

RESOLUTION NO.: R-2007-026

*Amending Resolution R-2007-016 Authorizing the City Manager to execute an Office Lease Agreement between First Citizens Bank and Trust Company, Inc. and the City of Columbia for the lease of 1225 Lady Street*

ORIGINAL  
STAMPED IN REC

WHEREAS, on May 2, 2007, by Resolution R-2007-016, City Council authorized the City Manager to execute an Office Lease Agreement with First Citizens Bank and Trust Company, Inc. for the lease of 1225 Lady Street for a ten (10) year term; and,

WHEREAS, the term has been amended to a five (5) year term as outlined in the attached Office Lease Agreement between First Citizens Bank and Trust Company, Inc. and the City of Columbia; NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council this 16th day of May, 2007, that the City Manager is authorized to execute the attached Office Lease Agreement between First Citizens Bank and Trust Company, Inc. and the City of Columbia for the lease of 1225 Lady Street by the City of Columbia.

Requested by:

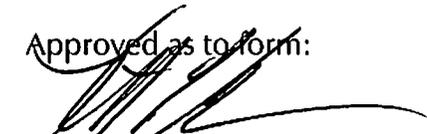
Charles P. Austin, Sr. City Manager

  
\_\_\_\_\_  
Mayor

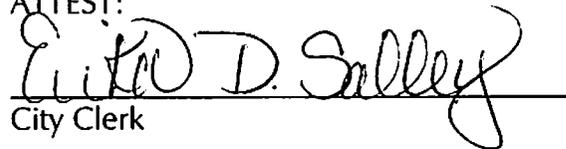
Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
Interim City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 5/16/2007

Final Reading: 5/16/2007

**OFFICE LEASE AGREEMENT  
(5 YEAR TERM)**

By and Between

**First Citizens Bank and Trust Company, Inc.**  
(Landlord)

and

**City of Columbia**  
(Tenant)

dated

05/08/07

**Lease Number: MD-07-013**

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# LEASE AGREEMENT (5 YEAR LEASE)

THIS LEASE made and entered into this 23<sup>rd</sup> day of May, 2007, by and between First Citizens Bank and Trust Company, Inc., hereinafter called "Landlord" and City of Columbia, hereinafter called "Tenant".

## WITNESSETH

In consideration of the covenants and agreement of the respective parties herein contained, the parties hereto, for themselves, their heirs, successors, distributees, executors, administrators, legal representatives and permitted assigns, do hereby agree as follows:

### A. DEMISED PREMISES:

Landlord by these presents does hereby demise and let unto Tenant, and Tenant hereby Leases and hires from Landlord all those certain premises, together with the buildings and other improvements thereon, for the term and upon the rental and the covenant and agreements of the respective parties herein set forth. Said premises are situate, lying and being in the State of South Carolina, County of Richland in or near the City of Columbia, having an address of 1225 Lady Street, and more fully described as follows:

Approximately 41,633 rentable square feet located on three (3) floors, hereinafter "Demised Premises". Further delineated in the Real Estate Atlas of Richland County on Page 09013, in Block 06, as Lot 07; all measurements subject to Landlord's architect's final measurements.

### B. TERM AND DELIVERY OF PREMISES:

TO HAVE AND TO HOLD said Demised Premises unto Tenant for a term of five (5) years, beginning on the first, day of June, 2007, and ending at 11:59 p.m. on the last day of May, 2012.

### C. COVENANTS AND CONDITIONS OF LEASE:

This Lease is made on the following covenants and conditions which are expressly agreed to by Landlord and Tenant:

1. **RENT:** Tenant covenants to pay as rental to Landlord the annual sum to be in lawful money of the United States, payable in equal monthly installments as defined in the Additional Provisions Section (Paragraph 32) of this Agreement. Said rental shall be payable monthly in advance at the offices of Landlord. Rent is due on the first day of each month and shall not be withheld for any reason whatsoever.

If any amount due from Tenant is not received by Landlord on or before the fifth (5<sup>th</sup>) day following the date upon which such amount becomes due and payable, a late charge ("Late Charge") of five percent (5%) of said amount shall become immediately due and payable as set forth below. Landlord and Tenant agree that the Late Charge represents a fair and reasonable estimate for the processing, accounting and other costs that Landlord will incur by reason of such late payment. For each of Tenant's checks payable to Landlord that is returned by the depository bank for any reason attributable to Tenant, Tenant shall pay a Late Charge, if applicable, a returned rent charge of \$45.00, subject to Landlord's reasonable increases from time to time without notice to, or consent of, Tenant ("Returned Rent Charge"), and any returned check charge ("Returned Check Charge") which the depository bank has charged Landlord for such check. All Rent, as increased by Late Charges, Returned Rent Charges and Check Return Charges, which is not paid within ten (10) days after due shall bear interest from the date due until the date paid at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less. All Late Charges, Returned Rent Charges, Returned Check Charges and interest accrued

pursuant to this paragraph shall be deemed Additional Rent and shall be due and payable, along with such other Rent then in arrears, within ten (10) days after Tenant received Landlord's invoice for such charges. Landlord shall be entitled to apply any funds received from Tenant pursuant to this paragraph to amount then due and owing by Tenant to Landlord, regardless if such amounts are in arrears, in a manner determined by Landlord in Landlord's sole and absolute discretion. Nothing in this Lease shall be construed so as to compel Landlord to accept payment of Rent in arrears should Landlord elect to apply Landlord's rights and remedies available under this Lease or at law or in equity in the event of a Tenant Default. Landlord's acceptance of Rent in arrears pursuant to this paragraph shall not constitute a waiver of Landlord's rights and remedies available under this Lease or at law or in equity.

