

1 of Community Health, or his designee, or the successor officer who assumes his duties.

2 **NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency
3 of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

4 **SECTION 1**

5 **LEASE**

6 **A.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, subject to
7 the terms and conditions of this Lease, certain Equipment identified in Exhibit "A" to this Lease,
8 which is attached hereto and incorporated herein. Lessee may, from time to time, lease
9 additional items of Equipment pursuant to the terms and conditions of this Lease upon the
10 mutual written agreement of the Parties (or their respective representatives identified in section
11 31 herein), and such items of equipment so added to this Lease shall be deemed Equipment
12 under this Lease for all purposes. Said mutual written agreement shall be executed in the form of
13 an addendum to Exhibit "A" to this Lease.

14 **B.** In the event of a conflict between or among the terms and conditions of this Lease
15 (excluding any exhibit or addenda to this Lease) and the terms and conditions of any exhibit or
16 addendum hereto, then the conflict shall be resolved by giving precedence in the following order
17 of priority (with the first being the highest in the order of priority):

- 18 **1.** This Lease, excluding any exhibit and addendum to Exhibit "A" to this
19 Lease;
- 20 **2.** Exhibit "A" to this Lease; and
- 21 **3.** Each executed addendum to Exhibit "A" to this Lease (and between such
22 addenda, later-executed addenda shall take precedence over earlier-executed addenda);
23 and
- 24 **4.** Exhibit "B" to this Lease.

25 **C.** In the event of any conflict between or among the terms and conditions of this
26 Lease, the Three-Way Lease, and the Ambulance Agreement, the conflict shall be resolved by
27 giving precedence in the following order of priority (with the first being the highest in the order
28 of priority):

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1. This Lease;

2. The Three-Way Lease (and between any Three-Way Leases, later executed Three-Way Leases shall take precedence over earlier-executed Three-Way Leases); and

3. The Ambulance Agreement.

D. In addition to the obligations of Lessee set out in the text of this Lease, as a separate and additional covenant and agreement, Lessee hereby agrees to fully perform each and every one of its obligations stated in the Ambulance Agreement, as they relate to the use of the Equipment.

SECTION 2

TERM

A. The term of this Lease shall commence upon its execution by the Parties and shall terminate upon the termination of the Ambulance Agreement , unless this Lease is sooner terminated by Lessor (for any reason or for no reason) upon written notice thereof given to Lessee, in which case this Lease shall be terminated on such sooner termination date.

B. THIS LEASE IS NON-CANCELABLE BY LESSEE FOR ITS ENTIRE TERM. Lessee understands that this provision is necessary and reasonable, and in the best interest of the public’s health and safety, in order to ensure that Lessor shall have the instant and unimpaired use of the Equipment for Lessor’s emergency take over of emergency ambulance services in Fresno County, under the Ambulance Agreement, if Lessee defaults in the performance of its obligations in the Ambulance Agreement or in this Lease.

C. Notwithstanding anything else stated to the contrary in this Section 2, the right of Lessee to use the Equipment pursuant to this Lease shall be in effect only so long as the Ambulance Agreement is in full force and effect, and Lessee is not in default of the Ambulance Agreement and this Lease.

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1 **DIRECTLY OR INDIRECTLY, BY ANY EQUIPMENT LEASED HEREUNDER OR**
2 **THE USE OR MAINTENANCE THEREOF OR THE FAILURE OR OPERATION**
3 **THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY**
4 **DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS,**
5 **SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS**
6 **OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.**

7 **LESSOR SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL**
8 **DAMAGES AS THOSE TERMS ARE USED IN SECTION 2715 OF THE CALIFORNIA**
9 **COMMERCIAL CODE.** No defect or unfitness of the Equipment shall relieve Lessee of

10 Lessee's obligations under this Lease or the Ambulance Agreement. Lessor shall have no
11 obligation whatsoever under this Lease with respect to the Equipment and shall have no
12 obligation whatsoever to install, erect, test, adjust or service the Equipment. Lessor agrees, so
13 long as there shall not have occurred any Event of Default, as defined in Section 13 hereof,
14 which has continued without cure by Lessee, as provided for in this Lease, that Lessor will
15 permit Lessee to enforce in Lessee's own name and at Lessee's sole expense any supplier's or
16 manufacturer's warranty or agreement with respect to the Equipment. This Subsection 4.A. shall
17 apply to this Lease notwithstanding any other provisions of this Lease.

