

PENDING APPROVAL

OKLAHOMA COUNTY PUBLIC BUILDING AUTHORITY

AGENDA ITEM REQUEST SHEET

FOR THE June 30, 2010 AGENDA

DEPARTMENT: Facilities Management REQUESTED BY: Mark Stephens

REQUISITION NO.: _____ REQUISITION SHEET ATTACHED: _____ YES _____ X _____ N/A

NAME OF FUNDS: _____

FUND NUMBERS: _____ / _____ / _____

DOES THE AGENDA ITEM CONTAIN PRIVACY-PROTECTED OR SECURITY INFORMATION? _____ YES _____ NO

AGENDA ITEMS CONTAINING PRIVACY-PROTECTED OR SECURITY INFORMATION WILL NOT BE HYPERLINKED TO THE AGENDA.

NUMBER OF ORIGINAL DOCUMENTS TO BE RETURNED TO YOUR DEPARTMENT: Two

AGENDA ITEM READS AS FOLLOWS: _____

_____ For discussion and possible action for approval of an amended Lease Agreement between the Public Buildings Authority and Board of County Commissioners for lease of room 400A in the Investors Capital Building, 217 North Harvey Avenue, Oklahoma City, Oklahoma.
"One dollar annually. This agreement commences July 1, 2010 and ends June 30, 2011."

APPROVED BY DA
(If Applicable)

APPROVED BY ENGINEER
(If Applicable)

APPROVED BY PURCHASING
(If Applicable)

ASSISTANT DISTRICT ATTORNEY

COUNTY ENGINEER

PURCHASING AGENT

Please initial that document has been reviewed for privacy-protected or security information

DISTRICT ATTORNEY: _____ YES _____ N/A

COUNTY CLERK: _____ YES _____ N/A

Indicate any privacy-protected information that exists _____

(NOTE: THE CHAIRMAN/CHIEF DEPUTY MUST APPROVE ALL EMERGENCY REQUESTS FOR ANY ITEM SUBMITTED AFTER THE DEADLINE)

DATE OF REQUEST: _____ APPROVED BY: _____

CHAIRMAN

AMENDED

Investors Capital Building Lease Agreement

217 N. Harvey Avenue – Oklahoma City, OK 73102

THIS LEASE AGREEMENT is made and entered into this 9th day June 2010 by and between the **Oklahoma County Public Building Authority**, hereinafter referred to as Lessor, and **Board of County Commissioners** hereinafter referred to as Lessee.

The following definitions and basic provisions shall be construed in conjunction with and limited by the references thereto in other provisions of this Lease Agreement:

- (A) **Demised Premises:** Approximately **807 square feet on Floor 4, Suite #400A**, in the building located at 217 N. Harvey Avenue in Oklahoma City, Oklahoma.
- (B) **Basic Monthly Rental:** The sum of **One Dollar and no/100 (\$1.00)** payable at the office of the Lessor ~~monthly~~, on or before the first day of each month of this Lease Agreement.
Annually
- (C) **Lease Term:** A period of one year commencing on **JULY 1, 2010** and ending **JUNE 30, 2011** during which all the terms and conditions of this Lease Agreement shall be in full force and effect.
- (D) **Improvements:** None
- (E) **Permitted Use:** Storage

In consideration of the obligation of Lessee to pay rent as herein provided, and in consideration of the other terms, covenants and conditions hereof, Lessor hereby demises and leases to Lessee, and Lessee hereby takes from Lessor, the Demised Premises to have and to hold the same for the Lease Term, all upon the terms and conditions set forth in this Lease Agreement.

Lessor agrees to furnish Lessee, while occupying the Demised Premises, the following services:

- (A) Hot and cold water at those points of supply provided for public use of the tenants.
- (B) Heated and refrigerated air conditioning in season, if presently provided for the Demised Premises, at such times as Lessor normally furnishes these services to all tenants of building, and at such temperatures and in such amounts as are considered by Lessor to be standard, such service on Saturday, Sunday and holidays to be optional on part of Lessor.
- (C) Elevator services in common with other tenants, for ingress to and egress from the Demised Premises.
- (D) Janitorial cleaning services as in the judgment of the Lessor be reasonably required.
- (E) Electric lighting for public areas and special service areas of the building in the manner and to the extent deemed by Lessor to be standard.

