

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20041081

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve lease with Uccello Immobilien GMBH for 8,404 square feet of space at the University Park Building, 12800 University Park Drive in Ft. Myers, Florida. This space will be occupied by the Economic Development Office. Lease is all inclusive of utilities and services except for telephone and data. Base lease cost will be \$14.00 per square foot and CAM charges of \$8.10 per square foot for a total annual charge of \$185,728.40. Lease is for five years with the option to renew for one additional five year term. Lease cost will increase annually by 3% during the initial and renewal terms. Lease can be terminated after the 24<sup>th</sup> month of the initial five year term. Landlord will contribute \$35,200.00 towards renovation costs as long as those renovations are permanently attached to the structure.

**WHY ACTION IS NECESSARY:** Board must approve all lease agreements

**WHAT ACTION ACCOMPLISHES:** Allows Economic Development to function in a more centrally located proximity to the areas that they service through their programs. They will now have more parking for their patrons as well as more office space for their growing staff needs. Also allows them to be located in the same building as VCB, who they partner with for some functions.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT #: 5

*CIA*

**3. MEETING DATE:**

*08-31-2004*

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:**  
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE *AC-4-1*
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT *Economic Development*
- C. DIVISION *Regina Smith*
- BY: *Regina Smith, Director*

**7. BACKGROUND:**

In April of 2004, Economic Development requested Facilities Management to look for space for their office, in a more centrally located area of Ft. Myers, that would be closer all around to their patrons that they service through their programs. They were in need of more parking and more office space for their staff, which are growing due to the increased interest in Southwest Florida. They also wanted to be located in the same location as VCB. Economic Development's current space at 2180 West First Street was becoming limited for their use and increasingly impacted by all the construction around it as well as limited parking concerns. Facilities Management located space in the University Park Building at the corner of Summerlin and College Parkway and a lease was negotiated, however, the move to the building had to be expedited immediately due to the fact that their offices, at 2180 West First Street, were damaged during Hurricane Charley.

**FUNDS ARE AVAILABLE IN THE FOLLOWING ACCOUNT:  
KJ5520400100.504410**

**Independent Divisions/Economic Development/General Fund/Land & Building Rental**

Attachments:

**3 original lease documents**

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services <i>4/21 8/19/04</i>			G County Manager
					OA <i>CIA</i>	OM <i>8/19/04</i>	Risk <i>5/19/04</i>	GC <i>5/19</i>
<i>R Smith</i>				<i>KW</i> <i>8/19/04</i>	<i>8/19/04</i>	<i>8/19/04</i>	<i>5/19/04</i>	<i>5/19</i>

**10. COMMISSION ACTION:**

- \_\_\_\_\_ APPROVED
- \_\_\_\_\_ DENIED
- \_\_\_\_\_ DEFERRED
- \_\_\_\_\_ OTHER

**Rec. by CoAtty**  
 Date: *8/19/04*  
 Time: *1:35*  
 Forwarded To:  
*Co. Admin*  
*8/19/04*

**RECEIVED BY  
COUNTY ADMIN:**  
*8/19/04*  
*1:40 pm SLT*  
**COUNTY ADMIN  
FORWARDED TO:**  
*8/19/04*  
*430*

**OFFICE LEASE**

**between**

**UCCELLO IMMOBILIEN GMBH**

**as Landlord**

**And**

**LEE COUNTY**

**(EDO) FOR UNIVERSITY PARK**

**as Tenant**

**OFFICE LEASE**

This Lease (the "Lease") is made this 18<sup>th</sup> day of August, 2004 by and between **UCCELLO IMMOBILIEN GMBH**, a German corporation authorized to do business in Florida ("Landlord"), and **LEE COUNTY, (EDO) FOR UNIVERSITY PARK**, a political subdivision and Charter County of the State of Florida ("Tenant").

**WITNESSETH:**

**1. BASIC LEASE PROVISIONS:**

1.1. Project: Legal Description See Schedule I

The Project includes: An office building (the "Building"), a parking garage and/or parking areas (the "Designated Parking Areas"), and other improvements within the Project boundaries.

Address: One University Park,  
12800 University Park Drive,  
Ft. Myers, Florida 33907

Unit/Suite No.: Suite nos. 300 & 325 (the "Premises")

Floor: Third

Guaranty of Lease: INTENTIONALLY OMITTED

Rules and Regulations: See Schedule III

- 1.2. Area of Premises: The Premises consist of 8,404 rentable square feet. The Premises are depicted on the floor plan attached hereto as Exhibit "A". The parties stipulate that the herein established measurements are correct and shall not be subject to dispute by either party.
- 1.3. Tenant's Percentage Share of Project Operating Expenses: 6.68% Tenant's Percentage Share shall be adjusted if the rentable area of the Premises, or of the Building is increased or decreased.
- 1.4. Lease Commencement Date: On August 19, 2004. Landlord shall deliver to Tenant a Commencement Date Certificate in the form of Exhibit "B".

  
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- 1.5. Lease Term/Expiration Date of the Lease: The term of this Lease (the "Lease Term") shall commence on the Lease Commencement Date, and shall be sixty (60) months and thirteen (13) days, and shall expire at midnight of the last day of the Lease Term (the "Expiration Date"), unless the Lease Term is extended or terminated earlier by the provisions of this Lease.
- 1.6. Rent Commencement Date: On the Lease Commencement Date.
- 1.7. Rent: Rent is defined as Annual Base Rent and Operating Expenses Rent, as these terms are defined in this Lease. Rent is payable on the rentable area of the Premises, Tenant shall pay Rent to Landlord throughout the Lease Term commencing on the Rent Commencement Date. If the Lease Term commences during a calendar month, Rent and Additional Rent due for such portion of the particular calendar month shall be apportioned and paid on the basis of a month of thirty (30) days.

(1) Annual Base Rent: Annual Base Rent shall be \$14.00 per rentable square foot ("RSF") per year during the 1st Lease Year, subject to the Annual Base Rent Adjustments as reflected on the following Annual Base Rent Schedule:

ANNUAL BASE RENT SCHEDULE

<u>Lease Year</u>	<u>Annual Base Rent per RSF</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
Lease Year 1	\$14.00	\$117,656.00	\$9,804.67
Lease Year 2	\$14.42	\$121,185.68	\$10,098.81
Lease Year 3	\$14.85	\$124,799.40	\$10,399.95
Lease Year 4	\$15.30	\$128,581.20	\$10,715.10
Lease Year 5	\$15.76	\$132,447.04	\$11,037.25

A Lease Year is defined as each successive twelve (12) months period during the Lease Term.

(2) Operating Expenses Rent: Tenant shall pay Operating Expenses Rent (as hereinafter defined) in the amount of Tenant's Percentage Share of Operating Expenses and Taxes, as these terms are defined in this Lease. Operating Expenses Rent for the Premises during the calendar year of 2004 is estimated at \$8.10 per rentable square foot, which is an estimated amount of \$68,072.40 annually and of \$5,672.70 monthly during the calendar year of 2004.

- 1.8. Security Deposit: \$30,954.73 which is the amount of two (2) months of Annual Base Rent in the first Lease Year, plus two (2) months of Operating Expenses Rent for the first Lease Year, excluding Florida sales taxes. The Security Deposit is due and payable at the time Tenant executes this Lease, together with the first (1<sup>st</sup>) month's Rent plus Operating Expenses Rent in the amount of \$15,477.37,

 INITIAL

excluding Florida sales taxes, resulting in a total amount of \$46,432.11 which is due at Lease execution.

- 1.9. Permitted Use: General county government business offices and conference use.
- 1.10. Trade Name: Lee County Economic Development Office
- 1.11. Parking Spaces: Landlord shall make available to Tenant three (3) parking spaces per 1,000 square feet of the Premises as reserved and assigned parking spaces in the Project garage without charge to Tenant.

In addition, Tenant shall be granted use of up to eighty (80) designated spaces on the 3<sup>rd</sup> floor of the parking garage, for meeting and conference parking, which shall be limited to the hours before 11:30 AM and after 5:00 PM, Monday through Friday. Any additional spaces required, or any parking required after 11:30 AM or prior to 5:00 PM, Monday through Friday, shall be subject to availability, and may be subject to additional parking charges.

- 1.12. Late Charges: The parties agree that late payment by Tenant to Landlord of Rent will cause Landlord to incur costs not contemplated by this Lease, the amount of which is difficult to ascertain. Therefore, the parties agree that if any installment of Rent is not received by Landlord within five (5) days after Rent is due, Tenant will pay to Landlord a sum equal to ten percent (10%) of the monthly Rent as a late charge. In addition, all rental and other charges due hereunder which are not paid when due shall bear interest from the due date until paid at the Default Rate, as defined herein.

1.13. Renewal Option(s):

A. Renewal Term. Provided that this Lease is current at the time Tenant exercises its option right, and Tenant has not been in default hereunder, Tenant shall have one (1) five (5) year option (the "Renewal Term") to renew this Lease as further provided herein. The Renewal Term shall be on the terms and conditions set forth in this Lease, other than such terms and conditions as are by their terms inapplicable to the Renewal Term. Tenant shall continue paying Rent during each Lease Year of the Renewal Term subject to the same Annual Base Rent Adjustments, consisting of an annual 3% escalation, and the same Operating Expenses Rent adjustments, as if the Renewal Term had been included in the Lease Term from the Lease Commencement Date of the Lease.

B. Tenant Improvements. Landlord shall not provide any improvements or work allowance for the Premises at the commencement of the Renewal Term.

C. Exercise of Option. Tenant must exercise its option for the Renewal Term by written notice to Landlord which must be received not later than six (6) months prior to the expiration of the current Lease Term.

1.14. Guarantor(s): INTENTIONALLY OMITTED.

1.15. Improvements.

A. Tenant's Work: Tenant has inspected the Premises and accepts them in "as is" condition. Tenant acknowledges that no representations with respect to the condition of the Premises have been made by Landlord. Tenant, at its sole cost and expense, shall provide the tenant improvements to the Premises ("Tenant's Work"), which shall be at least commensurate with the existing Building standard. Tenant's Work shall be performed by contractors of Tenant's choice, subject to Landlord's reasonable approval, except that Tenant shall use Landlord's contractor for all connections to emergency power and life safety systems of the Building.

Tenant shall use commercially reasonable and diligent efforts to complete Tenant's Work on or before or within a reasonable time after the Lease Commencement Date, provided however that any delay of Tenant's Work shall not delay the Commencement Date of the Lease which is as stated herein on August 19, 2004. Tenant shall commence Tenant's Work after the following conditions have been met:

- (i) Tenant has received a fully executed copy of this Lease;
- (ii) Landlord has received and approved in writing Tenant's plans and specifications for Tenant's Work, and a schedule of proposed contractors; and
- (iii) any required building permit for the work has been issued.