18 **B.** By executing this Lease, Lessee acknowledges and agrees that prior to its receipt
19 of an item of Equipment, Lessee has been given a reasonable opportunity to fully inspect and test
20 the Equipment and did fully inspect and test the Equipment identified on the applicable exhibit,
21 or addendum thereto, and unconditionally accepted the Equipment.

22 **C.** If Lessee adds any Equipment to this Lease from a Three-Way Lease, Lessee shall
23 or shall cause the lessor under the Three-Way Lease to execute a Release Certificate prior to
24 adding such Equipment to this Lease, a form of which is attached hereto as Exhibit "B" to this
25 Lease and incorporated herein. Lessor hereby authorizes Lessor's Director to accept fully
26 executed Release Certificates, subject to such modifications as he deems appropriate and in the
27 best interest of Lessor.

28 **D. LESSEE'S TIME FOR BRINGING ANY LEGAL ACTION FOR BREACH**

1 **OF CONTRACT ARISING OUT OF THE LEASE MUST BE COMMENCED WITHIN**
2 **TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS ACCRUED, OR TWO (2)**
3 **YEARS AFTER THE REMOVAL OF SUCH ITEM OF EQUIPMENT FROM THE**
4 **LEASE, WHICHEVER OCCURS FIRST. NOTHING HEREIN SHALL BE**
5 **INTERPRETED TO EXTEND THE STATUTE OF LIMITATIONS FOR ANY OTHER**
6 **CAUSE OF ACTION ARISING OUT OF THIS LEASE WHICH MAY HAVE A**
7 **LIMITATIONS PERIOD FOR BRINGING LEGAL ACTION OF LESS THAN TWO (2)**
8 **YEARS.**

9 **SECTION 5**
10 **CONDITIONS PRECEDENT**

11 As conditions precedent to Lessor's obligations to lease Equipment to Lessee under this
12 Lease, Lessor shall receive on or before the date hereof (or for any later-added equipment, the
13 date of the addendum to Exhibit "A" to this Lease) the following:

14 **A.** Duly executed copies of any subordination agreements and agreements to waive
15 and/or release any interest in the Equipment by creditors of Lessee as Lessor may request, or
16 such other evidence as Lessor shall require from Lessee to ensure that the Equipment is free and
17 clear of any and all liens, encumbrances, and security interests of third parties;

18 **B.** Appropriate evidence as to the authority and power of Lessee to execute, deliver
19 and perform this Lease;

20 **C.** Copies of certificates of insurance or other evidence satisfactory to Lessor
21 required to be delivered pursuant to Subsection 10.B. hereof;

22 **D.** All such other documents and instruments as Lessor may request to carry out this
23 Lease.

24 **E.** All the foregoing documentation required to be provided pursuant to this Section
25 5 shall be satisfactory in form and substance to Lessor and as to legal form to its counsel.

26 **F.** Lessee's tender of the equipment to Lessor that qualifies as Equipment under this
27 Lease.

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1 completely satisfied to the satisfaction of Lessor's Director prior to its removal from this Lease:

2 **1.** The Ambulance Agreement, this Lease, or any Three-Way Lease shall not
3 have been terminated because of the occurrence of a breach or event of default caused, in
4 whole or in part, by Lessee under the Ambulance Agreement, this Lease, or any Three-
5 Way Lease, or all of such agreements.