Failure in any extent to furnish, or any stoppage of, these defined services shall not render Lessor liable in any respect for damages to either person or property, nor be construed as an eviction of Lessee or work an abatement of rent, or relieve Lessee from fulfilling any covenant or agreement hereof. Should any equipment or machinery break down, or for any cause cease to function properly, Lessor shall use reasonable diligence to repair same promptly, but Lessee shall have no claim for rebate or rent or damages on account of any interruptions in service occasioned thereby or resulting. Lessee shall contact Lessor immediately upon discovering any such mechanical or equipment breakdown or stoppage in

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service. In the event interruptions or inadequacies as herein described cause a disruption in the Lessee's business continually for three (3) consecutive days and/or which are not diligently remedied as required herein, Lessee shall be entitled to a prorated abatement of rent for the period of such interruptions.

This Lease Agreement is conditioned upon faithful performance by Lessee of the following agreements, covenants, rules and provisions herein set out and agreed to by Lessee:

1. To pay all rents and sums provided to be paid by lessee hereunder at the times and in the manner herein provided, including Lessee's pro-rata share of the common areas and the expenses related thereto. Except as otherwise provided herein, the obligation of Lessee to pay Basic Monthly Rental is an independent covenant, and no act or circumstances whether constituting a breach of covenant by Lessor or not, shall release Lessee of the obligation to pay rent. In the event payment of any and all amounts required to be paid pursuant to this Lease Agreement are not made within ten (10) days from the date due, a late fee of five percent (5%) of the amount unpaid shall be added to the amount due and be payable immediately.
2. Lessee will not mortgage, assign, or otherwise encumber this lease, or allow same to be assigned by operation of law or otherwise, or the Demised Premises or any part thereof, or use or permit same to be used for any other purpose than stated in the Permitted Use clause hereof without written consent of Lessor.
3. By moving into the Demised Premises or taking possession thereof, Lessee accepts the Demised Premises as suitable for the purpose for which the same are leased and accepts the building and each and every appurtenance thereof. Lessee, by said act, waives any and all existing defects therein.
4. Lessor shall not be liable to Lessee or Lessee's agents, employees, guests, invitees or any person claiming by, through, or under Lessee for any injury to persons, loss or damage to property, or for loss or damage to Lessee's business, occasioned by or through the acts or omissions of Lessor of any other person, or by any other cause whatsoever except Lessor's gross negligence or willful misconduct. To the extent Lessor is not prevented by law from contracting against such liability, Lessee shall indemnify Lessor and save it harmless from all suits, actions, damages, liability and expense, including but not limited to costs and attorneys fees, in connection with any and all damages, including but not limited to loss of life, bodily or personal injury or use by Lessee of the Demised Premises or any part thereof.
5. Lessee will not make or allow to be made any alteration or physical additions in or to the Demised Premises without the written consent of Lessor before performance (such consent will not be unreasonably withheld). Such alterations, physical additions or improvements as well as those improvements made at the Lessee's expense or under any agreement with the Lessee whereby the Lessee is given an allowance or rent reduction in exchange for Lessor's agreement to install or allow to be installed lease improvements such as by way of example but not limitation: wall covering, floor coverings or carpet, paneling, doors and hardware, and any and all such improvements shall become the property of the Lessor and shall in no event be removed by the Lessee. It is the responsibility of the Lessee to restore the Demised Premises to the condition that existed when Lessee first took possession if Lessor so requests. This clause shall not apply to movable non-attached fixtures or furniture of the Lessee. If any mechanic's or material man's lien is filed against the Demised Premises or the real estate of the Demised Premises, Lessee shall cause same to be discharged within ten (10) days after the lien is filed by the Lessee paying or bonding over said lien.

