

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: City Development

AGENDA DATE: May 27, 2014

CONTACT PERSON NAME AND PHONE NUMBER: Memo Sotomayor 915-541-4583

DISTRICT(S) AFFECTED: ALL

SUBJECT:

That the City Manager be authorized to sign an Office Lease between the CITY OF EL PASO and 211 FLORENCE, LP, a Texas limited partnership for the lease of 5,177 square feet at the property commonly known as 211 North Florence Street, for the Police Department Internal Affairs Division in an annual base rental amount of \$81,020.05 per annum (or \$6,751.67 per month), El Paso, Texas for a five (5) year initial term with one option to extend for an additional five (5) year term, and to execute any necessary documents to accomplish the intent of this Resolution.

BACKGROUND / DISCUSSION:

The Police Department currently operates the Internal Affairs Division out of a leased property at 2211 E. Missouri. The Police Department Internal Affairs Division wishes to relocate their operations to a better suited building. Through value engineered space design, we were able to negotiate a decrease in the base rent (representing a 10% savings) in the first year and that base rent will stay flat throughout the initial five (5) year term of the lease. This flat rate equates to a savings of \$6,569.75 in the initial year as compared to the existing lease contract.

PRIOR COUNCIL ACTION:

Yes, current IA lease was approved on August 28, 2012.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

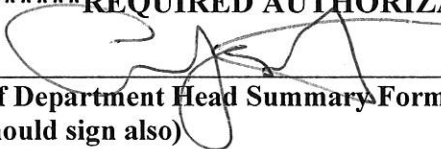
This item has been and will continue to be budgeted out of the Police Department's budget. The funding source is 524000-1000-321-21010-P2111.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Office Lease between the CITY OF EL PASO and 211 FLORENCE, LP, a Texas limited partnership for the lease of 5,177 square feet at the property commonly known as 211 North Florence Street, for the Police Department Internal Affairs Division in an annual base rental amount of \$81,020.05 per annum (or \$6,751.67 per month), El Paso, Texas for a five (5) year initial term with one option to extend for an additional five (5) year term, and to execute any necessary documents to accomplish the intent of this Resolution.

ADOPTED this _____ day of _____, 2014.

CITY OF EL PASO

ATTEST:

Oscar Leaser
Mayor

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic and International Development



Gregory Allen, Chief
Police Department

OFFICE LEASE

between

211 FLORENCE, LP

“Landlord”

and

_____ CITY OF EL PASO _____

“Tenant”

(g) **Lease Year:** As used herein, a Lease Year shall mean a period of twelve (12) successive months. The First Lease Year commences on the Commencement Date, except that if the Commencement Date is a date other than the first day of a month, the initial fractional month together with the next succeeding twelve (12) months shall constitute the first Lease Year, and each succeeding Lease Year shall start on the anniversary date of the first day of the first full month of the first Lease Year.

(h) **Rent:**

(1) **Base Rent:**

The annual Base Rent for the first year initial Term shall be **\$15.65** per square foot of Net Rentable Area. The initial Base Rent is calculated as follows, based upon **4,665** square feet of Net Rentable Area plus **512** S.F. of Pro Rata Share as per I (j) for a total of **5,177** S.F.

<u>Years</u>	<u>Rate psf</u>	<u>Monthly Installment</u>	<u>Annual Amount</u>
Year 1:	\$15.65	\$6,751.67	\$81,020.05
Year 2:	\$15.65	\$6,751.67	\$81,020.05
Year 3:	\$15.65	\$6,751.67	\$81,020.05
Year 4:	\$15.65	\$6,751.67	\$81,020.05
Year 5:	\$15.65	\$6,751.67	\$81,020.05

(2) **Additional Rent.** Tenant shall also pay, as additional rent, commencing in the first Lease Year, Tenant's Pro Rata Share of any increases in the Basic Operating Costs (as such term is defined in Section 2.04) for the Building over the Initial Basic Operating Costs, all as set forth in Article II of this Lease.

(3) **Above Standard Tenant Improvements.** Landlord agrees to complete all work specified in **Exhibit "C"** up to \$50,000. If work requested by Tenant exceeds \$50,000, Landlord will provide an Invoice setting out the additional costs with sufficient evidence of such additional costs, including contractor's invoices. Within 30 days of the Tenant's receipt of such Invoice and sufficient evidence of the additional costs, the Tenant will pay such additional cost as Additional Rent.

(4) **Place of Payment.** Tenant shall pay the Base Rent and Additional Rent to Landlord at the address of Landlord as set forth above for giving notices or such other address as Landlord may designate in writing. Landlord shall provide such banking information as may be required by Tenant in order to pay by wire/bank transfer.

(i) **Premises:** Approximately **4,665 square feet of Net Rentable Area** (the "**Premises**"), as identified on **Exhibit "A"** attached hereto, on the second floor of an office building known as 211 Florence, El Paso, Texas, 79901 (the "**Building**"). The Building is on a parcel of land (the "**Land**"), more particularly described in **Exhibit "A-1"**, attached hereto and made a part hereof.

(j) **Tenant's Pro Rata Share:** Landlord and Tenant stipulate and agree that the Building contains a total of **31,305** square feet of Net Rentable Area, as hereinafter defined, and that the Premises

contains a total of 4,665 square feet of Net Rentable Area. Accordingly, Tenant agrees that its Pro Rata Share with respect to increases in Basic Operating Costs (as defined in Section 2.04 herein) is **14.9%** (4,665) s.f. divided by 31,305 s.f.), subject to adjustment, if applicable, as provided above. Tenant acknowledges that Landlord may, at its election, during the Term of this Lease make certain changes or improvements to the Building, which may increase or decrease the Net Rentable Area of the Building, in either of which events Tenant's Pro Rata Share will be adjusted accordingly. The term "**Net Rentable Area**" shall mean (i) in the case of a single tenancy floor, the area within the inside surface of the outer glass or finished column walls of the Building to the inside surface of the opposite outer wall, and (ii) in the case of a multi-tenancy floor, the area within the inside surface of the outer glass or finished column walls enclosing the Premises to the midpoint of the demising walls separating the Premises from other areas, but including an allocable portion of the corridors, elevator foyers, restrooms, mechanical rooms, janitor closets, vending areas, and other similar facilities for the use of all Building tenants on the particular floor.

(k) **Advance Rent:** Tenant, contemporaneously with the execution of this Lease, shall pay the first month's Base Rent.

(l) **Option to Renew.** If Tenant is not in default of this Lease beyond any applicable notice or cure periods, Tenant shall have the option, but not the obligation to extend the term of this Lease Agreement for one additional five (5) year term (each a "Renewal Term"). This option shall be exercised by Tenant only in an irrevocable, unconditional writing, delivered to Landlord no sooner than one hundred eighty (180) days prior to the expiration of the term of this Lease. The terms and conditions of this Lease shall apply to each Renewal Term except that monthly rent for the first year of each Renewal Term will increase to \$19.55 per square foot. Tenant's exercise of a renewal option shall, at Landlord's election, be null and void if Tenant is in default under the Lease beyond any applicable notice or cure period at the date of said notice or at any time thereafter and prior to commencement of such option period.

ARTICLE II – DEMISE AND RENT

Section 2.01 **Lease of Premises.** Landlord hereby rents unto Tenant, and Tenant hereby leases from Landlord, the Premises, together with a non-exclusive right to use the Common Areas as hereinafter provided, for the Term and subject to all of the terms and conditions of this Lease. Notwithstanding anything to the contrary contained herein, Landlord represents and warrants to Tenant that on the Delivery Date, the Premises shall be in good condition and all Building systems serving the Premises shall be in good working order, the Premises will be in compliance with all statutes, laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition and occupancy of the Premises including but not limited to the American with Disabilities Act, and all rules, orders, regulations and requirements of the board of fire underwriters of insurance service office, or any similar body having jurisdiction over the Premises. Landlord represents that no environmental risk or health hazard exists in the Building or the Premises.

Section 2.02 **Title and Quiet Enjoyment.** Landlord represents and covenants that it has indefeasible title to the Premises, subject to easements, restrictive covenants of record and liens in favor of Landlord's Mortgagee. Subject to Tenant's performance of all of its obligations hereunder, Tenant shall peacefully and quietly have, hold and enjoy the Premises for the Term and, if applicable, the Renewal Term, of this Lease.

Section 2.03 **Payment of Base Rent.** Starting one month after the Commencement Date and continuing throughout the Term of this Lease, Tenant shall pay to Landlord, in monthly installments,



Base Rent for the Premises in the amount set forth in Article I above, together with any Additional Rent. Base Rent is payable in advance in twelve (12) monthly installments on or before the first day of each calendar month during the Term, without demand, abatement, offset or deduction of any kind, except as expressly permitted by this Lease. Base Rent for the first fractional rent paying month, if any, shall be due and payable in advance together with the Base Rent for the following month.

Section 2.04 **Tenant's Share of Basic Operating Costs**. Commencing in the Second Lease Year, and continuing thereafter for the Term, Tenant shall pay Landlord, in addition to Base Rent, Tenant's Pro Rata Share of increases in Basic Operating Costs, as hereinafter defined.

(a) For each Lease Year during the Term, commencing in the second Lease Year, Landlord shall provide a then current estimate of Basic Operating Costs for the upcoming Lease Year, and thereafter Tenant shall pay, as additional rental, in twelve (12) equal monthly installments at the time and place provided above, Tenant's Pro Rata Share of the increase in the estimated Basic Operating Costs over the Initial Basic Operating Costs for the Lease Year in question. The parties agree that the "Initial Basic Operating Costs" are the Tenant's Pro Share of Operating Expenses for the first Lease Year are included in the first year's Base Rent and no Additional Rent shall be due for the Initial Basic Operating Costs in the first Lease Year.

