

COUNTY OF EL DORADO
LEASE # 134-L1211

THIS LEASE is made by and between **COUNTY OF EL DORADO**, a political subdivision of the State of California, hereinafter called "Lessee", and **CHARLES FREELAND AND CYNTHIA FREELAND, TRUSTEES OF THE FREELAND FAMILY TRUST**, owners of premises, herein after referred to as "Lessor".

1. PREMISES

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, for and in consideration of the rents, covenants and agreement hereinafter set forth, the "Premises" described as follows:

Warehouse Space along with the entire 1.67 acre parcel
3615 ChinaGarden (Stage Coach)
Diamond Springs, CA 95619

The Premises consists of 4,000 square feet of improved warehouse space together with the entire 1.67 acres of land on which the facility is located.

2. TERM

The term of this Lease shall commence on September 20, 2011 and terminate on September 19, 2016, subject however, to earlier termination as hereinafter more particularly provided in Paragraph 20.

3. BASE RENT

Lessee agrees to pay to Lessor as rent the sum of **Three Thousand One Hundred Sixty-three Dollars and 48/100 (\$3,163.48)** per month for the period of September 20, 2011, to September 19, 2016, payable on the twentieth day of each and every month commencing on September 20, 2011 The Rent shall be paid in advance on the twentieth day of each month, without prior notice or demand, except in the event that LESSEE'S occupancy commences on a day other than the first day of the month, the rent for the first partial month shall be prorated at one-thirtieth (1/30) of the rental rate for each calendar day the premises are ready for occupancy during such month. Rent shall be paid to the order of: **Charles H. and Cynthia J. Freeland at 2641 Old Meder Road, Rescue, CA 95672.**

Said monthly rent shall be adjusted on September 20, 2016, and annually thereafter, in an amount equal to two (2%) percent of the then current monthly rent amount.

4. OPTION FOR ADDITIONAL TERMS

Lessee shall have the option to Lease the subject Premises for three (3) additional five (5) year terms after the initial Lease expiration date of September 19, 2016. Such option(s) shall be on the same terms and conditions as provided for herein for the initial term. Lessee shall notify Lessor in writing approximately sixty (60) days prior to the expiration of the first five (5) year term and each additional five (5) year terms thereafter, should Lessee elect to exercise said option(s).

5. USE OF PREMISES

The Premises are leased to the Lessee for the purpose of conducting business and activities permitted by law, including any government operations or uses related thereto.

6. PROHIBITED USE

Lessee shall not commit or permit the commission of any acts on the Premises nor permit the use of the Premises in any way that will:

- (a) Increase the existing fire rates or cancel any fire, casualty, liability or other insurance policy insuring the building or its contents;
- (b) Violate or conflict with any law, statute, ordinance, governmental rule or regulation whether now in force or hereinafter enacted, governing the Premises;
- (c) Obstruct or interfere with the rights of other tenants or occupants of the building or injure or annoy them; and
- (d) Constitute commission of a waste on the Premises.

7. INSURANCE

- 1. LESSOR shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that LESSOR maintains insurance that meets the following requirements:
 - A. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
 - B. Workers' Compensation and Employers' Liability Insurance covering all employees of LESSOR as required by law in the State of California.

- C. LESSOR shall furnish a certificate of insurance satisfactory to the LESSEE as evidence that the insurance required above is being maintained.
- D. The insurance shall be issued by an insurance company acceptable to LESSEE or be provided through partial or total self-insurance likewise acceptable to LESSEE.
- E. LESSOR agrees that the insurance required above shall be in effect at all times during the term of this Lease. In the event said insurance coverage expires at any time or times during the term of this Lease, LESSOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Lease, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of LESSEE and LESSOR agrees that the Lease shall not commence prior to the giving of such approval. In the event the LESSOR fails to keep in effect at all times insurance coverage as herein provided, LESSEE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event.
- F. The certificate of insurance must include a provision stating that the insurer will not cancel the insured's coverage without 30 day prior written notice to the LESSEE.
- G. Any deductibles or self-insured retention must be declared to and approved by the LESSEE. At the option of the LESSEE either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the LESSEE, its officers, officials and employees; or LESSOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- H. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the LESSEE, its officers, officials, employees or volunteers.
- I. The insurance companies shall have no recourse against the LESSEE, its officers, officials or employees for payment of any premiums or assessments under any policy issued by any insurance company.
- J. LESSOR's obligations shall not be limited by the foregoing requirements and shall survive the expiration of this Agreement.
- K. In the event LESSOR cannot provide an occurrence policy, LESSOR shall provide insurance covering claims made as a result of performance of this Lease for not less than three (3) years following completion of this Lease.
- L. The Certificate of Insurance shall meet additional standards as may be determined by the LESSEE, either independently or in consultation with LESSEE's Risk Manager, as essential for protection of LESSEE.
- M. LESSOR shall provide property insurance on all real property owned by LESSOR covered by this Lease under a standard "all risk" policy. The policy shall insure for not less than ninety percent (90%) of the replacement value of the property.