B. Work Allowance. Landlord shall contribute to the cost of Tenant's Work by providing "Work Allowance" toward the "Hard Costs", which term means the cost of improvements, such as structural elements, mechanical, plumbing and electrical systems (including the installation of electrical wiring and pull boxes for Tenant provided cabling in the Premises), and other improvements that become integrated into, or permanently attached or affixed to or on the Building and the Premises, shall be as follows: the lesser of (i) the actual cost of Tenant's Work or (ii) \$35,200.00. Landlord shall pay the Work Allowance to Tenant within thirty (30) days after receipt by Landlord of Tenant's statement of costs and final contractor's affidavit(s) and lien releases and upon issuance of the certificate of occupancy issued for the Premises.

C. General Provisions. The improvements made in or upon the Premises, which are attached to the Premises or to the Building shall at once, when made or installed, be deemed to have attached to the fee and to have become the property of Landlord, and at the end of the term will remain on the Premises for the benefit of Landlord.

Tenant shall fully comply with all provisions of the Lease, as amended hereby, relating to the procedure and performance of improvements or alterations to the Premises. Subject to any applicable mutual waiver of subrogation, Tenant will indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord harmless from and against

  
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any and all claims, demands, losses, damages, costs and expenses (including commercially reasonable attorney's fees) or death of or injury to any person or damage to any property whatsoever arising out of or relating to the performance of Tenant's Work by Tenant, its agents, employees, contractors, and invitees, PROVIDED HOWEVER, that Tenant's liability to Landlord in tort shall be limited to money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time.

- 1.16. Address for Payment/Notices: Address for payment of Rent and notices, which is subject to change by written notice to the other party at its then current address is as follows:

Address for Payment:

Uccello Immobilien GmbH, Inc.  
P.O. Box 019220  
Miami, Florida 33101-9220

Address for Notices:

Landlord:

Uccello Immobilien, GmbH  
c/o Welsh Companies, Fl, Inc.  
2400 Ninth Street, North  
Suite 101  
Naples, Florida 34103  
Tel. (239) 261-4744  
Fax. (239) 263-4142

Tenant:

Lee County Division of Facilities Mgmt.  
1500 Monroe Street  
Fort Myers, Florida 33901  
Tel. (239) 335-2919  
Fax (239) 335-2653

With a copy of notices to:

Kirsten I. Baier, P.A.  
General Counsel  
999 Brickell Avenue, 7<sup>th</sup> Floor  
Miami, FL. 33131

Tenant's address for invoices:

Lee County Finance Department  
P.O Box 2238  
Fort Myers, Florida 33902

- 1.17. Brokers: Welsh Companies Florida, Inc. is Landlord's broker (the "Broker"), Landlord shall pay the commission payable to Broker in connection with this Lease pursuant to Landlord's listing agreement with Broker. Landlord and Tenant represent to each other that they have not consulted or negotiated with any broker

  
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or finder with regard to the Premises or this Lease other than Broker. If either party shall be in breach of the foregoing warranty, such party shall indemnify and hold harmless the other party against any loss, liability and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone having dealt with such party in breach.

- 1.18. Building Operating Hours/ Access: Monday through Friday, 7:00 a.m. to 6:00 p.m., except on legal holidays. HVAC service outside of the Building Operating Hours, may be obtained in 2-hour intervals by swiping a control card through a designated terminal located adjacent to the Premises at a charge of currently \$35.00 per one-hour of operation. Access outside of the Building Operating Hours is available via a card system 24 hours a day, 7 days a week.

Building Operating Hours/Access is subject to reasonable change by Landlord with reasonable prior notice to all tenants.

- 1.19. Early Lease Termination: After the second (2nd) anniversary of the Lease Commencement Date, and provided Tenant is not in default under the Lease, Tenant shall have the right to cancel the Lease effective as of the last day of the sixth (6<sup>th</sup>) month or as of the last day of the twelfth (12<sup>th</sup>) of a Lease Year, with respect to all or any portion of the premises, at any time by giving Landlord not less than one hundred eighty (180) days' written notice prior to the effective date of cancellation.

Together with the notice of exercise and as a condition of the effectiveness of the notice of termination, Tenant shall pay to Landlord the sum per rentable square foot of the space to be vacated, which is reflected on the Early Termination Reimbursement Schedule attached as Exhibit "C" as of the effective date of cancellation, and which amount the parties stipulate, constitutes reimbursement to Landlord for the unamortized portion of the Tenant Improvement Allowance, and leasing costs.

- 1.20. Landlord's Insurance. Notwithstanding any provision of this Lease to the contrary, Landlord agrees to purchase and maintain public liability insurance and multi-peril property insurance for the Building and Project with not less than the following limits: Commercial General Liability insurance in the amount of \$500,000 Per Person, \$1,000,000 Per Occurrence Bodily Injury and \$100,000 Per Occurrence Property Damage, or \$1,000,000 Per Occurrence Combined Single Limit of Bodily Injury and Property Damage. Coverage shall include Contractual Liability as pertaining to this contract with insurers approved by the County Risk Manager.

The Landlord shall furnish an appropriate certificate of insurance naming Lee County Board of County Commissioners as an additional Certificate Holder. The Landlord agrees that these insurance requirements shall not relieve or limit Landlord's liability



and that the Tenant does not in any way represent that the insurance required is sufficient or adequate to protect the Landlord's interest or liabilities, but are merely minimums.

2. **DEFINITIONS:** Unless the context otherwise specifies or requires, the following terms will have the meanings set forth below:

2.1 Common Areas: Common Areas shall mean all areas and facilities outside the Premises and within the exterior boundaries of the Project that are not leased to other tenants and that are provided and designated by Landlord, in its sole discretion from time to time, for the general use and convenience of Tenant and other tenants of the Project and their authorized representatives, invitees and the general public. Common Areas are areas within and outside of the Building in the Project, such as common entrances, lobbies, pedestrian walkways, patios, landscaped areas, sidewalks, service corridors, elevators, restrooms (other than those within any tenant's leased premises), stairways, decorative walls, plazas, loading areas, parking areas, and roads.

2.2 Operating Expenses: All costs of operating, servicing, administering, repairing and maintaining the Project (excluding costs paid directly by Tenant and other tenants in the Project or otherwise reimbursable to Landlord), the landscaping of Common Areas of the Project and the parking areas within the Project boundaries. Such costs include Taxes, as this term is defined in Paragraph 2.5 below and any reasonable and necessary costs of operation, maintenance and repair, computed in accordance with generally accepted accounting principles applied on a consistent basis ("GAAP"), and will include, by way of illustration, but not limitation:

(i) All costs of managing, operating and maintaining the Project, including, without limitation, management fees, wages, salaries, fringe benefits and payroll burden for employees utilized in the day to day operation of the Project; public liability, flood, windstorm property damage, rent loss, all risk and all other insurance premiums paid by Landlord with respect to the Project; water, sewer, heating, air conditioning, ventilating and all other utility charges (other than with respect to utilities separately metered and paid directly by Tenant or other tenants); the cost of contesting the validity or amount of real estate and personal property taxes; janitorial services; access control; window cleaning; elevator maintenance; fire detection and security devices and services; gardening and landscape maintenance; trash, rubbish, garbage and other refuse removal; pest control; painting; facade maintenance; lighting; exterior and partition (demising) wall repairs; roof repairs; maintenance of all steam, water and other water retention and discharging piping, lakes, culverts, fountains, pumps, weirs, lift stations, catch basins and other areas and facilities whether or not on-site; canal embankment and related maintenance; repair and repainting of sidewalks and roads due to settlement and potholes and

general resurfacing and maintenance of parking areas; sanitary control; depreciation of machinery and equipment used in any of such maintenance and repair activities; road sidewalk and driveway maintenance; and all other Project maintenance, repairs and insurance.

(ii) The costs of all supplies, materials and equipment used in operation and/or maintenance of the Building and Land;

(iii) The costs (amortized together with a reasonable finance charge in accordance with GAAP) of any capital improvements or investment items which are for the sole purpose of reducing (or minimizing increases of) Operating Expenses or improvements that may be required by Governmental agencies with effective dates following the Commencement Date (including but not limited to improvements prescribed by the Americans with Disabilities Act ("ADA") and other such mandated programs, which may occur from time to time). All such costs shall be amortized on a straight-line basis over the reasonable life of the capital investment item(s), determined in accordance with generally accepted accounting principles and in no event to extend beyond the reasonable life of the Building.

Operating expenses shall not include cost of individual Tenant improvements, management cost associated with leasing activities (such as leasing expenses or commissions), or new capital improvements unless such items and/or improvements result in the operating efficiency of the Building being increased, in which event the cost shall be spread over the period necessary to recover the cost of such improvements from the increased efficiency.

2.3 Rentable Square Feet: The number of square feet of net rentable area as computed in accordance with BOMA (BUILDING OWNERS AND MANAGERS ASSOCIATION) standard as exists on the date of this Lease.

2.4 Default Rate: The maximum lawful rate of interest.

2.5 Taxes: All impositions, taxes, assessments (special or otherwise), water and sewer charges and rents, and other governmental liens or charges of any and every kind, nature and sort whatsoever, ordinary and extraordinary, foreseen and unforeseen, and substitute therefore including all taxes whatsoever (except only those taxes of the following categories: any inheritance, estate, transfer, or gift taxes imposed upon Landlord or any income taxes specifically payable by Landlord as a separate tax paying entity without regard to Landlord's income source as arising from or out of the Building and/or the land on which it is located) attributable in any manner to the Building and/or the Land (however the term may be defined) receivable therefrom or any part thereof, or any use thereof, or any facility located therein or thereon or used in conjunction therewith or any charge or other payment required to be paid to any governmental authority, whether or not

any of the foregoing shall be designated "real estate tax", "sales tax", "rental tax", "excise tax", or "business tax" or designated in any other manner.

**3. PREMISES:**

3.1 Lease of Premises: Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the term and subject to the agreements, covenants, conditions and provisions set forth in this Lease, to which Landlord and Tenant hereby mutually agree, the Premises described in Paragraph 1.