6 **2.** Lessee shall make a written request for Lessor to remove the item of
7 Equipment from this Lease ("Mid-Term Disposal Request"). Any Mid-Term Disposal
8 Request shall specify the following:

9 **(a)** The reason for the Mid-Term Disposal Request;

10 **(b)** the identity of the person or entity that will acquire the Equipment; and

11 **(c)** whether and, if so, when Lessee intends to replace such Equipment with a
12 functionally-similar item of new or used Equipment, and if so,

13 **(i)** whether the replacement Equipment is new or used, and

14 **(ii)** the specific item of new or used Equipment that Lessee intends to
15 use as a replacement Equipment.

16 **3.** Lessor may require Lessee to purchase or authorize the purchase or
17 acquisition of such replacement Equipment as a condition precedent to granting its
18 approval of a Mid-Term Disposal Request. Lessee shall be allowed not to replace such
19 item of Equipment only upon the written approval thereof from Lessor's Director or his
20 designee.

21 **4.** Lessee shall do all of the following, subject to approval in writing by
22 Lessor's Director which approval shall have the concurrence of Lessor's Purchasing
23 Agent, or Board of Supervisors, as applicable, for the disposal of the item of Equipment,
24 if such concurrence is required by the Fresno County Ordinance Code or state law, or
25 both:

26 **(a)** If the item of Equipment is lost, damaged or destroyed, Lessee
27 shall, at its own cost and expense, dispose of the item of Equipment by selling
28 such item of Equipment to the insurer of the item of Equipment for its full insured

1 value (if it is insured, otherwise to any other person for the fair market value of
2 such item of Equipment), and the proceeds thereof shall be applied to:

3 (i) to purchase replacement items of Equipment;

4 (ii) the principal balance owing on any Three-Way Lease for any other
5 items of equipment (with the proceeds being applied first to the latest
6 payments due),

7 (iii) if Lessor allows Lessee not to obtain replacement equipment, and
8 if there is no Three-Way Lease then in effect, then Lessee may keep the
9 proceeds of the sale of such equipment;

10 (b) Lessee shall transfer the replacement item of Equipment, if any, as
11 follows:

12 (i) To Lessor whereupon such equipment shall be deemed to
13 be Equipment under this Lease for all purposes; or

14 (ii) To a Three-Way Lease, if one is then in effect.

15 **B.** Upon Lessee's performance of ALL of its obligations to the satisfaction of Lessor
16 under this Section 7, Lessor shall release its right, title, and interest in the item of Equipment to
17 Lessee in its then-present condition and location, "as is, where is," subject to Lessor's disclaimer
18 of warranties and representations provided in Subsection 4.A of this Lease and the terms and
19 conditions of this Lease.

20 **C.** Nothing in this Section 7 of this Lease shall be deemed to be an authorization that
21 Lessee may reduce, limit, or otherwise modify its obligations under the Ambulance Agreement,
22 to provide a specified level and manner of paramedic ambulance service thereunder.

23 SECTION 8

24 LOSS OR DAMAGE TO EQUIPMENT

25 Lessee hereby assumes and shall bear the entire risk of loss for theft, damage, destruction
26 or other injury to the Equipment from any and every cause whatsoever. **NO SUCH LOSS OR**
27 **DAMAGE SHALL IMPAIR ANY OBLIGATION OF LESSEE UNDER THIS LEASE**
28 **WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.** In the event of damage or

1 interest inferior and subordinate to that of Lessor.

2 SECTION 10

3 AFFIRMATIVE COVENANTS OF LESSEE

4 Lessee represents and warrants to Lessor and during the term of this Lease, Lessee shall
5 continue to represent and warrant to Lessor that:

6 **A. Maintenance of Equipment.** The Equipment shall be maintained by Lessee, at
7 Lessee's sole cost and expense, in good repair, condition and working order sufficient to be used
8 in accordance with all manufacturer's instructions and warranty requirements, all governmental
9 laws, regulations, requirements and rules and the requirements of all policies of insurance as
10 provided herein. Lessee shall furnish any and all parts, mechanisms and devices required to keep
11 the Equipment in such repair, condition and working order, at the sole cost and expense of
12 Lessee. Any and all such parts, mechanisms, devices, and modifications added or affixed to the
13 Equipment shall be deemed to be Equipment for all purposes under this Lease.

