminated, and (3) contains the same terms, covenants, conditions and provisions as are contained in the Lease, including, without limitation, the provisions set forth in Article 6 and Article 7 of the Lease; and
- c. **Cure Existing Defaults.** Lienholder, on execution of the new lease by Landlord, shall pay any and all sums that would at the time of the execution of the new lease be due under this Lease but for its termination and shall otherwise fully remedy or agree in writing to remedy any other defaults or breaches of this Lease committed by Tenant that can be remedied;

13. **Title to Improvements.** Landlord and Tenant agree that title to the Reimbursable Building Improvements shall immediately vest in Landlord in the event Lienholder forecloses on the Lease

as provided in Section 9 above, subsequent to which Lienholder may assign or sublet all interest in the Lease as provided in Section 11 above. Notwithstanding title to any Improvements remaining vested in Tenant, Tenant shall not be permitted to remove any Improvements excepting fixtures, equipment, and furnishings that can be removed without materially damaging the Premises. *[This section still pending review and approval by CDC.]*

14. **Lienholder as Assignee of Lease.** No Lienholder shall be liable to Landlord as an assignee of this Lease unless and until such time as Lienholder acquires all rights of Tenant under this Lease through foreclosure or other proceedings in the nature of foreclosure or as a result of some other action or remedy provided by law or the instrument creating the encumbrance.

15. **Non-Liability of Lienholder for Hazardous Waste Contamination.** Lienholder shall have no liability for any costs arising out of hazardous waste contamination in or about the Premises which arose or began to arise prior in time to the date on which Lienholder comes into possession of the Premises or becomes the owner of the Leasehold Estate. Notwithstanding any indemnification obligation of the Tenant under the Lease, Lienholder shall have no such indemnity obligation for hazardous waste contamination, as defined in its broadest sense, which arose or began to arise prior in time to possession of the Premises by Lienholder and/or before Lienholder becomes the owner of the Leasehold Estate.

16. **Insurance Policy Provisions.** Lienholder shall be named as an additional insured under all insurance coverages of Tenant, as may be required pursuant to the Deed of Trust and related documents. Any of Tenant's insurance policies on the Leasehold Estate and/or any improvements thereon are cancelable only upon prior written notice to the Lienholder. In case of a loss, and if Tenant rebuilds or repairs the Premises or any portion thereof, all in accordance with the Lease, then the proceeds of any such insurance shall be used for such rebuilding and/or repairing. If Tenant elects to terminate the Lease in lieu of making repairs to and/or rebuilding of the Premises as permitted by terms of Article 11 of the Lease after receipt of any insurance policy proceeds, then the proceeds of insurance as pertain to Tenant's trade fixtures, equipment and other personal property shall be paid to the Lienholder up to such amount as is required to satisfy Tenant's obligation to Lienholder under Lienholder's loan, and used toward the payment of the obligation (i.e., the Deed of Trust) in favor of Lienholder. Lienholder, as a successor-in-interest to Tenant, shall not be obligated to rebuild improvements in the event the insurance proceeds are insufficient notwithstanding the provisions of Section 11.02.

17. **Condemnation.** In the event of any taking or condemnation of all or any part of Leasehold Estate, all such compensation and/or damages awarded and/or received therefore shall belong to Tenant; provided, all such compensation and proceeds shall first be applied to repay the Lienholder's loan and other Trust Deeds given by Tenant secured by the Leasehold Estate and with a lien position senior to Lienholder's Loan.

18. **Attornment and Non-Disturbance.** Upon acquisition of the Lease by Lienholder, Lienholder shall attorn to Landlord as Landlord under the Lease, which attornment shall be effective and self-operative without the execution of any other instrument on the part of any party hereto, immediately upon Lienholder's succeeding to the interest of Tenant under the Ground Lease. In the event that a Lender or successor of Landlord takes title to the Real Property, either

as a result of foreclosure of the mortgage or accepting a deed to the Real Property in lieu of foreclosure, sale or otherwise, or the Real Property shall be purchased at such a foreclosure by a third party, and Landlords' successor or such other third party shall furnish Tenant reasonably satisfactory evidence that it has acquired title to the Real Property, Tenant shall attorn to such third party and recognize Lienholder as required under the Lease. Such successor to Landlord shall attorn to the Lease and shall not disturb the tenancy of Tenant or the Deed of Trust, so long as there is no default under the Lease and then, only in accordance with the Lease as amended by the First Amendment and this Second Amendment.

19. **No Merger of Leasehold and Fee Estates.** Should Tenant incur a Deed of Trust, then there shall thereafter, during the existence of the Deed of Trust, be no merger without the consent of the Lienholder of the Leasehold Estate created by the Lease and the fee estate in the Premises merely because both estates have been acquired or become vested in the same person or entity.

20. **Lienholder as Including Subsequent Security Holders.** The term "Lienholder" shall mean and refer to the persons and/or entities that are named in any Deed of Trust as well as all subsequent assignees and holders of the security interest created by such Deed(s) of Trust. Landlord agrees that by acceptance of the Deed(s) of Trust or other encumbrance of the Lease, Lienholder has not become liable under the terms of the Lease. Tenant and Landlord agree that Lienholder shall be so liable only if Lienholder acquires ownership of the Leasehold Estate, and then only for such period of time as Lienholder holds such leasehold interest. Landlord further agrees that Lienholder's liability shall be limited to Lienholder's interest in the Premises, notwithstanding any assumption of the Lease or entering into a new lease by Lienholder.

21. **Estoppel Certificates by Landlord.** Landlord hereby agrees to provide, from time to time for a Lienholder, an estoppel certificate in a commercially reasonable form.

