

RESOLUTION NO. 11-154

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE CITY AND HILLSBOROUGH CENTER ASSOCIATES, LLC FOR THE PROPERTY LOCATED AT 3132 FLAGLER AVENUE; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached First Amendment to Lease Agreement between the City and Hillsborough Center Associates, LLC is hereby approved.

Section 2: That the City Manager, upon advice and consent of the City Attorney, is hereby authorized to execute the First Amendment.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 17 day of May, 2011.

Authenticated by the presiding officer and Clerk of the Commission on May 18, 2011.

Filed with the Clerk May 18, 2011.


CRAIG CATES, MAYOR

ATTEST


CHERYL SMITH, CITY CLERK

FIRST AMENDMENT TO COMMERCIAL LEASE

THIS FIRST AMENDMENT TO COMMERCIAL LEASE (the "**Amendment**") is made this ~~31st~~ day of May, 2011 (the "**Amendment Effective Date**"), by and between **RL BB-FL HILLSBOROUGH, LLC**, a Florida limited liability company (hereinafter referred to as "**Lessor**"), whose address for purposes of notice is c/o Rialto Capital Advisors, LLC, 700 NW 107th Ave, Suite 200, Miami, FL 33172; Attention: Matt Papunen, and **THE CITY OF KEY WEST**, a municipal corporation (hereinafter referred to as "**Lessee**"), whose address for purposes of notice is P.O. Box 1409, Key West, FL, 33041. Capitalized terms which are used herein which are not separately defined shall have the meanings set forth in the Lease Agreement and/or the Option Contract (each of which is itself defined below).

WITNESSETH:

WHEREAS, Hillsborough Center Associates, LLC, a New Jersey limited liability company (the "**Original Landlord**"), and Lessee entered into that certain Commercial Lease (the "**Lease Agreement**") on the 16th day of April, 2010, but effective as of April 1, 2010 (the "**Original Effective Date**") pertaining to certain premises (the "**Leased Premises**") located at (and as part of a development which includes improvements beyond the Leased Premises) 3100 through 3140 Flagler Avenue, Key West, Florida and more particularly described on the legal description attached hereto as **Schedule 1** (the "**Property**"); and

WHEREAS, the Property was encumbered by a mortgage (the "**Mortgage**"), which has been foreclosed by Lessor; and,

WHEREAS, Lessor has taken title to the Leased Premises as provided in the Certificate of Title recorded April 18, 2011 (the "**Transfer Date**") in Official Records Book 2513, Page 1896, of the Public Records of Monroe County, Florida; and

WHEREAS, prior to Lessor taking possession (and without the approval of Lessor or its predecessor in title to the Mortgage), Original Landlord and Lessee agreed verbally to reconfigure the Leased Premises to be occupied by Lessee pursuant to the Lease Agreement, represented on **Exhibits "A" through "E,"** which are attached to the Lease Agreement; and

WHEREAS, the configuration of Suites 2, 4 and 5 (a/k/a Units B, D and E respectively) has been changed slightly; and

WHEREAS, Suites 1 and 3 (a/k/a Units A and C) have been completed and are currently being occupied by Lessee, as is Suite 4 (a/k/a Unit D), in its modified configuration; and

WHEREAS, Suites 2 and 5 (a/k/a Units B and E) have not yet been completed pursuant to the estimated dates set forth on the first page of the Lease Agreement and at this time are not occupied by Lessee; and

WHEREAS, Lessee has taken the position that Lessor is in default under the terms of the Lease Agreement, all as set forth in the notice from Lessee dated February 22, 2011 (the "**Notice of Default**"), which position Lessor denies (the positions of Lessee and Lessor being hereafter defined as the "**Dispute**"); and

WHEREAS, the Lessor and Lessee now desire to amend the Lease Agreement to address the issues set forth above and to resolve the Dispute, including a new timeline for completion of Suites 2 and 5 (a/k/a Units B and E), and otherwise modify the Lease Agreement on terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. The foregoing recitations of fact are true and correct and incorporated herein by this reference. Exhibits "A," "B," "C," "D" and "E" to the original Lease Agreement are deleted in their entirety and replaced with **Exhibits "A," "B," "C," "D" and "E"** attached to this Amendment, said Exhibits reflecting the configuration of each of the applicable Suites as same may have been modified on or before the Amendment Effective Date. In addition, **Exhibits "B-1" and "E-1"** attached to this Amendment reflect the work to be performed by Lessor to Suites 2 and 5 as a condition to Lessee's obligation to pay rent with respect to such Suites.

2. The parties agree that the Rental Commencement Dates for the Suites currently being occupied by Lessee, and that the net rentable square footage of said Suites are as follows:

- a. Suite 1- June 26, 2010 - Square Footage: 8,103
- b. Suite 3- August 17, 2010 - Square Footage: 4,639
- c. Suite 4- September 1, 2010 - Square Footage: 931

Lessee further acknowledges and agrees with Lessor that all build outs, improvements and any other repair, construction and/or renovation obligations of Lessor with respect to Suite 1, Suite 3 and Suite 4 have been satisfied and completed and have been fully paid for by Lessor or Lessor's predecessors in interest, and the condition of all such Suites is satisfactory to Lessee in all respects as of the date hereof. Additionally, Lessee represents and warrants that Certificates of Occupancy have been issued for Suite 1, Suite 3 and Suite 4.

3. The improvements required to be made to Suite 2 (a/k/a Unit B) by Lessor pursuant to the "City move-in Plan B" which is part of Exhibit "B" to the original Lease Agreement, have been modified to raise the floor for a portion of said unit; removal of the carpet; sealing of floor; and addition of acoustical ceilings tiles (as needed). As such, the breakdown/scope of work to be performed by Lessor (the "**Landlord's Work**") with respect to Suite 2 is as set forth in **Exhibit "B-1"** attached hereto.

a. The parties hereto agree that Landlord's Work with respect to Suite 2 shall be completed within ninety (90) days from the date Lessor obtains the necessary permits to complete Landlord's Work with respect to Suite 2. Lessor shall provide Lessee written notice that Lessor has substantially completed with regard to Suite 2. Thereafter, Lessee shall have 5 days within which to deliver written notice to Lessor accepting Suite 2 for occupancy or written notice specifying in detail the item or items to be corrected. Thereafter, Lessor shall correct said items within a reasonable time and provide Lessee written notice of same.

b. The parties hereto agree that the net rentable square footage of Suite 2 is 8104.

c. The Rental Commencement Date with respect to Suite 2 shall commence upon the Lessee's written notice to Lessor accepting Suite 2 for occupancy or upon Lessor's written notice to Lessee that Lessor has corrected items specified by Lessee. In the event Lessee fails to provide written notice to Lessor of acceptance or specifying items to be corrected, the Rental Commencement Date shall be the fifth (5th) business day after Lessor has provided Lessee with written notice that Landlord's Work with respect to such Suite is substantially complete (or such earlier date as Lessee may have taken occupancy of such Suite), which Rent Commencement Date is estimated to be August 18, 2011 (although such is not guaranteed by Lessor).

4. The improvements required to be made to Suite 5 (a/k/a Unit E) by Lessor pursuant to the "City move-in Plan E" which is part of Exhibit "E" to the original Lease Agreement, have been modified in accordance with the Lessee's request. As such, the breakdown/scope of Landlord's Work with respect to Suite 5 is as set forth in **Exhibit "E-1"** attached hereto.

a. The parties hereto agree that Landlord's Work with respect to Suite 5 shall be completed within ninety (90) days from the date Lessor obtains the necessary permits to complete Landlord's Work with respect to Suite 5. Lessor shall provide Lessee written notice that Lessor has substantially completed with regard to Suite 5. Thereafter, Lessee shall have 5 days within which to deliver written notice to Lessor accepting Suite 5 for occupancy or written notice specifying in detail the item or items to be corrected. Thereafter, Lessor shall correct said items within a reasonable time and provide Lessee written notice of same.

b. The parties hereto agree that the net rentable square footage of Suite 5 is 2,494.

c. The Rental Commencement Date with respect to Suite 5 shall commence upon the Lessee's written notice to Lessor accepting Suite 5 for occupancy or upon Lessor's written notice to Lessee that Lessor has corrected items specified by Lessee. In the event Lessee fails to provide written notice to Lessor of acceptance or specifying items to be corrected, the Rental Commencement Date shall be the fifth (5th) business day after Lessor has provided Lessee with written notice that Landlord's Work with respect to such Suite is substantially complete (or such earlier date as Lessee may have taken occupancy of such Suite), which Rent Commencement Date is estimated to be August 18, 2011 (although such is not guaranteed by Lessor).

5. The paragraph styled "Leased Premises" on page 1 of the Lease Agreement is hereby modified to provide that the total square footage which will ultimately be occupied by Lessee is now 24,271 square feet as a result of the change in the plans for Suites 4 and 5 (a/k/a Units D and E, respectively).

6. The parties acknowledge and agree that Lessee paid security deposits to Original Landlord for Suites 1, 3 and 4 in the total amounts of \$8,103.00, \$4553.00, and \$1,259.00, respectively (the "**Original Security Deposits**"). Concurrently with the execution of this Amendment, Lessee shall pay Lessor the security deposits for Suite 2 and Suite 5 in the amounts of \$8,104.00, and \$2,494.00 respectively (the "**New Security Deposits**"). So long as Lessee returns possession of the Leased Premises to Lessor in the condition required by terms of the Lease Agreement at the conclusion of the term of the Lease Agreement and otherwise complies with all of Lessee's obligations under the Lease Agreement (as modified by this Amendment, including but not limited to paying Lessor the Construction Reimbursement Amounts described below), Lessor shall return the Original Security Deposits and the New Security Deposits to Lessee (or such portion thereof as may remain after Lessor has applied any portion of the Original Security Deposits and/or New Security Deposits toward the cost incurred by Lessor in returning the Leased Premises to the condition required by terms of the Lease Agreement, and less any unpaid Construction Reimbursement Amounts) within 30 days of the end of the term of the Lease Agreement.

7. The parties agree that Lessee is obligated to reimburse Lessor for construction and renovation expenses (the "**Construction Reimbursement Amounts**") in the total amount of \$154,390.76. Further, the parties herein expressly agree that Lessee's liability for construction and renovation expenses shall not exceed \$154,390.76 in the event Lessor's actual expenditures for construction and renovation exceeds \$154,390.76.

a. As provided for in the Lease Agreement, Lessee began to reimburse Lessor for construction and renovation improvements by making payments (the "**Construction Reimbursement Payments**") for Suites 1, 3 and 4 at the rate of \$00.17 per square foot per month, commencing June 26, 2010, August 17, 2010 and September 1, 2010 respectively, and has made Construction Reimbursement Payments totaling \$24,694.00 as of April 13, 2011.

b. Lessee shall make Construction Reimbursement Payments to reimburse Lessor for construction and renovation improvements for Suites 2 and 5 at the rate of \$00.17 per square foot per month commencing on the Rental Commencement Dates for such Suites.

c. Lessee shall pay Lessor on December 31, 2013 (or, in the event of an earlier termination of the Lease or Lessee's right to possession of the Leased Premises, upon the date of such termination of the Lease or Lessee's right to possession) an amount equal to total of all Construction Reimbursement Amounts (i.e., \$154,390.76) LESS the total of all Construction Reimbursement Payments previously made by Lessee to Lessor

8. Lessor and Lessee hereby agree that Section I Paragraph 3 of the Lease Agreement erroneously stated that Base *Monthly* Rent shall be \$12.00 per square foot. The

parties hereby agree that the Base *Annual* Rent shall be \$12.00 per square foot and all references in the Lease Agreement to Base *Monthly* Rent of \$12.00 shall be modified to reflect a Base *Annual* Rent of \$12.00 per square foot. All payments of rent, additional rent, and all Construction Reimbursement Payments shall be paid to Lessor at the address set forth below for notice to Lessor.

9. Lessee hereby acknowledges and agrees that upon the execution of this Amendment and Lessor's commencement of Landlord's Work with respect to Suite 2 and Suite 5 pursuant to the terms of this Amendment, Lessor shall be in full compliance with its obligations under the Lease Agreement as modified by this Amendment, that the Dispute shall have been fully and satisfactorily resolved, and that Lessee withdraws the Notice of Default and waives any and all rights to declare Lessor in breach of the Lease Agreement for any matter in existence (or which would exist but for passage of time or giving of notice) as of the Amendment Effective Date. Lessee and Lessor acknowledge that the Lease Agreement, as modified by this Amendment, is in full force and effect, binding upon the parties in accordance with its terms and as of the date of execution of this Amendment, and with the exception of prepaid common area maintenance payments made from and after the Transfer Date, and prepaid security deposits, neither party has any claim, charge, lien, or right to setoff under this Lease Agreement or otherwise against Rent or other charges due under this Lease Agreement.

10. Upon obtaining final certificate(s) of occupancy for both of Suite 2 and Suite 5, Lessor shall provide signage for the Leased Premises which is comparable to signage currently existing at the Leased Premises, at Lessor's sole cost and expense, so long as said cost does not exceed the estimate provided to Lessor in the amount of \$9,916.88. In the event that the cost of providing such signage (determined by Lessor after receipt of a proposal for the construction of such signage) exceeds the estimated cost, then Lessor shall provide such signage only after Lessee shall have paid Lessor an amount equal to the difference between the actual cost and the estimated cost.

11. Section I, paragraph 2 of the Lease Agreement, styled "Term of Lease," is deleted in its entirety and replaced with the following:

"This Lease Agreement shall be effective for the period beginning on April 1, 2010, and ending on December 31, 2013; provided, however, that the specific Effective Dates and Rental Commencement Dates for each unit of the Leased Premises may vary, but (subject to the Lessee's right to renew as provided for in Section I, paragraph 19 of the Lease Agreement, as amended) this Lease Agreement shall terminate as to all Suites comprising the Leased Premises on December 31, 2013."

12. Section I, paragraph 19 of the Lease Agreement, styled "Renewal," is deleted in its entirety and replaced with the following:

"The Lessor herein grants to the Lessee an option to renew this Lease Agreement for two (2) one (1) year terms following the expiration of the initial term on December 31, 2013 [i.e., from January 1, 2014 to December 31, 2014 (the "**First**

Renewal Term"), and from January 1, 2015 to December 31, 2015 (the "**Second Renewal Term**")], on the same terms and conditions contained in this Agreement, subject to rent increases as provided for herein, and provided no default by Lessee has occurred and is then continuing hereunder. The Lease Agreement can only be extended in its entirety; i.e., Lessee may only extend lease as to all of the Leased Premises, and not only as to some of the suites. Lessee shall give Lessor written notice of its intention to renew at least 120 days prior to the expiration of the initial term in order to extend lease for the First Renewal Term, and At Least 120 Days Prior to the Expiration of the First Renewal Term in order to extend the lease for the Second Renewal Term. In the event Lessee fails to give Lessor written notice of its election to exercise its option to renew as set forth above, such option shall then be and become null and void and of no further force and effect. Lessee shall be deemed to have waived any option for a Second Renewal Term of this Agreement if Lessee has not exercised its option for the First Renewal Term.

For the First Renewal Term, the annual base rent shall be derived by taking the base rent charged at the expiration of the initial term of this Lease Agreement and increasing same by five percent (5.00%).

For the Second Renewal Term the annual base rent shall be derived by taking the base rent charged at the expiration of the First Renewal Term and increasing same by five percent (5.00%). "

In the event Lessee fails to exercise its options to renew as set forth above but Lessee remains in possession of the Leased Premises, Lessee shall be a month-to-month tenant and monthly base rent shall be equal to 150% of the then-current rate for the previous month.

13. Section I, paragraph 6, styled "Cost of Living Escalation," is deleted in its entirety and replaced with the following:

"Base annual rent shall be fixed at \$12.00 per square foot per year for the first eighteen (18) months following the Rental Commencement Date for each Suite. Commencing upon the expiration of eighteen (18) months from each Rental Commencement Date (for each Suite) and every twelve (12) months thereafter, base annual rent for each Suite shall increase annually by three and one-half percent (3.50%)."

14. The second sentence in the last paragraph on page one of the Lease Agreement is deleted in its entirety and replaced with the following:

"Lessor will provide indoor air quality testing for Suites 2 and 5 with results consistent with the air quality of the suites previously occupied by Lessee at the time those suites were initially occupied by Lessee, prior to Lessee's acceptance of Suites 2 and 5 for occupancy, at Lessor's sole cost and expense."

15. The last sentence of Section I, paragraph 14 is modified to provide that any insurance coverage shall contain a waiver of the insurer's right of *subrogation* against Lessor.

16.. Section I, paragraph 15 is modified to read "Waiver of Subrogation on Casualty Insurance."

17. INTENTIONALLY OMITTED.

18. Any rights which Lessee and/or Lessor have to audit CAM charges shall be limited to time frames from and after the Transfer Date.

19. If either party shall be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor trouble, inability to procure material, failure of power, riots, insurrection, war or other reasons of like nature not the fault of the party delayed, in performing work or doing acts required under this Lease Agreement, the period for the performance of any such act shall be extended for a reasonable period. Neither Lessor nor Lessee shall be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease Agreement if same shall be due to any of the foregoing. Notwithstanding the foregoing, the provisions of this paragraph shall at no time operate to excuse Lessee from any obligations for payment of Rent, Additional Rent, or any other payments required by the terms of this Lease Agreement when due, and all such amounts shall be paid when due.

20. Lessor and Lessee hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Lease Agreement or this Amendment, Lessee's use or occupancy of the Leased Premises, and/or any claim of injury or damage.

21. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by facsimile, upon electronic or telephonic confirmation of receipt from the receiving facsimile machine; (c) if sent by overnight courier, with request for next Business Day delivery, on the next Business Day after sending; or (d) whether actually received or not, two (2) Business Days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO LESSOR: c/o Rialto Capital Advisors, LLC
700 NW 107th Avenue
Suite 200
Miami FL 33172
Attention: Matt Papunen
Telephone No. 305-485-2717
Facsimile No. 305-485-2724
Email Address: Matt.papunen@rialtocapital.com

WITH A COPY TO: Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 22nd Floor
Miami, Florida 33131
Attention: Jon Chassen, Esq.
Telephone No. 305-350-7270
Facsimile No. 305-351-2270
Email Address: jchassen@bilzin.com

TO LESSEE: At the address set forth on the
first page of this Amendment
Attn: City Manager
Telephone No. (305) 809-3886
Facsimile No. (305) 809-3888
Email address: jscholl@keywestcity.com

22. This Amendment may be executed in counterparts. Except as expressly modified by this Amendment, all terms and conditions of the Lease Agreement remain in full force and effect, and binding upon the parties in accordance with its terms. In the event of any conflict between the terms of the Lease Agreement and the terms of this Amendment, the terms of this Amendment shall control. Lessee further represents and warrants it is not in default of any of the conditions or covenants of the Lease Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed this
31 day of May, 2011.

ATTEST:

By:

Cheryl Smith
Cheryl Smith, City Clerk

THE CITY OF KEY WEST, a Municipal Corporation

By:

Craig Cates
Printed Name:

Its:

Mayor

WITNESSES:

Vivian Perez
Signature of Witness

Vivian Perez
Printed Name of Witness

Portia H. Navarro
Signature of Witness

PORTIA H. NAVARRO
Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this 31st day of May, 2011, by
Craig Cates, as Mayor, of The City of Key West, a
municipal corporation, who is personally known to me or has produced
as identification.

(Notary Seal)

Susan P. Harrison
Notary Public, State of Florida

Print Name: SUSAN P. HARRISON

My Commission Expires: April 8, 2015



WITNESSES.

Signature of Witness

Printed Name of Witness

Signature of Witness

Printed Name of Witness

RL BB- FL HILLSBOROUGH, LLC

By: RL BB Financial, LLC, its sole member

By: _____

Name: _____

Title: _____

Anthony Seijas

Chief Operating Officer

STATE OF FLORIDA

COUNTY OF MIAMI DADE

The foregoing instrument was acknowledged before me this 24 day of May, 2011, by

ANTHONY SEIJAS, as COO of RL BB

Financial, LLC, as the sole member of RL BB-FL HILLSBOROUGH, LLC, who is personally

known to me or has produced _____ as identification.

(Notary Seal)



MAYLEN DELGADO
MY COMMISSION # EE 077248
EXPIRES: April 22, 2015
Bonded Thru Budget Notary Services

Notary Public, State of Florida

Print Name: _____

Maylen Delgado

My Commission Expires: 4/22/15

SCHEDULE 1

Legal Description of Property

Parcel I: Commencing at the Northwest corner of Block 2, of RIVIERA SHORES SUBDIVISION, a subdivision of a part of the City of Key West, Monroe County, Florida, according to the Plat thereof recorded in Plat Book 3, at Page 148, of the Public Records of Monroe County, Florida; thence run Southerly along the Easterly boundary line of 13th Street a distance of Two Hundred Twenty (220) feet to the intersection of 13th Street and Riviera Drive; thence run Easterly along the Northerly boundary line of Riviera Drive a distance of Four Hundred (400) feet; thence run Northerly and parallel to 13th Street a distance of Two Hundred Twenty (220) feet to the Southerly boundary line of Flagler Avenue; thence run Westerly along the Southern right-of-way of Flagler Avenue a distance of Four Hundred (400) feet to the intersection of 13th Street and Flagler Avenue, Point of Beginning.

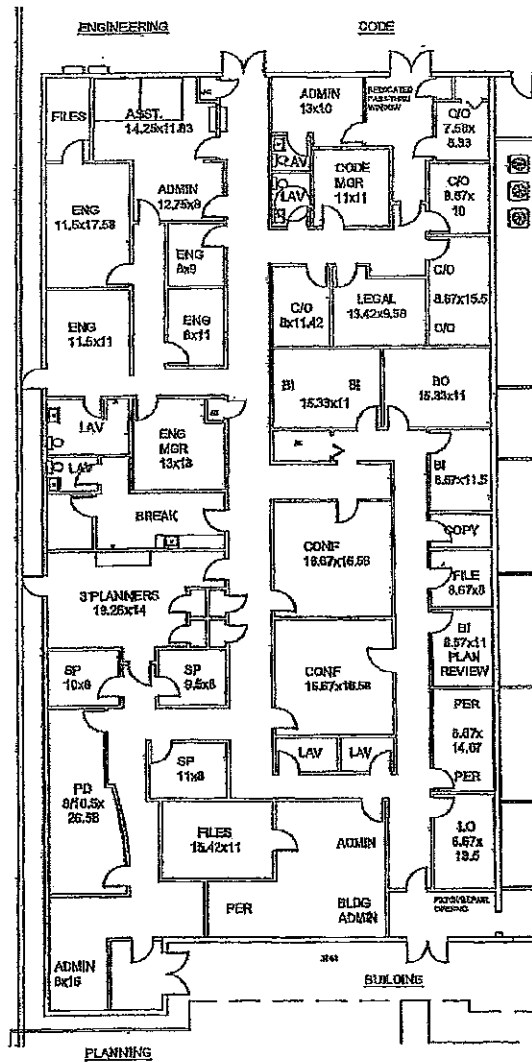
AND ALSO;

Parcel II: On the Island of Key West, described as follows: BEGIN at the Northwest corner of Block 2, RIVIERA SHORES SUBDIVISION, a subdivision of a part of the City of Key West, Florida, between Eleventh Street and Seventeenth Street and lying South of Flagler Avenue, Key West, Monroe County, Florida, as recorded in Plat Book 3, at Page 148, of the Public Records of Monroe County, Florida; run thence in an Easterly direction along the Southeast right-of-way of Flagler Avenue 400 feet to the Point of Beginning; thence run in an Easterly direction along the Southeast right-of-way line of Flagler Avenue; a distance of 71.98 feet; thence run at right angles in a Southerly direction a distance of 220 feet to Riviera Drive, run thence in a Westerly direction, along the Northeast right-of-way line of Riviera Drive, a distance of 71.98 feet; run thence at right angles in a Northerly direction a distance of 220 feet to the Point of Beginning.

Parcel Identification Number: RE: 00069090-000000/Alt Key 1072982

MONROE COUNTY
OFFICIAL RECORDS

Exhibit A



PARTIAL FLOOR PLAN - A

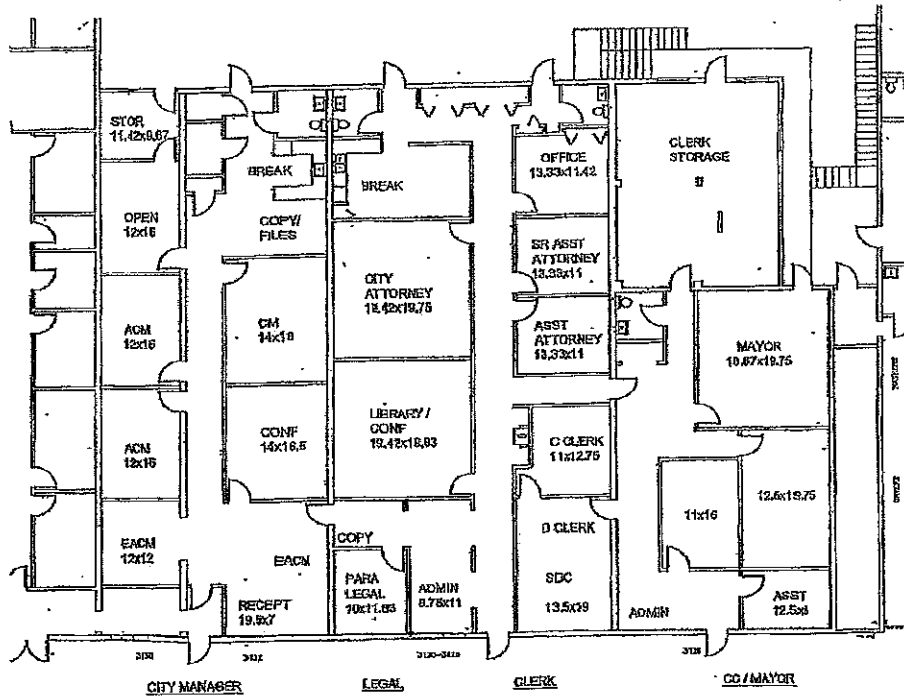
SCALE = 1/16" = 1'-0"

8,103 S.F.