In the event Tenant shall fail to pay each rental on the due date, a late charge of one and one-half (1½) percent of the monthly rental, compounded monthly but a minimum of Ten and no/100 (\$10.00) dollars per month, shall be added to the rental and paid to Landlord for each such late payment, and the same shall be treated as additional rent. Rent shall be considered delinquent if not received by the 10th of each month.

2. **AUTHORIZED USE:** Tenant agrees not to abandon or vacate the Demised Premises and shall use the Demised Premises for general office use and for no other purpose whatsoever without having first obtained the written consent of Landlord.

Tenant will not permit or suffer anything to be done nor keep anything in or about the Demised Premises which would render the insurance thereon void or voidable or cause cancellation. Tenant will not keep, use or sell, or allow to be kept, used or sold in or about the Demised Premises, any article or material which is prohibited by law or by standard fire insurance policies of the kind customarily in force with respect to Demised Premises of the same general type as those covered by this Lease.

3. **INSURANCE/INDEMNITY:**

A. "Bodily Injuries and Property Damage" Tenant shall at all times during the term hereof keep in effect in responsible companies liability insurance in the names of and for the benefit of Tenant and Landlord with limits as follows:

Bodily Injury and Property Damage	\$ 1,000,000.00 per occurrence
	\$ 2,000,000.00 aggregate

Such insurance may, at Tenant's election, be carried under any general blanket coverage of Tenant. A renewal policy shall be procured not less than ten (10) days prior to the expiration of any policy. Each original policy or a certified copy thereof, or a satisfactory certificate of the insurer evidencing insurance carried shall be deposited with the Landlord and Tenant. Each additional insured shall be furnished with a certificate evidencing issuance of the policy. Further, if any party shall fail to maintain the insurance required under this Section, the additional insured may but shall not be required to procure or maintain such insurance at the sole expense of the party failing to maintain the insurance. The limits of said insurance shall not, however, limit the liability of Tenant hereunder. In the event that the Demised Premises constitute a part of a larger property said insurance shall have a Landlord's Protective Liability endorsement attached thereto. If Tenant shall fail to procure and maintain insurance, Tenant shall be deemed to be in default of this Lease. In such event, Landlord may, but shall not be required to, procure and maintain the same, but as the expense of Tenant. Tenant shall have the right to settle and adjust all liability claims and all claims against the insuring companies, but without subjecting Landlord to any liability or obligation.

B. "Property Insurance" Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the premises, in the amount of the full replacement value thereof, providing against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (Special Cause of Loss Form) and loss of rents. Tenant shall pay during the term hereof, in addition to rent, the amount of any increase in premiums for the insurance required under this Paragraph 3(b) over and above such premiums paid by Landlord during the first full year of the term of this Lease in which Landlord shall have maintained the insurance required under this Paragraph 3(b), whether such premium increase shall be the result of the nature of Tenant's occupancy, any act or omission of Tenant, requirements of the holder of a mortgage or deed or trust covering the premises, or increased valuation of the premises, Tenant shall pay any such premium increases to Landlord within thirty (30) days after receipt by Tenant of a copy of the premium statement or other satisfactory evidence of the amount due. If the insurance policies maintained hereunder cover other improvements in addition to the premises, Landlord shall also deliver to Tenant a statement of the amount of such increase attributable to

the Demised Premises and showing in reasonable detail the manner in which such amount was computed. If the term of this Lease shall not expire concurrently with the expiration of the period covered by such insurance, Tenant's liability for premium increases shall be prorated on an annual basis. If the Demised Premises are less than the total property the base pro rata share shall be the same as in Section 8 (Taxes).

C. "Insurance Policies" Insurance required hereafter shall be in companies rated A-Plus or better in "Best's Insurance Guide." Tenant shall deliver to Landlord copies of policies of liability insurance required under Paragraph 3(a) or certificates evidencing the existence and amounts of such insurance. No such policy be cancelable or subject to reduction of coverage or other modification except after ten (10) days' prior written notice to Landlord. Tenant shall, within ten (10) days prior to the expiration of such policies, furnish Landlord with renewals or "binders" thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant upon demand. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraphs 3(a) and (b).