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6. So long as the Lessee's use of the Demised Premises and adjacent common areas is not adversely affected, Lessor shall have the right at any time to inspect, clean, alter, repair, or improve the Demised Premises and the building, and Lessor and its representatives for that purpose may enter on and about the Demised Premises and the building with such material as Lessor may deem necessary and may erect scaffolding and all other necessary structures on or about the Demised Premises and the building.

7. Lessee will, at Lessee's own cost and expense, keep the Demised Premises in sound condition and good repair, and shall repair or replace damage or injury done to the building or any part thereof by Lessee or Lessee's agents, employees and invitee, and if Lessee fails to make such repairs or replacements promptly, or within fifteen (15) days of occurrence, Lessor may at its option make such repairs or replacements, and Lessee shall repay costs thereof to Lessor on demand. Lessee will not commit or allow any waste or damage to be committed on any portion of this Lease Agreement by lapse of time or otherwise, deliver up said Demised Premises to Lessor in as good condition as at date of possession, ordinary wear and tear excepted, and upon termination of this Lease Agreement, Lessor shall have the right to reenter and Lessee and resume possession of the Demised Premises. In addition, Lessee shall permit Lessor or Lessor's agents and any other person authorized by Lessor to enter the Demised Premises at any time for valid business reasons.

8. If the Demised Premises or any part of the building is damaged by fire or other casualty resulting from any act or negligence of Lessee or any of Lessee's agents, employees, or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by Lessee's insurance.

9. In case Lessee makes a default in the performance of any of the terms, covenants, agreements, or conditions contained in this Lease Agreement, and Lessor places the enforcement of this Lease Agreement or any part thereof, or the collection of any rent due, or to become due hereunder, or recovery of possession of the demised premises in the hands of any attorney or files suit upon the same, the Lessee agrees to pay all attorneys fees.

10. Lessee will conduct its business, and control its agents, employees and invites in such a manner as not to create any nuisance, interfere with, annoy, or disturb other tenants or Lessor in management of the building.

11. Lessor shall not be liable or responsible for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or any matter beyond the control of Lessor or for any damage or inconvenience which may arise through repair or alteration of any part of the building, or failure to make any such repairs, or from any cause whatever, unless caused solely by Lessor's gross negligence.

12. In consideration of mutual benefits arising by virtue of this Lease Agreement, Lessee does hereby mortgage unto Lessor all property of Lessee now or hereinafter placed in or upon the Demised Premises (except such part of property or merchandise as may be exchanged, replaced, or sold from time to time in the ordinary course of operations or trade, and including business records [ledgers, journals, files], clients clinical jackets and essential office equipment such as computer hardware/software and video equipment), and such property is hereby subjected to a lien of Lessor for payment of all rents and other sums agreed to be paid to Lessor herein. Said lien shall be in addition to and cumulative of Lessor's lien provided by law.

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13. Lessee shall fully comply with all requirements of the Building Rules, which are attached hereto as Exhibit B and made a part hereof as though fully set out herein, and Lessee shall require Lessee's agents, employees, invitees, and visitors to do so. Lessor shall at all times have the right to change the Building Rules or to amend them in such reasonable manner as may be deemed advisable for safety, care, and cleanliness of the building and its tenanted areas and for preservation of good order therein. All changes or amendments to the Building Rules will be forwarded to Lessee in writing and shall be carried out and observed by Lessee.

Holding Over

In the event Lessee or anyone claiming under Lessee shall continue to occupy the Leased Premises after the expiration of the term of this Lease Agreement or any renewal or extension thereof without any agreement in writing between Lessor and Lessee with respect to such tenancy, said occupancy of the premises shall not be deemed to extend or renew the term of the Lease Agreement, but such occupancy shall be deemed as a tenancy at will, from month to month, upon the same covenants, provisions, and conditions herein with the exception of the Basic Monthly Rental, which shall immediately convert to a rate to include a twenty percent (20%) increase over and above the rate specified herein as the Basic Monthly Rental.