(b) Within one hundred fifty (150) days or as soon thereafter as possible after the conclusion of each Lease Year of the Term, Landlord shall furnish to Tenant a statement of actual Basic Operating Costs for such year, and within thirty (30) days thereafter an appropriate adjustment shall be made between Landlord and Tenant to reflect any difference between Landlord's estimate of, and the actual, increase in Basic Operating Costs, but in no event will such adjustment result in a reduction in the Base Rent specified in Article I above.

(c) "Basic Operating Costs" shall mean the operating expenses of the Land and Building and all expenditures by Landlord reasonably necessary to maintain the Building, Land, landscaping, parking, and related facilities, and such additional facilities in subsequent years as may be reasonably determined by Landlord to be necessary in accordance with sound and reasonable practices for facilities of a like kind and character. Such operating expenses shall include all expenses, costs and disbursements of every kind and character which Landlord shall pay or become obligated to pay because of or in connection with the ownership, operation, and maintenance of the Land and Building (unless otherwise excluded herein), including, but not limited to, the following:

- (i) Wages and salaries of all employees engaged on-site in the Building and Land in direct operations and maintenance of the Building and Land, social security taxes, unemployment taxes or insurance, and any other taxes which may be levied on such wages and salaries, the cost of disability and hospitalization insurance and pension or retirement benefits of such employees;
- (ii) All supplies and materials used in the operation and maintenance of the Building and Land;
- (iii) Cost of all utilities for the Building and Land, including the cost of water and power, heating, lighting, air conditioning and ventilating for the Building and utilities for lighting and landscaping;
- (iv) Administrative and management fees.



- (v) Cost of all maintenance and service agreements for the Building and Land, the equipment therein and grounds, including janitorial service to the Building, common area security services, landscape maintenance, alarm service, window cleaning and elevator maintenance;
- (vi) Cost of all insurance relating to the Building and Land, including casualty and liability insurance applicable to the Building and Landlord's personal property used in connection therewith;
- (vii) All taxes and assessments and governmental charges, whether federal, state, county or municipal and whether they be by taxing districts or authorities presently taxing the Building and Land, and any other taxes and assessments attributable to the Building and Land or its operation excluding, however, (i) federal taxes on income and ad valorem taxes on Tenant's personal property (which shall be paid by Tenant), (ii) federal, state or local income taxes, (iii) franchise, gift, transfer, excise, capital stock, estate, succession, or inheritance taxes, and (iv) penalties or interest for late payment of taxes;
- (viii) Cost of repairs and general maintenance of the Building and common areas, including restriping, repairing and resurfacing of parking areas and driveways (but excluding repairs and general maintenance paid by insurance proceeds or by Tenant or other third parties and alterations attributable solely to tenants of the Building other than Tenant);
- (ix) Legal and accounting expenses attributable to the ownership and operation of the Building (but excluding legal expenses incurred in connection with: any refinancing of the Building; any sale of the Building; negotiation of tenant Leases; prosecution of tenant defaults);
- (x) Costs incurred in compliance with new or revised federal or state laws or municipal ordinances or codes or regulations promulgated under any of the same; and
- (xi) Amortization of the cost of installation of capital investment items which are primarily for the purpose of reducing (or avoiding increases in) Basic Operating Costs or which may be required by governmental authority for compliance with laws or regulations enacted after the Commencement Date. All such costs shall be amortized over the reasonable life of the capital investment items with the reasonable life and amortization schedule being determined in accordance with generally accepted accounting principles and in no event to extend beyond the reasonable life of the Building.

(d) Basic Operating Costs shall not include (i) expenditures classified as capital expenditures for federal income tax purposes (except as expressly permitted above), (ii) costs for which Landlord is entitled to specific reimbursement by Tenant, any other tenants of the Building, or any other third party, (iii) costs of initial construction of the Building, (iv) cost of renovating or modifying space in the Building for Lease to tenants, (v) leasing expenses, inducements, advertising, promotion and commissions, (vi) debt service on any indebtedness secured by the Building or Land, (vii) federal, state and city income, excess profit, gift, estate, succession, inheritance, franchise and transfer taxes and any other taxes relating to the operation of Landlord's business, but not the Building or Land, (viii) the cost of repairing and restoring any portion of the Building damaged by fire or other casualty, any other cost of expenditure for which Landlord has been reimbursed or is entitled to reimbursement, whether by insurance proceeds or otherwise including costs subject to any self-insured retention or deductible amount, (ix) the cost of any item or service that Landlord provides selectively to one or more tenants of the Building, whether or not Landlord is reimbursed by such other tenants; (x) any amount paid to an



entity or individual affiliated with or otherwise related to Landlord which exceeds the amount which would be paid for similar goods or services on an arms-length basis between unrelated parties; and (xi) the cost of correcting defects in the construction of the Building whether or not covered by any warranty.

(e) The annual increase in Basic Operating Costs other than taxes, insurance, and utilities, shall be capped at five percent (5%) per annum. The actual cost of increases in taxes, insurance, and utilities may be passed through to Tenant.

Section 2.05 **Additional Rental**. Each and every payment, amount and expenditure required to be paid by Tenant under this Lease other than Base Rent shall constitute additional rental (“**Additional Rent**”) hereunder, and unless otherwise stated herein, shall be payable to Landlord on the first day of each calendar month along with the Base Rent. If Tenant fails to pay any amounts when due, Landlord shall have all rights and remedies available to it including those for the nonpayment of rent.

Section 2.06 **No Offset**. Except as otherwise expressly set forth herein, it is the intention of the parties that Landlord shall receive all payments due hereunder without demand, deduction, or offset. It is agreed that Landlord’s obligations hereunder are independent of Tenant’s obligations.

Section 2.07 **Late Charge**. If any installment of rent or other amounts is received by Landlord more than thirty (30) days after such installment or amount is past due, Tenant shall pay Landlord as Additional Rent an amount set forth in Texas Government Code Section 2251. Landlord shall provide Tenant with five (5) days prior written notice twice during each Lease Year before imposing such late charge and interest. [This last sentence is not relevant given 2251].

Section 2.08 **Lease Interest Rate**. Any Base Rent, Additional Rent, or other amounts required to be paid by Tenant hereunder which have not been paid within thirty (30) days of date due shall bear interest at the Lease Interest Rate at set forth in Texas Government Code Section 2251. “**Lease Interest Rate**” means the amount set forth in Texas Government Code Section 2251. Notwithstanding anything to the contrary contained herein, if as a result of the interest charged, received or collected pursuant to this Lease Landlord would be deemed to have charged, collected or received interest in excess of the maximum lawful nonusurious rate then this provision shall automatically be amended to reduce or eliminate the interest to an amount that complies with all applicable laws and regulations, and, if necessary, Landlord will promptly refund to Tenant an amount that will cause Landlord to comply with all applicable laws and regulations. Landlord and Tenant intend that Landlord shall never be entitled to charge, collect or receive interest in excess of the maximum lawful nonusurious rate.

Section 2.09 **Check Charge for Insufficient Funds**. There will be a \$50.00 charge for any check which is returned to Landlord because of insufficient funds or such other amount as may be allowed by law for insufficient funds checks.

ARTICLE III – CONTROL OF COMMON AREAS

Section 3.01 **Common Area**. As used herein, the term “**Common Area**” means the corridors, elevator foyers, mechanical rooms, elevator mechanical rooms, janitorial closets and telephone closets, lobby areas and other similar facilities in the Building and parking areas, driveways, sidewalks, loading areas and similar areas outside the Building located on the Land for the use or benefit of tenants of the Building or the public now or in the future. Tenant shall have access to the Premises twenty-four (24) hours per day, seven days per week. Tenant shall have the right to use in common with the other tenants of the building, their invitees, customers and employees, the Common Areas of the Building, except the parking areas, which shall be limited to the two spaces provided in Section 3.02.

Section 3.02 **Control of Common Areas.** All Common Areas shall be at all times subject to the exclusive control and management of Landlord.

Section 3.03 **Rules and Regulations.** Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations (herein called the "Rules and Regulations") with respect to the Premises, Building, Land, and all Common Areas; the initial Building Rules and Regulations are set out in **Exhibit "B"** hereto. Landlord shall enforce such rules and regulations in a non-discriminatory manner.

ARTICLE IV – SERVICES; REPAIRS AND MAINTENANCE

Section 4.01 **Utilities.** Landlord agrees to provide normal Building Standard electric, water and sewer utility service connections to the Premises. "**Building Standard**" shall mean the quantity and quality of materials, finishing and workmanship specified by Landlord from time to time as standard for the Building and consistent with the condition of the Building on the Delivery Date. Tenant is solely responsible for contracting for and paying for all other services to the Premises, including, without limitation, telephone, internet, cable and other services, and Tenant agrees to pay directly to the relevant provider for any such services that Tenant uses, together with any taxes thereon. Tenant agrees that it will pay any and all costs of utility service required for the operation of the Premises beyond the Building Standard services and hours established by Landlord for the operation of the Building. Landlord shall have no liability for any loss or damage suffered by Tenant or its agents, licensees, employees, concessionaires, officers, customers, or invitees as a result of any interruption or cessation of utilities, and Tenant waives the right to recover any damages from Landlord for any such interruption or cessation. Landlord shall use all reasonable efforts to restore utility service if the interruption or cessation is caused by the acts or omissions of Landlord.

