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## CITY OF PORT LAVACA

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CITY COUNCIL REGULAR MEETING: September 12, 2022

DATE: 9.09.2022

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: JODY WEAVER, INTERIM CITY MANAGER

SUBJECT: CONSIDER RENTAL RATES, TERMS AND LEASE AGREEMENT FOR SUITE 3  
EDWARD JONES

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- Edward Jones has leased Suite 3 from the City since September 1, 2003. As such they have been a long-time steady tenant and have always to my knowledge paid their rent on time without issue. The original 2003 lease was a standard Edward Jones lease document and had a term of 5 years with a 5-year option. There have been 5 amendments that extended the lease until it's current expiration date of August 31, 2022. The lease amount they contracted for in 2003 was \$765.00/month. The MCI in September 2003 was 166.8. The MCI in July 2022 (last date published) was 309.81, or an increase of 185.7%. So, \$765.00 in today's dollars per the MCI is \$1,420.89. Edward Jones currently pays a total of \$1,150/month comprised of \$1,035/month rent (0.98/sf) and \$115.00 for utilities.
- After much discussion with the real estate division of Edward Jones, the proposal that was initially offered by Edward Jones and presented to the Port Commission at the August meeting was for a 5-year lease with a starting rent of \$1,085.00 (4.8% increase) with a fixed 3.5% increase each year, plus an agreed upon \$135.00/month for utilities, subject to increase per actual KWHr costs and water rates borne by the City. The proposed lease agreement document is based upon Edward Jones' standard agreement with some edits on our part and not the City's standard lease document. Anne Marie has reviewed the proposed document and is satisfied with the lease language.
- After rejecting this proposal from Edward Jones, **Port Commission** unanimously voted to recommend to Council that the following lease agreement be made with Edward Jones: a two (2) -year lease with year 1 at \$1,095.50 + \$135 utilities = \$1,230.50 (7% overall increase) and Year 2 \$1,181.64 + \$135.00\* utilities = \$1,316.64 (7% overall increase) AND the requirement that the City's standard lease document must be used.
- The opinion of the real estate division of **Edward Jones** was that a 7% increase was too great and has countered with the following: a 5-year lease with a starting rent of \$1,092.00 (5.5% incr) with a fixed 4% increase each year on the rent rate PLUS the \$135.00/month for utilities, which is subject to increase per actual KWHr costs and water/sewer base rates borne by the City.
- Being able to secure a 5-year lease would certainly simplify staff's workload for this lease over the next 5-years and to be able to show known future income is a POSITIVE when advocating our financial position as stable for bond ratings. Communication with Edward Jones this year has been sporadic, but based upon my conversations two years ago, they want upfront known increases and not the inconsistency of the MCI.
- If we have hope that the inflation rate will normalize, and we recognize that the MCI has in fact begun to drop after a peak in April, and we reflect back on "normal" inflation rates prior to 2021, I have no issue with a 4% guaranteed increase in the rental rate each year for the next 5 years. For consideration, the monthly Yr-Yr % change in the MCI in the following years ranged from:
  - 2020: -.086% to 1.77%
  - 2019: 0.5% to 2.01%
  - 2018: 2.63% to 4.47% (annual average was about 3%)
  - 2017: 2.05% to 3.63%
  - 2016: -0.87% to 2.74%
  - 2015: -1.1% to .43%

