

**LEASE**

This Lease made and entered into this 10<sup>th</sup> day of October, 2007, between, Berkeley Plaza, Inc, a Kansas Corporation, c/o Robert E. Shmalberg, 1029 New Hampshire Street, Lawrence, Kansas, hereinafter referred to as "Lessor" and The City of Lawrence, Kansas, a Kansas municipal corporation, c/o David Corliss, City Hall, 6<sup>th</sup> East 6<sup>th</sup>, Lawrence, Kansas, hereinafter referred to as "Lessee."

In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. DEMISE AND DESCRIPTION.

Lessor does hereby agree to let and lease unto Lessee the following-described premises in the City of Lawrence, Douglas County, Kansas:

The first (1<sup>st</sup>) floor, containing 6,870 square feet in a building constructed on the real property described as: 1006-1008 New Hampshire Street (South 45 feet of Lot 96 and Lot 98 of New Hampshire Street) in the City of Lawrence, Douglas County, Kansas. [Lawrence Municipal Court Offices and Court)

2. TERM OF LEASE.

The term of this Lease shall be for four (4) years to commence April 13, 2008. In addition, the Lessee shall have two (2) additional three (3) year terms, exercisable by notice given at least ten (10) months prior to the termination of the previous term. If such notice is not timely given by Lessee, Lessor shall give Lessee notice and Lessee shall have an additional ten (10) days to give such notice.

3.a BASE RENT.

Tenant shall pay as base rent of the sum of \$88,650.00 per year payable in monthly installments of \$7,387.50, along with the herein described Additional Rents, for each of the ~~60~~ <sup>48</sup> months of the initial term of this lease. Rent shall be paid on or before the first day of each month, at such place designated by Lessor. However, provided this lease is signed and in place by October 1, 2007, and Lessee pays its current monthly rent through April 2008, Lessor agrees to forgive the rent for May 2008 in the sum of \$7,387.50.

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3.b. BASE RENT ADJUSTMENT UPON RENEWAL.

Base Rent during the first three-year renewal period (2012-2015) shall increase by 3% from \$88,650 to \$91,309.50 per year paid in monthly installments of \$7,609.13. Base Rent during the second renewal period (2015-2018) shall increase by 3% to \$94,049 per year paid in monthly installments of \$7,837.40.

4. RENT ADJUSTMENT.

Lessee shall pay to Lessor on a monthly basis, beginning April 13, 2008, and during the remaining term of the Lease and commencing with the payment of the Lessee's base rent as herein provided, the sum of Five hundred (\$500) per month for the estimated building insurance premium, common area maintenance, and grounds maintenance. This amount is based upon the Lessee's use and occupancy of forty-six percent (46 %) of the building at 1006-1008 New Hampshire Street. This additional rent will be adjusted annually in December based upon the previous year's actual costs for said insurance and services. Any adjustment shall be paid/refunded by February 15th of the year following the period for which the payments apply. Lessee will pay its prorata share of real estate taxes, based upon its share of building, and pay the full amount of any taxes on any of its' tenant improvements, these tax bills to be paid in December of each year when presented by the County for payment.

5. AUDIT OF CAM, TAXES AND INSURANCE.

Lessor shall, upon request, provide an accounting of all ad valorem taxes on the premises, insurance expenses and common area maintenance expenses of each year of the Lease Term at such time as Lessee shall request, if Lessee is required to pay any portion of such expenses by the terms of this Lease.

6. USE OF LEASED PREMISES.

The leased premises shall be used by Lessee for city offices or other Municipal Court and municipal office use and for no other purpose without the written consent of Lessor which shall not be withheld unreasonably and Lessee shall obtain, at its own expense, any and all licenses and permits necessary for the operation of said activities upon the premises.

7. ACCESS TO PARKING

The Lessee shall have the use of five parking spaces behind the building, It is understood that Lessee shall own and operate a city parking garage nearby the leased premises and thus no other provisions are made for parking.

8. TAXES.

During the term of this Lease, the Lessee shall pay promptly all taxes and assessments levied upon its trade fixtures, merchandise, and all other personal property located in or on said premises. Lessee shall also pay its forty-six percent (46 %) pro rata share, based upon its square footage of the total floor space of the building, the real estate taxes assessed against the entire land and building as additional rent heretofore provided. Payment for real estate taxes shall be made as provided in 4a above.