3.2 Project: The Premises are a part of the office project (the "Project") described in Paragraph 1. Landlord may increase, reduce or change the number, dimensions or locations of the walks, buildings, lobbies, parking and other Common Areas and other improvements located in the Project in any manner that Landlord, in its sole discretion shall deem proper. Landlord further reserves the right to make alterations and/or additions to and to build or cause to be built additional stories on the Building in which the Premises are situated and to add any buildings within the Project site. Landlord reserves the right to install, maintain, use, repair and replace, pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Project in a manner that will not materially interfere with Tenant's use of the Premises. Landlord will also have the right to increase and expand the size of the Project and/or the Project site by adding additional land, buildings and other structures to the Project. Landlord shall have the right to grant easements for ingress, egress or other purposes within or across the Project or the Project site. Landlord shall have the right to change the Project's name without notice, to change the Project's street address upon 90 days' prior notice, to grant to any person or entity the exclusive right to conduct any business or render any service in or to the Project, (provided such exclusive right shall not operate to prohibit Tenant from using the Premises for the purpose set forth in Paragraph 1.) to retain at all times master keys or passkeys to the Premises, and to place such signs, notices or displays as Landlord reasonably deems necessary or desirable upon the roof and exterior of the Project.

3.3 Relocation of Tenant: If the Premises consists of less than 2,000 square feet and Landlord desires to incorporate the Premises into space for a Tenant requiring space greater than the Premises, Tenant agrees upon request of Landlord to relocate to comparable space in the Building, provided that Landlord bears all expenses in connection with moving and readying the new space.

**4. COMMON AREAS:**

4.1 Tenant's Right to Use Common Areas: Landlord grants Tenant and its authorized representatives and invitees the non-exclusive right to use the Common Areas with others who are entitled to use the Common Areas subject to Landlord's rights as set forth in this Lease.

 INITIAL

4.2 Landlord's Control: Landlord has the right to:

- (a) establish and enforce reasonable rules and regulations applicable to all tenants concerning the maintenance, management, use and operation of the Common Areas;
- (b) close, if necessary, any of the Common Areas to prevent dedication of any of the Common Areas or the accrual of any rights of any person or of the public to the Common Areas;
- (c) close temporarily any of the Common Areas for maintenance purposes;
- (d) select a person, firm or corporation which may be an entity related to Landlord to maintain, manage, and/or operate any of the Common Areas; and
- (e) designate other lands outside the exterior boundaries of the Project to become part of the Common Areas.

Notwithstanding the provisions of this Subparagraph, in exercising its rights hereunder, Landlord will provide reasonable access to and from the Premises.

**5. RENT:**

- 5.1 Rent: Tenant will pay Rent to Landlord for the use and occupancy of the Premises in the amounts and at the times and in the manner provided herein.
- 5.2 Sales Tax: In addition to the Rent, Tenant agrees to pay Landlord monthly all sales or use taxes or excise taxes imposed or levied by the State of Florida or any other governmental body or agency against any Rent or any other charge or payment required hereunder to be made by Tenant to Landlord, except to the extent that Tenant is exempt from the payment of sales tax in Florida.
- 5.3 Payment of Rent and Additional Rent: Any payments of sums required hereunder to be made to Landlord by Tenant, other than Rent as designated herein, shall be deemed Additional Rent, whether or not designated as such. Rent and Additional Rent are due in equal monthly installments on the first day of each calendar month at Landlord's address stated in this Paragraph 1, together with all applicable sales and/or rent taxes thereon, without demand, deduction or setoff during the Lease Term. If the Lease Term commences during a calendar month, Rent and Additional Rent due for such portion of the particular calendar month shall be apportioned and paid on the basis of a month of thirty (30) days. Landlord's remedies for default in the payment of Additional Rent shall be the same as are available to Landlord in the case of a default in the payment of Rent.

  
INITIAL

6. OPERATING EXPENSES:

- 6.1 Operating Expenses Rent: In addition to Base Rent, Tenant shall pay Tenant's Percentage Share, as specified in Paragraph 1 above, of the Operating Expenses paid or incurred by Landlord in each year ("Operating Expenses Rent").
- 6.2 Payment: Prior to the Commencement Date and thereafter during December of each calendar year or as soon thereafter as practicable, Landlord will give Tenant written notice of its estimate (line item and detailed support included) of Operating Expenses Rent for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant will pay to Landlord 1/12<sup>th</sup> of such estimated amounts, provided that if such notice is not given in December, Tenant will continue to pay on the basis of the prior year's estimate until the month after such notice is given. If at any time or times it appears to Landlord that the amounts payable for Operating Expenses Rent for the current calendar year will vary from its estimate by more than 10%, Landlord, by written notice to Tenant, will revise its estimate for such year, and subsequent payments by Tenant for such year will be in an amount so that by the end of such year Tenant will have paid a total sum equal to such revised estimate. Landlord will indicate in its notice to Tenant the reasons Landlord believes its estimate is low by more than 10%.

Landlord agrees to maintain accounting books and records reflecting Operating Expenses of the Building and Land in accordance with generally accepted accounting principles.

Within one hundred twenty (120) days following the end of each calendar year during the Term hereof, Landlord shall submit to Tenant a statement showing the actual amount of Operating Expenses and Taxes for the past calendar year, the amount thereof actually paid during that year by Tenant and the amount of the resulting balance due thereon, or overpayment thereof, as the case may be. Within thirty (30) days after receipt by Tenant of said statement, Tenant shall have the right to inspect Landlord's books and records, at Landlord's office, during normal business hours, after four (4) business days prior written notice, showing the Operating Expenses and Taxes for the Building for the calendar year covered by said statement. Said statement shall become final and conclusive unless Landlord receives written objections with respect thereto within said thirty (30) day period. Any balance shown to be due pursuant to said statement shall be paid by Tenant to Landlord within thirty (30) days following Tenant's receipt thereof. Any overpayment shall be credited against Tenant's obligation to pay expected Operating Expenses Rent, or if by reason of any termination of the Lease no such future obligation exists, refunded to Tenant within thirty (30) days. The provisions of this Paragraph shall survive the expiration or termination of this Lease.

- 6.3 Proration: If for any reason other than the default of Tenant, this Lease terminates on a day other than the last day of a calendar year, the amount of Operating

 INITIAL

Expenses Rent payable by Tenant applicable to the calendar year in which such termination occurs will be prorated on the basis which the number of days from the commencement of such calendar year to and including such termination date bears to 365.

- 6.4 Taxes Payable by Tenant: To the extent that this provision is applicable to Tenant and Tenant is not tax exempt, Tenant shall be directly responsible for taxes upon, measured by, or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant other than the initial improvements to be installed at Landlord's expense.

## 7. USE OF PREMISES:

- 7.1 Effect on Insurance: Tenant shall not use any portion of the Premises for purposes other than those specified in Paragraph 1 and no use shall be made or permitted to be made upon the Premises, nor acts done, which will increase the existing rate of insurance upon the Project, or cause cancellation of insurance policies covering said Project.
- 7.2 Continuous Operation: Tenant will not leave the Premises unoccupied or vacant and will continuously conduct and carry on in the Premises the type of business for which the Premises are leased.
- 7.3 Miscellaneous Restrictions: Tenant will operate from the Premises using the Trade Name set forth in Paragraph 1, if any. Tenant will not use the Premises for or permit in the Premises any offensive, noisy, or dangerous trade, business, manufacture or occupation or interfere with the business of any other tenant in the Project. Tenant agrees not to cause, permit or suffer any waste or damage, disfigurement or injury to the Premises or the fixtures or equipment thereof or the Common Areas. Tenant will not use the Premises for washing clothes or cooking (other than microwave, toaster, etc.) and nothing will be prepared, manufactured or mixed in the Premises which might emit any offensive odor into the Project. Tenant will not obstruct the sidewalks or Common Areas in the Project or use the same for business operations or advertising. Tenant will not use the Premises for any purpose which would create unreasonable elevator loads, cause structural loads to be exceeded or adversely affect the mechanical, electrical, plumbing or other base building systems. Tenant will at all times comply with the Rules and Regulations of the Project attached hereto as Schedule III and with such additional reasonable rules and regulations as may be adopted by Landlord from time to time.

  
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**8. PARKING:**

8.1 Tenant's Parking Rights: Subject to the rules and regulations of the Project, Tenant shall be entitled to use of the Building's Designated Parking Areas. Only automobiles, motorcycles and pickup trucks will be permitted on the parking areas.

8.2.1 Landlord's Control Over Parking: Tenant and its authorized representatives shall park their cars only in the Building's Designated Parking Areas which are specifically designated for that purpose by Landlord. Within 5 days after written request by Landlord, Tenant will furnish to Landlord the license numbers assigned to its cars and the cars of all of its authorized representatives. If Tenant or its authorized representatives fails to park their cars in the Designated Parking Areas in compliance with this Lease, Landlord may charge Tenant as and for liquidated damages \$45.00 per each day or partial day for each car parked in area other than those designated. Tenant will not park or permit the parking of any vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. Landlord shall have the right, in Landlord's sole discretion, to designate portions of or spaces in the Designated Parking Areas for the exclusive use of a particular tenant or particular tenants. Landlord will have the right to institute reasonable procedures and/or methods to enforce the terms of this Subparagraph or otherwise regulate parking, including the use of a towing or booting service to tow or boot improperly parked vehicles.

8.3 Tenant's Risk: The Designated Parking Areas are provided by Landlord as a convenience to Tenant only and not to Tenant's guests or visitors, except as expressly permitted in this Lease, and shall be used at the sole and exclusive risk of the Tenant. Landlord does not accept any responsibility for injury to any persons, damage or loss of any automobiles or other property, while in the parking facility and common and other areas of the Building, whether under the control of the Landlord or some third party. Landlord accepts no responsibility for the regulation of the parking area nor for persons who improperly park automobiles in spaces assigned to another tenant or operate automobiles in an improper manner. Landlord is under no obligation to provide a parking attendant, doorman or valet, and is under no obligation to provide security for automobiles parked in the Designated Parking Areas.


9. **SIGNAGE**: Landlord, at Landlord's sole cost and expense, will install and maintain all letters or numerals on the entrance doors for the Premises. All such letters and numerals shall be in the form specified by Landlord, and no other shall be used or permitted on the Premises. Tenant shall not place any signs within the Premises which are visible from the outside of the Premises without Landlord's prior written approval.

  
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**10. ASSIGNMENT AND SUBLETTING; ENCUMBRANCE:**

10.1 No Transfers: Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord which Landlord may unreasonably withhold. Any change in the ownership of Tenant, if Tenant is a corporation or partnership or other entity, shall constitute an assignment for purposes of this Paragraph, including, without limitation, the transfer of shares of stock of Tenant, the transfer of any partnership interest or the transfer of any beneficial interest in Tenant, if such transfer effectively vests control of Tenant in an entity or person other than the entity or person having such control prior to the transfer.