14 **B. Insurance.** Lessee shall obtain and maintain for the entire term of this Lease, at
15 Lessee's sole cost and expense, property damage and liability insurance and insurance against
16 loss or damage to the Equipment including, without limitation, loss by fire (including so-called
17 extended coverage as that term is commonly used in the insurance industry), and such other risks
18 of loss as are customarily insured against on the type of Equipment leased hereunder and by
19 businesses in which Lessee is engaged, in such amounts, in such form and with such California-
20 admitted insurers as shall be satisfactory to Lessor and Lessor's risk manager. Each insurance
21 policy (a) will name Lessor as additional insured, and Lessor as loss payee thereof, as Lessor's
22 interest may appear, (b) and shall contain a clause requiring the insurer to give Lessor at least
23 thirty (30) calendar days advance written notice of any material alteration in the terms of such
24 policy or of the cancellation thereof. Lessee shall furnish to Lessor a certificate of insurance or
25 other evidence satisfactory to Lessor that such insurance coverage is in effect; provided,
26 however, that Lessor shall be under no duty either to ascertain the existence of or to examine
27 such insurance policy or to advise Lessee in the event such insurance coverage shall not comply
28 with the requirements hereof. Lessee further agrees to give Lessor prompt notice of any material

1 damage to, or loss of, the Equipment, or any part thereof.

2 **C. Fees and Taxes.** Lessee shall pay to the appropriate governmental authority
3 when due all license fees, assessments and sales, use, property (including possessor interest),
4 excise and other taxes now and hereafter imposed by any governmental body or agency upon any
5 Equipment, or the use thereof, and shall assume the risk of liability arising from or pertaining to
6 the possession, operation or use of such Equipment.

7 **D. Charges and Expenses.** Lessee shall pay all shipping and delivery charges and
8 other expenses incurred in connection with the Equipment and shall pay all lawful claims,
9 whether for labor, materials, supplies, rents or services, which might or could, if unpaid, become
10 a lien on the Equipment.

11 **E. Compliance.** Lessee shall comply with all Federal and State statutes, laws,
12 regulations, codes and requirements, all applicable provisions of the Fresno County Charter and
13 Ordinance Code, and all other applicable local codes, regulations, ordinances, and requirements,
14 and rules, all EMS Agency policies and procedures, all manufacturer's instructions and warranty
15 requirements and all conditions and requirements of all policies of insurance with respect to the
16 Equipment and this Lease.

17 **F. Identification.** Lessee shall mark and identify the Equipment with all
18 information and in such manner as Lessor may request from time to time and replace promptly,
19 any such markings or identification which are removed, defaced or destroyed.

20 **G. Access to Inspect.** Lessee shall, at any and all times during Lessee's business
21 hours, grant Lessor or its agent free access to enter upon the premises wherein the Equipment
22 shall be located or used and permit Lessor to inspect the Equipment, provided that Lessee's
23 business shall not be unreasonably interrupted.

24 **H. Costs.** Lessee shall reimburse Lessor for all reasonable charges, costs and
25 expenses (including attorney's fees) incurred by Lessor in defending or protecting its interests in
26 the Equipment (including repossessing, refurbishing, storing, relocating and selling or disposing
27 of the Equipment), in the enforcement of the provisions of this Lease.

28 **I. Indemnification.** Lessee shall indemnify, defend, and hold harmless Lessor,

1 including Lessor's officers, agents, and employees, from and against any and all claims, losses,
2 liabilities (including, but not limited to, negligence, tort and strict liability), damages, judgments,
3 suits, and all legal proceedings, and any and all costs and expenses in connection therewith
4 (including attorney's fees) arising out of or in any manner connected with the manufacture,
5 purchase, financing, ownership, delivery, rejection, non-delivery, possession, use, transportation,
6 storage, operation, maintenance, repair, return or other disposition of the Equipment, or with this
7 Lease, including, without limitation, claims for injury to or death of persons and for damage or
8 loss to property, and give Lessor prompt notice of any such claim or liability. The provisions of
9 this paragraph shall survive the termination of this Lease.