In addition the Lessee shall pay, the full amount of any additional real estate taxes assessed, on the tenant finish provided for or by the Lessee. This is the cost and/or valuation

assessed above the space valuation. Lessee shall have no obligation for Tenant Finish of other tenants if the Appraiser's Office separates Tenant Finish from their overall appraisal.

9. MAINTENANCE AND ALTERATIONS.

Lessor agrees to maintain and repair the roof, exterior walls, foundation, sprinkler system, and structural parts of the building located on the leased premises, in as good condition as they shall be on the commencement of this Lease, reasonable wear and tear excepted, except that Lessee agrees to make any such repairs caused by the negligence of Lessee or its agents or employees, subject to the provisions of paragraph 28.

Lessee agrees that it will keep and maintain in good working order, condition and repair the leased premises and every part thereof, including without limitation the front, exterior and interior portions of all doors, all plumbing and sewage facilities within the leased premises, the fixtures and interior walls, floors, ceilings, signs and all interior building appliances and similar equipment, including heating and air conditioning equipment provided, however, that in the event the heating unit or air conditioning compressors, condensers, or the entire unit on the air conditioners need to be replaced, said units will be replaced at Lessor's expense. All glass and glass windows in the leased premises shall be maintained and repaired at Lessor's cost. All warranties shall be extended to Lessee where applicable. Lessee further agrees that the leased premises shall be kept in a safe, clean and sanitary condition in accordance with the laws of the State of Kansas and the ordinances of the City of Lawrence and Douglas County, Kansas. Lessee further agrees to comply with all directions, rules and regulations of the health officers, fire marshal, building inspector, and other proper officials of any government agencies having jurisdiction. Should Lessee neglect to reasonably keep and maintain the leased premises in the manner set forth above, then Lessor shall have the right, but not the obligation, to have the work done, and any reasonable cost thereof shall be charged to Lessee as additional rent and payable by Lessee.

At the expiration or termination of this Lease, Lessee shall return the leased premises in the same condition as when received, usual wear and tear excepted, except for damage or loss caused by a peril which is insured against by a standard form policy of fire and extended coverage insurance upon which the Lessor is a named insured.

It is further agreed that the Lessee shall not make any structural changes to said leased premises, without having first obtained, in writing, the consent of the Lessor, which shall not be unreasonably withheld.

10. COMMON AREA MAINTENANCE.

Lessees shall bear responsibility, based upon its pro rata share which shall be based upon the square footage of the Lessee compared to the square footage of the total floor space of the building for common area maintenance. Items subject to common area maintenance are the elevator, the grounds, common area lobbies, corridors, seasonal service and repairs to HVAC, landscaping, lawn care, snow removal, pest control, common area lighting and heating, and the sidewalks, but excluding capital item replacements. Lessee shall promptly pay all assessments

for common area maintenance when the bills therefore are received. Notwithstanding Lessee's obligation to pay its proportionate share of the common area expenses, it shall be the sole duty of Lessor to maintain and keep in good and proper condition and working order all common areas.

11. MECHANIC'S LIENS.

Lessee shall not permit any liens to stand against the premises for any labor or materials furnished to Lessee in connection with any permissible work performed thereon. Lessee shall not be the agent of Lessor with respect to any such liens, and no such liens shall attach to or affect the interest of Lessor.

12. DAMAGE TO PROPERTY OF LESSEE.

Lessor shall not be liable to Lessee for any damage to property of Lessee contained in the premises caused by reason of any defects in the roof, exterior walls, foundation or structural parts of the building, provided Lessor shall repair such defects within a reasonable time after having been given written notice thereof by Lessee, unless the damage results from a peril which is insured against under a standard fire and extended coverage insurance policy; in which event, the policy proceeds shall be used to repair the damage.

13. UTILITIES.

Lessee shall pay for all utilities furnished the leased premises. Lessor may interrupt or suspend the supply of all utilities to the premises in order to make any necessary repair or alteration to the premises. There shall be no abatement in rent because of any such interruption or suspension, provided that Lessor shall make such repair or alteration with reasonable diligence, and provided further that such repair or alteration shall not unreasonably interfere with Lessee's business conducted in the premises. When possible, Lessor will give notice of the interruption or suspension of utility services.

14. SIGNS.

Any sign attaching to the premises by Lessee must be approved, in writing, by the Lessor before the same can be installed (all existing signage being approved). However, consent will not be unreasonably withheld if such sign does not impair the structure and meets all City codes.