Notwithstanding any consent by Landlord, Tenant and Guarantor(s), if any, shall remain jointly and severally liable (along with each approved assignee and sublessee, which shall automatically become liable for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and Landlord shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sublessee without proceeding in any way against any other party. In the event of an assignment, contemporaneously with the granting of Landlord's consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant (but any assignee who does not expressly assume such obligations in writing shall nevertheless be deemed to have assumed such obligations by acceptance of any such assignment). No usage of the Premises different from the usage provided for in Paragraph 1 above shall be permitted, and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease. Tenant shall not make or consent to any conditional, contingent or deferred assignment of some or all of Tenant's interest in this Lease without the prior written consent of Landlord, which Landlord may unreasonably withhold in its sole and absolute discretion. Tenant shall not enter into, execute or deliver any financing or security agreement that can be given priority over any mortgage given by Landlord or its successors, and, in the event Tenant does so execute or deliver such financing or security agreement, such action on the part of Tenant shall be considered a breach of the terms and conditions of this Lease and a default by Tenant entitling Landlord to such remedies as are provided for in this Lease. In the event of any assignment or sublease (other than permitted assignments and sublettings as hereinafter provided), Tenant shall pay to Landlord fifty percent (50%) of any "Transfer Premium" received by Tenant in connection therewith. As used herein, "Transfer Premium" shall mean all payments required to be paid by the assignee or sublessee in excess of the Base Rental, Operating Expenses and other amounts due from Tenant hereunder. Tenant shall pay all legal and administrative costs related to such assignment or sublease, including the cost to redraft the lease document, and to process any consent.

 INITIAL



- 10.2. Consent. Landlord's consent shall be given or refused within thirty (30) days after Tenant's submission to Landlord of the proposed assignment or sublease together with all information about the proposed transferee which is reasonably requested by Landlord. Landlord's consent shall be deemed refused if not given within such thirty (30) day period.
- 10.3 Loss Of Rights. At Landlord's option, any option to renew or extend the Lease term, shall terminate upon approval of a sublease or an assignment of the Lease by Landlord as to the subleased or assigned space.
- 10.4 Landlord Transfers. Landlord shall have the right to assign or transfer, in whole or in part, Landlord's rights and obligations hereunder and in the Project and the Premises and subsequent to any such assignment or transfer. Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of Landlord's covenants and obligations contained in or derived from this Lease or arising out of any act, occurrence or omission occurring thereafter, and the assignee or transferee, at such transfer the Premises and the Building or assignment of this Lease, shall be deemed, without any further agreement between the parties and such transferee or assignee, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease.

11. **ORDINANCES AND STATUTES:** At Tenant's sole cost, Tenant will comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to Tenant's use of the Premises (other than ADA, for which Landlord shall be responsible). The commencement or pendency of any state or federal court abatement proceeding affecting the use of the Premises shall, at the option of the Landlord, be deemed a breach thereof. Further, Tenant agrees to comply with the Building Rules and Regulations and such other reasonable and nondiscriminatory rules as are published from time to time by Landlord for the operation of the Building and the facility serving it. The current Building Rules and Regulations in effect as of the date of this Lease are attached hereto as Schedule III.

12. **MAINTENANCE, REPAIRS, ALTERATIONS:**

- 12.1 Tenant's Obligations: Tenant acknowledges that the Premises are in good order and repair, unless otherwise indicated herein. Tenant shall, at its own expense and at all times, maintain the Premises in good and safe condition and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Tenant shall promptly repair any damage done to the Premises and to the Building, or any part thereof, including replacement of damaged portions of items, caused by Tenant or Tenant's agent, contractors, subcontractors, employees, invitees, or visitors. All such work or repairs by Tenant shall be effected in compliance will all applicable laws. If Tenant fails to make such repairs or replacements promptly, Landlord may, at its option, make the repairs or replacements, and Tenant shall pay the cost thereof to the Landlord within ten (10) days of Landlord's demand therefor. Tenant shall not make or

  
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**INITIAL**

allow to be made any alteration to or install any vending machines on the Premises without the prior written consent of the Landlord. Any and all alterations to the Premises shall become the property of Landlord upon termination of this Lease (except movable equipment or furniture owned by the Tenant). Tenant shall not use or permit the use of the Premises for the generation, storage, treatment, use, transportation or disposal of any chemical, material, or substance which is regulated as toxic or hazardous or exposure to which is prohibited, limited, or regulated by any federal, state, county, regional, local, or other governmental authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the other tenants and occupants of the Landlord's property or adjacent property. If any such chemical, material, or substance is used upon the Premises in the ordinary course of Tenant's permitted business, Tenant shall not use such chemical, material, or substance in a hazardous manner. In the event of any use in violation of this provision Tenant will remove, or cause to be removed, such material at its own expense and will indemnify Landlord for any loss or expense, including reasonable attorneys' fees, it suffers as a result of the violation. Tenant's liability for such indemnification is not limited by any exculpatory provision in this Lease, and shall survive any expiration, cancellation, or termination of this lease or transfer of Landlord's interest in the Premises.

12.2 Limits on Alterations: Tenant may not make any structural improvement or alteration to the Premises or which may affect building systems without the prior written consent of Landlord. Prior to the commencement of any repair, improvement, or alteration, Tenant shall give Landlord at least 2 days written notice. All alterations will be made by a licensed contractor consented to by Landlord and performed in a good and workmanlike manner. All materials shall be of a quality comparable to or better than those in the Premises and shall be in accordance with plans and specifications approved by Landlord. Landlord may condition its consent to any improvements or alterations upon Tenant's obtaining such lien releases, waivers, bonds, and insurance as Landlord shall require.

12.3 Liens: Tenant will pay all costs of construction done by it or caused to be done by it on the Premises as permitted by this Lease. Tenant will keep the Project free and clear of all construction, mechanic's, materialman's, laborer's and supplier's liens, resulting from construction done by or for Tenant. The interest of Landlord in the Premises and the Project shall not be subject to liens for improvements made by Tenant. Any lien filed by any contractor, materialman, laborer or supplier performing work for Tenant shall attach only to Tenant's interest in the Premises. Tenant agrees to indemnify, defend (by counsel reasonably acceptable to Landlord) and hold harmless Landlord from and against any and all costs and liabilities and any and all mechanic's, materialman's or laborer's liens arising out of or pertaining to any improvements or construction done by Tenant. All persons and entities contracting or otherwise dealing with Tenant relative to the Premises or the Project are hereby placed on notice of the provisions of this

Paragraph, and Tenant shall further notify in writing such persons or entities of the provisions of this Paragraph prior to commencement of any Tenant work in the Premises. If any construction, mechanic's, materialman's or laborer's lien is ever claimed, fixed or asserted against the Premises or any other portion of the Project in connection with any such Tenant work, Tenant shall, within ten days after receipt by Tenant of notice of such lien, discharge same as a lien either by payment or by posting of any bond as permitted by law. If Tenant shall fail to discharge any such lien, whether valid or not, within thirty days after receipt of notice from Landlord, Landlord shall have the right, but not the obligation, to discharge such lien on behalf of Tenant and all costs and expenses incurred by Landlord associated with the discharge of the lien, including without limitation, attorneys' fees, shall constitute Additional Rent hereunder and shall be immediately due and payable by Tenant. Landlord, at its option may record a Notice of Lease pursuant to F.S 718.10.

12.4 Surrender of Premises: On the last day of the term hereof or on any sooner termination, Tenant shall surrender the Premises to Landlord in the same condition as when received, ordinary wear and tear excepted, clear and free of debris. Tenant shall repair any damage to the Premises occasioned by the installation or removal of Tenant's trade fixtures, furnishings and equipment.

12.5 Fixtures: Any and all alterations or improvements made to the Premises during the term hereof shall unless Landlord requests their removal, belong to the Landlord without compensation, allowance or credit to Tenant, except movable trade fixtures of the Tenant which can be removed without defacing the Premises or the Project. Landlord may, nonetheless, require Tenant to remove any and all fixtures, equipment and other improvements installed on the Premises. If Tenant fails to do so, Landlord may remove the same and Tenant agrees to pay Landlord on demand the cost of making repairs to the Premises caused by such removal.

13. **ENTRY AND INSPECTION:** Tenant shall permit Landlord or Landlord's agents to enter upon the Premises at reasonable times and upon reasonable notification for the purpose of inspecting the same, performing any services required of Landlord hereunder and showing the Premises to potential and existing mortgagees and purchasers and prospective tenants of other space in the Project. The foregoing notwithstanding, Landlord is not required to give notice to Tenant if Landlord must enter the Premises because of an emergency or to perform janitorial and other services. Tenant will permit Landlord at any time within 180 days prior to the expiration of this Lease, to have potential tenants inspect the Premises.

14. **INDEMNIFICATION:**

14.1 Indemnification: Except for any injury or damage to persons or property on the Premises that is directly caused by, or results directly from the gross negligence or

 INITIAL

willful act of Landlord, its employees, or agents, and except for any injury or damage to persons or property on the Building or the Property (excluding the Premises) that is directly caused by, or results directly from, the gross negligence of Landlord, its employees or agents, Tenant will neither hold nor attempt to hold Landlord, its employees, or agents liable for, and Tenant will indemnify and hold harmless Landlord, its employees, and agents from and against, all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including without limitation reasonable attorneys' fees) incurred in connection with or arising from:

- (a) the use or occupancy or manner of use or occupancy of the Premises by Tenant or any person claiming under Tenant;
- (b) any activity, work, or thing done or permitted by Tenant in or about the Premises, the Building, or the Property;
- (c) any breach by Tenant or its employees, agents, contractors, or invitees of this Lease; and
- (d) any injury or damage to the person, property, or business of Tenant, its employees, agents, contractors, or invitees entering upon the Premises under the express or implied invitation of Tenant;

PROVIDED HOWEVER, that Tenant's liability to Landlord in tort shall be limited to money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time.

If any action or proceeding is brought against Landlord, its employees, or agents by reason of any such claim for which Tenant has indemnified Landlord, Tenant, upon written notice from Landlord, will defend the same at Tenant's expense, with counsel reasonable satisfactory to Landlord.

14.2 Waiver and Release: Tenant, as a material part of the consideration to Landlord for this Lease, hereby waives and releases all claims against Landlord, its employees, and agents with respect to all matters for which Landlord has disclaimed liability pursuant to the provisions of this Lease.

15. **POSSESSION:** If Landlord is unable to deliver possession of the Premises at the commencement hereof, Landlord shall not be liable for any damage caused thereby, nor shall this Lease be void or voidable, but Tenant shall not be liable for any rent until

possession is delivered, at which time the term and Rent shall commence and the Expiration Date shall be extended so as to give effect to the full stated term.