D. "Waiver of Subrogation" Tenant and Landlord each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Tenant and Landlord shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

E. "Indemnity" To the extent permitted by law, Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from Tenant's use of the premises, or from any activity, work or things done, permitted or suffered by Tenant in or about the Demised Premises or elsewhere and shall further indemnify and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons, in, upon or about the Demised Premises arising from any cause and Tenant hereby waives all claims in respect thereof against Landlord.

F. "Exemption of Landlord from Liability" Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the premises, nor shall Landlord be liable for injury to the person of Tenant, Tenant's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Demised Premises or upon other portions of the building of which the Demised Premises are a part, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant. Landlord shall not be liable for any damages arising from any act or neglect of any other Tenant, if any, of the building in which the Demised Premises are located.

4. **CONDITION OF THE PREMISES:** Tenant has inspected and accepts the Demised Premises in the same condition they are in at the time of commencement of the term of this Lease. Tenant agrees if, during said term, Tenant shall change the usual method of conducting Tenant's business on the Demised Premises, or should Tenant install thereon or therein any new facilities, Tenant will, at the cost and expense of Tenant, make alterations or improvements in or to the Demised Premises which may be required by reason of any Federal or State Law, or by any municipal ordinance, or regulation applicable thereto. If there is any deficiency, Tenant shall report such deficiency within forty-eight (48) hours of said commencement, or silence shall be deemed acceptance.

5. **REPAIR AND CARE OF BUILDING BY TENANT:** Tenant shall, throughout the initial term of this Lease and any renewals thereof, as its own expense, maintain in good order and repair the Demised Premises, including the building and other improvements located thereon, except those repairs expressly required to be made by Landlord. Such repairs by Tenant shall include as applicable but not limited to, repairs to electrical and plumbing systems and fixtures, air-conditioning, heating and ventilation equipment systems (as outlined herein) loading doors, paved parking areas and drives, mowing of grass and care of shrubs. Tenant shall at its expense contract with a

reputable firm for periodic servicing of the heating, air-conditioning and ventilation systems as recommended by the manufacturer of such equipment and shall keep on file with Landlord or its agent a copy of said contract or other substantial proof of such servicing. Tenant shall be responsible for all minor repairs to heating, air-conditioning, and ventilating equipment including parts and labor, and including repair to major components, but not replacement of major components. Tenant shall also maintain pest control (including termite) inspection and treatment of the Demised Premises as required. Tenant agrees to return said Demised Premises to Landlord at the expiration or prior termination of this Lease in as good condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted

**6. REPAIR AND CARE OF BUILDING BY LANDLORD:** Landlord shall keep and maintain the foundations, roof and structural portions of the exterior walls of the Demised Premises (exclusive of all glass and exterior doors) in good condition and repair, except for any repairs required thereto by reason of the acts of the Tenant, its employees, agents, invitees, licensees, or contractors. So long as Tenant maintains proper servicing and repairs of heating, air-conditioning and ventilation equipment as outlined above, Landlord shall be responsible for all required replacements of major components of the said equipment including all cost of installation. Landlord gives to Tenant exclusive control of Demised Premises and shall be under no obligation to inspect the premises. Tenant shall promptly report in writing to Landlord any defective condition which Landlord is required to repair or replace, and failure to report such defects makes Tenant responsible to Landlord for any liability, costs or attorney's fees incurred by Landlord by reason of such defect. Landlord shall not be obligated to make any repair or replacement required of it until notice in writing from Tenant of need for same. Landlord shall have reasonable time in which to make such repair or replacement.

**7. ALTERATION OF BUILDINGS AND INSTALLATION OF FIXTURES AND OTHER APPURTENANCES:** Tenant may, with consent of Landlord, but at its own cost and expense in a good, workmanlike manner, make such alterations and repairs in the building as Tenant may require for the conduct of its business without, however, materially altering the basic character of the building or improvements, or weakening any structure on the Demised Premises. Tenant shall have the right, without the permission of Landlord, to erect, at Tenant's sole cost and expense, such temporary partitions, including office partition, as may be necessary to facilitate the handling of Tenant's business and to install electrical fixtures, additional lights and wiring and other trade appliances. Any alterations or improvements to the Demised Premises, including but not limited to partitions, all electrical fixtures, lights and wiring, shall at the option of Landlord, become the property of Landlord, at the expiration or sooner termination of this Lease. Should Landlord request Tenant to remove all or any part of the above mentioned items, Tenant shall do so prior to the expiration of this Lease and repair the Demised Premises as described below. Temporary shelves, bins and machinery installed by Tenant shall remain the property of Tenant and may be removed by Tenant at any time; provided, however, that all covenants, including rent, due hereunder to Landlord shall have complied with and paid. At the expiration or sooner termination of this Lease, or any extension thereof, Tenant shall remove said shelves, bins and machinery, and repair, in good and workmanlike manner, all damage done to the Demised Premises by such removal. Tenant shall not exercise the right and privilege granted by this Article 7 in such manner as to damage or affect the structural qualities of the building. Before any work is begun, Tenant agrees to furnish Landlord with holdharmless agreements from all contractors protecting against mechanics liens.