Section 4.02 **Services.** Landlord agrees to provide the following services: (i) air conditioning and heating to the Premises reasonable for Tenant's use (exclusive of air conditioning or heating for electronic data processing or other specialized equipment) during Building Operating Hours; during the cooling season temperatures inside the Building shall be maintained at 70 to 76 degrees at substantially all times during Building Operating Hours and in the heating season inside the Building shall be maintained at 68 to 74 degrees at substantially all times during Building Operating Hours; (ii) hot and cold water for lavatory and drinking purposes; (iii) janitorial service five days per week (excluding holidays) and periodic window washing; (iv) elevator service to and from the Premises if not located on the ground floor; (v) electric current for normal office machines and the Building Standard lighting reasonable for Tenant's use; (vi) bulb replacement for Building Standard lighting; and (vii) air conditioning and heating, landscaping and groundskeeping services, lighting and hot and cold water for lavatory and drinking purposes in Common Areas. As used herein the term "**Building Operating Hours**" means 7:00 a.m. to 7:00 p.m., Monday through Friday; 8:00 a.m. to 2:00 p.m. on Saturday and closed Sunday and City recognized holidays, as established by Landlord in good faith. Tenant agrees to reimburse Landlord for the actual cost to Landlord of providing to Tenant any heating, air conditioning or electrical needs in excess of Building Standard Services that Tenant has requested, provided that Landlord shall not be obligated to provide any such excess services. Tenant shall reimburse Landlord within thirty (30) days after Tenant has received a given itemized invoice for those heating, air conditioning and electrical charges in excess of Building Standard Services that Tenant has requested and Landlord has provided. Failure by Landlord to any extent to furnish any services or any cessation or interruption thereof shall not render Landlord liable in any respect for damages to either person or property, nor be construed as an eviction of Tenant, nor work an abatement of rent, nor relieve Tenant from fulfillment of any covenant or agreement under the Lease. Should any of such required services be interrupted, Landlord shall use reasonable diligence to promptly restore the services.

Section 4.03 **Repairs and Maintenance by Landlord.** Landlord agrees to repair, replace and maintain in good repair and condition, to Building Standard, the (i) roof, (ii) foundation, (iii) Common Areas, (iv) structural soundness of the exterior walls, doors, corridors and exterior windows, (v) the HVAC system serving the Building and Premises, and (vi) all mechanical, plumbing and electrical components of the Premises and Building. Except as expressly provided herein, Landlord shall not be required to make any improvements or repairs of any kind or character to the Premises.

Section 4.04 **Maintenance by Tenant.** Tenant, at its sole cost and expense, shall maintain the interior of the Premises in good, clean order, first-class condition and repair. Tenant shall, at its cost, be responsible to change all light bulbs in the Premises other than Building Standard as necessary. Tenant shall promptly repair any damage to the Premises, the Building, or Common Areas that results from the negligence or misconduct of Tenant, its employees, agents, customers or invitees. If Landlord reasonably determines any repairs to the Premises, Building or Common Area are necessitated by Tenant's negligent acts or omissions or by the misconduct of Tenant, its employees or agents, Landlord shall notify Tenant of the damages and the required repairs. Tenant agrees to make, at its sole cost and expense, all such required repairs within thirty (30) days after receipt of such notification. In the event Tenant shall fail to do so, Landlord may make such repairs, and the cost of such repairs shall be paid by Tenant to Landlord upon demand and submittal of an invoice to Tenant. Tenant additionally agrees to submit to Landlord a written request for any repairs, replacements or maintenance required to be performed by Landlord under this Lease, promptly after Tenant discovers the need for that repair, replacement or maintenance.

Section 4.05 **Landlord's Right of Inspection and Repair.** Tenant agrees to permit Landlord or its representatives to enter the Premises at all reasonable hours to upon reasonable prior notice (except in the event of an emergency): (i) perform Landlord's obligations under this Lease; (ii) inspect the Premises; and (iii) show the Premises to prospective purchasers, mortgagees or tenants. Landlord will not interfere with Tenant's possession of the Premises so long as Tenant is not in default under this Lease beyond any applicable notice or cure period. Tenant shall not change the locks or any electronic access system to the Building or the Premises without Landlord's prior written consent, and if Tenant does change the locks or any electronic access system to the Building or Premises in accordance with this provision, then, within 24 hours of any such change, Tenant will provide Landlord with a master key or similar access information or card sufficient to allow Landlord to access the Premises in accordance with this provision.

ARTICLE V - TAXES AND INSURANCE

Section 5.01 **Taxes.**

(a) Tenant shall pay promptly when due all taxes and licenses imposed upon its business operation and its personal property situated in the Premises, including, without limitation, all ad valorem taxes, sales taxes, rental income taxes, use taxes, excise taxes, personal and property taxes, assessments, and all other governmental fines and charges.

(b) Landlord will pay all ad valorem taxes and assessments which may be levied or assessed by any lawful authority against the Building and Land, excluding personal property owned by Tenant or other tenants in the Building. All of the taxes levied or assessed by any lawful authority against the Building and Land, specifically including any "gross receipts" or "margin" tax on the rental income of the Building, shall be included within Basic Operating Costs.

(c) If at any time during the term of this Lease, the present method of taxation shall be changed so that in lieu of the whole or any part of any taxes, assessments, levies or charges levied, assessed or imposed on the Building and Land, there shall be levied, assessed or imposed taxes based



upon a different method of taxation, then Basic Operating Costs shall include such taxes levied or assessed under the different method.

Section 5.02 **Liability and Property Insurance.**

(a) Tenant will, at Tenant's expense, obtain and maintain and keep in full force and effect insurance upon and relating to the Premises with such insurers, in such amounts and covering such risks as shall be reasonably requested by and satisfactory to Landlord from time to time, including, without limitation (i) Comprehensive General Liability ("CGL") insurance providing coverage against (among others) bodily injury and disease, including death resulting therefrom, personal injury and property damage, written on an "occurrence" basis with respect to the business and any other activities carried on, in or from the Premises and with respect to Tenant's use and occupancy thereof, having limits of not less than \$1,000,000 per occurrence and in the aggregate per location, with no deductible or self-insured retention in excess of a commercially reasonable amount to apply to any coverage provided by the CGL policy; (ii) the broadest available form of "all risks" or "special form" property insurance, including, without limitation, coverage for leasehold improvements, equipment, furniture, fixtures and other items of Tenant's personal property in, or, at or about the Premises, with no exclusions permitted thereunder with respect to vandalism, malicious mischief or sprinkler leakage and including an agreed amount endorsement for not less than 100% of the full replacement cost (new, without deduction for depreciation) of the covered items and property; (iii) workers' compensation insurance to the statutory limits and employer's liability as a self-insured entity; and (iv) such other insurance coverages or limits as Landlord may reasonably require from time to time as may be commercially reasonable for similar buildings in the area or as may be reasonably required by Landlord's lender. It is expressly agreed that the insurance coverages required hereunder represent Landlord's minimum requirements.

(b) All Tenant's insurance coverage required by this Article shall be written by an insurance company or companies satisfactory to Landlord, licensed to do business in the State of Texas, having a "General Policyholders Rating" of at least "A IX" or better by Best's Insurance Guide and/or "A or better" by Standard & Poor Insurance Solvency Review, or such better rating as may be required by Landlord with respect to such insurance, and all such insurance shall provide by way of endorsements, riders, or as otherwise applicable, with respect to CGL, and all other liability insurance, if the policy contains a general aggregate limit, such policy shall include an "Aggregate Limits of Insurance Per Location" endorsement and shall name Landlord and Landlord's first mortgagee as additional insureds. Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least thirty (30) days prior to cancellation or reduction in coverage. Renewals thereof shall be delivered to Landlord at least thirty (30) days prior to the expiration of the policy. If Tenant fails to comply with the foregoing requirements, after written notice to Tenant, Landlord may, but shall have no obligation to, obtain such insurance for Tenant and Tenant shall pay to Landlord, on demand, the premium cost thereof, as Additional Rent. Landlord shall be furnished with insurance certificates evidencing such coverage not less than fifteen (15) days prior to the expiration of the initial and each immediately preceding renewal policy, and Tenant shall concurrently furnish Landlord with receipts or other evidence that the premiums on each and all such insurance has been paid for at least one (1) year.

Section 5.03 **Waiver of Subrogation Rights**[intentionally deleted]

Section 5.04 **Increase in Insurance Premium.** If Tenant's use and occupancy of the Premises causes an increase in the premium for any fire or other casualty insurance coverage carried by Landlord on the date Tenant shall have first gone into possession of the Premises, Tenant shall pay as Additional Rental, upon presentment of invoice therefor, the amount of such increase, pursuant to Texas Government Code Section 2251. Any schedule issued by the organization making the insurance rate on the Premises, showing the various components of such sale, shall be conclusive evidence of the several items and



charges which make up the insurance rate on the Premises. Tenant shall not permit any operation or activity to be conducted, or storage or use of any materials, which would cause suspension or cancellation of any fire or other insurance policy carried by Landlord.

Section 5.05 **Landlord's Insurance**. Except as otherwise provided herein, Landlord will, at Landlord's expense, obtain and maintain and keep in full force and effect fire and extended coverage, CGL and other insurance upon and relating to the Building and the Land with such insurers, in such amounts and covering such risks as shall be satisfactory to Landlord in its reasonable discretion from time to time or as may be required by Landlord's mortgagee. The premiums for the insurance carried by Landlord for each Lease Year will be included in Basic Operating Costs. Notwithstanding the foregoing, Landlord shall obtain commercial general liability insurance with respect to liability for death, bodily injury and property damage resulting from the ownership, use, occupancy and maintenance of the common areas of the Building in the amount of not less than \$1,000,000 combined single limit, with a reasonable self-insured retention or deductible amount and with contractual liability coverage for Landlord's indemnity obligation to Tenant under this Lease, if any. Landlord shall also maintain property insurance covering loss or damage to the Building as may be commercially reasonable for similar buildings in the area or as may be reasonably required by Landlord's lender.