**16. INSURANCE:**

- 16.1. Landlord's Insurance. Landlord agrees to maintain public liability insurance and multi-peril property insurance for the Building and Project.
- 16.2. Tenant's Insurance. Tenant shall, at its sole expense, maintain the following types of insurance coverage during the term of this Lease:
- A. General Liability. Commercial general liability insurance against any and all damages and liability including attorneys' fees on account or arising out of injuries to or the death of any person or damage to property, however occasioned, in, on or about the Premises in an amount of at least \$1,000,000.00 for one or more persons in a single accident damage to property.
- B. Personal Property. Insurance adequate in amount to cover damage to or replacement of, as necessary, Tenant's property in the Premises including, without limitation, leasehold improvements, trade fixtures, furnishings, equipment, goods and inventory. Tenant's insurance shall be sufficient to insure all merchandise, furniture, floor and wall covering and all personal property and trade fixtures of Tenant, and Tenant hereby acknowledges that Landlord shall not carry insurance with respect thereto and that such property shall be on the Premises at Tenant's sole risk, even if the source of damage is theft, fire, water, including sprinkler leakage or bursting pipes, gas or otherwise.
- C. Employers Liability/Workers Compensation. Employer's liability insurance and worker's compensation insurance providing statutory state benefits for all persons employed by Tenant in connection with the Premises as required by applicable law.
- 16.3. Form of Insurance/Companies. All insurance carried by Landlord or Tenant shall be carried with companies rated B+:XIII or better in Best's Key Rating Guide that are licensed or authorized to do business in the state in which the Premises are located. Tenant shall provide Landlord with a Certificate of Insurance showing Landlord and Landlord's manager as a certificate holder. The certificate shall provide that the insurance will not be canceled nor will the carrier fail to renew or materially change the policy without first giving Landlord thirty (30) days written notice. Prior to the expiration of any coverage, renewals of or replacements for such contracts of insurance shall be delivered to Landlord. In the event Tenant shall fail to procure any contract of insurance required under the terms hereof or any renewal of or replacement for any contract of insurance that is expiring or has been canceled, Landlord may, but shall not be obligated to, after first giving Tenant ten (10) business days prior notice and an opportunity to cure, procure such insurance on behalf of Tenant and the commercially reasonable cost thereof shall

be payable to Landlord as Additional Rent within ten (10) days following written demand therefor.

16.4. Subrogation. Anything in this Lease to the contrary notwithstanding, in any event of loss or damage to the Building, the Premises and/or any contents which are covered under an insurance policy of Landlord or Tenant, respectively, each party shall look first to any insurance in its favor before making any claim against the other party; and to the extent it is able to obtain such waiver of subrogation clause at no additional cost, each party shall obtain for each policy of such insurance, provisions permitting waiver of any claim against the other party for loss or damage within the scope of the insurance, and to the extent such waiver of subrogation clause is contained in the respective policy(ies), each party for itself and its insurers waives all such insured claims as to property against the other party. Such waivers shall not operate so as to adversely affect, prejudice or impair the party's right to recover under its respective policy(ies). The foregoing mutual waiver is specifically applicable to all merchandise, furniture, floor and wall covering and all personal property and fixtures belonging to Tenant.

**17. UTILITIES AND SERVICES:**

17.1. Landlord's Services. Consistent with the standards of comparable office buildings located in Lee County, Florida, Landlord shall (subject to reimbursement as Operating Expenses as provided in this Lease) furnish the following services to the Building and the Premises ("Landlord's Services"):

- A. Building passenger elevator service at all times.
- B. Janitorial services furnished after Building Operating Hours, except Saturdays, Sundays, and legal holidays.
- C. Electricity, water and sewer for usual office requirements.
- D. Air cooling and heating (the "HVAC Services") during Building Operating Hours.
- E. Bulb replacement for standard office lights.
- F. Restroom supplies.
- G. Window washing with reasonable frequency.
- H. Pest control, as needed.

Utilities and services required at other times shall be subject to a reasonable charge as determined by Landlord from time to time and not including any profit or overhead.

  
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INITIAL

17.2 Interruption of Services. Landlord shall not be liable in damages or otherwise in the event of any failure or interruption of any utility or service supplied to the Premises or Building, and no such failure shall entitle Tenant to terminate this Lease or to an abatement of rental hereunder, except to the extent provided in other provisions of this Lease. Landlord agrees to use commercially reasonable efforts to correct any failure or interruption as expeditiously as possible.

18. **CONDEMNATION:** In the event any portion of the Project shall be taken or condemned for public use, and such taking materially impairs the use of the Project and the Premises, Landlord or Tenant may elect to terminate this Lease effective on the date of taking; otherwise this Lease will remain in full force and effect. The election to terminate this Lease as provided herein must be exercised, if at all, within 60 days after the nature and extent of the taking is determined. All sums which may be payable to Landlord on account of any condemnation shall belong solely to the Landlord, and Tenant shall not be entitled to any part thereof; provided however, that Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right.

19. **DESTRUCTION OF PREMISES:**

19.1 Partial Destruction: In the event of a partial destruction of the Premises during the term hereof, from any cause covered by insurance, Landlord may elect to repair the same to the extent such repairs can be made with the insurance proceeds made available to Landlord (and not retained by any lender) and within a reasonable time under then existing governmental laws and regulations. Such partial destruction shall not terminate this Lease and Tenant shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Tenant on the Premises. If Landlord elects to make said repairs, this Lease will continue in effect and the rent will be proportionately abated as stated above. If the repairs cannot be made with the available insurance proceeds and Landlord elects not to make said repairs, this Lease may be terminated at the option of either party.

19.2 Material/Total Destruction: If the Building in which the Premises are situated or the Project sustains damage of more than 1/3 of the replacement cost thereof, Landlord may elect to terminate this Lease whether the Premises are injured or not. A total destruction of the Building in which the Premises are situated or the Project shall terminate this Lease.

20. **HAZARDOUS SUBSTANCES:**

20.1 Definitions: For the purposes of this Agreement, the following terms have the following meanings:

  
INITIAL

(a) "Environmental Law" means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation CERCLA (Comprehensive Environmental Response, Compensation and Liability Act of 1980) RCRA (Resources Conservation and Recovery Act of 1976) and SARA (Superfund Amendments and Reauthorization Act of 1986).

(b) "Hazardous Substance" means any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designated, classified or regulated, under any Environmental Law, including without limitation, asbestos, petroleum and petroleum products.

20.2 Tenant's Responsibilities: At its own expense, Tenant will procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Premises. Tenant will not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Project by Tenant, its agents, employees, contractors or invitees without the prior written consent of Landlord (other than small quantities normally associated with office use). Tenant will, in all respects, handle, treat, deal with and manage any and all Hazardous Substances in, on, under or about the Premises in total conformity with all applicable Environmental Laws and prudent industry practices regarding management of such Hazardous Substances. Tenant will not take any remedial action in response to the presence of any Hazardous Substances in or about the Premises or the Project, nor enter into any settlement agreement, consent decree or other compromise in respect to any claims relating to any Hazardous Substances in any way connected with the Premises without first notifying Landlord of Tenant's intention to do so and affording Landlord ample opportunity to appear, intervene or otherwise appropriately assert and protect Landlord's interests with respect thereto.

20.3 Hazardous Waste. (Intentionally Omitted)

20.4. Indemnification: If the Premises or the Project become contaminated in any manner for which Tenant is legally liable or otherwise become affected by any release or discharge of a Hazardous Substance, Tenant shall immediately notify Landlord of the release or discharge of the Hazardous Substance, and, to the extent that this provision is applicable to Tenant, and subject to the limitation of Tenant's liability in tort as more specifically described in Section 14.1. above, Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord) and hold harmless Landlord from and against any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in value of the Project or the Premises, damages caused by loss or restriction of rentable or usable space, or any damages caused by adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant fees and expert fees) arising during or after the Lease



Term as a result of Tenant's actions and arising as a result of such contamination, release or discharge. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal or restoration mandated by federal, state or local agency or political subdivision.

21. **EVENTS OF DEFAULT:** If one or more of the following events ("Event of Default") occurs, such occurrence constitutes a breach of this Lease by Tenant:
- 21.1 Abandonment/Vacation: Tenant abandons or vacates the Premises or removes furniture, fixtures or personal property except in the normal course of business; or
  - 21.2 Rent: Tenant fails to pay any monthly installment of Annual Base Rent or Operating Expenses Rent, as and when the same becomes due and payable, and such failure continues for more than five (5) days; or
  - 21.3 Other Sums: Tenant fails to pay any other sum or charge payable by Tenant hereunder as and when the same becomes due and payable, and such failure continues for more than five (5) days after Landlord gives written notice thereof to Tenant; or
  - 21.4 Other Provisions: Tenant fails to perform or observe any other agreement, covenant, condition or provision of this Lease to be performed or observed by Tenant as and when performance or observance is due, and such failure continues for more than 30 days after Landlord gives written notice thereof to Tenant, or if the default cannot be cured within said 30 day period and Tenant fails promptly to commence with due diligence and dispatch the curing of such default or, having so commenced, thereafter fails to prosecute or complete with due diligence and dispatch the curing of such default or fails to complete the cure within a reasonable period of time; or
  - 21.5 Insolvency: Tenant (a) files or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (b) makes an assignment for the benefit of its creditors; or (c) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property; or
  - 21.6 Receiver: A court or governmental authority of competent jurisdiction, without consent by Tenant, enters an order appointing a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial power of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of Tenant, or if any such petition is filed against Tenant and such petition is not dismissed within 60 days; or

21.7 Attachments: This Lease or any estate of Tenant hereunder is levied upon under any attachment or execution and such attachment or execution is not vacated within 60 days.

21.8 Assignment/Sublease: Tenant assigns this Lease or subleases all or any portion of the Premises without Landlord's prior written consent.

## 22. REMEDIES OF LANDLORD ON DEFAULT:

22.1 Termination: In the event of any breach of this Lease by Tenant, Landlord may, at his option, terminate the Lease and repossess the Premises pursuant to the laws of the State of Florida and recover from Tenant as damages:

(a) The unpaid Rent and other amounts due at the time of termination plus interest thereon at the Default Rate from the due date until paid;

(b) The worth at the time of such termination of the excess, if any, of the amount of Rent and charges equivalent to Rent reserved in this Lease for the remainder of the Lease Term over the then reasonable rental value of the Premises for the remainder of the Lease Term all of which amounts shall be immediately due and payable to Landlord's election from Tenant to Landlord. In determining the Rent which would be payable by Tenant hereunder subsequent to default, the monthly installment of Rent for the unexpired term shall be calculated on the basis of the Annual Base Rent and Operating Expense Rent payable by Tenant at the time of default plus any future increases which are determinable at the time of calculation; and

(c) any other amount necessary to compensate Landlord for all out-of-pocket damages caused by Tenant's failure to perform its obligations under the Lease, including, without limitation, the cost of recovering the Premises.