**8. COMMUNICATION LINES.** Subject to building design limits, Tenant may install, maintain, replace, remove or use communications or computer wires and cables which service the Demised Premises ("Lines"), provided: (a) Tenant shall obtain Landlord's prior written consent, and shall use contractors approved in writing by Landlord, (b) any such installation, maintenance, replacement, removal or use shall comply with all laws, rules and regulations applicable thereto, and shall not interfere with any then existing Lines at the building, and (c) Tenant shall pay all costs in connection therewith. Landlord reserves the right to require Tenant to remove any Lines located in or serving the Demised Premises which violate this Lease or represent a dangerous or potentially dangerous condition, within three (3) days after written notice. Landlord also reserves the right to require that Tenant remove any and all Lines upon termination of this Lease. Any Lines not required to be removed shall, at Landlord's option, become the property of Landlord without payment of any type. Under no circumstances shall any Line problems be deemed an actual or constructive eviction of Tenant, render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease.

**9. PAYMENT OF TAXES AND OTHER ASSESSMENTS:** Landlord shall pay annually all City of Columbia real estate taxes on the Demised Premises existing at the commencement of this Lease. However, Tenant shall pay any County property taxes and all increases in the taxes and other assessments assessed or levied including but not limited to business improvement district assessments against the Demised Premises over and above amounts assessed for the year 2006 (to be known as "base year"), as well as any special assessment imposed upon the Demised

Premises for any purpose whatsoever during the term, whether the increase in taxation results from a higher tax rate or an increase in the assessed valuation of the Demised Premises or of both. However, if the improvements upon the Demised Premises are not fully assessed by the local assessor's office during the agreed upon base year, the tax base will be amended in the following manner. The millage rate established in the year as set out above shall be applied to the assessed value of the Demised Premises when fully assessed by the Tax Assessor's office. Should the full assessment not be completed until after this Lease expires or is terminated, this increase will be due and payable upon demand. If the taxes of the Demised Premises are increased because of the fixtures added by Tenant, Tenant shall reimburse Landlord for all taxes assessed because of said improvements. Such payment shall be made by Tenant and Landlord not later than thirty (30) days following the date on which Landlord provides Tenant with written evidence of such increase. In the event the Demised Premises are less than the entire property assessed for such taxes for any such year, then the tax for any such year applicable to the Demised Premises shall be determined by proration on the basis that the rentable floor area of the Demised Premises bears to the rentable floor area of the entire property assessed. If the final year of the Lease term fails to coincide with the tax year, then any excess for the tax year during which the term ends shall be reduced by the pro rata part of such tax beyond the Lease term. For the purpose of this covenant, it is agreed that the Demised Premises demised hereunder contains approximately 41,633 square feet and the rentable area of the building is approximately 41,633 square feet. Tenant's pro-rata share is 100%.

In the event that any documentary stamp tax, or tax levied on the rental, leasing or letting of the Demised Premises whether local, state, or federal, is required to be paid to the execution hereof, the cost thereof shall be borne by the Tenant.

10. **SUBORDINATION OF LEASE:** Tenant's rights under this Lease shall remain subordinate to any bona fide mortgage or deed to secure debt which is now, or may hereafter be placed upon the Demised Premises by Landlord.

11. **CONDEMNATION:** If the whole of the Demised Premises shall be taken by any public authority under the power of eminent domain, this Lease shall terminate as of the day possession shall be taken by such public authority, and Tenant shall pay all rental and other sums due hereunder up to that date with an appropriate refund by Landlord of such amounts thereof as shall have been paid in advance for a period subsequent to the date of the taking. If twenty-five (25%) percent or less of the gross leasable area of the Demised Premises shall be so taken, this Lease shall terminate only with respect to the parts so taken as of the day possession shall be taken by such public authority, and Tenant shall pay all rental and other sums due hereunder up to that day with an appropriate refund by Landlord of such rent as may have been paid in advance for a period subsequent to the date of the taking, and thereafter, the rent shall be equitably adjusted, and Landlord shall at its expense make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remainder of the Demised Premises of complete architectural unit. If more than twenty-five (25%) percent of the gross leasable area of the Demised Premises shall be so taken, then this Lease shall terminate with respect to the part so taken from the date possession shall be so taken by such public authority, and Tenant shall pay all rental and other sums due hereunder up to that date with an appropriate refund by Landlord of such amounts thereof as may have been paid in advance for a period subsequent to the date of taking, and either party shall have the right to terminate this Lease upon notice in writing within sixty (60) days after taking of possession. In the event Tenant remains in possession, and if Landlord does not so terminate, all of the terms herein provided shall continue in effect except that the rent shall be equitably abated, and Landlord shall make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining Demised Premises a complete architectural unit. In the event Landlord is obligated to restore the Demised Premises to a complete architectural unit, as above provided, such work shall not exceed the scope of the work to be done by Landlord in constructing the premises, nor shall Landlord be required to spend for such work an amount in excess of the amount received by Landlord as damages for the part of the Demised Premises so taken, less any amount paid to Landlord's mortgagee from such award.