8. INDEMNIFICATION

LESSOR shall indemnify, defend, and hold harmless LESSEE, its officers, agents and employees, from and against any claims, actions, suits, costs, expenses (including reasonable attorney's fees) and other cost of defense incurred or liabilities, whether for damage to or loss of property, or injury to or death of person, which in any way arise from or are connected with the acts or omissions of LESSOR or its officers, agents, employees, contractors, subcontractors, or business invitees, or LESSOR'S use of the Premises, unless such damage, loss, injury, or death shall be caused by the sole, or active negligence of LESSEE, or the willful misconduct of LESSEE, as expressly provided by statute.

LESSEE shall indemnify, defend, and hold harmless LESSOR, its officers, agents, and employees, from and against any claims, actions, suits, costs, expenses (including reasonable attorney's fees) and other cost of defense incurred or liabilities, whether for damage to or loss of property, or injury to or death of person, which in any way arise from or are connected with the acts or omissions of LESSEE or its officers, agents, employees, contractors, subcontractors, or business invitees, or LESSEE'S use of the Premises to the extent such loss, damage, injury, or liability is not covered by the insurance required as provided for in paragraph 7.

"INSURANCE" above, unless such damage, loss, injury or death shall be caused by the sole, or active negligence of LESSOR, or the willful misconduct of LESSOR.

The duties of LESSOR or LESSEE to indemnify and save each other harmless include the duties to defend as set forth in California Civil Code Section 2778. The provisions of this section shall survive the termination of the Lease for any event occurring prior to the termination.

9. ALTERATIONS

Lessee shall not make or permit any other person to make any alterations to the Premises without the written consent of Lessor first obtained. Should Lessor consent to the making of any alterations to the Premises by the Lessee, subsequent to execution of this Lease, said alterations shall be made at the sole cost and expense of Lessee by a contractor or other person selected by Lessee and approved in writing by Lessor before work commences. Any and all alterations, with the exception of previously approved relocatable walls and other alterations readily removable without significant damage to the building Premises, interior or exterior, shall on expiration or sooner termination of this Lease, become the property of Lessor and remain on the Premises.

10. MAINTENANCE AND REPAIRS

Lessee shall, at all times during the term of this Lease and any renewal or extension thereof, maintain, at Lessee's sole cost and expense, the Premises, in a good, clean, and safe condition, and shall on expiration or sooner termination of this Lease surrender the Premises to Lessor in as good condition and repair as they are in on the date of this Lease, reasonable wear and tear and damage by the elements excepted.

11. ADA MODIFICATIONS

Lessor agrees, at its sole cost and expense, to make changes necessary to bring the subject Premises up to the accessibility standards of the Americans with Disabilities Act (ADA).

12. INSPECTION BY LESSOR

Lessee shall permit Lessor or Lessor's agent, representative, or employees to enter the Premises at all reasonable times upon forty-eight (48) hours advance notice to Lessee for the purpose of inspecting the Premises to determine whether Lessee is complying with the terms of the Lease and for the purpose of doing other lawful acts that may be necessary to protect Lessor's interest in the Premises under this Lease.

13. SERVICES FURNISHED BY LESSOR

Lessor is responsible for the payment of all local, state and federal taxes associated with or attributable to the property subject to this Lease Agreement, the operation of this Lease and the income flowing to Lessor through this Lease agreement. Lessor shall, at Lessor's own cost and expense, maintain the exterior walls, exterior windows, automobile parking areas, exterior lighting, sidewalks, retaining walls, ramps, plumbing, electrical, heating and air-conditioning, landscaped areas, air-conditioning and heating equipment and ductwork, and roof and structural supports of the building of which the Premises are a part, in good order and repair, excepting any repairs caused by the negligent or willful act of Lessee or Lessee's agents or servants.

14. UTILITIES: The monthly cost of the following utilities shall be paid as follows:

- (a) Water and sewer suitable for the intended use of the Premises shall be provided and

paid by Lessor.

- (b) Gas and/or electric utilities for the term shall be obtained and paid by Lessee.
- (c) Janitorial services, including the cleaning of windows and replacement of light globes or fluorescent tubes, shall be paid by Lessee.
- (d) Garbage removal shall be provided and paid for by Lessor.
- (e) Lessee shall obtain and pay for telephone service.

15. AIR-CONDITIONING AND HEATING

Lessor has provided, and shall maintain, or cause to be maintained, in the building of which the Premises are a part, an air conditioning and heating system.

16. DESTRUCTION OF PREMISES

Should said Premises, or the building of which they are a part, be damaged or destroyed by any cause not the fault of Lessee, Lessor shall at Lessor's sole cost and expense promptly repair the same and the rent payable under this Lease shall be abated for the time and to the extent Lessee is prevented from occupying the Premises in their entirety; provided, however, that should the cost of repairing the damage or destruction exceed twenty-five (25%) percent of the full replacement cost of the Premises, Lessee may choose, in lieu of Lessor making the repairs required by this paragraph to terminate this Lease by giving Lessor ten (10) days' written notice of such termination.