22.2 Landlord's Options: Landlord may, in the alternative, (i) continue this Lease in effect, as long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under the Lease, including the right to recover the Rent as it becomes due under the Lease; or (ii) terminate Tenant's right of possession (but not this Lease) and repossess the Premises pursuant to the laws of the State of Florida, in which event Landlord shall use its best efforts to relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord. For purpose of such reletting Landlord is authorized by Tenant to decorate or to make any repairs, changes, alterations or additions in or to the Premises that may be necessary or convenient, at Tenant's expense. Tenant shall also be responsible for rent for the period that the Premises are vacant and all costs of re-letting, including without limitation, brokerage commissions, and attorneys' fees in such amount as may be

  
INITIAL

determined by a court of competent jurisdiction. Tenant shall also be liable for any deficiency of such rental below the total rental and all other payments herein provided for the unexpired balance of the term of this Lease; or (iii) exercise any and all other rights and remedies available to Landlord at law or in equity.

22.3 Multiple Defaults: Should Tenant default in the payment of Base Rent, Additional Rent, or any other sums payable by Tenant under this Lease on three (3) or more occasions during any twelve (12) month period, and a default notice has been provided by Landlord on such occasions, regardless of whether any such default is cured, then, in addition to all other remedies otherwise available to Landlord:

(a) Landlord may demand by written notice to Tenant that all payments due by Tenant under this Lease shall be by bank certified or cashier's check.

(b) Tenant shall, within ten (10) days after demand by Landlord, post a security deposit in, or increase the existing Security Deposit by a sum equal to three (3) months' installments of Rent in the amount applicable at the time of demand. Any security deposit posted pursuant to the foregoing sentence shall be governed by Section 23 below.


23. **SECURITY DEPOSIT**: The Security Deposit set forth in Paragraph 1, if any, shall secure the performance of the Tenant's obligations hereunder. Landlord may, but shall not be obligated to apply all or portions of the Security Deposit on account of Tenant's obligations hereunder. In the event that Landlord applies all or a portion of the Security Deposit to Tenant's obligations hereunder, Tenant shall be obligated, within 10 days of receipt of notice from Landlord, to deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the full amount stated in Paragraph 1.8 above. Failure to deposit such cash shall be a default under the terms of this Lease. Provided Tenant is not in default, any balance remaining upon termination of the Lease shall be returned to Tenant within thirty (30) days after the end of the Lease Term, as renewed or extended, and Tenant's delivery of the Premises to Landlord in compliance with this Lease. Tenant shall not have the right to apply the Security Deposit in payment of the last month's rent. No interest shall be paid by Landlord on the Security Deposit. In the event of a sale of the Project, Landlord shall have the right to transfer the Security Deposit to the purchaser, and upon such transfer Landlord shall have no further liability with respect thereto, and Tenant agrees to look solely to such purchaser for the return of the Security Deposit. Landlord shall not be required to keep the Security Deposit in a segregated account, and the Security Deposit may be commingled with other funds of Landlord.

24. **LIEN FOR RENT**: [INTENTIONALLY OMITTED]

25. **LIMITATION ON LANDLORD'S PERSONAL LIABILITY**: Tenant specifically agrees to look solely to Landlord's interest in the Project for the recovery of any judgment from Landlord, it being agreed that Landlord (and any officers, shareholders, partners,

directors or employees of Landlord or of any partners in the entity comprising Landlord) shall never be personally liable for any such judgment.

26. **ATTORNEY'S FEES:** In the event either party defaults in the performance of any of the terms, covenants, agreements or conditions contained in this Lease and either party places the enforcement of this Lease or the collection of any rent due or to become due hereunder or recovery of the possession of the Premises in the hands of an attorney, the losing party shall pay the prevailing party's reasonable attorneys' fees and costs, whether suit is brought or not.
27. **WAIVER:** No failure of Landlord to enforce any term hereof shall be deemed to be a waiver.
28. **SEVERABILITY:** If any clause or provisions of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of both parties that 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 provision as may be possible and be legal, valid and enforceable.
29. **NOTICES:** All notices or other communications required or permitted hereunder must be in writing, and be (i) personally delivered (including by means of professional messenger service), (ii) sent by overnight courier, with request for next Business Day delivery, or (iii) sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses set forth in Paragraph 1. All notices sent by mail will be deemed received 2 days after the date of mailing.
30. **HOLDING OVER:** Any holding over after the expiration or termination of this Lease shall be construed as a month-to-month tenancy at a rental of 200% of the rent for the month of the Lease preceding the month in which the expiration or termination occurred, and otherwise in accordance with the terms hereof, as applicable. In the event Tenant shall be or become a holdover tenant, Tenant shall also indemnify Landlord against all claims for damages against Landlord as a result of Tenant's possession of the Premises, including, without limitation, claims for damages by any tenant to whom Landlord may have leased the Premises, or any portion thereof, for a term commencing after the expiration or termination of this Lease.
31. **TIME:** Time is of the essence of this Lease.
32. **HEIRS, ASSIGNS, SUCCESSORS:** This Lease is binding upon and inures to the benefit of the assigns and successors in interest of Landlord and is binding upon and inures to the benefit of Tenant and, as applicable, Tenant's heirs and successors and, to the extent assignment may be approved by Landlord hereunder, Tenant's assigns.

  
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INITIAL

33. **SUBORDINATION:** This Lease is and shall always be subject and subordinate to the lien of any mortgages which are now or shall at any future time be placed upon the Project, the Premises or Landlord's rights hereunder, and to any renewals, extensions, modifications or consolidations of any such mortgage. If the Premises or the Building is sold pursuant to default on the mortgage, or pursuant to a transfer in lieu of foreclosure, Tenant shall, at the mortgagee's or purchaser's election, not disaffirm this Lease but shall attorn to the mortgagee or purchaser. This clause shall be self-operative and no further instrument of subordination need be required by any mortgagee. In confirmation of such subordination, however, Tenant, at Landlord's request, shall execute promptly any appropriate certificate or instrument that Landlord may reasonably request. Notwithstanding the foregoing, in the event of a foreclosure of any such mortgage or deed of trust or any other acts or proceedings for the enforcement thereof or of any sale thereunder, this Lease will not be barred, terminated, cut off, or foreclosed, nor will the rights and possession of Tenant hereunder be disturbed, if Tenant shall not be in default in the payment of rent or other sums or otherwise in default under this Lease.

34. **ESTOPPEL CERTIFICATE; FINANCIAL STATEMENTS:**

34.1 Content: Tenant shall at any time upon not less than five (5) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing:

(a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect), the amount of any security deposit, and the date to which the rent and other charges are paid in advance, if any; and

(b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by a prospective purchaser or encumbrancer to the Premises.

34.2 Failure to Deliver: At Landlord's option, Tenant's failure to deliver such statement within such time shall be a material breach of this Lease or shall be conclusive upon Tenant:

(a) that this Lease is in full force and effect, without modification except as may be represented by Landlord; and

(b) that there are no uncured defaults in Landlord's performance.

34.3 Financial Statements: At any time, if Landlord desires to finance, refinance, or sell the Premises, or any part thereof, Tenant hereby agrees to deliver to Landlord and any lender or purchaser designated by Landlord, such financial statements of Tenant, including, without limitation, income statement and balance sheet, as may

INITIAL

be reasonably required by such lender, purchaser or Landlord. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

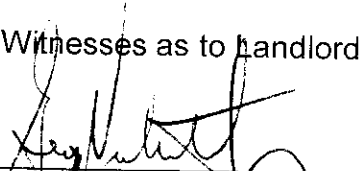
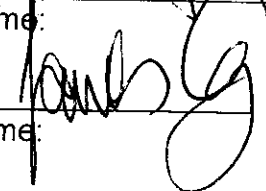
35. **AUTHORIZATION:** If Tenant executes this Lease as a corporation, partnership or other entity or organization then Tenant and the person(s) executing this Lease on behalf of Tenant, represent and warrant that such entity or organization is duly qualified to do business in the State in which the Project is located and that the individuals executing this Lease on Tenant's behalf are duly authorized to execute and deliver this Lease on Tenant's behalf.
36. **JOINT AND SEVERAL LIABILITY:** INTENTIONALLY OMITTED]37. **FORCE MAJEURE:** If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, civil disorder, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated, performance of such act shall be excused for the period of delay and then for a period of time reasonably necessary to perform the act; provided, however, nothing in this Article shall excuse Tenant from the prompt payment of any rental or other charge required of Tenant hereunder except as may be expressly provided elsewhere in this Lease.
38. **RECORDING:** Tenant shall not record this Lease, or any memorandum or short form thereof, without the written consent and joinder of Landlord, which may be unreasonably withheld.
39. **RIDER:** A Rider, signed by the parties    / is attached    /    / is not attached hereto.
40. **ENTIRE AGREEMENT:** The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties
41. **GOVERNING LAW, JURISDICTION AND VENUE:** This Lease shall be construed and interpreted in accordance with the laws of the State of Florida. Venue for any action arising hereunder shall be in the courts of Lee County, Florida, which shall have jurisdiction in any dispute arising under this Lease. Tenant expressly consents to, and waives any objection to jurisdiction and venue in any proceeding before said courts.
42. **RADON GAS:** The following statement is included in order to comply with Florida statutory law requirements: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

  
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INITIAL

43. **QUIET ENJOYMENT:** Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the term of this Lease, subject, however to the terms of this Lease.
44. **LANDLORD'S FEES:** [INTENTIONALLY OMITTED] **45. WAIVER OF COUNTERCLAIM:** IN THE EVENT LANDLORD COMMENCES ANY ACTION FOR NON-PAYMENT OF RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION IN THE POSSESSORY COUNTS IN ANY SUCH ACTION OR PROCEEDING, EXCEPT FOR COMPULSORY COUNTERCLAIMS. THE FOREGOING, HOWEVER, SHALL NOT BE CONSTRUED AS A WAIVER OF TENANT'S RIGHTS TO ASSERT SUCH CLAIM IN A SEPARATE ACTION INSTITUTED BY TENANT.
46. **OFFER TO LEASE :** THE EXECUTION AND SUBMISSION OF THIS DOCUMENT BY LANDLORD SHALL CONSTITUTE A CONTINUING OFFER TO TENANT TO LEASE SPACE IN THE PROJECT ON THE TERMS AND CONDITIONS OF THIS DOCUMENT UNTIL THE 19TH DAY OF AUGUST, 2004 AT 12:00 A.M. (THE "EXPIRATION DATE"), AT WHICH TIME THIS OFFER TO LEASE SHALL EXPIRE. THIS DOCUMENT SHALL HAVE NO BINDING EFFECT ON THE PARTIES UNLESS EXECUTED BY THE TENANT ON OR BEFORE THE EXPIRATION DATE, AND THE EXECUTED COPY IS DELIVERED TO THE LANDLORD ON OR BEFORE SEPTEMBER 9, 2004.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

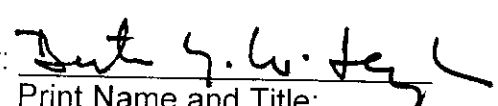
Witnesses as to Landlord:

  
 Name: \_\_\_\_\_  
  
 Name: \_\_\_\_\_

Witnesses as to Tenant:

\_\_\_\_\_  
 Name: \_\_\_\_\_  
 \_\_\_\_\_

**LANDLORD:**  
**UCCELLO IMMOBILIEN GMBH**

By:   
 Print Name and Title:  
**BEATRICE TORER-LEYBA**  
 Pres.