4-5-10

3140

Exhibit B



PARTIAL FLOOR PLAN - B

SCALE = 1/16" = 1'-0"

3,104 s.f.

3-25-10

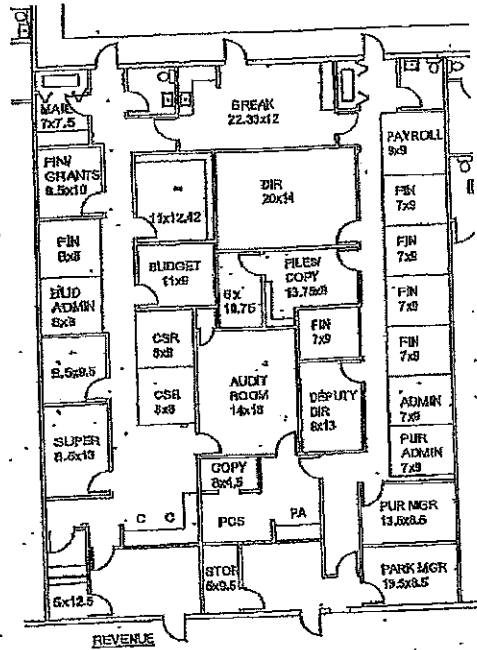
Habana Plaza

Exhibit B1

3130 - 3128, 3126, 3138, 3132 Flagler (Suite B)	3130-3128	3126	3138	3132
Seal floor	\$4,000.00	\$1,875.00	\$875.00	\$2,000.00
Remove carpet and acoustical ceiling	\$2,750.00	\$1,875.00	-	-
Metal stud walls with drywall and sound board	\$6,750.00	\$9,875.00	\$9,750.00	\$8,375.00
New acoustical ceiling	\$10,000.00	\$4,787.00	\$3,500.00	\$5,000.00
Move lights and add outlets for new offices	\$5,875.00	\$8,000.00	\$8,125.00	\$4,875.00
Move AC vents for new offices	\$750.00	\$2,500.00	-	\$750.00
Solid core doors with hardware	\$3,500.00	\$4,375.00	\$3,500.00	\$2,625.00
New carpet and vinyl base	\$21,500.00	\$9,125.00	\$4,500.00	\$10,750.00
Paint throughout	\$7,250.00	\$5,000.00	\$3,350.00	\$4,668.00
Demo existing duct work	-	-	\$625.00	-
Cut opening in block wall for lobby	-	-	\$1,875.00	-
Float floor	-	-	\$2,250.00	-
New AC duct work and install AC unit	-	-	\$6,875.00	-
Remove tile floor	-	-	-	\$2,500.00
Raise concrete floor to meet ADA requirements	-	-	-	\$10,000.00
Remove acoustical ceiling and old header walls	-	-	-	\$1,875.00
new custom entry door for ADA ramp	-	-	-	\$2,250.00
Exterior ADA ramp	-	-	-	\$2,250.00
	\$62,375.00	\$45,912.00	\$45,225.00	\$57,918.00

Total: \$211,430.00

Exhibit C



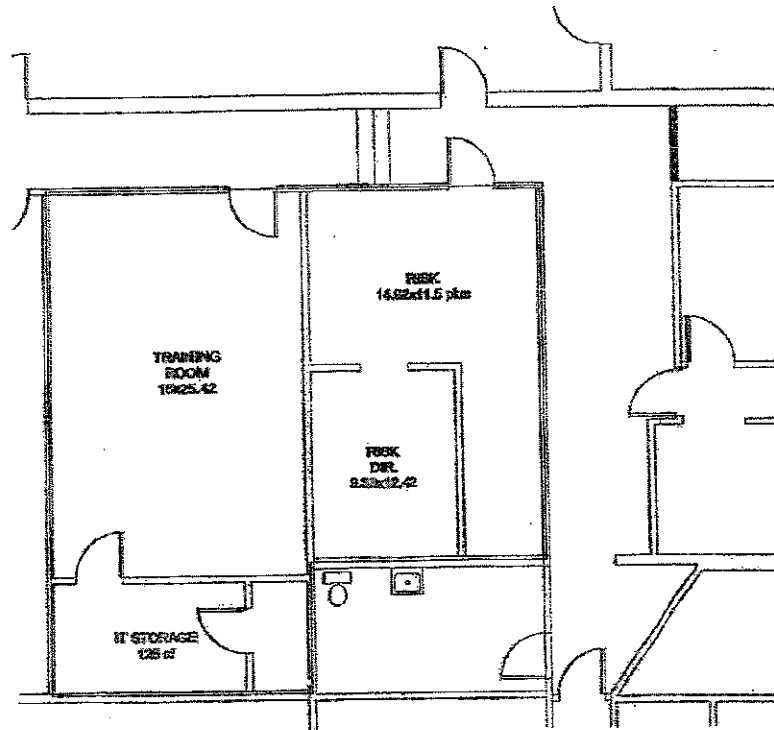
PARTIAL FLOOR PLAN - C

SCALE = 1/16" = 1'-0"

4,538 s.f.