Default

In the event that:

(a) Lessee shall on three or more occasions be in default in the payment of the Basic Monthly Rental or other charges herein required to be paid by Lessee (default being defined as payment received by Lessor ten (10) or more days after the due date), regardless of whether or not the default has occurred on consecutive or non-consecutive months and regardless of whether payment was subsequently made with late fee included; or

(b) Lessee has caused a lien to be filed against the Demised Premises and said lien is not removed within thirty (30) days of the recording of the same; or

(c) Lessee fails to comply with any terms, provisions, conditions, or covenants of this Lease Agreement or any of the rules now or hereafter established for the government of the building (Building Rules); or

(d) Sixty (60) days have elapsed after the commencement of any proceeding by or against Lessee, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or future Federal Bankruptcy Act or any other present or future applicable federal, state or other statute or law, whereby the proceeding shall not have been dismissed (provided that the non-dismissal of any such proceeding shall not be a default so long as all of Lessee's covenants and obligations hereunder are being performed by or on behalf of Lessee); or

(e) Lessee deserts or vacates the Demised Premises; then

Lessor shall have the option to do any one or more of the following:

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(i) Terminate this Lease Agreement by giving Lessee five (5) days notice thereof, in which event this Lease Agreement shall expire and terminate on the date specified in said notice of termination, with the same force and effect as though the date so specified were the date herein originally fixed as the termination date of the Lease Term, and all rights of Lessee under this Lease Agreement in and to the Demised Premises shall expire and terminate, and Lessee shall remain liable for all obligations under this Lease Agreement that arose up to the date of such termination, and Lessee shall immediately surrender the Demised Premises to Lessor.

(ii) Without terminating this Lease Agreement, and with or without notice to Lessee, Lessor may in its own name but as agent for Lessee enter into and upon and take possession of the Demised Premises or any part thereof, and, at Lessor's option, remove persons and property therefrom, and such property, if any, may be removed and stored in a warehouse or elsewhere at the cost of, and for the account of Lessee, all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Lessor may rent the Demised Premises or any portion thereof as the agent of Lessee with or without advertisement, and by private negotiations and for any term upon such terms and conditions as Lessor may deem necessary or desirable in order to relet the Demised Premises. Lessor shall in no way be responsible or liable for any rental concessions or any failure to rent the Demised Premises or any part thereof, or for any failure to collect any rent due upon such reletting. Upon such reletting, all rentals received by Lessor from such reletting shall be applied: first, to the payment of any indebtedness (other than any rent due hereunder) from Lessee to Lessor; second, to the payment of any costs and expenses of such reletting, including, without limitation, brokerage fees and attorneys' fees and costs of alterations and repairs; third, to the payment of rent and other charges then due and unpaid hereunder; and the residue, if any shall be held by Lessor to the extent and for application in payment of future rent as the same may become due and payable hereunder. In reletting the Demised Premises, Lessor may grant rent concession and Lessee shall not be credited therefore. If such rentals received from such reletting shall at any time or from time to time be less than sufficient to pay the Lessor the entire sums then due from Lessee hereunder, Lessee shall pay any such deficiency to Lessor. Such deficiency shall, at Lessor's option, be calculated and paid monthly. No such reletting shall be construed as an election by Lessor to terminate this Lease Agreement unless a written notice of such termination has been given to Lessee by Lessor. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this Lease for any such previous default provided same has not been cured; or

(iii) Without liability to Lessee or any other party and without constituting a constructive or actual eviction, suspend or discontinue furnishing or rendering to Lessee any property, material, labor, utilities or other service, whether Lessor is obligated to furnish or render the same hereunder, so long as Lessee is in default under this Lease Agreement; or

(iv) Allow the Demised Premises to remain unoccupied and collect rent from Lessee as it comes due; or

(v) Foreclose the security interest described herein, including the immediate taking of possession of all property on or in the Demised Premises; or

(vi) Declare the entire amount of rent which would have become due and payable during the remainder of the Lease Term, to be due and payable immediately, in which event Lessee agrees

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to pay the same at once, together with all rents theretofore due, to Lessor. The acceptance of such payment by Lessor shall not constitute a waiver of any failure of Lessee thereafter occurring to comply with any term, provision, condition, or covenant of this Lease Agreement.