15. INSURANCE.

Lessor shall, at its cost, insure the premises against loss by fire and other perils insured against by a standard form of fire and extended coverage insurance in an amount or amounts to be determined by Lessor, in its sole judgment, as adequate. Lessee shall reimburse Lessor for its pro rata share of the costs of insurance based upon the Lessee's percentage square footage of floor space of the leased premises (forty-six percent (46%)). Lessee shall not permit the leased

premises to be operated or used in such a manner as would render Lessor's insurance void or cause a cancellation thereof.

If the Lessor fails to have in full force, at any time during the term of this Lease, or any renewal thereof, a standard form policy(ies) of fire and extended coverage insurance, as provided in this Lease, the Lessee shall have no greater obligation to the Lessor hereunder in the event of loss or damage to the leased premises, or the entire structure of which the leased premises is a part, than Lessee would have if such policy(ies) was in full force and effect at the time of such loss.

It is expressly understood by the parties that the Lessee is a self-insurer of all perils and losses for which it might obtain a policy(ies) of insurance, subject to all limitations as to the dollar amount of liability as provided by law.

16. DAMAGE TO OR DESTRUCTION OF LEASED PREMISES.

If the leased premises should be damaged or destroyed during the term of this Lease by fire or other insurable casualty without the fault of Lessee, Lessor shall, subject to the time that elapses due to adjustment of insurance, repair and/or restore the same at substantially the condition it was in immediately prior to such damage or destruction, except as in this paragraph provided. Lessor shall not be required to replace or restore any trade fixtures, signs, personal property, or other installations theretofore installed by the Lessee. Lessor shall be required to replace tenant finish if the loss is covered by the Lessor's property or casualty insurance. Rent payable under this Lease shall be abated proportionately according to the floor area of the leased premises which is usable by Lessee to the extent that Lessor receives rent payments from any business interruption insurance coverage it maintains. If the damage was caused by the fault of Lessee and Lessor does not receive rent payments from its business interruption policy, there shall be no abatement of rent. Any abatement shall continue for the period commencing with such damage or destruction and ending with the completion by the Lessor of such work or repair or reconstruction as Lessor is obligated to do.

Notwithstanding the foregoing, in the event of any such casualty causes damages to extent that the premises are untenable and the repair or restoration of the premises is not economically feasible, the Lessor shall have the option to terminate this Lease by giving written notice thereof to the Lessee within thirty (30) days after the happening of such casualty, and thereupon this Lease shall be deemed to have terminated as of the date of the damage or destruction, and the Lessee shall immediately quit and surrender the leased premises to the Lessor.

17. LESSEE TO HOLD LESSOR HARMLESS.

Except as excluded or exempted by the non-subrogation clause and provisions of this Lease, the Lessee hereby covenants and agrees to indemnify, protect and save harmless the Lessor and assigns of and from any and all claims, demands and liabilities for any loss, damage, injury or other casualty to property owned, or in the possession of other than the Lessee, and to persons, whether third persons or employees of the Lessee, caused by, or growing out of, or

having connection with, Lessee's conduct of its business or use and occupancy of the leased premises, improvements or equipment located thereon, due to the negligence or misconduct of the Lessee, its agents, servants or employees, or of any other person or persons entering upon the leased premises, under the express or implied invitation of the Lessee, or where such injuries are the result of the violation of laws or ordinances or governmental orders of any kind.

18. NON-ASSIGNABILITY.

The Lessee shall not assign this Lease, nor sublet the premises or any portion thereof, without the prior written consent of Lessor, which shall not be unreasonably withheld.

19. CONDITION OF PREMISES UPON OCCUPANCY.

Lessee is currently in possession of the premises and accepts the premises in its current condition.