3-12-10

Exhibit D




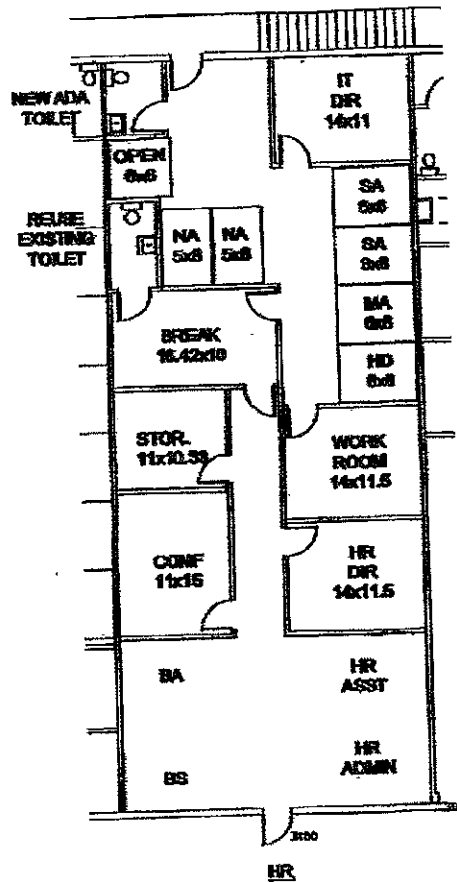
 **ALTERNATE #2**
PARTIAL FLOOR PLAN - D/E 031 s.f.
SCALE = 1/8" = 1'-0" 7-20-98

Exhibit E



ALTERNATE #1 PARTIAL FLOOR PLAN - D/E

SCALE = 1/16" = 1'-0"

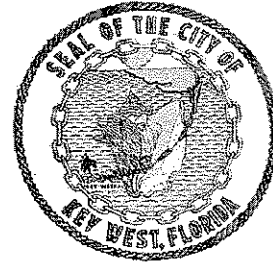
2,404 S.F.

7-14-10

Exhibit E1

3100 Flegler (Suite E)	
Quano	\$7,750.00
Front floor	\$4,960.00
Metal framing	\$6,200.00
Drywall and sound board	\$18,600.00
Interior doors and hardware	\$13,175.00
Glass impact doors and window for new entry	\$5,425.00
AC ductwork	\$5,100.00
Electrical - rewire for new outlets throughout, lighting, emergency lighting, exit lights and s	\$25,190.00
Paint throughout	\$9,300.00
New acoustical ceiling	\$9,300.00
Plumbing	\$7,750.00
Seal floor	\$4,650.00
New carpet and vinyl base	\$13,000.00
Total:	\$133,400.00

Executive Summary



TO: City Commission

CC: Jim Scholl, Mark Finigan, David Fernandez

FR: Larry Erskine
Marilyn Wilbarger, RPA, CCIM

DT: May 10, 2011

RE: Amendment to the Lease for City Offices at Habana Plaza

ACTION STATEMENT

This is a request to approve the first amendment to the city lease for space at 3100 - 3140 Flagler Avenue in Habana Plaza.

HISTORY

In April of 2010 the City signed an agreement to lease space at Habana Plaza for the temporary re-location of administrative offices while a new city hall could be completed. Subsequently events have taken place that require the City to amend the lease prior to the remaining re-location as follows:

Space re-location

This change is based upon the prior owner's request to re-locate the original space designated as Unit D which houses IT and Risk Management, and Unit E which houses Human Resources. These units, located in the rear of the building are completely raw space with no existing improvements and therefore expensive to finish for short term occupancy. When Grimm's Grill vacated, the Owner approached the city with taking that space instead to house these groups at no additional cost to the City. This is a substantially better location, the square footage is comparable and the space plan works as well for City purposes. The total square footage will change slightly from 24,224 to 24,271 square feet. The amendment calls for the construction to be completed within 90 days of permit issuance and permit application to be made within 5 days of the execution of the amendment.

Term

The original lease calls for the city to occupy the premises for a minimum of two years or until March of 2013. As the occupancy of the remaining units has been delayed the owners have requested that the term be extended until the end of 2013. The delay in occupancy was caused by the foreclosure and subsequent sale of the property which is now titled to a new institutional ownership entity with the financial capacity to finish the space immediately.

Rent

There is no change as the base rent for each unit will remain fixed at an annual rate of \$12.00 per square foot for eighteen months and will increase by 3.5% annually thereafter.

Renewal

The City will have the right to renew the lease for two, one year terms at a 5% increase for each renewal term.

Signage

The Lessor will provide signage as Lessor's sole expense.

Common Area Maintenance:

The City will agree to accept the charges of \$4.75 per square foot as the actual costs for common area maintenance from the date of occupancy until the date of the transfer of ownership. Going forward, costs will be paid on an estimated basis and reconciled annually as per the lease agreement.

Construction Costs:

The City will agree pay \$154,390, which is an increase of \$5,851, as the total construction reimbursement amount for improvements to the space.

FINANCIAL STATEMENT:

The original projected and amended annual rental costs are as follows:

1. Original projected rental costs to re-locate all three city locations

26,458 sf. @ \$12.00 psf	\$317,496
NNN charges @\$4.75	\$125,675
26,458 sf @\$2.00 psf improvement costs	\$52,916
Total Annual Rent	\$496,087

Off-setting Annual Expense Reductions

Rent for 626 Duval - 5712 s.f. @ \$30.07	(\$171,759)
Property coverage premium reduction	(\$30,000)

Total Annual Increase in Rental Cost **\$294,328**

2. First Amendment Rental Costs

24,271 sf. @ \$12.00 psf	\$291,252
NNN charges @\$4.75	\$115,287
24,271 sf. improvement costs	\$51,463
Total Annual Rent	\$458,002

Off-setting Annual Expense Reductions

Rent for 626 Duval - 5712 s.f. @ \$30.07	(\$171,759)
Property coverage premium reduction	(\$30,000)

Total Annual Increase in Rental Cost **\$256,243**

RECOMMENDATION:

Staff believes that the amended terms will serve the city well and recommends approval of the lease amendment as proposed.

ATTACHMENTS:

Lease Amendment

Lease

SCHEDULE 1

Legal Description of Property

Parcel I: Commencing at the Northwest corner of Block 2, of RIVIERA SHORES SUBDIVISION, a subdivision of a part of the City of Key West, Monroe County, Florida, according to the Plat thereof recorded in Plat Book 3, at Page 148, of the Public Records of Monroe County, Florida; thence run Southerly along the Easterly boundary line of 13th Street a distance of Two Hundred Twenty (220) feet to the intersection of 13th Street and Riviera Drive; thence run Easterly along the Northerly boundary line of Riviera Drive a distance of Four Hundred (400) feet; thence run Northerly and parallel to 13th Street a distance of Two Hundred Twenty (220) feet to the Southerly boundary line of Flagler Avenue; thence run Westerly along the Southern right of way of Flagler Avenue a distance of Four Hundred (400) feet to the intersection of 13th Street and Flagler Avenue, Point of Beginning.