(vii) Pursue such other remedies as are available at law or in equity.

General Provisions

Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when personally delivered to the office of the Lessor, or when mailed, postage prepaid by Certified or Registered U. S. Mail, addressed to the respective party to whom notice is intended to be given, as follows:

If to Lessee:

Board of County Commissioners
217 N. Harvey
Suite 400A
Oklahoma City, OK 73102

If to Lessor:

Commissioner Ray Vaughn, Chairman
Oklahoma County Public Building Authority
320 Robert S. Kerr
Oklahoma City, OK 73102

Either party may terminate this agreement for any reason with a thirty (30) day notice to the other party.

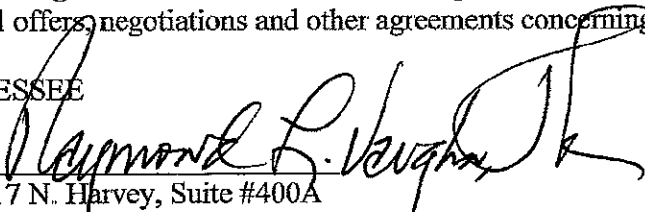
If any term, provision, condition, or portion of this agreement shall be held to be invalid or unconstitutional for any reason, it is the intent of the parties hereto that the portion declared invalid shall be severable and the remaining portions of this agreement shall be enforceable unless to do so would be inequitable or would result in a material change in the rights and obligations of the parties hereunder.

This agreement shall be governed by the laws of the State of Oklahoma.

No waiver of any default of Lessor or Lessee hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Lessor or Lessee shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

This agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein.

LESSEE


217 N. Harvey, Suite #400A
Oklahoma City, Oklahoma 73102

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EXHIBIT "B"

BUILDING RULES

1. Lessee agrees to make deposit, in amount fixed by Lessor from time to time, for each key issued by Lessor to Lessee for its offices, and upon termination of this lease, to return all keys to Lessor.
2. Directories will be placed by Lessor, at its own expense, in conspicuous places in the building. No other directories shall be permitted, unless previously approved by Lessor in writing.
3. Lessee will refer all contractors, contractor's representatives and installation technicians rendering any service to Lessee, to Lessor for Lessor'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.
4. Movement in or out of building of furniture or office equipment or dispatch or receipt by Lessee of any merchandise or materials which require use of elevators or stairways, or movement through building entrances or lobby shall be restricted to hours designated by Lessor. All such movement shall be under supervision of Lessor and in the manner agreed between Lessee and Lessor by prearrangement before performance. Such prearrangement initiated by Lessee will include determination by Lessor and subject to its decision and control, as to the time, method and routing of movement and as to limitations imposed for safety or other concerns which may prohibit any article, equipment or any other item from being brought into the building. Lessee is to assume all risk as to damage to articles moved and injury to persons or public engaged or not engaged in such movement, including equipment, property, and personnel of Lessor if damaged or injured as a result of acts in connection with carrying out this service for Lessee; from time of entering property to completion of work; and Lessor shall not be liable for acts of any person engaged in, or any damage or loss to any of said property on persons resulting from any act, in connection with such service performed for Lessee.
5. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors, or other parts of the building. No nails, hooks or screws shall be driven or inserted in any part of the building except by the building maintenance personnel, nor shall any part be defaced by Lessee. All signs will be contracted for by Lessor at the rate fixed by Lessor from time to time, and Lessee will be billed and pay for such service accordingly.
6. Lessee shall not place, install or operate in the Demised Premises or in any part of the building, any engine or machinery without consent of Lessor. Lessor shall not maintain, use, keep, store, bring upon the Demised Premises or allow to be brought upon the Demised Premises, any inflammable, explosive, hazardous material, or an other inherently dangerous substance, chemical, thing or device.
7. Receptacle loading shall not exceed one (1) watt per square foot of space.
8. Lessor *shall not be responsible* for lost or stolen personal property, equipment, money, or jewelry from Lessee's area or public rooms regardless of whether such loss occurs when the area is locked against entry.
9. No birds or animals shall be brought into or kept in or about the building.
10. Employees of Lessor shall not receive or carry messages for or to Lessee or other persons, nor contract with or render free or paid services to Lessee's agents, employees, or invitees.