ARTICLE VI - USE OF PREMISES

Section 6.01 **Compliance with Laws; Environmental Laws**. Tenant shall comply with all laws, including, without limitation, all Environmental Laws, applicable to Tenant, Tenant's business, the Premises or the Building. Tenant's use of the Premises shall be subject, at all times, to reasonable rules and regulations established by Landlord from time to time which are incorporated herein by reference for all purposes as though fully set forth herein. Tenant agrees to comply with all such rules and regulations upon notice of the same by Landlord. Tenant agrees that it shall not, and that it shall not knowingly permit, any Hazardous Materials to be used, stored, generated, located or disposed at, on or within the Premises in violation of any applicable Environmental Laws, except such Hazardous Materials that are used in standard office usage. As used in the Lease, the term "**Environmental Laws**" shall be defined in to include all present and future laws or regulations regarding the use, storage, removal, abatement or disposition of hazardous, toxic, and/or environmentally controlled substances or materials. As used herein, the term "**Hazardous Materials**" shall mean all hazardous, toxic and/or environmentally or statutorily controlled substances or materials. Landlord shall indemnify the Tenant and hold the Tenant harmless from any cost, liability or expense imposed upon the Tenant under any local or federal law, ordinance, statute, rule, regulation, or judicial or administrative order because of or arising out of any contamination by Hazardous Materials of the Premises for which Landlord is responsible and not caused by the actions or omissions of Tenant.

Section 6.02 **Use of Premises**. Tenant shall use the Premises only for the Permitted Use. Tenant shall, at its sole cost and expense, obtain and maintain any permits, licenses or similar items required for Tenant's Permitted Use. Landlord warrants and represents that the Premises may be legally used under all applicable laws including without limitation applicable building, zoning, environmental and land use ordinances for the Permitted Uses under this Lease.

Section 6.03 **Tenant Signage**. Landlord agrees to place Tenant's name on at least one interior Building directory. All signage proposed by Tenant for the exterior door of the Premises shall be subject to Landlord's review and approval, which approval shall not be unreasonably withheld. Prior to installation, Tenant shall provide Landlord with a drawing or a photograph of such signage, all of the specifications with respect to the size, color and other details for such signage, and the specific locations for Tenant's signage. Tenant agrees to pay for all costs for Tenant Signage including construction and



installation. No other Tenant signage shall be permitted on the exterior of the Building or in the Common Areas.

ARTICLE VII - TENANT'S BUSINESS OPERATIONS

Section 7.01 **Prohibited Uses.**

(a) Tenant shall not permit the Premises to be used for any operation deemed extra-hazardous on account of fire or otherwise or which will increase the insurance premiums on the insurance carried by Landlord above the standard rate for the Premises or render void or voidable the insurance carried by Landlord; and Tenant shall not sell or permit to be kept, used, or sold in or about the Premises any article which may be prohibited by standard fire insurance policies.

(b) Tenant shall not place or operate, or allow to be placed or operated, any soft drink, snack or other food vending machines in the Premises without Landlord's prior written consent, which may be withheld if such machines use substantial amounts of electricity or generate leaks, noise or heat.

(c) Tenant shall maintain a ratio of not more than one person per 125 square feet of Net Rentable Area, without the consent of Landlord. Tenant acknowledges that increased occupant density causes an increase in wear and tear on the Premises, Building, and Common Areas.

(d) If any conflict shall develop between Tenant and any other tenant of the Building regarding any provisions in this Lease or in leases to other tenants in the Building, the dispute shall be referred to Landlord for non-binding mediation. Landlord shall incur no liability to Tenant as a result of any action or inaction by Landlord with respect to such conflict. If Landlord permits a deviation from any provision of this Lease, the permission, to be effective, must be in writing, and Landlord, in its sole discretion, may withhold or revoke such permission.

Section 7.02 **Relationship of the Parties.** The relationship of the parties herein is that of Landlord and Tenant, and nothing herein contained shall be deemed or construed as creating the relationship of principal and agent or of partnership or joint venture.

Section 7.03 **Financial Statements.** At the time of execution of this Lease, and from time to time during the Term and, if applicable, the Renewal Term, of this Lease, but not more often than once a year, upon Landlord's request, Tenant agrees to furnish to Landlord a current, complete statement of Tenant's condition in a form prepared by Tenant in the ordinary course of Tenant's business.

ARTICLE VIII – TENANT IMPROVEMENTS DELIVERY OF POSSESSION

Section 8.01 **Tenant Improvements.** The improvements to the Premises to be constructed by Landlord and shall be in accordance with the terms set forth in **Exhibit "C"** to this Lease.

Section 8.02 **Delivery of Possession.** Tenant shall take possession of the Premises on the Commencement Date; provided, however that Tenant shall be entitled to have access to the Premises fifteen (15) days prior to Commencement Date, without any rental payable hereunder, for the purpose of installing Tenant's furniture, fixtures, equipment and telecommunications equipment in the Premises.



ARTICLE IX – ALTERATIONS AND TRADE FIXTURES

Section 9.01 **By Landlord.** Landlord reserves the right at any time to make alterations or additions to the Building and Common Areas. Except for temporary blockages during construction, Landlord's alterations shall not materially and adversely interfere with Tenant's use of or access to the Premises.

Section 9.02 **By Tenant.**

(a) Tenant agrees not to make any improvements or alterations to the Premises without the prior written approval of Landlord, such approval not to be unreasonably withheld for nonstructural alterations. Any physical alterations or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this Lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear and damage due to casualty excepted, provided that at Tenant's request, Landlord shall, at the time Landlord approves an alteration, addition or improvement, advise Tenant whether such alteration, addition or improvement will need to be removed at the end of the Term. All alterations must be performed in good and workmanlike manner, in accordance with accepted building practices and all applicable building codes or ordinances, so as not to weaken or impair the structural integrity or the value of the Building on the Premises, so as not to interfere with the business of other tenants.

(b) Tenant shall, at Tenant's sole cost, prepare and present to Landlord detailed plans and specifications for any work to be done that requires Landlord's prior written consent. No such work shall be commenced unless and until Landlord has approved such plans and specifications in writing, and any such work shall be carried out only in accordance with the approved plans and specifications.

Section 9.03 Construction BondsIn the event Tenant undertakes any alterations or construction undertaken under the terms of this Lease, Tenant shall cause its contractor, at its own cost and expense, to make, execute, and deliver to Landlord two (2) separate bonds, as follows:

- A. Prior to the date of commencement of any construction, a performance bond in a sum equal to the full amount of cost of construction, which shall comply in all respects with Chapter 2253 of the Texas Government Code.
- B. Prior to the date of commencement of any construction, a payment bond with Tenant's contractor or contractors as principal, in a sum equal to the full amount of construction, which shall comply in all respects with Chapter 2253 of the Texas Government Code.

Section 9.04 **Mechanic's, Materialmen's, and Other Liens.** During the Term and, if applicable, the Renewal Term, of this Lease, Tenant will not permit any mechanic's, materialmen's, or other liens be placed upon the Building or Premises or any improvements located thereon. If any lien on the interest of Landlord or Tenant is filed against the Building or the Premises, Tenant shall cause the same to be discharged of record within twenty (20) days after the filing of same (and in any event prior to any foreclosure or other enforcement thereof). If Tenant shall fail to discharge such lien within such

period, then in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due, by deposit in court, bonding, or otherwise. Any amount paid by Landlord for the satisfaction of any lien not caused by Landlord, and all reasonable attorneys' fees and other expenses of Landlord, associated therewith, shall be paid by Tenant to Landlord on demand, as Additional Rent.

Section 9.05 **Trade Fixtures.** All Trade Fixtures and equipment installed by Tenant in the Premises shall remain the property of Tenant. Provided Tenant is not in default hereunder beyond any applicable notice or cure period, Tenant may at the termination of this Lease, remove any and all of Tenant's Trade Fixtures, equipment and other items of personal property not constituting a part of the leasehold, including property which is susceptible to being moved without damage to the building. Tenant must exercise this right before the Lease is terminated and shall repair, at Tenant's cost and expense, any damage to the Premises caused thereby. The Premises shall be left in a broom-clean condition. If Tenant shall fail to remove its Trade Fixtures or other property at the termination of this Lease or within thirty (30) days thereafter, such fixtures and other property not removed by Tenant shall be deemed abandoned by Tenant and, at the option of Landlord, shall become the property of Landlord.

ARTICLE X - DAMAGE, DESTRUCTION OR CONDEMNATION OF THE PREMISES

Section 10.01 Damage or Destruction by Fire or Other Casualty.

(a) If the Premises are damaged by fire or other insured casualty to the extent of less than one-half of the then value of the Premises, Landlord shall promptly repair such damage at its expense within ninety (90) days from the date of such casualty. If the Premises are damaged by fire or other casualty to the extent of more than one-half of the then value of the Premises, or to the extent that Landlord's contractor, engineer, or construction consultant estimates that the required repair or restoration work cannot be completed within 120 days of the occurrence of such damage, Landlord shall have the option to terminate this Lease by giving written notice to Tenant within thirty (30) days after such occurrence. If this option is not exercised by Landlord, then Landlord shall promptly repair such damages at its expense within one hundred twenty (120) days from the date of such casualty. Notwithstanding anything to the contrary contained herein, in the event Landlord fails to restore the Premises within one hundred fifty (150) days of the date of any such casualty Tenant shall have the option to terminate this Lease upon thirty (30) days notice to Landlord. In the event of any casualty, until such repairs and restoration are completed, Base Rent and Additional Rent shall abate in proportion to that part of the Premises that is unfit for use in Tenant's business. The abatement shall continue from the date the damage occurred until ten (10) business days after Landlord completes the repairs and restoration to the Premises or the part rendered unusable and notice to Tenant that the repairs and restoration are completed, or until Tenant again uses the Premises or the part rendered unusable, whichever is first.