17. CONDEMNATION OF PREMISES

Should all or any part of the Premises be taken by any public or quasi-public agency or entity under the power of eminent domain during the term of the Lease:

- (a) Either Lessor or Lessee may terminate this Lease by giving the other thirty (30) days' written notice of termination; provided, however, that Lessee cannot terminate this Lease unless the portion of the Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the purposes intended by this Lease.
- (b) Any and all damages and compensation awarded or paid because of the taking, except for amounts paid Lessee for moving expenses or for damage to any personal property or trade fixtures owned by Lessee, shall belong to Lessor, and Lessee shall have no claim against Lessor or the entity exercising eminent domain power for the value of the unexpired term of this Lease.

- (c) Should any portion of the building containing the Premises, other than the Premises, be taken by eminent domain, Lessor or Lessee may, at its option, terminate this Lease.

18. ASSIGNMENT OR SUBLEASING

Lessee shall not sub-lease, encumber, assign, or otherwise transfer its rights or interests under this Lease, without the express written consent of the Lessor first had and received, provided said consent by Lessor shall not be unreasonably withheld.

19. ACTS CONSTITUTING BREACHES BY LESSEE

Lessee shall be guilty of a material default and breach of this Lease should:

- (a) Any rent be unpaid when due and remain unpaid for fifteen (15) days after written notice to pay such rent or to surrender possession of the Premises has been given to Lessee by Lessor;
- (b) Lessee default in the performance of or breach any provision, covenant, or condition of this Lease other than one for the payment of rent and such default or breach is not cured within fifteen (15) days after written notice thereof is given by Lessor to Lessee; or
- (c) Lessee breaches this Lease and abandons the Premises prior to the expiration of the term of this Lease.

20. NON-APPROPRIATION

Lessor acknowledges that Lessee's funding for this Lease is in large part dependent upon receipt of certain state, federal and other funds by Lessee. Lessee may terminate this Lease upon sixty (60) days notice if funds are not budgeted for the leasehold of these Premises.

21. LESSOR'S LIABILITY

In the event of a transfer of Lessor's title or interest to the property during the term of this Lease, Lessee agrees that the grantee of such a transfer will be substituted as Lessor under this Agreement, provided that all deposits are transferred to the grantee. Lessor shall be released from all future liability under this Lease Agreement, but shall not be released from the obligation to indemnify Lessee under paragraph 8 above for acts or omissions occurring prior to the transfer unless so released by Lessee in writing.

22. NOTICES

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party, Lessor or Lessee, to whom it is directed or any managing employee of such party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

Lessor: Charles H. Freeland & Cynthia J. Freeland
2641 Old Meer Road
Rescue, CA 95672

Telephone: (530) 676-5508

Lessee: County Of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attention: James W. Ware, P.E. Director
Telephone: (530) 621-7533

Either party, Lessor or Lessee, may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

23. BINDING ON HEIRS AND SUCCESSORS

This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties, Lessor and Lessee, hereto.

24. TIME OF ESSENCE

Time is expressly declared to be the essence of this Lease.

25. WAIVER

The waiver of any breach of any of the provisions of this Lease by Lessor shall not constitute a continuing waiver or a waiver of any subsequent breach by Lessee either of the same or of another provision of this Lease.

26. SOLE AND ONLY AGREEMENT

This instrument constitutes the sole and only agreement between Lessor and Lessee respecting

the Premises and correctly sets forth the obligations of Lessor and Lessee to each other as of its date. Any agreements or representations respecting the Premises or their leasing by Lessor to Lessee not expressly set forth in this instrument are null and void.

27. SEVERABILITY

If any provision, clause or part of this Lease Agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this Lease Agreement or the application of such provisions, clauses, or parts under other circumstances shall not be affected thereby.

28. CALIFORNIA FORUM AND LAW

Any dispute resolution action arising out of this Lease Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

29. ATTORNEY'S FEES

Should any litigation be commenced between Lessor and Lessee concerning the Premises, this Lease, or the rights and duties of either Lessor or Lessee in relation thereto, the party, Lessor or Lessee, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in the litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

30. LEASE ADMINISTRATION

The County officer or employee with responsibility for administering this Lease is James W. Ware, P.E., Director of Transportation or successor.

DEPARTMENT CONCURRENCE:

Dated: 8/23/11

Signed: 
John D'Agostini, Sheriff

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IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on day and year first below written.

**LESSOR: CHARLES FREELAND AND CYNTHIA FREELAND,
TRUSTEES OF THE FREELAND FAMILY TRUST**

Dated: 8/27/11


Signed: 
Charles Freeland

Dated: 8/23/11

Signed: 
Cynthia Freeland

LESSEE: COUNTY OF EL DORADO

Dated: 9-13-11

Signed: 
Raymond J. Nutting, Chair
Board of Supervisors

Attest: Suzanne Allen De Sanchez,
Clerk of the
Board of Supervisors

Dated: 9-13-11

By: 
Deputy Clerk