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11. Lessor will not permit entrance to Lessee's offices by use of pass keys controlled by Lessor to any person at any time without written permission by Lessee, *except* employees, contractors or service personnel directly supervised by Lessor.
12. The entries, passages, doors, elevators, elevator doors, hallways or stairwells shall not be blocked or obstructed; no rubbish, litter, *trash*, or material of any nature shall be placed, emptied or thrown in *these* areas; and such areas shall not be used at any time except for ingress or egress by Lessee, Lessee's agents, employees, or invitees to or from the Demised Premises.
13. Plumbing fixtures and appliances shall be used only for purposes for which constructed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed therein. Damage resulting to any such fixtures or appliances from misuse by Lessee shall be repaired and replaced at Lessee's sole cost and expense.
14. Lessee shall not do, or permit anything to be done in or about the building, or bring or keep anything therein, that will in any way increase the rate of fire or other insurance on the building, or on property kept therein, or obstruct or interfere with the rights of, or otherwise injure or annoy other tenants, or do anything in conflict with the valid pertinent laws, rules or regulations of any governmental authority.
15. The Lessor desires to maintain the highest standards of environmental comfort and convenience for the tenants. It will be appreciated if any undesirable conditions or lack of courtesy or attention are reported directly to the management.
16. The work of the janitor or cleaning personnel shall not be hindered by Lessee. Such work may be done at anytime between the hours of 8:00 a.m. and 5:00 p.m. or when the offices are vacant. Lessee shall provide adequate waste and rubbish receptacles, cabinets, book cases, map cases, etc, necessary to prevent unreasonable hardship to Lessor in discharging its obligation regarding cleaning service.
17. Lessor shall have the rights to determine and prescribe the weight and proper position of any unusually heavy equipment including safes, large files, etc., that are to be placed in the building, and only those which in the opinion of Lessor do not exceed acceptable floor loading and might not, with reasonable probability do damage to the floors, structure and/or freight elevator, may be moved into said building. Any damage occasioned in connection with the moving or installing of such aforementioned articles in said building or the existence of same in said building shall be paid for by Lessee, unless otherwise covered by Lessee's insurance.
18. Lessor shall have the right to prohibit the use of the name of the building or any other publicity by Lessee, which in Lessor's opinion, tends to impair the reputation of the building or its desirability for the executive offices of Lessor or of other Lessees. Upon written notice from Lessor, Lessee will refrain from or discontinue such publicity.
19. The leased premises shall not be used for lodging, sleeping or cooking, or for any immoral or illegal purpose, or for any purpose that will damage the premises or the reputation thereof, or for any purpose other than that specified in the lease covering the premises.
20. Canvassing, soliciting and peddling in the building is prohibited, and Lessee shall cooperate with Lessor to prevent the same.

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21. Building will be unlocked at 6:00 a.m. and locked at 6:30 p.m., Monday thru Friday. Lessees wishing to work late will be expected to keep the doors locked at all times after 6:30 p.m. There will be no exceptions to ~~this rule~~.

22. Lessee shall comply with all laws, order, ordinances, rules or regulation of any governmental entity, as well as other public requirements, now or hereafter pertaining to Lessee's use of the Demised Premises, including but not limited to the Smoking in Public Places and Indoor Workplaces Act, 63 O.S. § 1-1521, *et seq.*, and 21 O.S. § 1247.

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Approved amended Lease Agreement between the Public Building Authority and Board of County Commissioners for lease of room 400 A in the Investors Capital Building, 217 North Harvey Avenue, Oklahoma City, OK "One dollar annually."

Approved on Wednesday, June 30, 2010.

By the Board of County Commissioners

CHAIRMAN

MEMBER

MEMBER

ATTEST:

Carolynn Caudill, County Clerk