(b) Landlord's obligation to repair or rebuild pursuant to this Section shall be limited to basic building improvements and the replacement of any interior work excluding, however, Tenant's furniture, fixtures and equipment.

(c) If the Premises are damaged in whole or in substantial part within the last twelve (12) months of the Term (or the Renewal Term), Landlord or Tenant shall have the option, exercisable within

ninety (90) days following such damage, of terminating this Lease, effective as of the date of mailing notice thereof. Except as herein specifically provided, no damage or destruction to the Premises shall allow Tenant to surrender possession of the Premises nor affect Tenant's liability for the payment of rent or any other covenant contained herein.

(d) Notwithstanding anything herein to the contrary, Landlord shall have no obligation to rebuild the Premises unless the damage or destruction is a result of a casualty covered by Landlord's insurance policy and the amount of such insurance proceeds actually collected by Landlord, net of all costs of collection, to the extent such proceeds are not required to be paid over by Landlord to any mortgagee or other third party, are sufficient to discharge fully the cost of such repair and restoration. In the event that Landlord elects not to rebuild, Landlord shall promptly provide notice (but no later than 30 days from the date of such casualty) to Tenant of such election and the Tenant shall have the right to terminate this Lease. Tenant shall promptly notify Landlord in writing of any damage to or destruction of any portion of the Premises resulting from fire or other casualty.

Section 10.02 **Condemnation**.

(a) If the entire Premises are appropriated or taken under the right of condemnation or power of eminent domain for any public or quasi-public use or purpose ("condemned"), or sold to a condemning authority under threat of condemnation, this Lease shall terminate and cease as of the date of such taking, all rentals shall be paid by Tenant to Landlord to that date, and Landlord and Tenant shall thereupon be released from any further liability hereunder.

(b) If less than all, but more than fifteen percent (15%) of the floor area of the Premises are condemned, Tenant and Landlord shall each have the right to cancel this Lease as of the date of such taking upon giving the other notice of such election within thirty (30) days after the taking. In the event of such cancellation, all rentals shall be paid to date, and Landlord and Tenant shall thereupon be released from any further liability under this Lease. If this Lease shall not be so terminated then Landlord, at its cost and expense, shall immediately restore the building to a complete unit of like quality and character.

(c) All compensation awarded or paid upon any total or partial taking shall be the property of Landlord without any participation by Tenant provided that Landlord has provided to Tenant at least ninety (90) day notice to Tenant following the date Landlord receives notice of such taking and Tenant has the right to terminate this Lease with at least thirty (30) day notice to Landlord; provided, however, that nothing contained herein shall be construed to preclude Tenant from prosecuting any claim directly against the condemning authority for loss of business, or any claim relating to stock, Trade Fixtures, furniture, Tenant Additions, or other personal property belonging to Tenant. No such claim of Tenant shall diminish or otherwise adversely affect Landlord's award or the award(s) of any and all ground and underlying lessor(s) and mortgagee(s). Anything to the contrary herein notwithstanding, in the event the proceeds of any condemnation proceedings available to Landlord, net of costs of collection and amounts, if any, required to be paid by Landlord to any mortgagee or other third party, are, in Landlord's opinion, insufficient to restore the property to a state in which it can continue to be operated in a reasonable manner, Landlord may, at its sole option, terminate this Lease as of the date of such taking without liability of any kind or nature to Tenant.

ARTICLE XI - DEFAULT

Section 11.01 **Tenant's Default; Remedies**. Any of the following occurrences shall constitute an event of default ("**Event of Default**") under this Lease:



(i) Tenant fails to pay any amount it is obligated to pay hereunder when such payment is due and such failure continues for a period of five (5) days after Landlord notifies Tenant in writing thereof, provided, however, Landlord shall only be obligated to provide Tenant with two (2) notices of late payment and opportunity to cure within any twelve (12) consecutive month period, and upon the third occurrence of late payment during such twelve (12) month period the same shall be deemed to be an immediate Event of Default hereunder without notice or demand which Tenant hereby waives; or

(ii) Tenant fails to comply with any other term, provision, condition, or covenant of this Lease, or any rules or regulations for the Building, and such failure is not corrected within thirty (30) days after Landlord notifies Tenant thereof (or such longer period as may be reasonably required if such failure is not susceptible of being cured within thirty (30) days and if Tenant commences to cure such default within such period and thereafter diligently pursues such curative action), provided that in the case of a violation of the use clause hereof, if the same or a substantially similar default reoccurs during the six (6) months immediately following any purported cure by Tenant, it shall be deemed that no cure has been effectuated by Tenant and the default by reason of the reoccurrence thereof shall exist immediately upon such reoccurrence without further notice or opportunity to cure; or

(iii) any petition is filed by or against Tenant under any section or chapter of the then current federal bankruptcy laws or under any similar law or statute of the United States or any state thereof, and, in the case of an involuntary petition, such petition is not dismissed with forty-five (45) days from the date of filing; or Tenant becomes insolvent or makes a transfer in fraud of creditors, or Tenant makes an assignment for the benefit of creditors; or a receiver is appointed for Tenant or any of the assets of Tenant; or

(iv) the discovery by Landlord that any statements, applications, financial information, or credit information provided by Tenant knowingly contained materially false or contained materially false information; or

(v) Tenant abandons the Premises; or

(vi) Tenant assigns this Lease or sublets any portion of the Premises, or attempts or purports to do so, in violation of the terms of this Lease;

then in any of such Events of Default, Landlord shall have the option (but shall not be obligated) to do any one or more of the following (to the maximum extent permitted by applicable law), without any notice or demand, in addition to and cumulative with any other remedy available to Landlord:

(a) terminate this Lease by giving express written notice thereof to Tenant, in which event Tenant shall immediately and without demand surrender possession of the Premises to Landlord and, if applicable, the Renewal Term of this Lease or for any damage claim or remedy provided herein or by law;

(b) without notice and without prejudice to any other remedy Landlord may have for possession or for arrearage in rent, enter upon and take possession of the Premises and expel or remove Tenant (and any other occupant) and its effects by force and as permitted by law;

(c) change or modify door locks and other security devices on all entry doors of the Premises, and otherwise deny Tenant access to the Premises and the Building as permitted by law;



(d) terminate any or all utilities or other services that are supplied by Landlord or third parties with respect to the Premises, if the default relates to the non-payment of rent, and the rent is more than 30 days past due; and/or

In the event Landlord elects to terminate this Lease by reason of an Event of Default, but notwithstanding such termination, Tenant shall be liable for and shall immediately pay to Landlord at Landlord's address stipulated herein:

- (1) the sum of all Base Rent, Additional Rent and other amounts, if any, due hereunder accrued to the date of such termination; plus
- (2) all expenses of reletting and collection then or thereafter incurred by Landlord; plus
- (3) as damages, an amount equal to the Base Rent payable hereunder for a period of six (6) months, during the Term or the Renewal Term if in effect (but excluding any unexercised Renewal Terms).

No repossession of the Premises or other act by Landlord during the Term and, if applicable, the Renewal Term, of this Lease shall be considered to be an election by Landlord to terminate this Lease unless express written notice of termination is given to Tenant by Landlord.

Upon Landlord's termination of this Lease or repossession as a result of an Event of Default by Tenant, Landlord's sole obligation with respect to reletting shall be to promptly re-list and/or re-advertise the Premises for rent in the same manner as other space in the Building is being listed and/or advertised, but Landlord shall not be responsible for the success or failure of such reletting efforts, nor shall Landlord be obligated to lease the Premises to any particular new tenants unless such tenants are acceptable to Landlord in its sole and exclusive discretion, or to relet the Premises in preference to other vacant space in the Building. In no event shall Tenant be entitled to any excess monthly rent obtained by reletting over and above the monthly Base Rent herein reserved. Landlord may also take possession of and use the Premises for its own purposes in lieu of attempting to relet.

If Tenant defaults, Tenant shall, in addition to all amounts due under other provisions of this Lease, be liable for and shall pay to Landlord as incurred (to the extent not previously deducted as described above) at Tenant's address stipulated herein, any and all of the following described amounts:

- (1) a prorated portion of any brokers' fees payable to Landlord or any affiliates of Landlord or any outside broker in connection with reletting the whole or any part of the Premises;
- (2) the cost of removing and storing Tenant's or other occupant's property;
- (3) all expenses incurred by Landlord in enforcing Landlord's remedies, including, but not limited to, costs of court and attorneys' fees.

In addition to its other remedies upon a default by Tenant, Landlord may recover all actual damages suffered by Landlord as a result of Tenant's default, either (i) in lieu of one or more of the other specific remedies provided in this Lease, or (ii) in addition thereto, so long as Landlord does not actually recover twice for the same damage.



Section 11.02 **Non-Waiver**. The mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy Landlord might have, either in law or in equity. Further, the waiver of or redress for any violation of any covenant or condition in this Lease shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The failure of Landlord or Tenant to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this Lease shall not be construed as a waiver or a relinquishment thereof. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord.