22. **Authority.** Tenant and Landlord have the authority to enter into this Second Amendment and have received all consents required to give effect to this Amendment.

[Signatures Continued on Next Page]

LANDLORD:

THE CITY OF MARINA,
A California municipal corporation

By: _____
Layne Long, City Manager

Attest: Pursuant to Resolution _____

By: _____
Anita Long, City Clerk

TENANT:

LIGHT & MOTION INDUSTRIES,
A California Corporation

By: _____
Daniel Emerson, President &
Secretary

DRAFT

Recording Requested By
And When Recorded Mail To:

U.S. Small Business Administration
c/o CDC Small Business Finance Corp.
2448 Historic Decatur Road, Ste. 200
San Diego, CA 92106

Loan No.:

APN: 031-112-025

Documentary Transfer Tax: \$0.00
Less than 35 years

MEMORANDUM OF AMENDMENT OF LEASE AND ESTOPPEL CERTIFICATE

The undersigned certify and agree as set forth in this Memorandum of Amendment of Lease and Estoppel Certificate for reliance by the CDC Small Business Finance Corporation and the U.S. Small Business Administration (sometimes collectively referred to as “Lender”):

1. Tenant has accepted possession and is in occupancy of the Premises located at 711 Neeson Road in the City of Marina, County of Monterey, as more particularly described in Exhibit A attached hereto and in that certain Lease dated March 25, 2013, between the City of Marina, as Landlord, and Light & Motion Industries, as Tenant, as amended by that certain First Amendment to Lease dated November 5, 2013, and that certain Second Amendment to Lease dated ___, 2017 (collectively, the “Lease”), which Lease is in full force and effect. Tenant’s interest in the Premises under the Lease is referred to herein as the “Leasehold Interest.”
2. This Memorandum of Amendment modifies that certain Memorandum of Lease dated March 25, 2013, recorded on March 28, 2013 in the Official Records of the County of Monterey, State of California, as Document No. 2013019529.
3. Landlord has fulfilled all of its obligations of an inducement nature under the Lease, excepting Landlord’s continuing obligation to provide the rent credit for the Tenant Allowance as set forth in Section 4.03 of the Lease.
4. As of the date of this Memorandum, there are no offsets or credits against rentals, there are no claims or defenses to enforcement of the Lease, and that rentals have not been prepaid except as provided by the Lease terms, excepting the rent credit for the Tenant Allowance as set forth in Section 4.03 of the Lease.
5. Landlord has no notice of a prior assignment, sublease, hypothecation or pledge of any interest in the Lease, except:

- a. The Deed of Trust in favor of _____ (*First Trust Deed Lender*) in the original principal amount of \$_____.00;
- b. The Deed of Trust in favor of _____ (*Interim Trust Deed Lender*) in the original principal amount of \$_____.00.
6. Tenant certifies that Tenant has made no prior assignment, sublease, hypothecation or pledge of any interest in the Lease, except as identified above.
7. That the Lease is for a term of 20 years with two consecutive five (5) year options to renew. The initial term began on February 1, 2014 (the "Lease Commencement Date").
8. The base monthly rental effective as of the Lease Commencement Date was \$10,847.60. A security deposit of \$12,000.00 has been deposited by Tenant with Landlord.
9. None of the following events has occurred: (a) the filing by or against the undersigned of (i) a petition in bankruptcy or to declare insolvency or (ii) an action for the appointment of a receiver or trustee; or (b) the making of an assignment for the benefit of creditors; or (c) the reorganization of the undersigned.
10. Neither Landlord nor Tenant are in default under the Lease, and the Lease is hereby ratified and confirmed and has not been amended or modified prior to the execution hereof except as reflected above.
11. The entity, person and/or officer executing this certification is empowered by action, resolution or at law to execute the same, and this certificate shall be binding on the undersigned, its successors and assigns.
12. Landlord has no knowledge of any processing, use, storage, disposal or treatment of any hazardous or toxic materials or substances on the Premises, except as otherwise reflected in Section 8.01 and 8.02 of the Lease.
13. All consents, if any, required to enter into and/or make effective the Lease and this Estoppel Certificate have been obtained or waived.
14. Landlord and Tenant consent to the encumbrance by deed of trust of the Leasehold Interest by Tenant in favor of CDC Small Business Finance Corp., including all rights thereunder, which interest will be assigned to the U.S. Small Business Administration to secure an obligation in the original principal amount of \$_____.00; it is anticipated that this encumbrance will be subordinate to encumbrance(s) identified hereinabove.
15. The Lease shall not be modified, amended and/or terminated without the consent of Lender, which consent Lender will not unreasonably withhold.

This Memorandum of Amendment of Lease and Estoppel Certificate may be relied upon by CDC Small Business Finance Corp., and its successors, assigns and/or transferees, including without limitation the U.S. Small Business Administration. Landlord and Tenant agree that the Lease shall remain in full force and effect and shall bind and inure to the benefit of Tenant and its successors and assigns in interest as if no purchase and/or assignment or transfer had occurred.

Executed this _____ day of _____, 2017.

LANDLORD:

The City of Marina

By: _____
Layne Long, City Manager

TENANT:

Light & Motion Industries

By: _____
Daniel T. Emerson, President
& Secretary

DRAFT

EXHIBIT A

LEGAL DESCRIPTION

The real property situate in the City of Marina, County of Monterey, State of California, described as Parcel 31, as shown on the Official Map showing the creation of Marina Municipal Airport Parcels recorded on June 17, 1996, in Volume 19 of Cities and Towns, at Page 22.

APN: 031-112-025

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