10 **J. Vehicles.** As to any vehicles which are Equipment, the following shall apply:

11 **1. Drivers.** Lessee shall furnish and permit only licensed drivers
12 whom Lessee duly authorizes to operate the vehicles. All such drivers shall be
13 the agents, employees, or representatives of Lessee and not the agents,
14 employees or representatives of Lessor.

15 **2. Fuel.** Lessee shall provide and pay for all fuel necessary to
16 operate the vehicles including applicable federal, state and local taxes, charges
17 and fees thereon.

18 **3. Licensing.** Lessee shall cause the vehicles to be duly licensed in
19 the name of Lessor and to be periodically inspected as required by all applicable
20 laws, rules and ordinances.

21 **4. Use of Vehicles.** Lessee shall use the vehicles for the purpose
22 which they were intended and agrees to comply with all applicable laws,
23 ordinances and regulations relating to the use or possession of the vehicles.

24 **K. Use of Equipment.** Lessee shall use the Equipment for the sole
25 purpose of providing emergency ambulance services and advanced life support
26 (paramedic) ambulance services and other emergency medical services-related
27 functions approved by Lessor's Director within Fresno County pursuant to the
28 terms and conditions of this Lease and the Ambulance Agreement, unless

1 otherwise provided herein or by written agreement of the Parties.

2 **SECTION 11**

3 **NEGATIVE COVENANTS OF LESSEE**

4 Throughout the term of this Lease, Lessee hereby agrees that it shall not:

5 **A. Liens.** Create, incur, assume or suffer to exist any mortgage, lien, security interest,
6 pledge or other encumbrance or attachment of any kind whatsoever upon, affecting, or with
7 respect to the Equipment or this Lease or any of Lessor's interests thereunder.

8 **B. Alterations to Equipment.** Make any changes or alterations in or to the
9 Equipment except in maintaining and/or altering the Equipment by Lessee so that it may be used
10 for the purpose under the Ambulance Agreement.

11 **C. Designation of Ownership.** Except as otherwise provided herein, permit the
12 name of any person, association or corporation other than Lessor to be placed on the Equipment
13 as a designation that might be interpreted as a claim of ownership or security interest. However,
14 Lessee shall be allowed to place signs on the Equipment which state the name of Lessee.

15 **D. Possession.** Part with possession or control of or suffer or allow to pass out of
16 Lessee's possession or control the Equipment or any part thereof from the address designated
17 herein as the location of the Equipment without the prior written consent of Lessor.

18 **E. Disposition.** Assign or in any way dispose of all or any part of its rights or
19 obligations under this Lease or enter into any sublease without the prior express written consent
20 of Lessor.

21 **SECTION 12**

22 **EQUIPMENT**

23 **A. Use of Equipment.** So long as no Event of Default shall have occurred, and
24 continue without cure by Lessee pursuant to this Lease, Lessee shall be entitled to peaceable
25 possession and use of the Equipment for the term of this Lease in Lessee's lawful business and
26 performance of service under the Ambulance Agreement and in accordance with the provisions
27 of this Lease.

28 **B. Lien Waivers.** If Lessee attaches or affixes any Equipment to any real property or

1 any building located thereon, Lessee shall obtain Lessor's written approval thereof, provided
2 however, Lessee shall first obtain from all persons who may claim any interest in the affected
3 real property their written waivers of interest or liens in the Equipment satisfactory in form and
4 substance to Lessor and as to legal form to its counsel. Lessor shall be permitted to record those
5 written waivers of interest or liens against the title of the affected real property.