Section 11.03 **Landlord's Default; Remedy.**

(a) In the event Landlord fails to comply with any term, provision, condition or covenant of this Lease and such failure continues for a period of thirty (30) days after Tenant notifies Landlord thereof (or, in the event such default is otherwise not susceptible of being cured within thirty (30) days, if Landlord does not commence to cure such default within such period and thereafter diligently pursues such curative actions, not to exceed sixty (60) days), Tenant, at its election, shall have the right, in addition to any and all other legal or equitable remedies, to remedy the default and recover the cost thereof from Landlord.

ARTICLE XII - MORTGAGE FINANCING AND SUBORDINATION

Section 12.01 **Subordination and Attornment.** This Lease and all of Tenant's rights hereunder are and shall be subject, inferior and subordinate to any mortgage, deed of trust, lien, or other security instrument (collectively, "**Mortgage**") that Landlord may place upon or against the to secure the payment of any indebtedness. Tenant shall, upon request of either Landlord or the holder of any such Mortgage, execute any documents to evidence such subordination and deliver the same upon demand. Landlord is hereby irrevocably vested with full power and authority to subordinate Tenant's interest hereunder to any Mortgage hereafter placed on the Premises. Tenant agrees to attorn to any purchaser of the Building or the Premises at a foreclosure sale or sale in lieu of foreclosure, and execute any agreements reasonably necessary to evidencing the same. In the event the Building or the Land are or shall hereafter be subject to the lien of a mortgage or deed of trust (the "**Mortgage**"), and the holder of such mortgage requires that this Lease be subordinated in writing to the lien of such Mortgage, Tenant agrees to subordinate its interest under this Lease to such Mortgage; provided that the holder of such mortgage shall execute and deliver to Tenant a nondisturbance and attornment agreement which provides that so long as no default has occurred and is continuing beyond the period of time allowed for the remedy thereof under the terms of this Lease, the holder of the Mortgage (i) shall not disturb Tenant's leasehold interest or possession of the Premises in accordance with the terms hereof, and (ii) waives all rights or interests in any trade fixtures of either Tenant or any of its subtenants. Landlord shall deliver to Tenant a subordination, nondisturbance and attornment agreement in accordance with the terms of the preceding sentence and in form reasonably acceptable to Tenant and Landlord's lender, with respect to each Mortgage which now constitutes a lien against the Land and/or Building or any such Mortgage that shall constitute a lien against the Land and/or Building in the future.

Section 12.02 **Notice to Mortgagees of Landlord's Default.** Tenant shall endeavor to give prompt written notice to the holder of any Mortgage of record ("**Mortgagee**") of which Tenant has received notice of any default of Landlord hereunder, provided, however, that failure to give such notice shall not subject Tenant to any liability to Mortgagee or any other person or entity. Tenant shall allow such Mortgagee a reasonable length of time in which to cure any such default prior to Tenant's exercise of any remedies, including termination. Such notice, if any, shall be sent to the Mortgage Loan Department

of such Mortgagee at its home office address provided to Tenant unless Tenant is notified of a different address for such notice, in which case such address shall be used.

ARTICLE XIII – OTHER PROVISIONS

Section 13.01 **Indemnification** [intentionally deleted]

Section 13.02 **Limited Liability of Landlord.**

(a) Landlord shall not be liable for any damage caused by the public or by persons in the Premises or by other tenants of the Building, or for damage caused by operations in construction of any private, public or quasi-public work. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only.

(b) In the event of (i) the sale of the Building or the Premises by Landlord or (ii) an assignment of this Lease by Landlord, Landlord shall be and hereby is entirely released and relieved of the obligations of “Landlord” hereunder accruing after the date of such transfer and it shall be deemed, without further agreement between the parties and such purchaser(s), assignee(s) or lessee(s), that the purchaser, assignee or lessee has assumed and agreed to observe and perform all obligations of Landlord from and after the date of such sale or assignment. Tenant specifically agrees to look solely to Landlord’s interest in the Building and proceeds therefrom for the recovery of any judgment from Landlord by reason of a default in the performance of Landlord’s obligations under this Lease and that, in no event, shall Landlord or any partner of Landlord be personally liable for any such judgment.

Section 13.03 **Assignment; Subletting; Recapture Provisions.**

(a) Tenant may not assign this Lease, or sublease all or any portion of the Premises, or grant any license or concession within the Premises, without Landlord’s prior written consent, which consent shall not be unreasonably withheld or delayed. If Tenant desires to assign this Lease, or sublet all or any portion of the Premises, or grant any license or concession, at least thirty (30) days prior to the effective date of the proposed assignment, sublease, license or concession, Tenant shall submit to Landlord written notice of its intention to do so together with (i) a statement executed by the proposed assignee, sublessee, licensee or concessionaire specifying such party’s intended use of the Premises, and (ii) a current financial statement, in form reasonably satisfactory to Landlord, of such proposed assignee or sublessee. Landlord may, for a period of fifteen (15) days after the receipt of such notice (including the statement of proposed use and financial statement), elect to (i) approve such assignment, sublease, license or concession; or (ii) disapprove such assignment, sublease, license or concession. No assignee, sublessee, licensee or concessionaire shall further assign this Lease or sublet all or any portion of the Premises, or grant any license or concession, without the prior written consent of Landlord, in which event the terms of this section shall again apply to such proposed assignment or sublease. Any permitted assignee or sublessee shall use the Premises only for the Permitted Use and for no other purpose without Landlord’s prior written consent. Any proposed assignee or sublessee of Tenant approved by Landlord shall assume Tenant’s obligations hereunder and deliver to Landlord an assumption agreement in form reasonably satisfactory to Landlord prior to occupancy of the Premises by such assignee and Tenant shall be released and relieved from any obligations of this Lease from the date of such assignment and assumption.

(b) If Tenant, or any transferee or sublessee is a corporation, limited liability company or partnership, the transfer of fifty percent (50%) or more of the stock or equity ownership interest of the transferor shall be considered an assignment hereunder, and (ii) any corporate amalgamation such as a merger, consolidation, or other disposition of fifty percent (50%) or more of the controlling stock or majority of the assets of Tenant shall be deemed an assignment hereunder, provided, however, the terms

of this section shall not apply to (1) an assignment or sublease to any affiliated entity under common control with Tenant or that controls or is controls Tenant; (2) the acquirer of all or substantially all of Tenant's stock or its assets; (3) the sale, the offer to sell, or the acquisition of Tenant's stock to or by the general public or (4) a corporate amalgamation such as a merger, consolidation, or other disposition of all of the controlling stock or all or substantially all of the assets of Tenant.

Section 13.04 **Intentionally Deleted**

Section 13.05 **Notices.** Any notice, document or payment required or permitted to be delivered or remitted hereunder or by law must be in writing, and shall be deemed to be delivered or remitted, whether actually received or not, when deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, addressed to the parties hereto at the respective addresses set out in Article I unless a party shall change its address for notice by delivering written notice of such change to the other party.

Section 13.06 **Memorandum of Lease.** Tenant agrees not to record this Lease or a memorandum thereof without the express written consent of Landlord.

Section 13.07 **Surrender of Premises; Holding Over.** On the Termination Date, Tenant shall surrender the Premises, and all keys thereto, in the same condition as the Premises were in upon the Commencement Date, except for reasonable wear and tear, and damage due to casualty. Tenant shall inform Landlord of all combinations of locks in the Premises. If Tenant shall holdover the Premises after the Termination Date, Tenant's holdover, whether or not with the consent or acquiescence of Landlord, shall be deemed to be that of a tenancy at will only (and not a tenancy from month to month or from year to year) subject to the same terms and conditions contained here, except that the rent for any such holdover period after ninety (90) days shall be one hundred twenty percent (120%) of the amount of the Base Rent in effect immediately prior to the Termination Date, plus Additional Rent during all such holding over, payable on a daily basis, in advance.

Section 13.08 **Force Majeure.** The time for performance by Landlord or Tenant or any term, provision or covenant of this Lease Agreement shall be deemed extended by time lost due to delays resulting from Acts of God, war, civil commotion, fire or other casualty, strikes or labor difficulties, general shortages of labor, material or equipment, governmental regulations or other causes not within the reasonable control of Landlord or Tenant, their agents, contractors or subcontractors, excluding, however, causes related to such party's financial condition. Each party shall keep the other fully advised in writing of any such delay and the cause thereof. Each party agrees to use its best efforts and all due diligence to effect the required performance. The terms of this section shall not apply to the payment of any money.

Section 13.09 **Estoppel Certificate.** Tenant will, at any time and from time to time, upon not less than twenty (20) days after receipt of a written request from Landlord, execute, acknowledge, and deliver to Landlord a statement in writing certifying, if true, that Tenant is in possession of the Premises under the terms of this Lease, that this Lease is unmodified and in full effect (or, if there have been modifications, that this Lease is in full effect, as modified, and setting forth such modifications), stating the dates to which the rent has been paid, and either stating that to the knowledge of Tenant no default exists hereunder, or specifying each such default of which Tenant may have knowledge, and such other matters as may be reasonably requested by Landlord. Any such statement by Tenant may be relied upon by any prospective purchaser or mortgagee of the Building.

Section 13.10 **Broker.** Tenant represents to Landlord that no broker is involved in this transaction on behalf of Tenant. No commission or other fee shall be due to such brokers in the event that this Lease (i) is not executed by Landlord, or (ii) is terminated pursuant to the terms of this Lease. If any



person other than such brokers shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment as a finder or broker on performance of services as a finder or broker in connection with this transaction, the party against whom the finder or broker is claiming shall indemnify and hold the other party harmless from and against any such claim and all costs, expenses and liabilities, including attorneys' fees, incurred in connection with such claim or any action or proceeding brought thereon.