- If the Council requires that only the City's standard lease document be used, OR is unwilling to agree to a 5-year term, then I suggest that a one-year amendment to the existing lease be offered at the suggested Year 1 increase and we provide them written notice of these facts so they have a year to find a new location. (Note: the language of the original contract states that in the event that the Lessee should holdover or be permitted to holdover, the lessee shall be deemed a tenant wholly at will of the City).
- Note the following provisions in the edited Edward Jones agreement as presented:
  - An Early Termination clause is included but provides for a Four (4) month rent liquated Damages payment, which matches the original 2003 lease.
  - The scheduled payment for water/sewer and electrical are subject to increase with changes to the KW/hr cost and/or the Base Water and/or Sewer Rate.
  - Lessee is responsible for payment of any ad valorem taxes assessed on the leased property if any.
  - 2 parking spaces are provided in the front and 2 in the back
  - Edward Jones has included in the proposed lease the following restrictions on the City's rental of units in the building as follows. This list is the same as that included in the 2003 lease except with the addition of A(e) and A(f) :
    10. Restricted Use
      - A. The Lessor shall not lease or sell any units within the Building, Shopping Center or Property to the following user(s):
        - a) Adult video/Adult entertainment stores;
        - b) Abortion offices/facilities;
        - c) Alcohol/Drug rehabilitation offices/facilities;
        - d) Off-track betting establishments;
        - e) Offices or entities that sell, barter, trade, buy, or dispenses marijuana, for medical use or otherwise; or
        - f) Probation/parole offices.
      - B. The Lessor shall not lease or sell the units within fifty (50) feet of Lessee's demising wall to the following users(s):
        - a) Bars, taverns, billiard halls;
        - b) Pawn shops;
        - c) Dance studios or Karate studios;
        - d) Beer or wine-making stores;
        - e) Psychological counseling offices/facilities;
        - f) Unemployment or Social Security offices;
        - g) Liquor stores; h) Nail Salons.
- Port Commission Recommendation: a two (2) -year lease with year 1 at \$1,095.50 + \$135 utilities = \$1,230.50 (7% overall increase) and Year 2 \$1,181.64 + \$135.00\* utilities = \$1,316.64 (7% overall increase) AND the requirement that the City's standard lease document must be used.
- Edward Jones proposal: a five (5)-year lease with a year 1 rent of \$1,092.00 (5.5% incr) with a fixed 4% increase each year on the rent rate PLUS the \$135.00\*/month for utilities, \*which is subject to increase per actual KWHr costs and water/sewer base rates borne by the City. (Note: If the utilities remain at \$135.00, the overall annual increase including the cost of utilities will be 3.6%)

Attached:

- proposed draft lease agreement



**EDWARD D. JONES & CO., L.P.**  
**d/b/a EDWARD JONES**  
**TERM LEASE AGREEMENT**

THIS AGREEMENT (herein referred to as the "Lease") made and entered into this the 13<sup>th</sup> day of July 2022, by and between **City of Port Lavaca**, having principal offices at P.O. Box 105 in Port Lavaca, TX 77979, hereinafter referred to as the Lessor,

and

**EDWARD D. JONES & CO., L.P. d/b/a EDWARD JONES**, having principal offices at 12555 Manchester Road, in St. Louis, Missouri 63131, hereinafter referred to as Lessee,

WITNESSETH, that said Lessor does by these presents lease and demise unto the said Lessee the following described property hereinafter known as:

"Premises": 106 S COMMERCE ST STE 3, PORT LAVACA, TX 77979

Square Feet: 1,055

With appurtenances for the term of Five (5) Five ~~Five~~ (5#) years beginning the first day of September 2022, and ending the last day of August ~~#####~~ 2027 ~~2027~~, at the monthly schedule of:

09/01/2022 – 08/31/2023	One Thousand Eighty-Five and No/100 Dollars (\$1,092.00)
09/01/2023 – 08/31/2024	One Thousand One Hundred Twenty-Two and 98/100 Dollars (\$1,135.68)
09/01/2024 – 08/31/2025	One Thousand One Hundred Sixty-Two and 28/100 Dollars (\$1,181.11)
09/01/2025 – 08/31/2026	One Thousand Two Hundred Two and 96/100 Dollars (\$1,228.35)
09/01/2026 – 08/31/2027	One Thousand Two Hundred Forty-Five and 06/100 Dollars (\$1,277.49).

Lessor agrees to accept payment of the Monthly Rent via electronic funds transfer (EFT). Upon execution of this Lease by both parties, enrollment details will be sent to Lessor. In order to implement payment via EFT, Lessor agrees to enroll in the EFT program within 30 days of execution of this Lease. If Lessee changes to another vendor for its electronic funds transfer processing, Lessor will upon Lessee's request, complete and return another EFT Form to Lessee within at least (30) calendar days before the next scheduled Monthly Rent payment. Lessor must notify Lessee in writing of any changes to its banking account to which the Monthly Rent payment is sent that would affect transmission of an electronic funds transfer at least (30) calendar days prior to the next scheduled Monthly Rent payment. Lessee shall not be deemed to be in breach of the Term Lease Agreement if payment to Lessor is late or never received by Lessor due to any of the following reasons: (i) Lessor fails to submit an EFT Form; (ii) Lessor fails to submit an EFT Form within the requisite time period set forth herein, or (iii) the EFT Form submitted by Lessor is incomplete and/or contains inaccurate information.