20. DEFAULT.

If default shall be made by the Lessee in the payment of rent, or any part thereof, or in the performance of the agreements, on its part required to be fulfilled and performed, or in the event the Lessee shall abandon or vacate the leased premises without the consent of the Lessor, and such default is not cured within twenty (20) days after the Lessee has received written notice of default in payment of rent and within thirty (30) days after the Lessee has received, written notice of any default other than payment of rent, the Lessor, at its option, shall have the right to deem the Lessee in default, and Lessor, shall have the right, at its option, to enter the leased premises, or any part thereof, either with or without process of law, and to remove the Lessee and all other persons therefrom together with all personal property found therein, and shall have the option of terminating this Lease; or the Lessor may, from time to time, without terminating this Lease, relet the leased premises or any part thereof for such term or terms, although extended beyond the term of this Lease and at such rental or rentals and upon such other terms and conditions as the Lessor, in its sole discretion, may deem advisable, with the right to repair, renovate, remodel, redecorate, alter and change the leased premise. At the option of Lessor, rents received by Lessor from such reletting shall be applied first to the payment of any indebtedness from Lessee to Lessor other than rent due hereunder; second, to the payment of any cost and expenses of such reletting, including but not limited to, attorneys' fees, advertising fees and brokerage fees, and to the payment of any repairs, renovations, remodeling, redecoration, alterations and changes in the leased premises; third, to the payment of rent due and payable hereunder, and, if after so applying said rentals a deficiency exists in the rent payable by Lessee hereunder, Lessee shall pay any such deficiency to Lessor monthly. No such reentry or taking possession of the leased premises shall be construed as an election of Lessor to terminate this Lease unless a written notice of such termination shall be given to Lessee. No remedy provided in this Lease shall be exclusive, but each shall be cumulative with all other remedies provided in this Lease and at law or in equity.

21. BANKRUPTCY OR INSOLVENCY OF LESSEE.

In the event of insolvency, bankruptcy, or attachment proceedings against Lessee involving any business conducted upon the leased premises, this Lease shall not be deemed an asset that can be passed to the trustee in bankruptcy of Lessee, or to its creditors, and if such proceedings continue beyond the p period for which rent has actually been paid, then Lessor shall have the option immediately and without notice to terminate this Lease.

22. QUIET ENJOYMENT OF LEASED PREMISES.

If Lessee shall perform, all and singular, the agreements on its part herein contained to be performed, Lessor and assigns shall warrant and defend Lessee in the quiet enjoyment and peaceful possession of the leased premises during their term aforesaid.

23. INSPECTION OF LEASED PREMISES.

Lessor shall have the right to enter into and upon the leased premises or any part thereof at any reasonable hours for the purpose of inspection and making repairs, but Lessor agrees not to exercise this right in such a way as unreasonably to interfere with the business of Lessee.

24. TERMINATION AND REMOVAL OF LESSEE'S PROPERTY.

Upon the expiration or the sooner termination of this Lease, Lessee shall quit and surrender the leased premises in as good condition as the reasonable use thereof would permit, ordinary wear and tear excepted. Upon the expiration or sooner termination of this Lease, all changes, additions, alterations or modifications of the leased premises and any fixtures installed as a part of such changes, additions, alterations or modifications shall, at Lessor's option, become the property of Lessor, and Lessee shall thereupon remove such of its personal property as is not permanently affixed to the leased premises, which personal property shall include trade fixtures of Lessee. Lessee shall also remove any of the changes, additions, alterations or modifications made by Lessee as Lessor may request and shall repair any damage caused by such removal. Provided, however, Lessee may remove any fixtures or additions added or made by them if they can do so and return the premises to the condition it was in prior to the fixtures being attached or the additions made. All fixtures, furnishings, floor coverings and equipment which are permanently affixed to the leased premises, other than trade fixtures as herein provided, shall thereupon become the property of Lessor, and any personal property of Lessee not removed from the leased premises within twenty (20) days following the expiration of this Lease or its sooner termination shall become the property of Lessor, at the option of Lessor. It is expressly agreed that the Lessee shall not remove from the premises any part of the heating and air conditioning system.

25. EMINENT DOMAIN.

If at any time during the term of this Lease title to the whole or any part of the real estate shall be taken by condemnation or by agreement between the condemning authority and the Lessor, and if such taking materially affects the Lessee's use of said premises, this Lease shall be terminated. Termination date shall be the date of taking of the agreement between the condemning authority and the Lessor, and the unused portion of any prepaid rent shall be refunded to Lessee. It is expressly understood and agreed that Lessee waives any and all rights and interest to the proceeds from any condemnation or from any agreement between the condemning authority and the Lessor.

26. CONSENTS.

It is agreed that either Lessor or Lessee be allowed to mortgage or pledge as collateral their respective interests in the premises and improvements and that the other party shall execute any appropriate consents. Further, if a requirement is made of either Lessor or Lessee to provide estoppel certificates, the other party shall provide such reasonable certificates as may be requested.