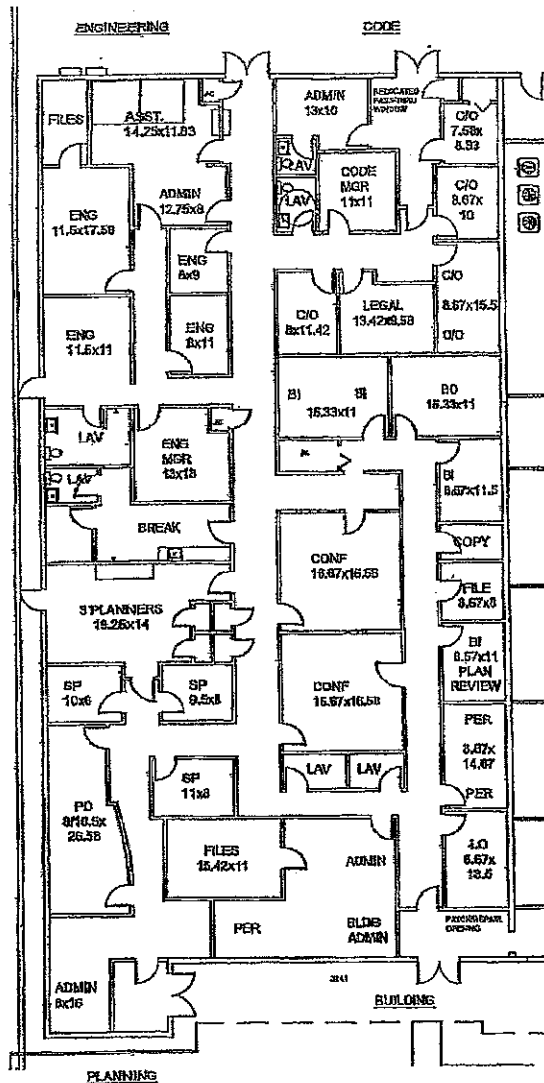
AND ALSO;

Parcel II: On the Island of Key West, described as follows: BEGIN at the Northwest corner of Block 2, RIVIERA SHORES SUBDIVISION, a subdivision of a part of the City of Key West, Florida, between Eleventh Street and Seventeenth Street and lying South of Flagler Avenue, Key West, Monroe County, Florida, as recorded in Plat Book 3, at Page 148, of the Public Records of Monroe County, Florida; run thence in an Easterly direction along the Southeast right-of-way of Flagler Avenue 400 feet to the Point of Beginning; thence run in an Easterly direction along the Southeast right-of-way line of Flagler Avenue; a distance of 71.98 feet; thence run at right angles in a Southerly direction a distance of 220 feet to Riviera Drive, run thence in a Westerly direction along the Northeast right-of-way line of Riviera Drive, a distance of 71.98 feet; run thence at right angles in a Northerly direction a distance of 220 feet to the Point of Beginning.

Parcel Identification Number: RE: 00069090-000000/Alt Key 1072982

MONROE COUNTY
OFFICIAL RECORDS

Exhibit A



PARTIAL FLOOR PLAN - A

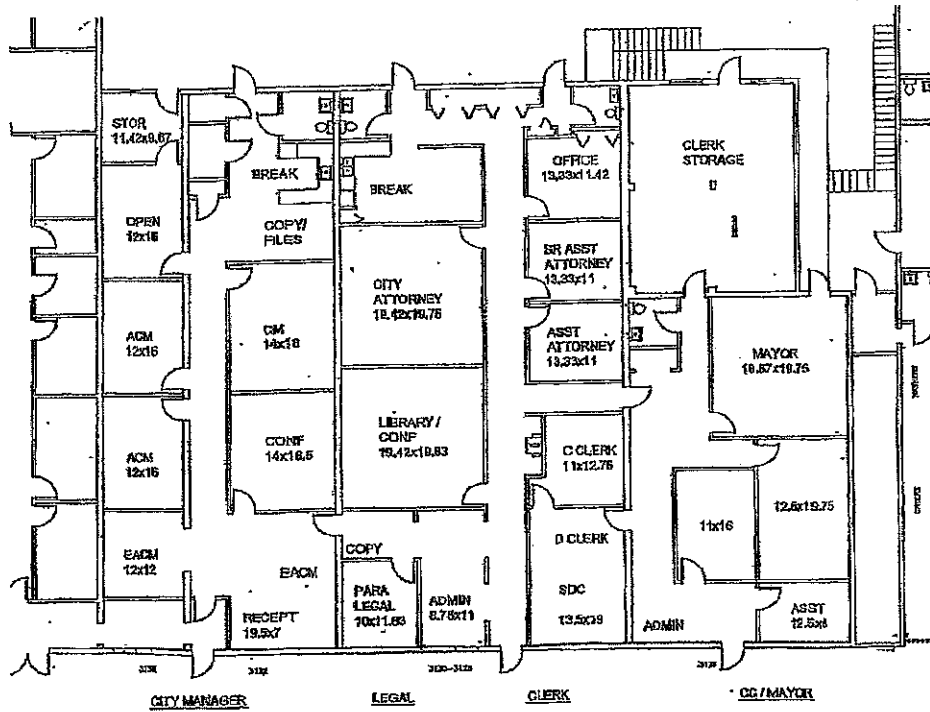
SCALE = 1/16" = 1'-0"

8,103 s.f.

4-5-10

3140

Exhibit B



PARTIAL FLOOR PLAN - B

SCALE = 1/16" = 1'-0"

B.104 e.l.

3-25-10

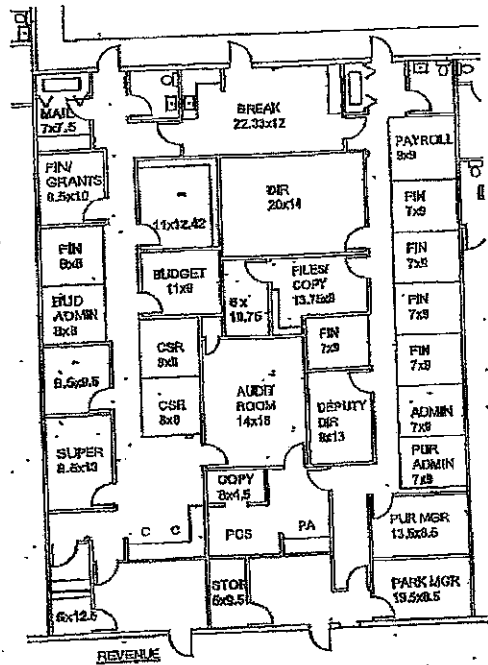
Habana Plaza

Exhibit B1

3130 - 3128, 3126, 3138, 3132 Flyer (Suite B)	3130-3128	3126	3138	3132
Seal Floor	\$4,000.00	\$1,875.00	\$875.00	\$2,000.00
Remove carpet and acoustical ceiling	\$2,750.00	\$1,875.00	-	-
Metal stud walls with drywall and sound board	\$6,750.00	\$9,375.00	\$9,750.00	\$8,375.00
New acoustical ceiling	\$10,000.00	\$4,787.00	\$3,500.00	\$5,000.00
Move lights and add outlets for new offices	\$5,875.00	\$8,000.00	\$8,125.00	\$4,875.00
Move AC vents for new offices	\$750.00	\$2,500.00	-	\$750.00
Sold core doors with hardware	\$3,500.00	\$4,375.00	\$9,500.00	\$2,625.00
New carpet and vinyl base	\$21,500.00	\$8,125.00	\$4,500.00	\$10,750.00
Paint throughout	\$7,250.00	\$5,000.00	\$3,350.00	\$4,668.00
Demo existing duct work	-	-	\$625.00	-
Cut opening in block wall for lobby	-	-	\$1,875.00	-
Float floor	-	-	\$2,250.00	-
New AC duct work and install AC unit	-	-	\$6,875.00	-
Remove tile floor	-	-	-	\$2,500.00
Raise concrete floor to meet ADA requirements	-	-	-	\$10,000.00
Remove acoustical ceiling and old header walls	-	-	-	\$1,875.00
New custom entry door for ADA ramp	-	-	-	\$2,250.00
Exterior ADA ramp	-	-	-	\$2,250.00
	\$62,375.00	\$45,912.00	\$45,225.00	\$57,918.00

Total: \$211,430.00

Exhibit C



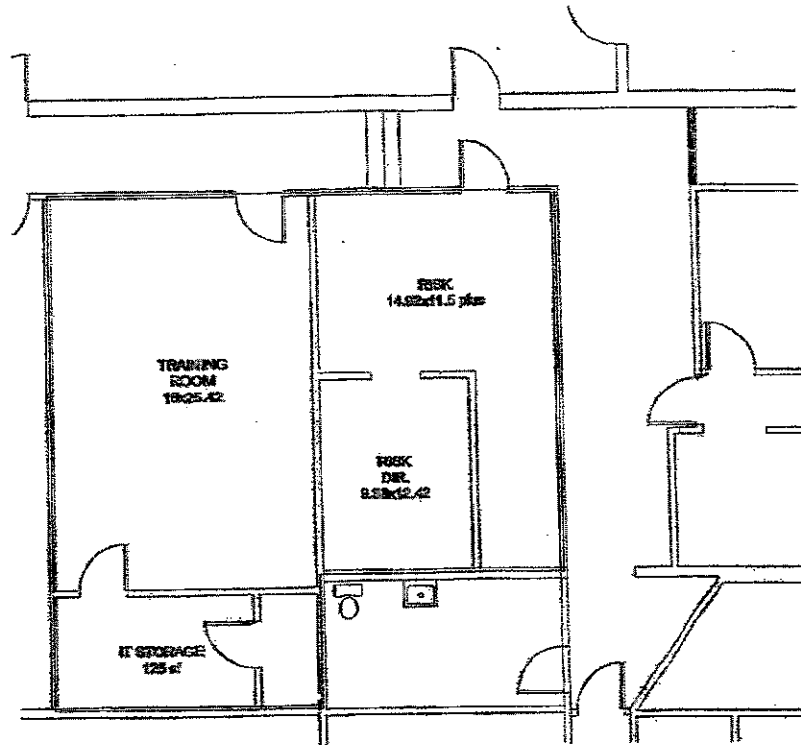
PARTIAL FLOOR PLAN - C

4,638 s.f.

3-12-10

SCALE = 1/8" = 1'-0"

Exhibit D




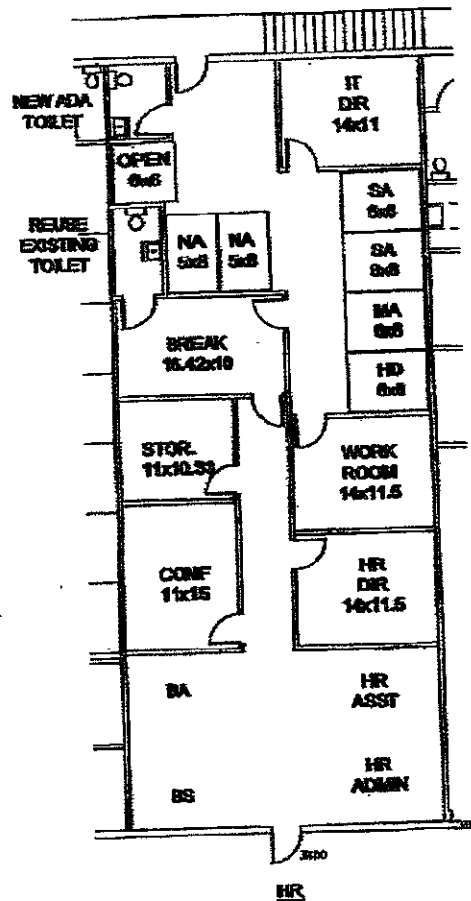
 **ALTERNATE #2**
PARTIAL FLOOR PLAN - D/E 031 s.f.
SCALE = 1/8" = 1'-0" 7-19-13

Exhibit E



ALTERNATE #1 PARTIAL FLOOR PLAN - D/E

2/204 s.f.

SCALE = 1/16" = 1'-0"

7-14-10

Exhibit E1

3100 Flagler (Suite E)	
Demo	\$7,750.00
Front floor	\$4,960.00
Metal framing	\$6,200.00
Drywall and sound board	\$18,600.00
Interior doors and hardware	\$13,175.00
Glass impact doors and window for new entry	\$5,425.00
AC ductwork	\$5,100.00
Electrical - rewire for new outlets throughout, lighting, emergency lighting, exit lights and si	\$26,190.00
Paint throughout	\$9,300.00
New acoustical ceiling	\$9,300.00
Plumbing	\$7,750.00
Seal floor	\$4,650.00
New carpet and vinyl base	\$13,000.00
Total:	\$131,400.00