12. **ERECTION AND REMOVAL OF SIGNS:** Tenant may place suitable signs on Demised Premises for the purpose of indicating the nature of the business carried on by Tenant in said Demised Premises; provided, however, that such signs shall be in keeping with other signs in the district where the Demised Premises are located; Tenant agrees to exonerate, save harmless, protect, and indemnify Landlord from and against any and all losses, damages, claims, suits, or actions and all costs and expenses including reasonable attorney's fees, in connection therewith, arising from any damage or injury to persons or property caused by an erection and maintenance of such signs or part thereof, and insurance coverage for such signs shall be included in the public liability policy which Tenant is required to furnish. The location and size of such signs shall be approved by Landlord prior to their erection, and shall not damage the Demised Premises in any manner. At the termination of this Lease, Landlord may require that

Tenant remove its sign, and any damage to the Demised Premises caused by removal shall be promptly repaired by Tenant.

13. **GLASS BREAKAGE AND VANDALISM:** Tenant agrees to immediately replace broken or damaged glass with glass of comparable quality and characteristics which meets appropriate agency building code requirements, excepting breakage covered under Landlord's normal fire and extended coverage insurance policy. Tenant shall make any repairs or replacements caused by vandalism to the Demised Premises or any part thereof, if said damage is not covered by Landlord's insurance.

14. **RIGHT OF ENTRY BY LANDLORD:** Tenant at any time during this Lease term shall permit inspection of the Demised Premises during reasonable business hours by Landlord or Landlord's agents or representatives for the purpose of ascertaining the condition of the Demised Premises and in order that Landlord may make such repairs as may be required to be made by Landlord under the terms of this Lease. Sixty (60) days prior to the expiration of this Lease, Landlord may post suitable notice on the Demised Premises that the same are "For Rent" and may show the Demised Premises to prospective Tenants at reasonable times. Landlord may not, however, thereby unnecessarily interfere with the use of Demised Premises by Tenant.

15. **PAYMENT OF UTILITIES:** Tenant shall contract for and pay all charges for sewerage, water, gas, electricity and other public utilities used on the Demised Premises, including all replacements of light bulbs, tubes ballasts and starters. Landlord may pay any delinquent bills incurred by Tenant during the Lease term which bills may create a lien on the Demised Premises and shall upon demand be immediately reimbursed by Tenant. Said payments shall be treated as additional rental even though the Lease term may have expired.

16. **ASSIGNMENT AND SUBLETTING:** Neither this Lease nor any interest herein may be assigned by Tenant voluntarily or involuntarily, by operation of law, and neither all nor any part of the Demised Premises shall be sublet by Tenant without the written consent of Landlord first had and obtained; however, Landlord agrees not to withhold its consent unreasonably for Tenant to sublet the Demised Premises. Landlord may withhold consent to sub-Lease should the sub-Lease rental be greater than contract rent. If he withholds such consent because of this condition, Landlord must cancel this Lease. In the event this Lease or any interest herein is assigned or the Demised Premises or any part thereof is sublet, whether with or without Landlord's consent, Tenant shall remain fully liable under all the terms, covenants, and conditions of this Lease. In no event will any provision herein stated to renew, extend, or purchase be available to any assignee or sub-Tenant.

17. **DAMAGE OR DESTRUCTION:** If the building on the premises, or any part thereof, shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the said building without expense to Tenant, subject to delays due to adjustment of insurance claims, strikes and other causes beyond Landlord's control. If such damage or destruction shall render the said building unrentable in whole or in part, the rent shall be abated wholly or proportionately as the case may be until the damage shall be repaired and the Demised Premises restored. If the damage or destruction shall be so extensive as to require the substantial rebuilding (i.e., expenditure of fifty (50%) percent or more of the replacement cost) of the said building, or the damage is due to a peril not covered by Landlord's insurance, or the damage occurs within the last three (3) years of the term of this Lease, Landlord or Tenant may elect to terminate this Lease by written notice to the other given within thirty (30) days after the occurrence of such damage or destruction. In no event shall Landlord be required to repair or replace Tenant's stock in trade, trade fixtures, furniture, furnishings, special equipment, or other items of construction and personal property.

18. **SURRENDER OF PREMISES:** Tenant agrees to deliver all keys and surrender the Demised Premises at the expiration, or sooner termination, of this Lease, or any extension thereof, broom-clean in the same condition as when said Demised Premises were delivered to Tenant, or as altered, pursuant to the provisions of this Lease, ordinary wear, tear and damage by the elements excepted, and Tenant shall remove all of its property. Tenant agrees to pay a reasonable cleaning charge should it be necessary for Landlord to restore or cause to be restored the Demised Premises to the same condition as when said Demised Premises were delivered to Tenant.