**1. Form W-9**

Under Section 6109 of the Internal Revenue Code, Lessor is required to provide Lessee with the correct Taxpayer Identification Number (TIN) in order for Lessee to file information returns to the IRS to report income paid to Lessor. Lessor shall complete all IRS required forms and return to Lessee as requested. Notwithstanding anything to the contrary herein, if Lessor fails to submit a properly completed Form W-9 as requested by Lessee, Lessor agrees that Lessee has the right (but not the obligation), pursuant to Section 3406 of the Internal Revenue Code, to withhold and pay to the IRS a percentage of the total monthly rent payment.

In the event that Lessor shall have a change in its business or legal name, Lessor agrees to notify Lessee in writing, within 30 days of any such change, and submit a new Form W-9 reflecting such change(s).

2. **Notice to Lessee**

a) It is expressly understood between the parties hereto that Lessee's employees stationed at the Premises are not empowered to give instruction regarding the leasehold and furthermore that all notices to be served by the Lessor upon the Lessee shall be in writing addressed to:

Edward D. Jones (Headquarters)  
12555 Manchester Road  
St. Louis, MO 63131  
Attention: Branch Leasing; BR# 1840

Notices to either party shall be considered served when deposited with the United States Postal Service via Certified Mail, return receipt requested, or other nationally recognized courier. The refusal of a party to accept a notice shall not affect the giving of notice.

b) Only Principals or Authorized Officers/Agents of Lessee employed at its Headquarters are empowered to give any instruction or notice regarding the Lease and any notice or instruction issued by any other party is null and void.

c) Due to the nature of Lessee's business, any access to or entrance into the Premises by the Lessor or its employees, agents or contractors shall require 24 hours prior notice to Lessee, except in cases of an emergency.

3. **Notice to Lessor**

Notwithstanding anything contained to the contrary in the Lease, all notices, demands, requests or other writings that are required or permitted to be given, made or sent under this Lease or by law must be given by U.S. certified mail, return receipt requested, postage prepaid or via nationally recognized overnight carrier, addressed in the case of the Lessor as follows:

City of Port Lavaca  
P.O. Box 105  
Port Lavaca, TX 77979

Attention: City Manager  
Email: [jweaver@portlavaca.org](mailto:jweaver@portlavaca.org)  
Phone: 361-827-3601  
Fax: 361-552-6062

4. **Voice & Data Communications**

Lessor shall grant Lessee access to any part of the Building, including common areas, hallways, and telephone/equipment rooms, needed to install phone line, cable, or fiber circuits for voice and data communication. Lessee requires either ADSL or cable communication lines to operate its business. In the event Lessee's telecommunications provider, as selected by Lessee, cannot furnish these lines, or the cost is unreasonable (in Lessee's reasonable opinion), then Lessee shall have the right to terminate (without penalty and without further obligation to pay rent per the Lease to the Lessor) by giving written notice to Lessor.

5. **Occupancy and Commencement of Term**

In the event the Premises are ready for occupancy prior to September 1, 2022, ("Commencement Date") Lessor will allow Lessee to take early occupancy. All terms and conditions of this Lease shall be in effect during any said early occupancy period. Additionally, if Lessee shall occupy the Premises prior to the Commencement Date of this Lease, with Lessor's consent, all other provisions of this Lease shall be in full force and effect as soon as Lessee occupies the Premises and the Lease expiration date shall not change.



6. **Early Termination**

Notwithstanding anything to the contrary contained elsewhere in this Lease it is expressly understood and agreed between the parties hereto that Lessee is granted an option to cancel this Lease and any renewals or extensions thereof at any time upon Ninety (90) days prior written notice to Lessor. Lessee shall pay to Lessor as liquidated damages, a sum equivalent to Four (4) months base rent. Upon payment of aforesaid sum, Lessor shall hold harmless and relieve Lessee from any further liability or obligation under this Lease.