6 SECTION 13

7 EVENTS OF DEFAULT

8 An Event of Default shall occur hereunder if Lessee:

9 A. Fails to pay any payment required hereunder when due and such failure continues
10 for a period of fifteen (15) calendar days;

11 B. Fails to perform or observe any other covenant, condition or agreement to be
12 performed or observed by it hereunder, or breaches any representation, warranty or other
13 provision contained herein or in any other document furnished to Lessor in connection herewith,
14 and such failure or breach continues for a period of fifteen (15) calendar days after receipt of
15 written notice thereof from Lessor;

16 C. Without Lessor's written consent, attempts to or does remove, sell, assign, transfer,
17 encumber, dispose of, part with possession, or sublet any item of Equipment;

18 D. Becomes insolvent or admits in writing its inability to pay its debts as they mature;

19 E. A trustee or receiver is appointed for Lessee or a substantial part of its property, or
20 any bankruptcy, reorganization, debt arrangement, moratorium, or any proceeding under any
21 bankruptcy or insolvency law, or any dissolution or liquidation proceeding, is instituted by or
22 against Lessee; or

23 F. Fails to perform or observe any covenant, condition or agreement to be performed
24 or observed by it under the Ambulance Agreement, or breaches any representation, warranty or
25 other provision contained therein or in any other document furnished to Lessor in connection
26 therewith, and such failure or breach continues according to the terms and conditions of the
27 Ambulance Agreement, and thereby results in a breach or default of the Ambulance Agreement.

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1 (4%) over the “prime rate” for banks in Fresno County at the time of the Event of
2 Default.

3 (b) All reasonable costs and expenses incurred in taking,
4 repairing, restoring and selling the Equipment;

5 (c) All reasonable costs and expenses, including but not
6 limited to, legal fees and expenses incurred by Lessor as a result of Lessee’s
7 default hereunder;

8 (d) Any indemnity allowed pursuant to this Lease, or allowed
9 as a matter of law or equity.

10 **B.** If this Lease shall be deemed at any time by a court of competent jurisdiction to be
11 one intended as security, then Lessee agrees that the Equipment shall be deemed to secure in
12 addition to any financial obligation set forth herein, any other financial obligation of Lessee at
13 any time owing by Lessee to Lessor.

14 **C.** Lessor, in exercising its rights and remedies in Subsections 14.A.2 and 14.A.3,
15 herein, shall mitigate its damages in a commercially-reasonable manner, unless mitigation in
16 such manner will in any way adversely affect or jeopardize the public health, welfare or safety,
17 as determined by Lessor’s Director. However, if such mitigation will in any way adversely affect
18 or jeopardize the public health, welfare or safety, as determined by Lessor’s Director, then, to the
19 extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred
20 by statute or otherwise which may require Lessor to sell, lease or otherwise use the Equipment in
21 mitigation of Lessor’s damages as set forth in this Section 14 or which may otherwise limit or
22 modify any of Lessor’s rights or remedies under this Section 14. Lessor shall be entitled to sell,
23 use or re-lease the Equipment as part of its emergency take over of emergency ambulance
24 services in Fresno County, under the Ambulance Agreement without regard to whether such sale,
25 use or disposition of the Equipment is done in a commercially reasonable manner. Lessee
26 understands and acknowledges that the provisions of this Subsection 14.C. are necessary and
27 reasonable, and in the best interest of the public’s health and safety, in order to ensure that
28 Lessor shall have the instant and unimpaired use of the Equipment for Lessor’s emergency take

1 over of emergency ambulance services in Fresno County, under the Ambulance Agreement, if
2 Lessee defaults in the performance of its obligations in the Ambulance Agreement.

3 **D.** No right or remedy of Lessor referred to in this Section 14 is intended to be
4 exclusive but each right and remedy of Lessor shall be cumulative and in addition to any other
5 right and remedy of Lessor referred to in this Lease or otherwise available to Lessor at law or in
6 equity. No waiver by Lessor of any default of Lessee shall constitute a waiver of any other
7 default by Lessee or a waiver of any of Lessor's rights.

8 **SECTION 15**

9 **LESSOR'S RIGHT TO PERFORM FOR LESSEE**

10 If fifteen (15) calendar days after receipt of notice, Lessee fails to perform or comply
11 with any of its promises, covenants, or warranties contained herein, Lessor may perform or
12 comply with such promises, covenants or warranties, and the amount of any payments and
13 expenses of Lessor incurred in connection with such performance or compliance (including
14 reasonable attorney's fees), together with interest thereon at Lessee's Borrowing Rate, shall be
15 deemed due and payable by Lessee upon demand.

16 **SECTION 16**

17 **RETURN OF EQUIPMENT**

18 Except as otherwise provided in Sections 6 and 7 of this Agreement, upon the termination
19 of this Lease, Lessee shall promptly and peaceably surrender the Equipment to Lessor at any
20 place within Fresno County, California, as designated by Lessor in the same condition as when
21 delivered to Lessee under this Lease, ordinary wear and tear excepted. If Lessee surrenders the
22 Equipment to Lessor under this Section 16, Lessee shall not be entitled to any payment or
23 compensation.

24 **SECTION 17**

25 **LEGAL TITLE TO THE EQUIPMENT**

26 It is understood and agreed that legal title to the Equipment shall, at all times during the
27 term of this Lease, remain and be vested solely in Lessor, and that Lessee or any successor or
28 assignee of Lessee shall not have any right (including both legal and equitable), claim interest in,

1 or title to the Equipment except as expressly and specifically provided in this Lease.

2 **SECTION 18**

3 **FURTHER ASSURANCES**

4 Lessee shall cooperate with Lessor for the purpose of protecting the interests of Lessor in
5 the Equipment, this Lease and the sums due under this Lease, including, without limitation, the
6 execution of any written statements, such as Uniform Commercial Code financing statements,
7 showing Lessor's ownership of the Equipment (or security interest) as requested by Lessor.
8 Lessor is authorized to file one or more written statements of ownership (or security interest),
9 such as Uniform Commercial Code financing statements, disclosing the Lessor's ownership (and
10 any security interests) in the Equipment, this Lease and any sums due under this Lease, without
11 the signature of Lessee or signed by Lessor as Attorney-in-Fact for Lessee. Lessee shall pay all
12 costs of filing any written financing, continuation or termination statements with respect to this
13 Lease, including, without limitation, any documentary stamp taxes relating thereto. Lessee will
14 do whatever may be legally necessary to have a statement of the ownership (or security interest)
15 of Lessor in the Equipment noted on any certificate of title relating to the Equipment and will
16 deposit said certificate with Lessor. Lessee shall execute and deliver to Lessor upon request such
17 other instruments and assurances as Lessor deems necessary or advisable for the implementation,
18 effectuation, confirmation or perfection of this Lease and any rights of Lessor hereunder.

19 **SECTION 19**

20 **NOTICE**

21 Any notices or demands required to be given herein shall be given by one of the Parties
22 to the other in writing and by regular mail at the addresses herein set forth in the first paragraph
23 of this Lease, or to such other addresses as either of the Parties may hereafter substitute by
24 written notice given in the manner prescribed in this Section 19. Any notices or demands shall
25 not be modifications to this Lease.

26 **SECTION 20**

27 **NONCANCELABLE LEASE BY LESSEE;
28 OBLIGATIONS UNCONDITIONAL**

This Lease may not be canceled or terminated by Lessee. Lessee hereby agrees that

1 Lessee's obligation to perform any acts or to pay any amounts owing hereunder shall be absolute
2 and unconditional.

3 **SECTION 21**

4 **GOVERNING LAW/VENUE**

5 This Lease shall in all respects be governed by, and construed in accordance with, the
6 laws of the State of California including all matters of construction, validity and performance;
7 Lessee hereby agrees to submit to the jurisdiction of the state and/or Federal courts in the State
8 of California. Venue for any legal action arising out of this Lease shall be in Fresno County,
9 California.

10 **SECTION 22**

11 **NO ASSIGNMENT BY LESSEE**

12 Lessee may not assign or transfer this Lease, or any right in, or interest to the Equipment
13 hereunder, or delegate any obligation hereunder, without the prior express written approval of
14 Lessor. Any such assignment, transfer or delegation in violation of this Section 22 shall be void.

15 **SECTION 23**

16 **BINDING UPON SUCCESSORS**

17 This Lease shall be binding upon the Parties, including their respective successors,
18 assigns, transferees, sublessees, and legal representatives, provided however, that in the case of
19 the successors, assigns, transferees, sublessees, and legal representatives of Lessee, the right of
20 such persons to succeed to the rights and/or assume the obligations of Lessee under this Lease
21 shall be subject to the express, written approval of Lessor.

22 **SECTION 24**

23 **NO WAIVER BY LESSOR**

24 Lessor's failure at any time to require strict performance by Lessee of any of the
25 provisions of this Lease shall not waive or diminish Lessor's right thereafter to demand strict
26 compliance therewith or with any other provision of this Lease. Waiver of any default shall not
27 waive any other default.

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SECTION 25

ENTIRE AGREEMENT

This Lease constitutes the entire understanding or agreement between Lessee and Lessor concerning the subject matter hereof, and there is no understanding or agreement, oral or written, which is not set forth herein.

SECTION 26

THIS LEASE DOES NOT AFFECT THE PARTIES' OTHER LEASING ARRANGEMENTS

Notwithstanding anything else stated to the contrary herein, the terms and conditions of this Lease shall apply only to this Lease and the Equipment to be leased hereunder, and such terms and conditions shall not in any way whatsoever apply to or affect any other leasing arrangements by and between Lessor and Lessee concerning any other property, both personal and real, or equipment.

SECTION 27

OTHER LEASING ARRANGEMENTS DO NOT AFFECT THIS LEASE

The terms and conditions of any other leasing arrangements by and between Lessor and Lessee shall not in any way whatsoever apply to or affect this Lease.

SECTION 28

NO THIRD PARTY BENEFICIARIES

Notwithstanding anything else stated to the contrary herein, it is understood that this Lease is between Lessor and Lessee, and that the benefits to be derived therefrom are intended to accrue only to the Parties and/or their permitted respective assigns as provided herein. Accordingly, it is understood that no other person, firm, corporation, or entity, including, but not limited to, the vendor(s), supplier(s), manufacturer(s), dealer(s), and/or salespeople of the Equipment, shall be deemed an intended third party beneficiary of this Lease.

SECTION 29

INDEPENDENT RELATIONSHIP

It is understood that the relationship of the Parties is strictly that of lessor and lessee. This Lease shall not be construed to create the relationship of principal-agent, master-servant,

1 employer-employee, partnership, joint-venture or association between Lessor and Lessee; neither
2 is any party an officer of the other. Each of the Parties, their officers, agents, and employees, in
3 their performance of this Lease shall at all times act in an independent capacity between each
4 other.

5 **SECTION 30**

6 **AMENDMENTS**

7 This Lease may not be amended except in writing, signed by each of the Parties, and all
8 such amendments and shall be binding upon and inure to the benefit of the Parties, their
9 permitted successors and assigns.

10 **SECTION 31**

11 **EACH PARTY'S REPRESENTATIVE**

12 Lessor and Less designate their respective representatives for this Lease as follows:

13 Lessor: Lessor's Director or his designee.

14 Lessee: Lessee's General Manager, or his designee.

15 Unless otherwise provided herein, Lessor's Director, or his designee, is hereby authorized
16 by Lessor to take all action on behalf of Lessor to carry out the terms and conditions of this
17 Lease for Lessor. Unless otherwise provided herein, Lessee's General Manager, or his designee,
18 is hereby authorized by Lessee to take all action on behalf of Lessee to carry out the terms and
19 conditions of this Lease for Lessee.

20 **SECTION 32**

21 **MISCELLANEOUS**

22 If any provision of this Lease or the application thereof to any person or circumstance
23 shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of
24 such provision to persons or circumstances other than those as to which it is invalid or
25 unenforceable, shall not be affected thereby, and each provision of this Lease shall remain in
26 effect and shall be enforceable to the full extent permitted by law. Time is of the essence with
27 respect to this Lease. All representations, covenants and warranties of Lessee made in this

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1 Lease and any certificates delivered in connection herewith shall survive the termination of this
2 Lease for any reason.

3 **IN WITNESS WHEREOF**, the Parties have executed this Lease as of the day and year
4 first hereinabove written.

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