19. **HOLDOVER:** Should Tenant remain in possession of the Demised Premises or any part thereof after the expiration of the term of this Lease, such holding over shall, unless otherwise agreed in writing, constitute a month to month tenancy only, and Tenant shall pay as monthly rental two (2) times the monthly rental assessed during the last month of the term of this Agreement. Tenant agrees to give Landlord thirty (30) days prior written notice of Tenant's intent to vacate the Demised Premises. Landlord may terminate the month to month tenancy by providing Tenant thirty (30) days prior written notice.

20. **QUIET ENJOYMENT:** If and so long as Tenant pays the rents reserved by this Lease and performs and observes all the covenants and provisions hereof, Tenant shall quietly enjoy the Demised Premises, subject, however, to the terms of this Lease, and Landlord will warrant and defend Tenant in the quiet enjoyment and peaceful possession of the Demised Premises throughout the term of this Lease.

21. **WAIVER OF COVENANTS:** It is agreed that the waiving of any of the covenants of this Lease agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provision herein contained. No forbearance by either party to seek a remedy for any breach of this Lease agreement shall be deemed a waiver by such party of its rights or remedies with respect to such breach.

22. **DEFAULT BY TENANT:** This Lease is made upon the condition that the Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to-wit: (a) any installment of rent, additional rent, taxes, or any other sums required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid for fifteen (15) days after written demand therefor, or (b) there be any default on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant (unless such default cannot reasonably be cured within fifteen (15) days and Tenant shall have commenced to cure said default within said fifteen (15) days and continues diligently to pursue the curing of the same), or (c) Tenant shall file a petition in bankruptcy or be adjudicated a bankrupt, or file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state, or other statute, law or regulation, or make an assignment for the benefit of creditors, or (d) any trustee, receiver or liquidator or Tenant or of all or any substantial part of its properties or of the Demised Premises shall be appointed in any action, suit or proceeding by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the Leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall vacate or abandon the Demised Premises, then and in any of said cases, Landlord at its option may terminate this Lease and re-enter upon the Demised Premises and take possession thereof with full right to sue for and collect all sums or amounts with respect to which Tenant may then be in default and accrued up to the time of such entry, including damages to Landlord by reason of any breach or default on the part of Tenant, or Landlord may, if it elects to do so, bring suit for the collection of such rents and damages without entering into possession of the Demised Premises or voiding this Lease.

In addition to, but not in limitation of, any of the remedies set forth in this Lease or given to Landlord by law or in equity, Landlord shall also have the right and option, in the event of any default by Tenant under this Lease and the continuance of such default after the period of notice above provided, to retake possession of the Demised Premises from Tenant without the process of law, by summary proceedings or otherwise, or any execution of any judgment or decree obtained in any action to recover possession of the Demised Premises, shall not be construed as an election to terminate this Lease unless Landlord expressly exercises its option hereinabove provided to declare the term hereof ended, whether or not such entry or re-entry be had or taken under summary proceedings or otherwise, and shall not be deemed to have absolved or discharged Tenant from any of its obligations and liabilities for the remainder of the term of this Lease, and Tenant shall, notwithstanding such entry or re-entry, continue to be liable for the payment of the rents and the performance of the other covenants and conditions hereof and shall pay to Landlord all monthly deficits after any such re-entry in monthly installments as the amounts of such deficits from time to time are ascertained and, in the event of any such ouster, Landlord rents or Leases the Demised Premises to some other person, firm or corporation (whether for a term greater, less than or equal to the unexpired portion of the term created hereunder) for an aggregate rent during the portion of such new Lease co-extensive with the term created hereunder which is less than the rent and other charges which Tenant would pay hereunder for such period, Landlord may immediately upon the making of such new Lease of the creation of such new tenancy sue for and recover the differences between the aggregate rental provided for in said new Lease for the portion of the term co-extensive with the term created hereunder and the rent which Tenant would pay hereunder for such period, together with any expense to which Landlord may be put for brokerage commission, placing the Demised Premises in Tenantable condition or otherwise. If such new Lease or tenancy is made for shorter term than the balance of the term of this Lease, any such action brought by Landlord to collect the deficit for that period shall not bar Landlord from thereafter suing for any loss during the balance of the unexpired term of this Lease.

If Tenant at any time shall fail to pay any taxes, assessments, or liens, or to make any payment or perform any act required by this Lease to be made or performed by it, Landlord, without waiving or releasing Tenant from any obligation or default under this Lease, may (but shall be under no obligation to) at any time thereafter make

such payment or perform such act for the account and at the expense of Tenant. All sums so paid by Landlord and all costs and expenses so incurred shall accrue interest at the rate of eighteen percent (18%) from the date of payment or incurring thereof by Landlord and shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand. All other sums payable by Tenant to Landlord under this Lease, if not paid when due, shall accrue interest at the rate of eighteen percent (18%) from their due date until paid, said interest to be so much additional rent under this Lease and shall be paid to Landlord by Tenant-upon demand.

All right and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity. For the purpose of any suit brought by Landlord or based on this Lease, this Lease shall be construed to be a divisible contract to the end that successive action may be maintained as successive periodic sums shall mature under this Lease and it is further agreed that failure to include in any suite any sum or sums then matured shall not be a bar to the maintenance of any suit or action for the recovery of said sum or sums so omitted.

Tenant agrees to pay a reasonable attorney's fee and all costs if Landlord, in its sole discretion, employs an attorney to collect any rent, additional rent, or any other sums payable under this Lease agreement or to enforce any covenants, agreements, or conditions on the part of the Tenant to be kept and performed; and Tenant expressly waives all exemptions secured to the Tenant under the laws of the State of South Carolina or of any other State of the United States as against the collection of any debt herein or hereby incurred or secured.

**23. FAILURE TO PERFORM COVENANT:** Any failure on the part of either party to this Lease to perform any obligation hereunder, any delay in doing any act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or any other similar cause beyond the control of the party so failing to perform, to the extent and for the period that such continues, save and except that the provisions of the paragraph shall not excuse a non-payment of rent or other sums due hereunder on its due date.

**24. RIGHTS OF SUCCESSORS AND ASSIGNS:** The covenants and agreements contained in the within Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, their heirs, successors, distributees, executors, administrators, legal representatives, assigns and upon their respective successors, in interest, except as expressly otherwise hereinbefore provided.

**25. LIENS:** Tenant will not permit to be created not to remain undischarged any lien, encumbrance, or charge (arising out of any work of any contractor, mechanic, laborer, or materialman or any mortgage, conditional sale, or security agreement) which might be or become a lien or encumbrance or charge upon the Demised Premises or any part thereof or the income therefrom, and Tenant will not suffer any other matter or thing whereby the estate, right and interest of Landlord in the Demised Premises or any part thereof might be impaired. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Demised Premises shall be filed against the Demised Premises or any part thereof, Tenant, within ten (10) days after notice of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs, attorneys' fees and allowances. Any amount so paid by Landlord and all costs and expenses including attorneys' fees, incurred by Landlord in connection therewith, together with interest thereon at the maximum legal rate from the respective dates of Landlord's making of the payment or the incurring of the cost and expense shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

**26. CONSTRUCTION OF LEASE:** The word "Landlord" as used herein shall refer to the individual, individuals, partnership or corporation called "Landlord" at the commencement of this Lease, and the word "Tenant" shall likewise refer to the individual, individuals, partnership, or corporation called "Tenant". Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural when the sense requires.

**27. PARAGRAPH HEADINGS:** The paragraph headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no way to be construed as part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

28. **COMMISSIONS:** Landlord acknowledges the service of Colliers Keenan Inc. as Real Estate Broker in this transaction and in the consideration of the effort of said broker in obtaining Tenant herein, does hereby agree to pay said broker for services rendered, commissions on the rental of the Demised Premises in accordance with their separate agreement.

29. **NOTICES:** It is agreed that the legal address of the parties for all notices required or permitted to be given hereunder, or for all purposes of billing, process, correspondence, and any other legal purposes whatsoever, shall be deemed sufficient, if given by a communication in writing by United States mail, postage prepaid and certified, and addressed as follows:

To the Landlord at the following address:

First Citizens Bank and Trust Company, Inc.  
Corporate Real Estate  
Mail Code 994026  
1314 Park Street  
Columbia, SC 29201

To the Tenant at the following address:

City of Columbia  
Attn: Steve Gantt  
P.O. Box 147  
Columbia, SC 29217

30. **SECURITY:** Paragraph intentionally deleted.

31. **SUBMISSION OF DOCUMENT:** The submission of this document for examination does not constitute an option or offer to Lease space at the Property. This document shall have no binding effect on the parties unless executed by the Landlord and the Tenant and a fully executed copy is delivered to the Tenant.

32. **ADDITIONAL PROVISIONS:** Insofar as the following provisions conflict with any other provision of this Lease, the following shall control:

A. Rent, as described in Article C, Paragraph 1 "Rent" shall be paid by Tenant according to the following schedule:

<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Rent Rate/SF</u>
Months 1-36	\$374,697.00	\$31,224.75	\$9.00
Months 37-60	\$416,330.00	\$34,694.17	\$10.00

B. **Option to Renew.** So long as Tenant has not been in default of the terms of this Lease more than two (2) times during the then current term of this Lease, Tenant shall have the option to renew ("Option to Renew") this Lease under the same terms and conditions for up to four (4) additional periods of five (5) years each ("Option Periods").