Section 13.11 **Disclaimer.** LANDLORD AND TENANT HEREBY ACKNOWLEDGE THAT THEY ARE NOT RELYING UPON ANY BROCHURE, RENDERING, INFORMATION, REPRESENTATION, OR PROMISE OF THE OTHER, OR AN AGENT OR BROKER, IF ANY, EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE LEASE. LANDLORD AND TENANT EXPRESSLY ACKNOWLEDGE AND AGREE, AS A MATERIAL PART OF THE CONSIDERATION FOR LANDLORD'S ENTERING INTO THIS LEASE WITH TENANT, THAT, EXCEPT AS OTHERWISE SET FORTH IN THIS LEASE, LANDLORD HAS MADE NO WARRANTIES TO TENANT AS TO THE USE OR CONDITION OF THE LEASED PREMISES OR THE BUILDING, EITHER EXPRESS OR IMPLIED, AND LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE LEASED PREMISES OR THE PROJECT ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE OR ANY OTHER WARRANTY (EXPRESS OR IMPLIED) REGARDING THE LEASED PREMISES OR THE BUILDING. EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, LANDLORD AND TENANT EXPRESSLY AGREE THAT THERE ARE NO, AND SHALL NOT BE ANY, IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND ARISING OUT OF THIS LEASE, ALL SUCH OTHER EXPRESS OR IMPLIED WARRANTIES IN CONNECTION HEREWITH BEING EXPRESSLY DISCLAIMED AND WAIVED.

Section 13.12 **General Provisions**

(a) **Entire and Binding Agreement.** This Lease contains the entire agreement between the parties hereto, and it may not be altered, amended or modified in any manner other than by written agreement signed by all parties. The terms contained herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(b) **Severability Clause.** If any term of this Lease is declared illegal, invalid, or unenforceable during the Term and, if applicable, the Renewal Term, of this Lease then and in that event, the remainder of this Lease shall not be affected thereby. In lieu of each clause or provision that is illegal, invalid or unenforceable, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provisions as may be possible and be legal, valid, and enforceable.

(c) **Joint and Several Liability.** If there be more than one person or entity named as "Tenant" under this Lease, the obligations hereunder imposed upon Tenant shall be joint and several, and no such person shall not be released from their liability for any reason whatsoever, including, without limitation, any amendment of this Lease, any forbearance by Landlord or waiver of any of Landlord's rights, the failure to give Tenant any notices, or the release of any party liable for the payment of Tenant's obligation hereunder.



(d) Captions. The captions contained herein are for convenience and reference only and shall not be deemed to amplify, modify or limit the terms and provisions of this Lease.

(e) Time of Essence. Time is of the essence with respect each of the provisions of this Lease.

(f) Exhibits. The Exhibits annexed hereto are made a part hereof for all purposes as if fully set forth in the body of this Lease.

(g) Independent Covenants. The obligation of Tenant to pay Rent and other monetary obligations provided to be paid by Tenant under this Lease and the obligation of Tenant to perform Tenant's other covenants and duties under this Lease constitute independent, unconditional obligations of Tenant to be performed at all times provided for under this Lease, save and except only when an abatement thereof or reduction therein is expressly provided for in this Lease and not otherwise, and Tenant acknowledges and agrees that in no event shall such obligations, covenants and duties of Tenant under this Lease be dependent upon the condition of the Leased Premises or the Project, or the performance by Landlord of its obligations hereunder.

(h) Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Section 13.13 Waiver of Trial by Jury[intentionally deleted]

Section 13.14 Effect of Lease. The preparation, revision or delivery of this Lease for examination and discussion shall in no event be deemed to be an offer to lease the Premises but shall merely be a part of the negotiations between Landlord and Tenant. Neither party hereto shall have any obligation or liability to the other whatsoever at law or in equity (including any claims for detrimental reliance or promissory estoppel) unless and until such time as both parties shall have executed and delivered this Lease.

[Signatures Appear on Next Page.]



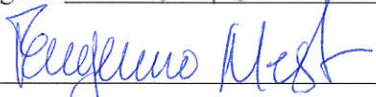
IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the date and first year above written, and each acknowledge receipt of an executed copy hereof.

LANDLORD:

211 FLORENCE, LP, a Texas limited partnership

By: FLORENCE MANAGEMENT, LLC, its General Partner

Date signed: 5-16, 2014

By: 
Authorized Agent

TENANT:

_____, a _____

Date signed: _____, 2014

By: _____

Name: _____

Title: _____



TENANT:

CITY OF EL PASO , a municipal corporation

Date signed: _____, 2014

By: _____

Sean McGlynn
Interim City Manager

ATTEST:

Richard Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Cary Westin, Director
Economic and International Development

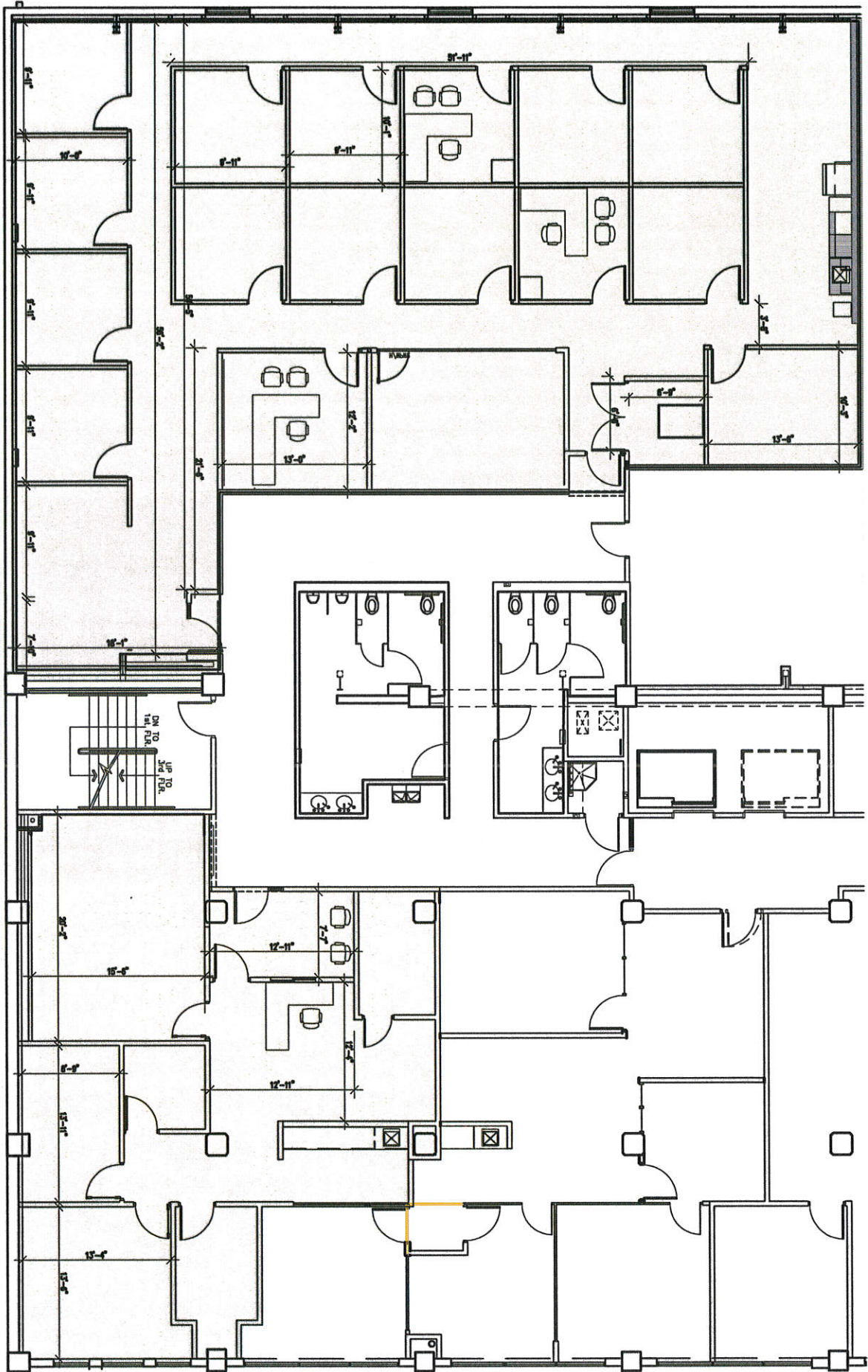


Gregory Allen, Chief
Police Department

EXHIBIT "A"

THE PREMISES





1 FIRST FLOOR PLAN / REVISED

EXHIBIT "A-1"
LEGAL DESCRIPTION OF LAND

Lots 6 through 10, Block 230, CAMPBELL'S ADDITION, an Addition to the City of El Paso, El Paso County, Texas, according to the map or plat thereof recorded in Volume 2, Page 68, Plat Records of El Paso County, Texas.



EXHIBIT "B"
Rules and Regulations

RULES AND REGULATIONS

1. WALKS AND PASSAGEWAY OBSTRUCTION. The sidewalks, entries, passages, courts, corridors, stairways and elevators shall not be obstructed by Tenant, Tenant's employees or agents or used by them for other purposes than for ingress and egress to and from their respective suites.
2. HEAVY EQUIPMENT: FURNITURE MOVEMENT. All safes or other heavy articles shall be carried up or into the Building only at such times and in such manner as shall be prescribed by Landlord and Landlord shall in all cases have the right to specify the proper weight and position of any such safe or other heavy article. Any damage done to the Building by taking in or removing any safe or other heavy article or from overloading any floor in any way shall be paid by Tenant. Maximum live floor loads shall not exceed fifty (50) pounds per square foot. The expenses resulting from the defacing or injury in any way of any part of the Building by Tenant, his agents or servants shall be paid by Tenant. Movement of furniture or office equipment in or out of the Building, or dispatch or receipt by Tenant of any heavy equipment, bulky material or merchandise which requires use of elevators or stairways, or movement through the Building's service or lobby entrance shall be restricted to such hours as Landlord shall designate. All such movement shall be in a manner to be agreed upon between Tenant (upon Tenant's initiation) and Landlord in advance. The time, method, and routing of movement and limitations for safety or other concerns which may prohibit any article, equipment or other item from being brought into the Building shall be subject to Landlord's discretion and control. Any hand trucks, carryalls, or similar appliances used for the delivery or receipt of merchandise or equipment shall be equipped with rubber tires.
3. COMMON AREAS. No advertising, flyers, furniture, vending machines, showcases, signs or any other fixtures or objects whatsoever shall be placed or distributed on the Land, in front of the Building or in the parking, elevator, lobby, corridor, or other public areas, without written consent of Landlord.
4. LOCKS. Landlord will furnish Tenant, free of charge, two keys for each corridor door entering the Premises, additional keys to be furnished at a reasonable charge by Landlord on an order signed by Tenant or Tenant's authorized representatives. All such keys shall remain the property of Landlord. No additional locks shall be allowed on any door of the Premises without Landlord's permission, and Tenant shall not make or permit to be made any duplicate keys, except those furnished by Landlord. Upon termination of this Lease, Tenant shall surrender to Landlord all keys to the Premises and give to Landlord the explanation of the combination of all locks for safes, safe cabinets and vault doors, if any, in the Premises.
5. BUILDING SECURITY. The Landlord specifically reserves the right to refuse admittance to the Building after hours to any person or persons who cannot furnish satisfactory identification or to any person or persons who for any other reason should be denied access to the Premises. At Landlord's option, all persons entering the Building after hours, whether Tenant or others, may be required to sign a register before being given admittance to any part of the Building, but Landlord shall not be liable for any damages which may result from its failure to maintain such a register or for any omissions from said register.



6. LIGHT & AIR PASSAGEWAYS. The doors, skylights and windows that reflect or admit light and air into the corridors and passageways, or to any place in said Building shall not be covered or obstructed by Tenant. Without limiting the foregoing, no signs, lettering, pictures or other objects shall be displayed in any doors or windows, except as may be approved by Landlord in writing.
7. PLUMBING FIXTURES. The water closets and other water fixtures shall not be used for any purpose other than those for which they were constructed, and any damage resulting to them from misuse caused by Tenant or Tenant's invitees, or the defacing or injury of any part of the Building caused by Tenant or Tenant's invitees shall be paid for by Tenant. No article should be placed down toilets other than toilet paper. Paper towels, excessive amounts of toilet paper, tampons and sanitary napkins should never be flushed down toilets. Tenant will be responsible for repair costs if any of these items are found in plumbing lines as a result of the actions of Tenant and its employees or invitees. Tenant will be responsible for all damages caused by misuse.
8. NOISE. Tenant shall not disturb the occupants of the Building by the use of any musical or sound producing instrument, making unseemly noises, or by interference in any way. Tenant shall not bring any dogs or other animals into the Building (except seeing eye dogs).
9. BICYCLES. Tenant shall not bring any bicycle or similar vehicles into the Building.
10. DEBRIS. Nothing shall be thrown out of the doors of the Building, or down the stairways or other passages by Tenant.
11. ELEVATOR SERVICE. The Landlord shall not be liable for any damages from stoppage of elevators for repairs or improvements, or delays of any sort or duration in connection with the elevator service. Advance notice of arriving or departing shipments will enable Landlord to provide better assistance.
12. CANVASSING AND SOLICITING. Canvassing, soliciting and peddling in the Building and Common Areas are prohibited and Tenant shall cooperate to prevent the same.
13. AUTOMOBILE PARKING. The lease does not include any parking in the premises.
14. UNATTENDED PREMISES. Tenant, its agents, servants, and employees before leaving the Premises unattended, shall close and lock all doors and shut off all lights.
15. EXCESS TRASH DISPOSAL. In the event Tenant must dispose of crates, boxes, etc., which will not fit into office waste paper baskets, it will be the responsibility of Tenant to dispose of same. In no event will Tenant set such items in the public hallways or other areas of the Building (excepting Tenant's own Premises) for disposal.
16. CARPET DAMAGE. Tenant will be responsible for any damage to carpeting and flooring as a result of rust or corrosion of file cabinets, pot holders, roller chairs, metal objects, spilled beverages and stains.



17. EXTRA UTILITY USAGE. In the event Tenant desires utility or air conditioning service at other than normal operating hours, the request must be made at the area designated by Landlord. If available, this service will be made available at the then prevailing rate established on an hourly basis. Only one refrigerator may be kept within the Premises. Tenant shall not use any method of heating or air conditioning other than as provided by Landlord or any dedicated system approved by Landlord. Tenant shall use reasonable efforts to conserve energy where possible, such as by turning off lights in rooms that are not occupied.
18. SMOKING. Tenant shall not suffer or permit smoking or carrying of lighted cigar or cigarettes in the Building or in other areas reasonably designated by Landlord or by applicable governmental agencies as nonsmoking areas.
19. USE RESTRICTIONS. The Premises shall not be used for any illegal activity or for lodging or manufacturing, cooking or food preparation. Notwithstanding the foregoing, one Underwriters' Laboratory-approved microwave oven and one coffee-type machine may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages, provided that such use is in accordance with all applicable laws, codes, ordinances, rules and regulations, and does not cause odors which are objectionable to Landlord and other tenants.
20. FIRE SAFETY. Tenant shall comply with all safety, fire protection and evacuation regulations established by Landlord or any applicable governmental agency.
21. WAIVER. Landlord reserves the right to waive any one of these rules or regulations, and/or as to any particular tenant, and any such waiver shall not constitute a waiver of any other rule or regulation or any subsequent application thereof to such tenant.
22. VANDALISM. Tenant assumes all risks from theft or vandalism to the Premises.
23. HOUSEKEEPING. Tenant space that is visible from public areas must be kept neat and clean. All freight and passenger elevator lobbies are to be kept neat and clean. The disposal of trash or storage of materials in these areas is prohibited.
24. LOCKING OF DOORS. All doors leading from public corridors to the Premises are to be kept closed when not in use, and locked during the night, or when the space is unoccupied.
25. NOTICES. Tenant shall give immediate notice to Landlord in case of material accidents in the Premises or in the Building or Common Areas or of any known emergency in the Building or Common Areas.
26. SERVICES. Tenant will refer all contractors, contractor's representatives and installation technicians rendering any service for Tenant to Landlord for Landlord's supervision and/or approval *before* performance of any such contractual services. This shall apply to all work performed in the Building including, but not limited to, installation of telephones, telegraph equipment, and electrical devices and attachments and installations of any and every nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Building. None of this work will be done by Tenant without Landlord's written approval first had and obtained, which approval shall not be unreasonably withheld, except as otherwise expressly provided in the Lease.

27. ADDITIONAL RULES. The Landlord reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Premises and for the preservation of good order therein. In the event of any conflict between the terms of these rules and regulations and the terms of the Lease, the terms of the Lease shall control.



Exhibit "C"

CONSTRUCTION ADDENDUM

This Construction Addendum is by and between Landlord and Tenant and shall be attached to and become a part of the lease for the premises located at **211 N. Florence** (the "**Lease**").

1. **Allowance.** Landlord shall construct improvements to the Premises (the "**Tenant Improvements**") based on the estimate attached as Schedule 1 to this Construction Addendum. Landlord agrees to expend up to **\$50,000** for the design and construction of the Tenant Improvements (the "**Tenant Improvement Allowance**"). The Tenant Improvement Allowance represents the total amount of money that the Landlord will expend for the Tenant Improvements, including all design, permit and related fees and other improvements of any kind to the Premises. In the event the cost of constructing the Tenant Improvements exceeds the Tenant Improvement Allowance, Landlord shall inform Tenant of such excess (herein the "**Additional Costs**"), and upon agreement between Landlord and Tenant any excess cost shall be charged to Tenant as **Above Standard Tenant Improvements**, and that additional cost will be applied to Tenant as Additional Rent amortized over sixty (60) months of initial Lease Term.

2. **Plans.** Upon commencement of construction of the Tenant Improvements, Tenant shall be deemed to have approved the plans and specifications used by Landlord for such construction.

3. **Estimated Completion Date.** Landlord will use its best efforts to substantially complete construction of the Tenant Improvements on or before [*] [DATE].

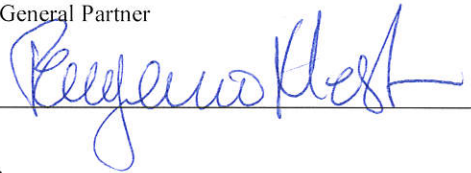
4. **Capitalized Terms.** All capitalized terms used in this Construction Addendum have the same meaning as given such terms in the Lease and vice versa.

SIGNED and effective as of the Effective Date of the Lease.

LANDLORD:

By: 211 Florence LP
Its: General Partner

By: _____



TENANT:

[*] [NAME]

Mailing Address: [*][PHYSICAL ADDRESS]

OR

Home Address: [*][PHYSICAL ADDRESS]