7. **Option to Renew** ~~Three is no option to renew this Lease~~

~~Provided Lessee is not in default of the Lease, Lessor will grant Lessee an option to renew this Lease for One (1) additional period of Five (5) years with Three (3) months' notice at a mutually agreeable Fair Market Rental at the time of renewal. Lessor shall provide written notice of the then Fair Market Rental within ten (10) days of receipt of Lessee's notice to renew. Lessor and Lessee shall reach agreement on the renewal rate within an additional twenty (20) days, or the renewal shall become voidable by Lessee.~~

8. **Delivery Upon Termination**

Upon expiration of the Lease term, or any subsequent renewal term, or other sooner termination of this Lease, Lessee shall deliver to Lessor possession of the Premises, together with all improvements or additions in or to the Premises, in the same condition as received, ordinary wear and tear excepted.

Lessee shall not be required to remove any of said improvements or return the Premises to its original condition upon any termination of this Lease. All said improvements shall remain in place as the Property of the Lessor. Lessee shall remove its furniture, fixtures and equipment and make any repairs occasioned by said removal upon any termination of this Lease.

9. **Use**

Lessee shall use said Premises for general office space in connection with investment brokerage, insurance sales and related financial services and Lessee shall be the only business in the Building to engage in investment brokerage, insurance sales and related financial services.

Lessee, its employees, customers, invitees, contractors, and agents shall have access and the right to use the Common Areas, if any, including but not limited to: corridors, sidewalks, restrooms, parking lots, entryways, lobbies and elevators, subject to Lessor's reasonable written rules and regulations which shall not adversely affect Lessee's right to use the Premises.

10. **Restricted Use**

A. The Lessor shall not lease or sell any units within the Building, Shopping Center or Property to the following user(s):

- a) Adult video/Adult entertainment stores;
- b) Abortion offices/facilities;
- c) Alcohol/Drug rehabilitation offices/facilities;
- d) Off-track betting establishments;
- e) Offices or entities that sell, barter, trade, buy, or dispenses marijuana, for medical use or otherwise; or
- f) Probation/parole offices.

B. The Lessor shall not lease or sell the units within fifty (50) feet of Lessee's demising wall to the following users(s):

- a) Bars, taverns, billiard halls;
- b) Pawn shops;
- c) Dance studios or Karate studios;
- d) Beer or wine-making stores;
- e) Psychological counseling offices/facilities;

- f) Unemployment or Social Security offices;
- g) Liquor stores;

h) Nail Salons.

C. Each party acknowledges that Lessee may suffer irreparable damage in the event of a breach or threatened breach of any paragraph of this Article. Accordingly, in such event, Lessee shall be entitled to seek preliminary and final injunctive relief, as well as any and all other applicable remedies at law or equity, including the recovery of damages for a breach of the paragraphs of this Article. Additionally, Lessee shall have the right, but not the obligation, to cancel/terminate the Lease, without further liability to Lessor, if Lessor breaches the paragraphs of this Article.

#### 11. Utilities

Commencing on the Commencement Date, the following utility costs for the Premises shall be paid as follows:

Lessee will pay, to Lessor, **\$115.00 per month for electric and \$20.00 per month for water and sewer**. These utility rates are based upon a base energy rate of \$0.03883/kWh and City of Port Lavaca Base Utility Rates as follows: Water- \$19.50/mo; GBRA fee- \$7.54; Sewer- \$17.75/mo. The rates paid to Lessor by Lessee are subject to change with any increase in these base utility rates.

Lessor will provide a dumpster for use by all tenants in the building for disposal of trash/solid waste. If required by Lessor, Lessor shall provide any necessary metering devices, any utility tap fees, and any impact fees at Lessor's sole expense, without reimbursement from Lessee.

Lessee shall have the right to choose its phone/data service provider. Lessor shall be responsible for providing phone service to the building.

If permitted by law, Lessee, without Lessor's consent, shall have the right at any time and from time to time during the Lease Term, to contract for service from a different company or companies providing utility service (including but not limited to, electric, water, sewer, heat (natural gas; oil; steam or electric) and waste or trash removal, etc.) for said Premises.

#### 12. Real Estate Taxes, Common Area Maintenance, and Insurance

- Lessee shall be responsible for paying all ad valorem taxes assessed on the leased property, if any
- Lessor shall provide, at its sole cost and expense, all reasonable Common Area Maintenance.
- See attached Insurance Addendum to Lease.

#### 13. Hours of Operation

Lessee's standard hours of operation shall be 8:00 a.m. to 5:00 p.m., Monday through Friday ("Standard Business Hours"), provided that, Lessee may operate evenings and weekends. Lessee and its employees shall have 24-hour access to the Premises and the Common Areas. Lessee and its employees may give its prospects, clients, agents and contractors temporary access to the Premises and the Common Areas. Lessee and its employees may conduct business on the premises during days and times outside of the Standard Business Hours. Lessee's employees are not required by this Lease to continuously occupy the Premises during Standard Business Hours due to the nature of Lessee's business operation. Lessee shall not be obligated to light the Premises or its signage beyond the Standard Business Hours. The Lessor is responsible to light and maintain the Common Areas, including the sidewalks and parking area, if applicable, at all times in a safe and secure manner.

#### 14. Parking



Lessor will provide Lessee with Two (2) unallocated parking spaces along Commerce Street and Two (2) unallocated spaces behind the building.

**15. Signage**

Lessee shall have the exclusive right to erect and maintain in, or about the exterior and interior of the Premises, at its own expense, all signs (electrical or otherwise) necessary or appropriate to the conduct of the business of Lessee. Lessor hereby approves of Lessee installing its standard signage as per proposal to be sent under separate cover. Upon full execution of this Lease, Lessee shall be allowed to install a temporary banner at the Premises until such time that Lessee's permanent sign is installed. Lessee's signage shall conform to all applicable local, city and county requirements.

Notwithstanding anything contained to the contrary herein, Lessor shall, at its sole cost and expense, remove any and all existing previous Lessee signage. Lessor shall make any and all necessary repairs caused by said sign removal. This includes, but is not limited to ant patch, repair, and paint to the Building, Fascia, or Multi-Tenant Signage. All sign removal and repair shall be completed prior to the Lease Commencement Date.

Any signs erected or placed in or on the Premises by Lessee may be removed by Lessee at any time during the term or on the expiration or sooner termination of this Lease. Any damage caused by the erection, maintenance or removal of any and all such signs shall be fully repaired at the expense of the Lessee.

Lessor shall also allow Lessee to place regulatory agency mandated signage (stickers) on or near the front entrance of the Premises. Further, if applicable, Lessor transfers to Lessee, Lessor's statutory authority as the owner of the Premises to post signage (stickers) on or near the front entrance of the Premises prohibiting concealed firearms. At any time during the term of this Lease, or any extension hereof, Lessee reserves the right to change its name. In the event Lessee does change its name, Lessee may, at its expense, change its signage to reflect the new name.

Lessor shall not place a "For Rent", "For Lease" or similar signage on the Premises prior to fifteen (15) days before the expiration of this Lease.

**16. Zoning**

Lessor hereby warrants that the Property/land/Premises are zoned for the use intended in this Lease.

**17. Peaceable and Private Enjoyment**

Lessor agrees to permit the Lessee to peaceably and quietly have and enjoy the use of the Premises and Common Areas for the purpose and for the term aforesaid. In addition, Lessor agrees to provide Lessee with access and ability to conduct business during normal business hours with the same peaceable and private enjoyment during any repairs, maintenance, and improvements.

**18. Estoppels: Subordination and Attornment**

Lessor agrees to use Lessee's standard Estoppel Certificate (attached hereto as Exhibit B).

This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation of security now or hereafter placed upon the Premises or Project and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Lessee's right to quiet possession of the Premises shall not be disturbed if Lessee is not in default beyond any applicable cure period and so long as Lessee shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground Lessor shall elect to have this Lease prior to the Lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Lessee, this Lease shall be deemed prior to such

mortgage, deed of trust or ground lease, whether this Lease is dated prior to or subsequent to the date of said mortgage, deed of trust or ground lease or the date of the recording thereof.

Lessee agrees to execute any reasonable documents, within ten (10) days of written receipt of said request, required to effectuate an attornment, a subordination, or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. In the event of any foreclosure, sale, or transfer in lieu of foreclosure, Lessee shall attorn to the purchaser, transferee or Lessor as the case may be, and recognize that party as Lessor under this Lease, provided such party acquires and accepts the Premises subject to this Lease.

**19. Lease Modification and Assignment**

This Lease may be modified only upon the written and signed Agreement of Lessor and Lessee. Lessee expressly covenants that it shall not assign or sublet the Premises, except to affiliates or parent companies, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, conditioned, or delayed.

**20. Tenant Improvements**

Intentionally deleted.

**21. Repair and Maintenance**

a) Lessor shall be responsible, at its expense, for all repair, maintenance or replacement of the following Building, Common Area and Premise elements: roof, foundation, outside walls, sidewalks, parking lot, common corridors and restrooms, windows, drainage system, heating and air conditioning, electrical wiring, snow/ice removal, landscaping, pest including termite control, lighting.

b) Notwithstanding anything to the contrary herein, Lessee shall only be responsible, at its expense, for all repair and maintenance of the following: interior walls and construction, plumbing. Additionally, Lessor shall assign to Lessee or allow and participate with Lessee with regard to any warranty applicable to such items in the Building.

c) In the event Lessor should fail to address the repairs and maintenance issues as required in a timely manner, Lessee shall have the right to terminate this Lease upon thirty (30) days written notice with no further liability to Lessee.

d) Lessor warrants that all fixtures and equipment are in good working order at the commencement of this Lease and Lessor warrants that all fixtures and equipment shall be under warranty for one hundred eighty (180) days after commencement of this Lease. Additionally, Lessor shall assign to Lessee or allow and participate with Lessee regarding any warranty applicable to such fixtures or equipment in the building.

**22. Contractor Lien**

In the event a lien is filed on the Premises by a contractor under the control of the Lessee, Lessee shall have the option to satisfy the lien.

**23. Condemnation**

In the event of the condemnation or purchase in lieu of all or any substantial part of the Premises by any public or private corporation with the power of condemnation, Lessee reserves the right to seek a separate award due to such condemnation. Additionally, Lessee shall have the right to cancel the Lease, with no further liability to Lessor if said condemnation affects Lessee in any manner.



**24. Damage or Destruction to the Premises**

In the event of damage or destruction to the Premises, the Lessor or the Lessee shall be allowed to cancel the Lease if the Lessor cannot restore the Premises within 60 days. If the Lessor can restore the Premises within said 60 days, the Lessor shall commence to do so diligently. Lessor shall notify Lessee in writing within 15 days of said damage or destruction of its ability to restore the Premises within 60 days or not. If restoration is not completely restored within 60 days, or cannot be restored within 60 days, Lessee shall have the immediate right to cancel the Lease effective from the date of occurrence of said damage or destruction, and Lessee shall have no further liability to Lessor. Rent payable hereunder for the period during which such damage, repairs or restoration continues shall be abated.

**25. Compliance with Laws and Ordinances**

Lessor shall be responsible for making the Premises, Building and its Common Areas comply with all laws, ordinances or regulations.

**26. Hazardous Materials**

To the best of Lessor's knowledge, the Building, its Common Areas, and Premises contain no Hazardous Materials (as defined by the US Environmental Protection Agency), and/or harmful mold, and/or harmful contaminants, and is in compliance with all applicable local, state and federal material rules, regulations, laws and ordinances. In the event that Hazardous Materials, and/or harmful mold, and/or harmful contaminants are identified as present in the Premises, Building, its Common Areas, and/or Property during the term of this Lease, Lessor shall be responsible for the removal of said Hazardous Materials, and/or harmful mold, and/or harmful contaminants by a licensed professional. Lessor shall hold harmless and indemnify Lessee for any hazardous waste, mold, and/or contaminant costs, clean-up, fine, damage, or judgment caused by Lessor or its agents. Lessee shall be responsible for removal of any Hazardous Materials, and/or harmful mold, and/or harmful contaminants Lessee introduces into the Premises. Lessor shall be responsible for the removal of any Hazardous Materials, and/or harmful mold, and/or harmful contaminants introduced to the Building, its Common Areas, or Premises by third parties not controlled by Lessee. Additionally, Lessor shall continue to comply with all applicable local, state and federal material rules, regulations, laws, and ordinances.

**27. Insurance - [See Insurance Addendum to Lease](#)**

**28. Indemnification**

Lessee agrees to indemnify and hold harmless Lessor for any risk of loss, injury or damage of any kind or nature to the Property, Building, or its Common Areas, or persons at the Property, Building, its Common Areas, or Premises that results from the negligence of Lessee except when such injury or damage is a result of a malfunction of or damage to items to be maintained, repaired or provided by Lessor, or when such injury or damage is the result of Lessor's negligent act and/or willful misconduct.

To the extent allowed by Texas law, but not otherwise, Lessor agrees to indemnify and hold harmless Lessee for any risk of loss, injury or damage of any kind or nature to the Property, Building, or its Common Areas, or persons at the Property, Building, its Common Areas, or Premises that results from the negligence of Lessor except when such injury or damage is a result of a malfunction of or damage to items to be maintained, repaired, or provided by Lessee, or when such injury or damage is a result of Lessee's negligent act and/or willful misconduct.

**29. Default**

a) In the event of any non-monetary default by either party, the defaulting party shall cure or commence to cure and diligently conclude said cure, within thirty (30) days of non-defaulting party's written notice of said default. In the event that the default cannot reasonably be cured within said thirty (30) day timeframe, as long as the defaulting party has diligently commenced to cure said default within thirty (30) days from receipt of notice of

default from the other party, then in such case, the defaulting party shall not be considered in default by reason of non-compliance of the thirty (30) day timeframe requirement.

b) In the event of a monetary default, Lessee shall cure said default within ten (10) days of receipt of written notice from Lessor.

**30. Late Fees**

Lessee will pay said rents in a manner and form herein before specified. Lessee shall pay to Lessor the sum equal to 10% of any Rent not received by Lessor by the tenth day after it is due.

**31. Holdover**

Provided Lessee has not vacated the Premises, and provided Lessee has not exercised any option to renew, or has not entered into a new Lease regarding the Premises, then if Lessee holds over after the Lease term, the Lessee becomes a Tenant at will and the Lease will revert to a month-to-month agreement upon expiration of the lease term. Lessee must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of the Lessor, will extend the Term. All other terms and conditions of the original Lease would remain in effect during this month-to-month tenancy, including the rental amount paid during the last month of the Lease term.

**32. Lessor's Default**

In the event Lessor breaks a clause in this Lease, omits to undertake what is stated it will undertake, or acts in a manner in which the Lease states it shall not act, Lessee has the right of setoff in a subsequent month's rent for the fair value of said act, omission, repair or maintenance that hinders Lessee's leasehold interests. In addition, Lessee shall have the option to cure a default/breach of Lease by Lessor, if (a) Lessee has sent written notice to Lessor of Lessee's intent to cure, and (b) Lessor fails to cure said default/breach within thirty (30) days following Lessor's receipt of such notice from Lessee.

**33. Interruption of Lease**

If any required service to be provided by Lessor is interrupted or otherwise ceases to be provided, and a substantial part of the Premises are deemed unfit for Lessee's normal use for more than three (3) days, all rent payable by Lessee shall abate until such interruption ceases. Said three (3) day period shall not begin until Lessor receives written notice from Lessee of said interruption. In the event said interruption continues for more than 15 days, Lessee shall have the option to terminate this Lease without further liability to Lessor.

**34. Remedies**

Lessor and Lessee shall have all remedies available at law or equity to enforce this Lease, and to proceed against the other party for any default of this Lease.

**35. Attorney's Fees**

If either party becomes a party to any litigation concerning this Lease, the Premises, or the Building or other improvements in which the Premises are located, by reason of any act or omission of the other party or its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for the reasonable attorneys' fees and court costs incurred by it in the litigation.

If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.



36. **Agency Disclosure**

Lessor represents and warrants that it has not consulted or negotiated with any broker, finder or agent with regard to this Lease except- Cushman & Wakefield U.S., Inc., who shall be paid a commission by the Lessee pursuant to a separate agreement between Lessee and Cushman & Wakefield U.S., Inc.

37. **Force Majeure**

In the event that either party shall be delayed or hindered in or prevented from doing or performing any act required in this Lease by reason of strikes, lock-outs, casualties, Acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, riots, insurrection, war or other causes beyond the reasonable control of such party, then such party shall not be liable or responsible for any such delays and the doing or performing of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

38. **Consent or Approval**

In each and every instance where the consent or approval of either party is required by the other party, said consent or approval shall be given in a prompt manner, and shall not be unreasonably withheld, conditioned or delayed.

39. **Heirs and Assigns**

All of the covenants, agreements, terms and conditions contained in this Lease shall inure to and be binding upon Lessor and Lessee and their respective heirs, executors, administrators, successors and assigns.

40. **Entire Agreement**

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Lessor and Lessee concerning the Premises and there are no covenants, promises, agreements, conditions or understandings either oral or written, between them other than as are herein set forth.

41. **Substitution/Relocation of Premises**

Lessor may, upon giving Lessee sixty (60) days prior written notice, relocate Lessee to other space within the same Building, which space shall have comparable visibility, be approximately the same size, and include similar leasehold improvements. In no event shall the monthly base and/or additional rental increase or exceed the monthly base and/or additional rental outlined herein for the original space, and the Lessor shall be responsible for all costs associated with the relocation including, but not limited to, the physical relocation, equipment relocation, printing of new stationary, advertising costs and new signage. Lessor agrees that such relocation shall be made during evenings, weekends or at such other time requested by Lessee so as to incur the least amount of inconvenience to Lessee's business. However, said relocation shall not occur during the last six (6) months of the Lease term.

42. **CPI Increases**

Not applicable.

43. **Continuous Occupancy**

Notwithstanding anything to the contrary in the Lease, if during the term of this Lease and any extensions hereof, so long as Lessee shall continue to pay rent as outlined herein, Lessee shall not be considered in default of this Lease by reason of abandonment or non-use in the event the Lessee's employee(s) vacates or fails to initially occupy the Premises. Lessee will use its best efforts to locate other employees to occupy the Premises. Lessee shall maintain the interior appearance of the Premises in a clean and orderly fashion at all times.

This Lease is not in effect until duly signed by Lessor and Lessee.

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## Insurance Addendum to Lease

This insurance addendum is part of the lease.

A. Tenant agrees to maintain -

1. Causes of loss - special form insurance on Tenant's leasehold improvements and personal property in the Premises in an amount equal to the full replacement cost.

2. Business income insurance insuring the loss of rent for a period of twelve months. Such insurance shall contain an agreed evaluation provision, and the amount of coverage shall be adjusted annually to reflect the rent payable for the next twelve-month period. Tenant shall be responsible for the deductible amount payable in respect of such insurance.

3. Commercial general liability insurance, including contractual liability insurance coverage, covering Tenant's operations within the Premises, with combined single limits of not less than \$1,000,000 per occurrence for bodily injury or property damage, naming Landlord as additional insured.

4. Worker's compensation insurance in the amount of \$500,000 with a waiver of subrogation in favor of Landlord.

B. Landlord agrees to maintain -

1. Causes of loss - special form insurance upon the building in which the Premises are located in an amount equal to the full replacement cost.

2. Commercial general liability insurance, including contractual liability insurance coverage, covering the property in which the Premises are located and Landlord's operations with combined single limits of not less than \$1,000,000 per occurrence for bodily injury or property damage.

C. Landlord and Tenant agree that -

1. The causes of loss - special form insurance policies maintained by them shall contain (a) an agreed evaluation provision in lieu of a co-insurance clause, (b) an increased-cost-of-construction clause, (c) debris removal coverage, and (d) a waiver-of-subrogation clause in favor of the party not carrying the insurance.

2. The commercial general liability insurance shall be primary to the maintaining party and not contributory to any similar insurance carried by the other party and shall contain a severability-of-interest clause.