Rent for each of the Option Period(s), if exercised shall be at the prevailing market rate (the "Prevailing Market Rate") calculated on a per square foot basis for comparable leases during each of the Option Periods, if exercised, covering buildings and parking comparable to the Demised Premises (as adjusted for any variances between such buildings and the Demised Premises and as adjusted for other relevant factors, but located in downtown Columbia, South Carolina (hereinafter referred to as the "Market Area")). Tenant shall indicate its intention to exercise its right to extend the Term by delivery of written notice to landlord no less than one (1) year prior to the expiration of the then current Term. Landlord shall, within Forty-five (45) days after receipt of Tenant's request notify Tenant in writing of Landlord's reasonable determination of the Prevailing Market Rate for the Demised Premises for the Option Period. Thereafter, Tenant shall have thirty (30) days from its receipt of Landlord's notice to notify

Landlord of its exercise of its Option to Renew and whether Tenant agrees with Landlord's determination of the Prevailing Market Rate. If Tenant exercises its Option to Renew but fails to object as aforesaid, Landlord's determination shall be deemed to be the Prevailing Market Rate for the ensuing Option Period. Upon receipt of Tenant's objection, Landlord and Tenant shall negotiate during a period of fifteen (15) days (the "Negotiation Period") to determine the Prevailing Market Rate, with each acting in good faith. If such negotiations are successful, the rate so negotiated by the parties will be deemed to be the Prevailing Market Rate for that Option Period. If such negotiations are not successful, the Prevailing Market Rate will be determined in accordance with the following evaluation procedure:

Within five (5) days of the expiration of the Negotiation Period, Tenant shall notify Landlord of Tenant's selection of an established commercial real estate M.A.I. appraiser who shall act on Tenant's behalf in determining the Prevailing Market Rate. After Tenant delivers its notice to Landlord as set forth above, Landlord shall notify Tenant of Landlord's selection of an established commercial real estate M.A.I. appraiser who shall act on Landlord's behalf in determining the Prevailing Market Rate. Within twenty (20) days of the selection of Tenant's and Landlord's appraiser, the two (2) appraisers shall render a joint written determination of the Prevailing Market Rate, which joint determination shall be final, conclusive and binding for the applicable Option Period. If the two (2) appraisers are unable to agree upon a joint written determination within said twenty (20) day period, the two appraisers shall select a third established commercial real estate M.A.I. appraiser within such twenty (20) day period and shall each submit a determination of the Prevailing Market Rate to such third appraiser. In the event the two appraisers cannot agree on a third appraiser, Landlord or Tenant may request that the local chapter of the Commercial Board of Commercial Real Estate Appraisers appoint a party to act as the third appraiser. Within ten (10) days after the appointment of the third appraiser, the third appraiser shall render a written determination of the Prevailing Market Rate, which must be either the Landlord's appraiser's determination as submitted or the Tenant's appraiser's determination as submitted, but no other amount and no compromise between the two, with the third appraiser's determination being final, conclusive and binding on both parties. All appraisers selected or appointed in accordance with this subparagraph shall have at least ten (10) years prior experience in the commercial office leasing appraisal market in the Southeastern United States. If either Landlord or Tenant fails or refuses to select an appraiser, the other appraiser shall alone determine the Prevailing Market Rate. Landlord and Tenant agree that they shall be bound by the determination of Prevailing Market Rate pursuant to this paragraph. Landlord shall bear the fee and expenses of its appraiser; Tenant shall bear the fee and expenses of its appraiser; and Landlord and Tenant shall share equally the fee and expenses of the third appraiser, if any.

Except for the Rent, which shall be determined as set forth above, leasing of the Demised Premises by Tenant for the Option Periods, if exercised, shall be subject to all of the same terms and conditions set forth in this Lease; provided however, any construction provisions, improvement allowances, rent abatements or other concessions applicable to the Demised Premises during the initial Term shall not be applicable during the Option Periods. Landlord and Tenant shall enter into an amendment to this Lease to evidence Tenant's exercise of the Option(s) to Renew.

- C. **Tenant Improvements.** The Demised Premises shall be leased in "as-is" condition as provided in this Lease. Landlord shall provide a tenant improvement allowance (the "Allowance") of up to One Hundred Seventy-Five Thousand and no/100 Dollars (\$175,000.00). The Allowance will be paid to Tenant as actual costs to improve the Demised Premises are incurred and verified by the submission of actual paid receipts to Landlord by Tenant. Landlord shall have the right to review and approve any planned improvements to the Demised Premises prior to the commitment of any work, such approval not to be unreasonably withheld.

In the event Tenant does not exercise the first (1<sup>st</sup>) of the four (4) Option to Renew options provided in Paragraph 32, B above, then in such event, Tenant shall pay to Landlord, as reimbursement of the Allowance ("Reimbursement") prior to the expiration date of the Lease which shall be May 31, 2012 the amount of One Hundred Sixteen Thousand, Six Hundred Sixty-seven and no/100 Dollars (\$116,667.00). In the event Tenant does exercise the Option to Renew

for the first (1<sup>st</sup>) of four (4) option periods, and so long as Tenant is not in default of this Lease at the commencement date of the term of the first (1<sup>st</sup>) option period, then the Reimbursement shall not be paid by Tenant to Landlord.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

WITNESS

Don Freeman  
Bonnie House  
\_\_\_\_\_

LANDLORD: First Citizens Bank and Trust Company, Inc.

BY: Michael [Signature]

ITS: SENIOR VICE PRESIDENT

DATE: 5/9/2007

Valerie R. Smith  
Erika D. Salley  
\_\_\_\_\_

TENANT: City of Columbia

BY: [Signature]

ITS: City Manager

DATE: May 23, 2007