**TENANT:**  
**LEE COUNTY BOARD OF COMMISSIONERS**

By: \_\_\_\_\_  
 Print Name and Title:  
 \_\_\_\_\_

  
 \_\_\_\_\_  
**INITIAL**

Name:  
ATTEST:

\_\_\_\_\_  
CHARLIE GREEN, CLERK

\_\_\_\_\_  
CHAIRMAN, LEE COUNTY BOARD OF  
COUNTY COMMISSIONERS

\_\_\_\_\_  
BY: DEPUTY CLERK

\_\_\_\_\_  
APPROVED AS TO LEGAL FORM BY  
COUNTY ATTORNEY'S OFFICE

Schedules and Exhibits:

- Schedule I: Project legal description
- Schedule II: N/A
- Schedule III: Rules and Regulations
- Exhibit "A": Floorplan of Premises
- Exhibit "B": Commencement Date Certificate
- Exhibit "C": Early Termination Reimbursement Schedule

  
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**SCHEDULE I  
PROJECT**

**LEGAL DESCRIPTION**

(ALSO KNOWN AS: ONE UNIVERSITY PARK, 12800 UNIVERSITY PARK DRIVE, FT. MYERS, FLORIDA 33907)

**PARCEL ONE:**

A tract or parcel of land lying in the east half (E-1/2) of the southwest quarter (SW-1/4) of the southwest quarter (SW-1/4), Section 14, Township 45 South, Range 24 East, Lee County, Florida which tract or parcel is described as follows:

From the northwest corner of said fraction run N89 degrees 00'21"E along the north line of said fraction and the centerline of College Parkway (100 feet wide) for 85.29 feet; thence run S 00 degrees 59'39" E for 50 feet to the Point of Beginning.

From said Point of Beginning run N89 degrees 00'21" E along the south line of said College Parkway for 368.87 feet; thence run S 01 degrees 19'29" E, parallel with the east line of Summerlin Road (106 feet wide) (CR-869), for 544.60 feet; thence run S 89 degrees 00'21" W, parallel with said south line of College Parkway, for 400.87 feet to an intersection with said east line of Summerlin Road; thence run N01 degrees 19'29" W N 43 degrees 50' 30" E for 45.13 feet to the Point of Beginning.

Containing 5.00 acres more or less.

AND

**PARCEL TWO:**

A tract or parcel of land lying in the east half (E-1/2) of the southwest quarter (SW-1/4) of the southwest quarter (SW-1/4), Section 14, Township 45 South, Range 24 East, Lee County, Florida which tract or parcel is described as follows:

  
INITIAL

From the northwest corner of said fraction run N 89 degrees 00'21" E along the north line of said fraction and the centerline of College Parkway (100 feet wide) for 85.29 feet; thence run S 00 degrees 59'39" E for 50 feet to the south line of said College Parkway, thence run N 89 degrees 00'21" E along said south line for 368.87 feet to the Point of Beginning. From said Point of Beginning continue N 89 degrees 00'21" E along said south line for 206.00 feet to an intersection with the east line of said fraction; thence run S 01 degrees 28'42" E along said east line for 1270.04 feet to the southeast corner of said fraction, thence run S 89 degrees 04'09" W along the south line of said fraction for 610.31 feet to the east line of Summerlin Road (106 feet wide) (CR-869); thence run N 89 degrees 00'21" E, parallel with said south line of College Parkway, for 400.87 feet; thence run N 01 degrees 19'29" W, parallel with said east line of Summerlin Road, for 544.60 feet to the Point of Beginning.

Containing 12.73 acres more or less.

SUBJECT TO an easement for former Iona Drainage District Canal H-7 over the South 50 feet of the hereinabove described parcel.

Bearings hereinabove mentioned are based on the Florida Department of Transportation centerline survey for Summerlin Road.

 INITIAL

**SCHEDULE III**  
**RULES AND REGULATIONS**

1. Sidewalks, halls, passages, exits, entrances, elevators, escalators and stairways shall not be obstructed by Tenants or used by them for any purpose other than for ingress and egress from their respective premises. The halls, passages, exits, entrances, elevators and stairways are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building and its Tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of such Tenant's business unless such persons are engaged in illegal activities. No Tenant, and no employees or invitees of any Tenant, shall go upon the roof of the Building, except as authorized by Landlord.

2. No sign, placard, picture, name, advertisement or notice, visible from the exterior of leased premises shall be inscribed, painted, affixed, installed or otherwise displayed by any Tenant either on its premises or any part of the Building without the prior written consent of Landlord, and Landlord shall have the right to remove any such sign, placard, picture, name, advertisement, or notice without notice to and at the expense of Tenant.

If Landlord shall have given such consent to any Tenant at any time, whether before or after the execution of the Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of such Lease, and shall be deemed to relate only to the particular sign, placard, picture, name, advertisement or notice so consented to by Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Landlord with respect to any other such sign, placard, picture, name, advertisement or notice.

All approved signs or lettering on doors and walls shall be printed, painted, affixed and inscribed at the expense of the Tenant by a person approved by Landlord.

3. The bulletin board or directory of the Building will be provided exclusively for the display of the name and location of Tenants only and Landlord reserves the right to exclude any other names therefrom.

4. No curtains, draperies, blinds, shutters, shades, screens or other coverings, awnings, hangings or decorations shall be attached to, hung or placed in, or used in

  
INITIAL

connection with, any window or door on the premises without the prior written consent of Landlord. In any event with the prior written consent of Landlord, all such items shall be installed inboard of Landlord's standard window covering and shall in no way be visible from the exterior of the Building. No articles shall be placed or kept on the windowsills so as to be visible from the exterior of the Building. No articles shall be placed against glass partitions or doors which might appear unsightly from outside Tenant's premises.

5. Landlord reserves the right to exclude from the Building between the hours of 7:00 P.M. and 7:00 a.m. Monday through Friday, 1:00 p.m. to 9:00 a.m. on Saturdays, and at all hours Sundays and holidays all persons who are not Tenants or their accompanied guests in the Building. Each Tenant shall be responsible for all persons for whom it allows to enter the Building and shall be liable to Landlord for all acts of such persons.

Landlord shall in no case be liable for damages for error with regard to the admission to or exclusion from the Building of any person.

During the continuance of any invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's opinion, Landlord reserves the right to prevent access to the Building by closing the doors, or otherwise, for the safety of Tenants and protection of the Building and property in the Building.

6. No Tenant shall employ any person or persons other than the janitor of Landlord for the purpose of cleaning premises unless otherwise agreed to by Landlord in writing. Except with the written consent of Landlord no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning same. No Tenant shall cause any unnecessary labor by reason of such Tenant's carelessness or indifference in the preservation of good order and cleanliness of the premises, however, occurring, or for any damage done to the effects of any Tenant by the janitor or any other employee or any other person.

7. No Tenant shall obtain or maintain for use upon its premises coin-operated vending machines or accept barbering or bootblacking services in its premises except from persons authorized by Landlord; provided, however, soft drink vending machines in Tenant spaces solely for use by Tenant, its employees and business invitees, are permitted.

8. Each Tenant shall see that all doors of its premises are closed and securely locked and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before the Tenant or its employees leave such premises, and that all utilities shall likewise be carefully shut off so as to prevent waste or damage, and for any default or carelessness the Tenant shall make good all injuries and sustained by other Tenants or occupants of the Building of Landlord. On multiple-tenancy floors, all Tenants shall keep the door or doors to the Building corridors closed at all times except for ingress and egress.

 INITIAL

9. As more specifically provided in the Tenant's Lease of the premises, Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air conditioning, and shall refrain from attempting to adjust any controls.
10. No Tenant shall alter any lock or access device or install a new or additional lock or access device or any bolt on any door of its premises without the prior written consent of Landlord. If Landlord shall give its consent, Tenant shall in each case furnish Landlord with a key for any such lock.
11. No Tenant shall make or have made additional copies of any keys or access devices provided by Landlord. Each Tenant, upon the termination of the Tenancy, shall deliver to Landlord all the keys or access devices for the Building, offices, rooms and toilet rooms which shall have been furnished the Tenant or which the Tenant shall have had made. In the event of the loss of any keys or access devices so furnished by Landlord, Tenant shall pay Landlord therefor.
12. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than for which they were constructed and no foreign substance of any kind whatsoever, including, but not limited to, coffee grounds shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant, who, or whose employees or invitees, shall have caused it.
13. No Tenant shall use or keep in its premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities necessary for the operation or maintenance of office equipment. No Tenant shall use any method of heating or air conditioning other than that supplied by Landlord.
14. No Tenant shall use, keep or permit to be used or kept in its premises any foul or noxious gas or substance or permit or suffer such premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors and/or vibrations or interfere in any way with other Tenants or those having business therein, nor shall any animals or birds be brought or kept in or about any premises of the Building.
15. No cooking shall be done or permitted by any Tenant on its premises (except that use by the Tenant of Underwriters' Laboratory approved equipment for the preparation of coffee, tea, hot chocolate and similar beverages for Tenants and their employees shall be permitted, provided that such equipment and use in accordance with applicable federal, state and city laws, codes, ordinances, rules and regulations) nor shall premises be used for lodging. Use of microwave ovens for warming of prepared foods for use of Tenant, its employees and business invitees, is permitted, so long as such food is not sold to third parties for profit.

16. Except with the prior written consent of Landlord, no Tenant shall sell, permit the sale, at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise in or on any premises, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from any premises for the service or accommodation of occupants of any other portion of the Building, nor shall the premises of any tenant be used for the storage of merchandise or for manufacturing of any kind, or the business of a public barber shop, beauty parlor, nor shall the premises of any Tenant be used for any improper, or reasonably objectionable purpose, or any business activity other than that specifically provided for in such Tenant's lease.
17. If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain, and comply with, Landlord's instructions in their installation.
18. Landlord will direct electricians as to where and how telephone, telegraph and electrical wires are to be introduced or installed. No boring or cutting for wires will be allowed without the prior written consent of Landlord. The location of burglar alarms, telephones, call boxes or other office equipment affixed to all premises shall be subject to the written approval of Landlord.
19. No Tenant shall install any radio or television antenna, loudspeaker or any other device on the exterior walls or the roof of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.
20. No Tenant shall lay linoleum, tile, carpet or any other floor covering so that the same shall be affixed to the floor of its premises in any manner except as approved in writing by Landlord. The expense of repairing any damage resulting from a violation of this rule or the removal of any floor covering shall be borne by the Tenant by whom, or by whose contractors, employees or invitees, the damage shall have been caused.
21. No furniture, freight, equipment, materials, supplies, packages, merchandise, or other property will be received in the Building or carried up or down the elevators except between such hours and in such elevators as shall be designed by Landlord. Landlord shall have the right to prescribe the weight, size and position of all safes, furniture, files, bookcases or other heavy equipment brought into the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as determined by Landlord to be necessary to properly distribute the weight thereof. Landlord will not be responsible for loss of or damage to any such safe, equipment or property from any cause, and all damage done to the Building by moving or maintaining any such safe, equipment or other property shall be repaired at the expense of Tenant.

Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the

Building shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be acceptable by Landlord.

22. No Tenant shall place a load upon any floor of the premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. No Tenant shall mark, or drive nails or screws or drill into, the partitions, woodwork or plaster or in any way deface such premises or any part thereof, without prior approval from Landlord which approval will not be unreasonably withheld.

23. No Tenant shall install, maintain or operate upon the Premises any vending machine without the written consent of the Landlord.

24. There shall not be used in any space, or in the public areas of the Building, either by Tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve. No other vehicles of any kind shall be brought by any Tenant into or kept in or about the premises.

25. Each Tenant shall store all its trash and garbage within the interior of its premises. No materials shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in this area without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entryways and elevators provided for such purposes and at such times as Landlord may designate.

26. Canvassing, soliciting, distributing of handbills or any other written material and peddling in the Building are prohibited and each Tenant shall cooperate to prevent the same. No Tenant shall make room-to-room solicitation of business from other tenants in the Building.

27. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the rules and regulations of the Building.

28. Without the prior written consent of Landlord, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.

29. Tenant shall comply with all energy conservation, safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.

  
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INITIAL

30. Tenant assumes any and all responsibility for protecting its premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the premises closed.
31. The requirements of Tenants will be attended to only upon application at the office of the Building by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless given special instructions from Landlord, and no employees will admit any person (Tenant or otherwise) to any office without specific instructions from Landlord.
32. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular Tenant or Tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other Tenant or Tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all Tenants of the Building.
33. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted. All such rules and regulations, however, shall apply to all Tenants uniformly in the Building.
34. All wallpaper or vinyl fabric materials which Tenant may install on painted walls shall be applied with a strippable adhesive. The use of nonstrippable adhesives will cause damage to the walls when materials are removed, and repairs made necessary thereby shall be made by Landlord at Tenant's expense.
35. Tenant shall provide and maintain hard surface protective mats under all desk chairs which are equipped with casters to avoid excessive wear and tear to carpeting. If Tenant fails to provide such mats, the cost of carpet repair or replacement made necessary by such excessive wear and tear shall be charged to and paid for by Tenant.
36. Tenant will refer all contractors, contractor's representatives and installation technicians, rendering any service to Tenant, to Landlord for Landlord's supervision, approval, and control before performance of any contractual service. This provision shall apply to all work performed in the Building, including installations of telephones, telegraph equipment, electrical devices and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings, equipment or any other physical portion of the Building. No fee will be charged to Landlord pursuant to this Paragraph except as may be provided for elsewhere in the Lease Agreement.
37. Tenant shall give prompt notice to Landlord of any accidents to or defects in plumbing, electrical fixtures, or heating apparatus so that such accidents or defects may be attended to properly.



38. The Building is designated as a "Non-Smoking" Building. This means that smoking is prohibited in all areas of the building. Individual tenants may not allow smoking areas in their offices.

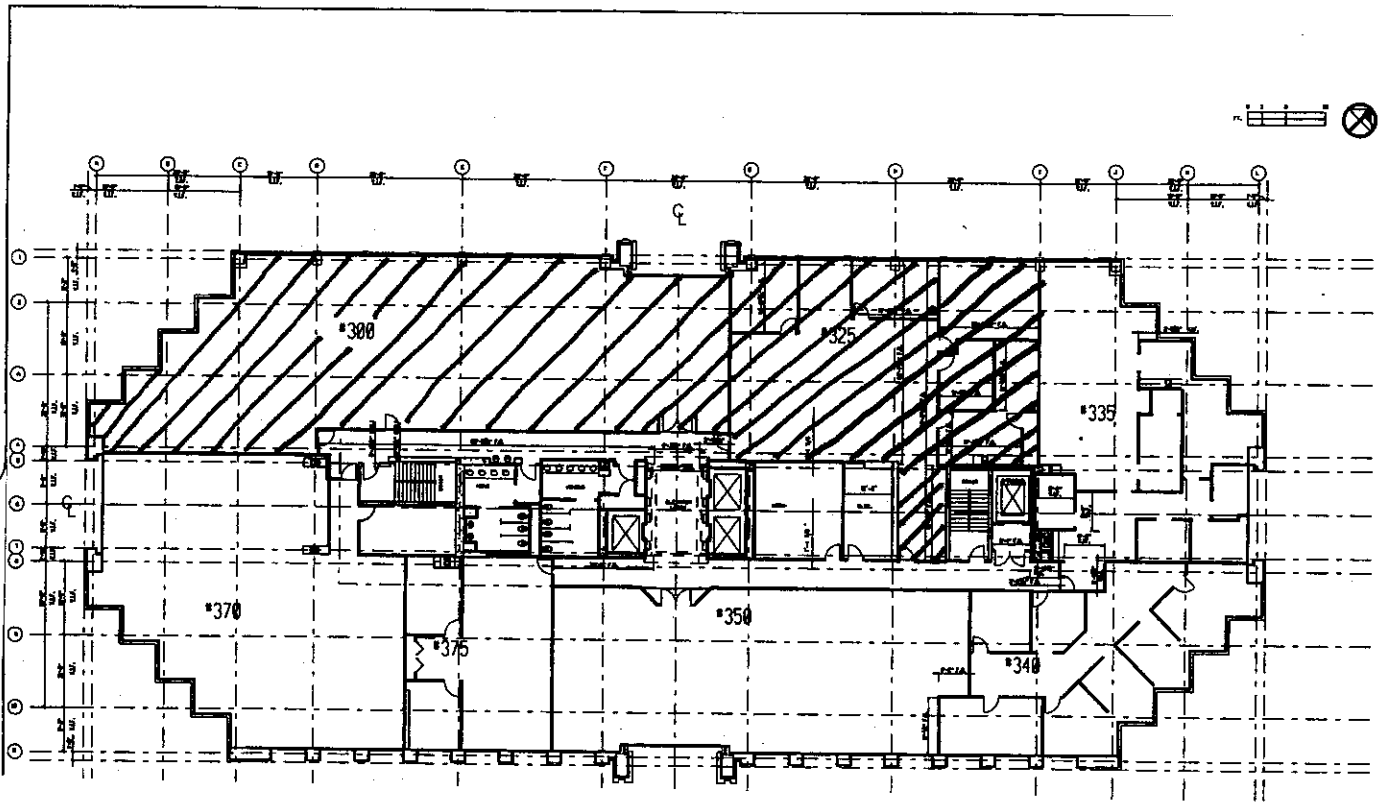
39. Tenant shall be responsible for the observance of all of the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

40. These Rules and Regulations are in addition to, and shall not be construed to in any way modify, alter or amend, in whole or in part, the terms, covenants, agreements and conditions of any Lease of premises in the Building.

  
INITIAL

EXHIBIT "A"

PREMISES



 INITIAL

**EXHIBIT "B"**

**COMMENCEMENT DATE CERTIFICATE**

This Commencement Date Certificate is issued by Landlord pursuant to the Lease.

1. **DEFINITIONS.** In this certificate the following terms have the meanings given to them:

- (a) **Landlord:** UCCELLO IMMOBILIEN GMBH
- (b) **Tenant:** LEE COUNTY BOARD OF COMMISSIONERS
- (c) **Lease:** Office Lease dated \_\_\_\_\_, 2004, between Landlord and Tenant.
- (d) **Premises:** Unit/Suite No.: Suite Nos. 300 & 325
- (e) **Building Address:** One University Park,  
12800 University Park Drive,  
Ft. Myers, Florida 33907

2. **CONFIRMATION OF LEASE COMMENCEMENT.** Landlord confirms that the Landlord has delivered possession or tendered possession of the Premises to Tenant on August 19, 2004. The Commencement Date of the Lease is August 19, 2004. The Expiration Date of the Lease is August 31, 2009.

This Commencement Date Certificate has been delivered to Tenant and has been acknowledged by Tenant on the date(s) set forth below.

**LANDLORD:** UCCELLO IMMOBILIEN GMBH  
**DATE:** \_\_\_\_\_

By: \_\_\_\_\_  
Print Name and Title

**TENANT:** LEE COUNTY BOARD OF COMMISSIONERS  
**DATE:** \_\_\_\_\_

By: \_\_\_\_\_  
Print Name and Title

 **INITIAL**

**EXHIBIT "C"**

**LEE COUNTY ECONOMIC DEVELOPMENT OFFICE  
EARLY TERMINATION REIMBURSEMENT SCHEDULE**

<u>Sq. Ft.</u> 8404	<u>Total Occupancy Cost</u> \$66,645 \$ 7.90/rsf	Months of <u>Term</u> 60
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Termination Date at End of:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
\$53,316.01	\$39,987.01	\$26,658.01	\$13,329.00	\$0
\$ 6.34 /rsf	\$ 4.76 /rsf	\$ 3.17 /rsf	\$ 1.59 /rsf	\$ 0.00 /rsf

Mid-Year Termination Date:

<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
\$59,980.52	\$46,651.51	\$33,322.51	\$19,993.51	\$6,664.50
\$ 7.14 /rsf	\$ 5.55 /rsf	\$ 3.97 /rsf	\$ 2.38 /rsf	\$ 0.79 /rsf

  
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INITIAL