27. BILATERAL WAIVER OF SUBROGATION.

Lessee hereby waives any and all right of subrogation against Lessor, its agents, servants and employees, for any damage caused to the property of Lessee located in and upon the leased premises, by reason of its negligence, the same as though Lessee insured its said property by a standard form policy of fire and extended coverage insurance, rather than being a self-insurer of its said property. Lessor hereby waives any and all right of subrogation against Lessee, its agents, servants, and employees, for any damage caused to the property of Lessor, including the leased premises; the structure of which the leased premises is a part; and that property located in and upon said premises, by reason of its negligence, and said Lessor shall cause said waiver of subrogation rights to be endorsed upon the policy or policies of standard form fire and extended coverage insurance written to insure the Lessor's said property, unless said policy(ies) do not require such endorsement.

28. KANSAS CASH BASIS LAW.

The parties mutually understand and agree that it is their intent that the terms of this Lease agreement, and renewals thereof, are lawful under the provisions of the Kansas Cash Basis Law, including K.S.A. 10-1101, *et seq.*, which state as follows:

- (a) This agreement is for a term exceeding the current fiscal year of Lessee and must be approved by a majority vote of all members of the Lessee's governing body;



(b) No lease payment required by this agreement, including those for any renewal term, will exceed 3% of the total amount budgeted by the Lessee during the current budget year;

(c) The amount of capital cost required to purchase Property, if presently paid for by cash, is \$2,600,000 ;

(d) The annual average effective interest cost is \$ 146,400

(e) The amount included in the payments for service, maintenance, insurance, and other charges, exclusive of the capital cost and interest cost, is estimated at \$ \_\_\_\_\_ per month.

29. NOTICES.

All notices in connection with this Lease shall be sent by certified mail. Notices to the Lessor shall be addressed to it, c/o Robert E. Shmalberg, 1029 New Hampshire St, Suite B, Lawrence, Kansas, 66044. Notices to the Lessee shall be addressed to the Lessee, c/o City Manager at City Hall, 6th East 6th Street, Lawrence, Kansas 66044, or at such address as the Lessee shall, from time to time designate in writing.

30. HOLDING OVER.

Should the Lessee hold over for any reason after the expiration of the basic term or the option term, if the option is exercised, said holding over shall create only a tenancy from month to month, terminable on thirty (30) days written notice from either party to the other.

31. NO BROKER.

Lessor and Lessee agree to hold each other harmless against any and all claims by any person for brokerage commissions arising out of any conversation, negotiations or other dealings held by the other party with any broker regarding this Lease. In the event that the Lessor has used the services of a broker in the negotiation of this Lease, Lessor alone is responsible for the payment of any commissions due.

32. WAIVER OF BREACH NOT WAIVER OF OTHERS.

The waiving of any of the covenants, provisions or terms of this Lease by either Lessor or the Lessee shall be limited to the particular instance and shall not be deemed to waive any other breach or breaches.

33. DEFAULT CORRECTION.

In the event of any notice of default under this Lease, either party shall be given 30 days to correct, unless it is reasonable to assume that correction will take longer. In which event, they shall be given such time required for correction.

34. BINDING EFFECT OF LEASE.

This lease shall inure to the benefit of and be binding upon the successors and permissible assigns of the parties hereto.

35 TIME.

Time is of the essence in this agreement.

Dated as of this 22<sup>nd</sup> day of September, 2007.

LESSOR:  
Berkeley Plaza, Inc.

By: Robert E. Shmalberg  
Robert E. Shmalberg

LESSEE:  
THE CITY OF LAWRENCE, KANSAS

By: David L. Corliss  
Sue Hack, Mayor David L. Corliss,  
City Manager

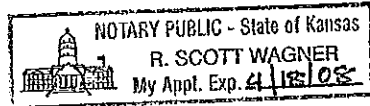
ATTEST

[Signature]  
City Clerk

STATE OF KANSAS )  
 ) ss.  
COUNTY OF DOUGLAS )

On October 10<sup>th</sup>, 2007, before me, the undersigned, a Notary Public in and for said county and state, personally appeared ~~Sue Hack~~ <sup>David Carliss</sup>, Mayor of the City of Lawrence, Kansas, a Kansas municipal corporation, known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.

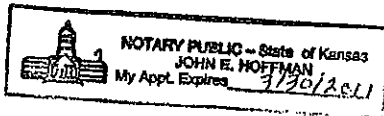


[Signature]  
Notary Public  
My appointment expires:

STATE OF KANSAS )  
 ) ss.  
COUNTY OF DOUGLAS )

On SEPT. 27, 2007, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Robert E. Shmalberg, the PRESIDENT of Berkeley Plaza, Inc. known to me to be the person whose name is subscribed to the within instrument and acknowledged that they executed the same.

WITNESS my hand and official seal.



[Signature]  
Notary Public  
My appointment expires: