

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

**LEASE AGREEMENT FOR
9565 DIANA, EL PASO, TX 79924**

This Lease Agreement (“Lease”) is made this JUNE 1, 2024 (“Effective Date”) between TOMLIN PARTNERS, LLC, a TEXAS LIMITED LIABILITY COMPANY, (“Landlord”), and the City of El Paso, a municipal corporation organized and existing under the laws of the State of Texas (“Tenant”).

For good and valuable consideration, the parties agree as follows:

SECTION 1. DEFINITIONS.

The following terms shall be defined in this Lease as follows:

Premises: The building and parking area located at **9565 DIANA, EL PASO, TX 79924**, consisting of approximately 9584 square feet as shown on Exhibit A attached. PROPERTY ID# 94172 hereto GEO ID# C23299900403050

Permitted Use: OFFICE SPACE, WELLNESS CENTER, and any other lawful use.

Term: The Initial Term, any renewal or extension term pursuant to any properly exercised Tenant option, any renewal or extension period provided for in any subsequent written agreement between the parties, and any month-to-month tenancy holdover period.

Initial Term: FIVE (5) YEARS

The first “Lease Year” shall commence on the Lease Commencement Date and end upon the expiration of the last day of the twelfth (12th) full calendar month following the Rent Commencement Date. Thereafter, a “Lease Year” shall consist of successive periods of twelve (12) calendar months.

Renewal Term: ONE (1) OPTION OF FIVE (5) YEARS

Lease Commencement Date: JUNE 1, 2024

Rent Commencement Date: JUNE 1, 2024

Base Rent Schedule:

Monthly Base Rent

From the Rent Commencement Date
through

Lease Year 1: **\$13,258**

Lease Year 2: **\$13,921**

Lease Year 3: **\$14,617**

Lease Year 4: **\$15,348**

Lease Year 5: **\$16,115**

Security Deposit: **\$13,258** due upon execution of the lease

**Landlord's Payment
Address:**

**Tomlin Partners, LLC
300 N Resler, Suite A
El Paso, TX 79912**

Landlord's Notice Address: JMT Properties, Inc.

300 N. Resler, Suite A
El Paso, TX 79912

Attn: Rebecca McBroom,

Vice President of JMT Properties, Inc – manager for Landlord

Email: mcbroom.becca@gmail.com

SECTION 2. LEASE OF PREMISES; CONDITION OF PREMISES; QUIET ENJOYMENT.

A. LEASE OF PREMISES. Subject to the terms of this Lease, Landlord hereby leases the Premises to Tenant for the Term.

B. CONDITION OF PREMISES. Except as otherwise provided in this Lease, Tenant accepts the Premises in "AS IS" condition. after inspection of premises by tenant. Tenant's acceptance of occupancy from Landlord shall constitute acknowledgment by Tenant that Tenant has inspected the Premises and that same are suitable for Tenant's intended use thereof as stated in this Section. TENANT AGREES THAT LANDLORD IS MAKING NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PREMISES, INCLUDING WITHOUT LIMITATION, EXPRESS OR IMPLIED WARRANTIES REGARDING (i) THE CONDITION OF THE PREMISES; OR (ii) THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR ANY PARTICULAR USE OR PURPOSE. WITHOUT LIMITATION ON THE FOREGOING,

TENANT EXPRESSLY WAIVES ANY AND ALL SUCH WARRANTIES, INCLUDING SPECIFICALLY, BUT WITHOUT LIMITATION, THE WARRANTY OF SUITABILITY.

Exhibit D shall detail the items that Tenant does not accept due to their condition upon move-in. Tenant shall not be responsible for deficiencies of the items noted in Exhibit D upon its move-out.

C. **QUIET ENJOYMENT.** Upon Tenant paying Rent and performing all of the covenants and conditions set forth in this Lease, Tenant shall, subject to all zoning ordinances and other laws and regulations governing or regulating the use of the Premises and all easements, rights of way, and all presently recorded instruments which affect the Premises, Tenant shall peaceably and quietly have, hold and enjoy the Premises for the Term.

SECTION 3. COMMON AREA.

Subject to Landlord's reasonable rules and regulations of general applicability, Tenant shall have the right to use all common areas on the Premises, including, without limitation, all parking areas. Tenant acknowledges the Declaration of Easements, Restrictions, Reservations and Covenants attached as Exhibit C which controls the Common Areas of the Premises and the adjoining property to the Premises.

SECTION 4. PERMITTED USE.

Tenant shall use the Premises solely for the Permitted Use and for no other purpose. Tenant shall not be required to open or operate in the Premises.

SECTION 5. HOLDOVER.

If Tenant fails to surrender the Premises to Landlord prior to the expiration of the Term, (i) the Term shall automatically be extended on a month-to-month basis, (ii) the monthly Base Rent due during such tenancy shall be one hundred and fifty percent (150%) of the Base Rent rate in effect immediately prior to the date this Lease converted into a month-to-month lease, and (iii) all terms and provisions of this Lease shall remain in full force and effect during such month-to-month tenancy. During such month-to-month tenancy, either party may terminate this Lease by providing the other party at least thirty (30) days prior written notice of termination.

SECTION 6. BASE RENT.

Tenant shall pay Landlord Monthly Base Rent in the amounts set forth in Section 1 of this Lease, in advance, on the first day of each calendar month throughout the Term, which amounts shall be prorated for any partial month. Notwithstanding the foregoing, rent due from the Rent Commencement Date through the last day of the calendar month in which the Rent Commencement Date occurs, shall not be due and payable until the first day of the first calendar month following the Rent Commencement Date. Tenant agrees to pay a late charge of ten percent (10%) as additional rent for each payment due hereunder that remains unpaid ten (10) days after the due date to cover Landlord's administrative costs of processing such late payment.

All rent, fees, and other charges due Landlord shall be paid to Landlord at Landlord's Payment Address or at such place or by wire transfer as may be designated in writing from time to time by Landlord.

SECTION 7. MAINTENANCE AND REPAIR OBLIGATIONS.

A. **LANDLORD'S MAINTENANCE AND REPAIR OBLIGATIONS.** Landlord will, at Landlord's sole cost, maintain, repair, and/or replace all structural elements of the Premises, including the roof, windows, exterior doors, foundation, load bearing walls, exterior walls (excluding paint), and shall maintain the heating and cooling systems in accordance with Section 7.A.i below, and the following items up to the point of entry into the building located on the Premises: electrical systems, water systems, wastewater systems, fire suppression systems (if any), and all utility systems (excluding Tenant's trade fixtures and the interior non-structural portions of the Premises). In the event the Premises need repairs, maintenance, or replacement that is Landlord's responsibility as provided hereunder, Tenant will give notice to Landlord and Landlord will arrange for the maintenance, repairs, or replacement within a reasonable time period not to exceed seven (7) and initiate and complete the request promptly. Landlord shall maintain, repair, and replace the foregoing listed items excluding Tenant's trade fixtures and the interior non-structural portions of the Premises) in accordance with all applicable governmental laws, rules, and regulations, and shall at all times keep the exterior of the Premises and improvements and facilities on the Land in a clean and good state of repair and condition, including, without limitation, all parking areas, access roads, driveways, sidewalks, landscaped areas, retaining walls, fences and rock walls, and lighting facilities. Notwithstanding the foregoing to the contrary, Tenant shall, within five (5) days after an invoice is sent to Tenant from Landlord, reimburse Landlord for the repair, maintenance or replacement of any items required of Landlord to repair, maintain or replace as provided in this Section 7A and subject to damage not covered by Landlord's property insurance in the event of the damage to any such items is due to the acts, omissions, negligence or willful misconduct of Tenant or, Tenant's employees, agents, contractors or invitees.

Notwithstanding any contrary provision in this Lease, if Landlord fails to perform its obligations under this section to Tenant's reasonable satisfaction within fourteen (14) days after receipt of written notice from Tenant, Landlord shall be in default of this Lease and, in addition to Tenant's other remedies under applicable law, upon written notice to Landlord, Tenant shall have the right to perform such obligations at Landlord's sole cost, which costs Landlord shall reimburse Tenant for the reasonable and necessary cost thereof within five (5) days after Landlord's receipt of all contracts, agreements, invoices and proof of payment related to the performance of such obligations and invoice from Tenant therefor. Additionally, Tenant shall have the right to make repairs without prior landlord authorization in the event of an emergency and Landlord shall reimburse Tenant for the reasonable and necessary costs thereof within five (5) days after Landlord's receipt of all contracts, agreements, invoices and proof of payment related to the performance of such obligations and invoice from Tenant therefor.

- i. **HVAC MAINTENANCE:** Landlord shall service and deliver all HVAC systems in good working condition and shall warrant their performance for the first 90 days of the Lease term. Thereafter the Tenant shall become responsible for their

maintenance, repair and replacement up to \$4500 per calendar year after which Landlord shall be responsible.

B. **TENANT'S MAINTENANCE AND REPAIR OBLIGATIONS.** Tenant shall at all times keep all parts of the interior of the building located on the Premises not required to be maintained by Landlord in good order, condition and repair and in a clean, orderly, sanitary and safe condition. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Tenant's use of the Premises and with any recorded covenants, conditions and restrictions.

SECTION 8. INSURANCE REQUIREMENTS.

Landlord shall procure and maintain during the Term such all-risk property, general liability, rental loss and other insurance coverage on the Premises at replacement cost . Landlord will maintain general liability insurance in an amount not less than \$1,000,000 per occurrence for bodily injury and wrongful death and \$1,000,000 per occurrence for property damage. Landlord will add Tenant to the general liability insurance policy as an additional insured. Further, Landlord will ensure that the policy provides an endorsement that requires the insurance company to notify Tenant 30 days prior to cancellation of the policy or a modification of the insurance limits to an amount lower than required under this Agreement. In addition, Landlord will maintain property insurance ("all risk" insurance) covering the full replacement cost of the Premises and any other building(s) on the Land, against risk of loss from events like fire, storm, vandalism, and theft. Landlord shall deliver proof of such insurance (including policies, if requested) to Tenant within ten (10) days after written request therefor.

SECTION 9. MUTUAL WAIVER OF SUBROGATION RIGHTS AND LANDLORD'S INDEMNIFICATION OBLIGATIONS.

Landlord and Tenant and all parties claiming under them mutually release and discharge each other and their respective officers, directors, partners, employees and agents from all claims and liabilities arising from or caused by any casualty or hazard to the extent they could be covered by the insurance required to be carried hereunder and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof; provided that such release shall not operate in any case where the effect is to invalidate such insurance coverage. This release shall apply even if the loss or damage shall be caused by the fault or negligence of a party hereto or for any person for which such party is responsible.

LANDLORD AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TENANT AND ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AND ELECTED AND APPOINTED OFFICIALS, AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEYS' FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR RELATED DIRECTLY OR INDIRECTLY TO THE MANAGEMENT, CONTROL, OR ACTIVITIES OF LANDLORD, ITS AGENTS, EMPLOYEES, CONTRACTORS, AND LICENSEES ON THE LAND, INCLUDING, WITHOUT LIMITATION, THE PREMISES, AND FROM ANY LANDLORD DEFAULT

UNDER THIS LEASE. IN CASE ANY ACTION OR PROCEEDING IS BROUGHT AGAINST TENANT BY REASON OF ANY SUCH CLAIM, LANDLORD, UPON RECEIPT OF WRITTEN NOTICE FROM TENANT, AGREES TO DEFEND THE ACTION OR PROCEEDING BY COUNSEL ACCEPTABLE TO TENANT. THE OBLIGATIONS OF LANDLORD UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

SECTION 10. LANDLORD'S RIGHT OF ENTRY.

Upon one (1) business days prior written notice to Tenant (except in case of emergency), Landlord reserves the right to enter the Premises to perform any required Landlord maintenance, repairs, or replacements under this Lease or such repairs and/or maintenance to the Premises that Tenant has failed to complete as required under this Lease; provided, however, Landlord shall use reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises, and Landlord will not access any information stored in physical or digital files belonging to Tenant. Rent shall not abate during any such entry by Landlord. In addition, during any apparent emergency, where life is endangered or significant pecuniary loss inevitable, Landlord, its agents and employees, may enter the Premises forcibly without liability therefor and without in any manner affecting Tenant's obligations under this Lease.

SECTION 11. TAXES.

Tenant shall pay all taxes and governmental charges of any kind whatsoever that may be assessed against any personal property, fixtures, furnishings, equipment and all other personal property of Tenant contained or located at the Premises throughout the Term, but not otherwise.

Landlord shall, at its sole cost, pay real property taxes and all other taxes and governmental charges of any kind whatsoever that may be assessed against the Premises, the Land, and any improvements thereon.

SECTION 12. TENANT IMPROVEMENTS.

In accordance with applicable law, Tenant may make (i) non-structural improvements, alterations, or changes to the interior of the building located at the Premises without Landlord's consent, and (ii) other improvements with Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

Upon the expiration or termination of this Lease, Tenant shall have the right, but shall not be required, to remove any attached Tenant trade fixtures, installed equipment, and other non-structural attached improvements to the Premises that Tenant did not intend to become permanently attached to the Premises. If any of Tenant's trade fixtures, equipment or other improvements are removed, Tenant shall repair any such damage and restore the Premises to a condition similar to the remainder of the Premises.

SECTION 13. UTILITIES.

Tenant is solely responsible for maintaining all utility services during the Term required for the operation of Tenant's business within the Premises. Landlord warrants and represents to Tenant that all utilities serving the Premises as of the Lease Commencement Date are separately metered. Landlord shall in no event be liable to Tenant for any interruption in the service of any such utilities to the Premises, howsoever such interruption may be caused, and this Lease shall continue in full force and effect despite any such interruptions except to the extent interruption in the service is caused by Landlord, his agents, or contractors, provided exclusive remedy for such interruption is to abate rent, on a per diem basis, for an interruption lasting longer than forty-eight (48) hours..

SECTION 14. SIGNS.

Tenant will not place any signs outside the Premises without Landlord's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

SECTION 15. ENVIRONMENTAL LAWS.

Landlord warrants and represents to Tenant that to Landlord's knowledge as of the Lease Commencement Date (i) the Land is in compliance with all applicable governmental environmental laws, rules, and regulations, (ii) as of the Lease Commencement Date, there are no hazardous materials in violation of environmental laws, rules, and regulations present in, on, or about the Premises, (iii) throughout the Term, Landlord shall not place any hazardous materials in, on, or about the Land, except de minimis quantities used and stored in accordance with applicable law, and (iv) **LANDLORD'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS LEASE SHALL INCLUDE ALL CLAIMS AND DAMAGES INCURRED BY TENANT DUE TO ANY LANDLORD BREACH OF ANY WARRANTY OR MISREPRESENTATION UNDER THIS SECTION.**

Tenant warrants and represents to Landlord that, except as may be required for the Permitted Use, Tenant shall not use or store any hazardous materials at the Premises unless permitted by applicable law, and necessary or required for tenant to comply with its obligations under this lease..

SECTION 16. TENANT'S FIRE PREVENTION EQUIPMENT

Tenant agrees to supply and maintain at its own expense any fire extinguishers or fire prevention equipment in the Premises.

SECTION 17. RESERVED.

SECTION 18. CASUALTY AND CONDEMNATION.

A. **CASUALTY.** If the Premises are hereafter damaged or destroyed or rendered partially untenable for their accustomed use by fire or other casualty, Landlord shall (subject to the provisions of this Section 18) repair the same to substantially the condition which they were in

immediately prior to the happening of such casualty (excluding stock in trade, trade fixtures, furniture, furnishings, carpeting, floor covering, wall covering, drapes and equipment), and from the date of such casualty until the Premises are so repaired and restored, the monthly rent payments hereunder shall abate in such proportion as the part of said Premises thus destroyed or rendered untenable bears to the total Premises and, in any event, not less than 270 days after the date of the casualty. Provided however, Landlord shall not be obligated to expend for such repair or restoration, an amount in excess of the insurance proceeds received by Landlord as a result of such damage. Landlord's obligation to rebuild is contingent upon its receipt of insurance proceeds sufficient to make such repairs. In the event any mortgagee or lender requires such sums to be applied to any debt, Landlord will not be deemed to have received the proceeds. Notwithstanding the above, if the Premises are wholly or partially damaged, destroyed or rendered untenable for their accustomed use by fire or other casualty then Landlord shall have the right to terminate this Lease effective as of the date of such casualty by giving to Tenant, written notice of such termination within ninety (90) days after the later of: (i) the happening of such casualty; (ii) final adjustment with the insurance carrier and any mortgagee or lender. If such notice is given, this Lease shall terminate and provided Tenant is not in default hereunder, Landlord shall promptly repay to Tenant any rent theretofore paid in advance which was not earned at the date of such casualty. If said notice is not given and Landlord is required or elects to repair or restore the Premises as herein provided, then Tenant shall promptly repair or replace its stock in trade, trade fixtures, furnishings, furniture, carpeting, wall covering, floor covering, drapes and equipment to the same condition as they were in immediately prior to the casualty, and if Tenant has closed its business, Tenant shall promptly reopen for business upon the completion of such repairs. Unless Tenant terminates this Lease as provided in this section, if (i) the Premises are hereafter damaged or destroyed or rendered partially untenable for their accustomed use by fire or other casualty, or (ii) any other improvements on the Land are damaged due to any such casualty, Landlord shall use its best efforts to repair and restore the damaged property as soon as reasonably practicable thereafter and, in any event, not less than 270 days after the date of the casualty. Notwithstanding the foregoing to the contrary, If (i) the Premises are hereafter damaged or destroyed or rendered partially untenable for their accustomed use by fire or other casualty, to any such casualty and such casualty will have a material adverse effect on Tenant's Permitted Use of the Premises, as determined by Tenant in its sole and absolute discretion, Tenant shall have the right to terminate this Lease within 30 days after the date of the casualty by written notice to the Landlord. If the Premises or other improvements are to be repaired or restored by Landlord, from the date of such casualty until such repairs or restoration are complete, the rent payments hereunder shall abate in such proportion as the part of the Premises damaged or rendered untenable bears to the total Premises (or shall be reduced on an equitable basis for a casualty outside the Premises that affects Tenant's Permitted Use of the Premises, as reasonably determined by Landlord and Tenant). If Tenant terminates this Lease pursuant to this provision, this Lease shall terminate as of the later of (i) the date of the casualty; and (ii) the date Tenant ceases all operations and occupancy of the Premises.

B. CONDEMNATION. If any portion of the Land or any improvement thereon shall be acquired, condemned or damaged as a result of the exercise of any power of eminent domain, condemnation or sale under threat thereof or in lieu thereof (herein called a "Taking"), and such taking includes any part of the Premises that would have a continuing material, adverse effect on Landlord's ability to comply with its obligations under this Lease, Landlord may terminate this

Lease by giving Tenant at least ninety (90) days prior written notice of termination. If Landlord terminates this Lease pursuant to this provision, this Lease shall terminate as of the date the condemning authority has the right to possession of the property subject to the Taking. If this Lease is not terminated as aforesaid, then it shall continue in full force and effect, and Landlord shall use its best efforts to promptly restore the Premises and other improvements on the Land to a like-kind condition. Base Rent shall be reduced in the proportion that the area of the building located on the Premises so taken bears to the total building located on the Premises (or shall be reduced on an equitable basis for a Taking outside of the parking area Premises that affects Tenant's Permitted Use of the Premises, as reasonably determined by Landlord and Tenant). Tenant reserves the right to make any claim for any damages that may be payable for Tenant's trade fixtures or leasehold improvements installed by Tenant at its own cost which are not part of the realty and all other available damages that Tenant may be entitled to under applicable law.

Notwithstanding the foregoing, Tenant shall have the right to terminate this Lease due to a Taking that includes (i) any part of the building located on the Premises, or (ii) any part of the parking area located on the Premises, if such taking of the parking area outside of the Premises will have a material adverse effect on Tenant's Permitted Use of the Premises, as determined by Tenant in its reasonable discretion. If Tenant terminates this Lease pursuant to this provision, this Lease shall terminate as of the date the condemning authority has the right to possession of the property subject to the Taking.

SECTION 19. SNDA AND ESTOPPEL.

A. **SNDA.** At the request of Landlord, Tenant will sign and return to Landlord any commercially reasonable Subordination, Nondisturbance, and Attornment agreement ("SNDA") within thirty (30) days after written request therefor, and Tenant agrees to the following:

1. **SUBORDINATION.** Tenant's interest under this Lease is, at all times, subordinate to other present and future liens on the Premises and any modifications, supplements, extensions, amendments, renewals, consolidations, and replacements of said liens.
2. **NON-DISTURBANCE.** If the ownership of the Premises changes in any way, then Tenant's right to quiet enjoyment and other rights under this Lease will not be disturbed or terminated, provided that this Lease is in full force and effect and there are no defaults by Tenant.
3. **ATTORNMENT.** Tenant shall recognize any future owners of the Premises as Landlord and will continue to perform all Tenant obligations under this Lease through the Term.

B. **ESTOPPEL.** At Landlord's request, Tenant will sign and return to Landlord within thirty (30) days after written request therefor any commercially reasonable estoppel certificate addressed to Landlord or any Landlord mortgagee certifying that this Lease is unmodified and in full force and effect (or if modified stating the nature of such modification and certifying that the Lease as modified is in full force and effect), the dates to which the rent and other charges are paid in

advance, if any, and acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. .

SECTION 20. DEFAULTS AND REMEDIES.

A. **LANDLORD DEFAULTS.** Except as otherwise provided in this Lease, Landlord shall not be in default of any of its obligations under this Lease unless and until Landlord shall have failed to perform any Landlord obligation under this Lease within ten (10) days after written notice from Tenant to Landlord describing the unfulfilled obligation. If such obligation cannot reasonably be performed in ten (10) days, Landlord shall not be in default of this Lease if Landlord has commenced performance of the obligation within such ten (10) day period and diligently performs it to completion.

B. **TENANT DEFAULTS.** The following shall be Tenant defaults under this Lease:

1. Tenant fails to pay Landlord Base Rent, or any additional rent or other amounts when due hereunder, within ten (10) days after written demand therefor; or
2. Tenant fails to perform or observe any other of the terms, provisions, conditions, and covenants of this Lease within ten (10) days after written notice from Landlord to Tenant describing the unfulfilled obligation. If such obligation cannot reasonably be performed in ten (10) days, Tenant shall not be in default of this Lease if Tenant has commenced performance of the obligation within such ten (10) day period and diligently performs it to completion, provided in no event shall such curing of the default exceed 180 days

C. **LANDLORD'S REMEDIES.** Landlord will have all rights and remedies provided by applicable law for any Tenant default under this Lease, provided, however, (i) Landlord shall not have the right to accelerate rent or collect any rentals due hereunder in advance of the applicable due date(s), (ii) Landlord will not have the right to lock Tenant out of the Premises in accordance with the Texas Property Code, (iii) Landlord will use its best efforts to mitigate its damages caused by any Tenant default under this Lease, (iv) Landlord shall have the right upon written notice to Tenant to terminate this Lease and evict the Tenant under applicable law, and/or (v) Landlord without terminating this Lease shall have the right upon written notice to Tenant to terminate Tenant's rights to possession of the Premises. No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a written notice of such termination is given by Landlord to Tenant. Notwithstanding any re-entry or taking possession, without termination, Landlord may at any time thereafter terminate this Lease for any prior breach or default.

SECTION 21. SURRENDER OF PREMISES.

Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in the condition they were in on the Lease Commencement Date, together with any improvements that Tenant does not elect to remove from the Premises, reasonable wear and tear and loss by casualty or condemnation excepted. Landlord shall have the right to dispose of any property left

in the Premises upon the expiration or termination of this Lease or Landlord's re-entry following a default by Tenant, in any manner, Landlord deems desirable, including without limitation, discarding such items in a refuse container. Tenant shall be entitled to no payment or offset for the value of any such property (even if sold by Landlord) and shall pay to Landlord on demand, the costs of refuse container incurred by Landlord in connection with such disposal. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord.

SECTION 22. GENERAL PROVISIONS.

A. **NO WAIVER.** Landlord may waive any Tenant default without waiving any prior or subsequent defaults. Landlord's failure to exercise or delay in exercising any right under this Lease, will not operate as a waiver of such right.

B. **RELATIONSHIP OF THE PARTIES.** Landlord shall not, in any way or for any purpose, become a partner, employer, principal, master, agent or joint venturer of or with Tenant.

C. **TIME IS OF THE ESSENCE.** Time is of the essence in this Lease.

D. **WEEKENDS AND HOLIDAYS.** If the due date set forth in this Lease for the performance of any obligation by Landlord or Tenant is a Saturday, Sunday, or City of El Paso holiday (or if notice is received or would otherwise be deemed received on any such date), the due date for performance of such obligation, or date of receipt of such notice, shall be deemed to be the next date that is not a Saturday, Sunday, or City of El Paso holiday.

E. **NOTICES.** The parties will send all notices required by this Lease either in person, e-mail, in writing postmarked and delivered by certified mail, or by a nationally recognized overnight courier. All notices that are properly addressed and mailed shall be considered received 3 business days after the postmark date. All notices that are delivered in person or by e-mail are considered received on the date sent to the addresses or persons listed below. Parties may change their addresses or designated persons by sending a written notice to the other party. A new address is not official until the change of address notice is received by the other party as provided in this Section. Upon receipt of proper notification of change of address the notified party will send all further notifications to the new address. Parties will address notices as follows:

To the Landlord: Landlord's Notice Address set forth in Section 1.

To the Tenant: The City of El Paso
Attn: City Manager
P. O. Box 1890
El Paso, Texas 79950-1890

With a Copy to:

The City of El Paso
Attn: Real Estate Division
7969 San Paulo
El Paso, Texas 79907
Email: realestate@elpasotexas.gov

F. **CONFIDENTIALITY.** Tenant acknowledges that this Lease is subject to Chapter 552 of the Texas Government Code (Texas Public Information Act). The release of the Agreement as a whole or in part must comply with Chapter 552 of the Texas Government Code (Texas Public Information Act).

G. **GOVERNING LAW.** This Lease is governed by Texas law.

H. **VENUE.** The venue for disputes regarding this Lease between the parties will be El Paso County, Texas.

I. **SEVERABILITY.** A future finding of invalidity of any provision of this Lease does not affect the validity of any remaining provisions of this Lease.

J. **HEADINGS.** The headings and subheadings of this Lease are for information purposes only and are not substantive terms.

K. **GOVERNMENTAL FUNCTION.** The parties agree that Tenant is entering into this Lease as a governmental entity performing a governmental function.

L. **AUDIT RIGHTS.** Upon written request from Tenant, Landlord will deliver to Tenant, at no cost to Tenant, all Landlord records pertaining to this Lease or, alternatively, Landlord shall allow Tenant to inspect and copy all such records in a place designated by Landlord in El Paso, Texas, at times reasonably satisfactory to Landlord.

M. **FORCE MAJEURE.** If either party hereto shall be delayed or hindered in or prevented from performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, acts of war or other reason of the like nature not the fault of the party delayed in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided however, Tenant shall not be excused in any event for payment of the Rent due under this Lease.

N. **SUCCESSORS AND ASSIGNS.** This Lease is binding on Landlord and Tenant, and their successors and assigns.

O. **NO THIRD-PARTY BENEFICIARIES.** There are no third-party beneficiaries of this Lease. **SALE OF PREMISES BY LANDLORD.** In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale.

P. **ENTIRE AGREEMENT.** There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Landlord and Tenant other than herein set forth. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by them.

Q. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 23. ADDITIONAL PROVISIONS. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS LEASE:

A. **TERMINATION RIGHT. TENANT SHALL HAVE THE RIGHT TO TERMINATE THIS LEASE: (A) AT ANY TIME UPON NINETY (90) DAYS PRIOR WRITTEN NOTICE TO LANDLORD, AND (B) UPON WRITTEN NOTICE TO LANDLORD IF:**

(1) NECESSARY TO SECURE EFFICIENCY OF PUBLIC SERVICE AT A REASONABLE RATE, OR TO ASSURE THAT THE PREMISES ARE MAINTAINED IN GOOD ORDER THROUGHOUT THE LIFE OF THE GRANT.

(2) THE FEDERAL OR STATE FUNDING SOURCE FOR THIS LEASE IS TERMINATED OR REDUCED BY 50% OR MORE,

(3) THE CITY OF EL PASO, TEXAS BUDGET DOES NOT APPROPRIATE ENOUGH FUNDS TO COVER THE COSTS OF THIS LEASE, OR

(4) THE CITY COUNCIL FOR THE CITY OF EL PASO, TEXAS, IN ITS SOLE DISCRETION, DETERMINES THAT THE TERMINATION OF THIS LEASE IS NECESSARY TO SECURE EFFICIENCY OF PUBLIC SERVICE AT A REASONABLE RATE OR THAT IT IS NECESSARY TO TERMINATE THE SERVICES PROVIDED BY THE COMMUNITY AT THE PREMISES.

B. **In the event that Tenant exercises the Termination Right prior to the 37th month of the lease, an Early Termination Fee will be due to Landlord within 30 days of such notice based on the table below where the month is the final month of occupancy.**

EARLY TERMINATION FEE (FOR 1ST THREE YEARS):

MONTH	FEE
1	\$ 95,000.00
2	\$ 92,361.11
3	\$ 89,722.22
4	\$ 87,083.33
5	\$ 84,444.44
6	\$ 81,805.55
7	\$ 79,166.66
8	\$ 76,527.77
9	\$ 73,888.88
10	\$ 71,249.99
11	\$ 68,611.10
12	\$ 65,972.21
13	\$ 63,333.32
14	\$ 60,694.43
15	\$ 58,055.54
16	\$ 55,416.65
17	\$ 52,777.76
18	\$ 50,138.87
19	\$ 47,499.98
20	\$ 44,861.09
21	\$ 42,222.20
22	\$ 39,583.31
23	\$ 36,944.42
24	\$ 34,305.53
25	\$ 31,666.64
26	\$ 29,027.75
27	\$ 26,388.86
28	\$ 23,749.97
29	\$ 21,111.08
30	\$ 18,472.19
31	\$ 15,833.30
32	\$ 13,194.41
33	\$ 10,555.52
34	\$ 7,916.63
35	\$ 5,277.74
36	\$ 2,638.85

(Signature page(s) follow)

LANDLORD:

TOMLIN PARTNERS, LLC

Attn: Rebecca McBroom

Vice President, JMT Properties, Inc – its manager

Rebecca McBroom

(Acknowledgement)

STATE OF TEXAS)

)

COUNTY OF EL PASO)

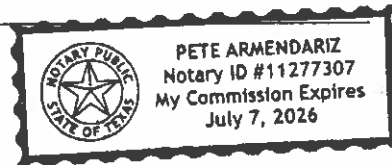
This Instrument was acknowledged before me on the 9 day of MAY, 2024, by REBECCA MCBROOM, as VICE-PRESIDENT of the JMT PROPERTIES, on behalf of TOMLIN PARTNERS.

Pete Armendariz
Notary Public, State of Texas

Notary's Commission Expires: 7-7-2026

Notary's Name (printed)

PETE ARMENDARIZ



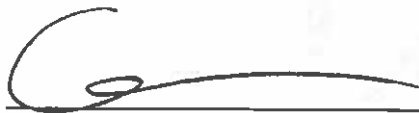
TENANT:

CITY OF EL PASO:


Cary Westin
Interim City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:


Carlos L. Armendariz
Assistant City Attorney


Mary Lou Espinoza
Capital Assets Manager

(Acknowledgement)

STATE OF TEXAS)
COUNTY OF EL PASO)

This Instrument was acknowledged before me on the 31 day of May, 2024 by Cary Westin, as Interim City Manager of the City of El Paso, a municipal corporation, on behalf of said corporation.


Notary Public, State of Texas

Notary's Name Mandy Contreras

Notary's Commission Expires:

4.14.2027

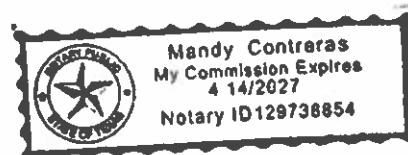


EXHIBIT A – DESCRIPTION of LEASED PREMISES

For the property commonly known as 9565 Diana and legally described as

4 CASTNER RANGE PT OF 3 BEG 190.43 FT NW OF NEC (195.84 FT ON ST- 213.19 FT ON ELY- 222.37 FT ON SLY- IRREG ON WLY) (46883.00 SQ FT)

Tenant's leased area including the parking area and common areas is shown in the survey below.

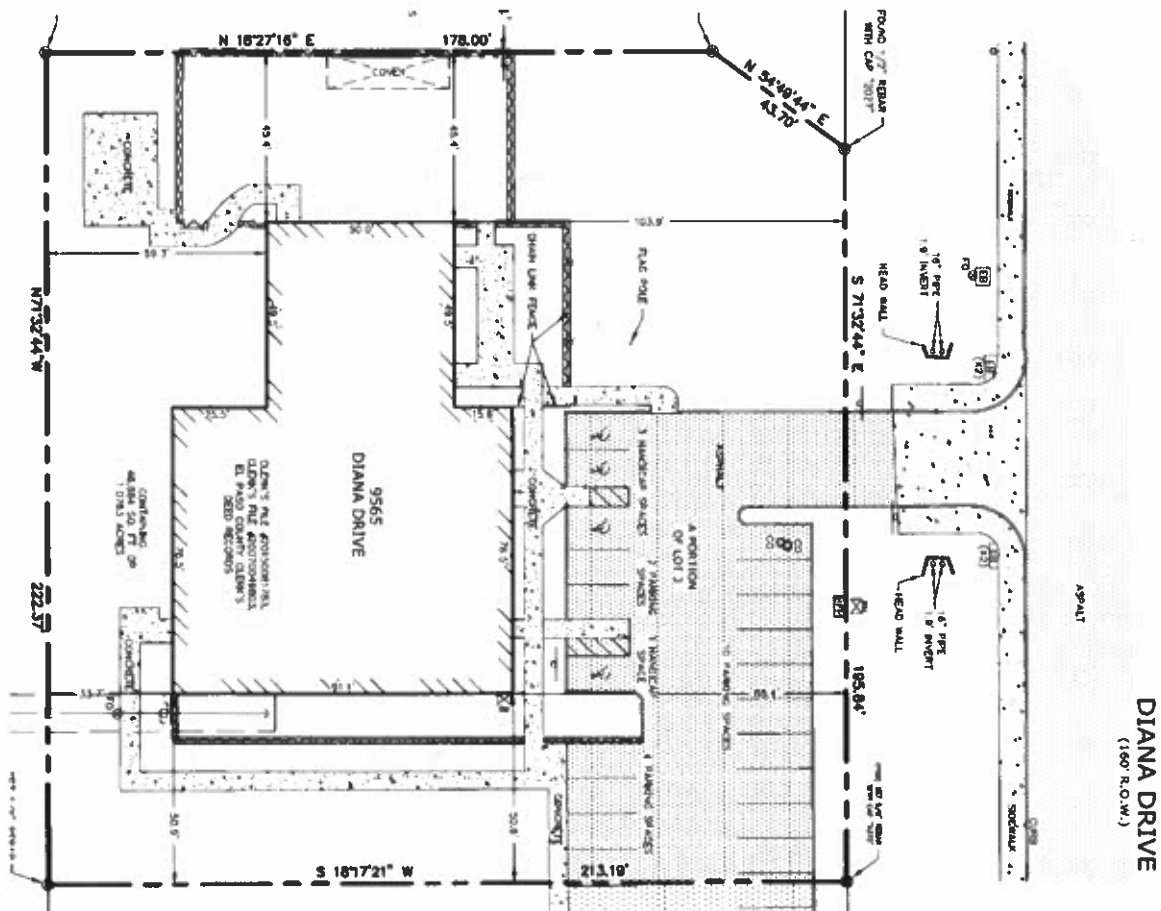


EXHIBIT B

RENEWAL OPTION ADDENDUM

Premises Address: 9565 Diana, El Paso, TX, 79924

Landlord: TOMLIN PARTNERS, LLC

Tenant: City of El Paso

Tenant shall have the right to extend the Term for an additional period of 60 months, by delivering written notice of renewal to Landlord at least 120 days prior to the expiration of the then current Term. If the Term is extended, all provisions of the Lease shall continue in full force and effect; provided, however, Base Rent for the extension period(s) shall increase each Lease Year five percent (5%) at the beginning of each Lease Year throughout such extension period(s).

All capitalized terms used in this addendum not otherwise defined herein have the same meaning given such terms in the Lease.

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EXHIBIT C

DECLARATION OF EASEMENTS, RESTRICTIONS, RESERVATIONS AND COVENANTS

This Declaration of Easements, Restrictions, Reservations and Covenants (Declarations) made on the 3 day of March, 2021 by Tomlin Partners, LLC, a Texas limited liability company ("Declarant"), for the property more particularly described in Exhibit "A", attached hereto and made a part hereof in the city of El Paso, El Paso County, Texas, hereinafter referred to as the "Property".

WITNESSETH:

WHEREAS, Declarant owns the Property described on Exhibit "A" attached hereto; and

WHEREAS, the Property will be owned by Declarant, leased, sold or issued to various other persons and/or entities (collectively "Owner" or sometimes "Owners"), into two tracts as shown on Exhibit "A" attached hereto as the 9565 Diana Drive Tract and the 9555 Diana Drive Tract; and

WHEREAS, the 9565 Diana Drive Tract and the 9555 Diana Drive Tract shall collectively be referred to as the "Tracts"; and

WHEREAS, the Declarant intends to reserve, restrict and provide for the perpetual, reciprocal and non-exclusive easements over the "Common Areas" of the Tracts; and

WHEREAS, the Declarant intends to provide for certain covenants, restrictions and reservations regarding the Property.

NOW THEREFORE, Declarant as the Owner of the Property, for itself, its successors and assigns, does herein declare and reserve the following easements, restrictions, reservations, terms, conditions and covenants upon the Tracts.

1. Declarant hereby grants to the Owners, and each and every person, partnership, corporation or other entity now or hereinafter owning or having any interest in the Property, or a portion thereof, (i) a mutual, reciprocal and non-exclusive perpetual easement between Tract 1 and Tract 2, in and over the driveways, paved parking areas, sidewalks and service areas, access ways for both pedestrian and vehicular passage, parking and use, water drainage, for ingress to and egress from the public streets adjoining the Tracts and for the installation, maintenance and connection of all over and underground utilities, including all utility lines, wires, pipes, conduits, sewers and drainage lines, and (ii) a mutual, reciprocal and non-exclusive perpetual easement on Tract 1 and Tract 2 for vehicular parking in any of the parking areas or parking spaces located on the Tracts as they exist from time to time..

2. For the purpose of this Declaration the term "Common Area" shall mean all areas within the Property which are not dedicated to be improved with buildings or other permanent structures, but shall be adjacent thereto. The Common Areas shall consist of only that portion of each Tract which shall be or are currently dedicated to and for use as driveways, pedestrian ways, sidewalks, parking areas, parking spaces, landscaped areas, and ingress to and egress from public roadways and for utility line purposes.

3. The easements granted herein shall be for the benefit of and be restricted solely to the Owner or Owners, from time-to-time, of all or any portion of the Property. However, such Owner or Owners of each Tract shall be authorized to grant the benefits of such easements to their lessees and tenants, now or hereafter, occupying buildings or portions thereof for the period of such tenancy and to the customers and

business invitees of tenants. This authorization is not intended and shall not be construed to create any rights in and for the benefit of the tenants or the general public.

4. With regard to the "Common Areas", the Owner of each Tract at its own cost shall be responsible for the following:

(a) The repair and maintenance of all lighting, paving, walk ways, sidewalks and landscaping within the respective Tracts.

(b) The maintenance of all parking and service areas located within the respective Tracts.

(c) The maintenance of all sidewalks and walkways adjacent to all buildings and improvements located within the respective Tracts.

(d) The cost of cleanup, sweeping, striping and maintenance of all common areas within the respective Tracts.

5. All Tract Owners must keep their portion of the Common Areas, sidewalks, service-ways, trash dumpster area and loading docks, clean and reasonably free from rubbish, waste, and debris.

6. Each Tract Owner will keep its parking area properly striped, free of chuckholes and lighted from sundown to 9:00 p.m. daily, unless all of the Tract Owners agree to reduce the number of hours of lighting by written agreement.

7. No fences, barriers, curbs or other obstructions of any kind shall be erected or maintained between each Tract Owners Tract. Each Tract Owner shall be subject to and comply with the Master Drainage Plan as approved by the City of El Paso, Texas. No Tract Owner shall place or construct any structure that would alter, divert or obstruct the drainage of water on the Property at any without the prior written approval of the other Tract Owner. No Owner shall change, modify, eliminate or restrict the driveways or points of ingress and egress from public streets or between the Tracts without the prior written approval of the other Owner.

8. Each Owner shall have the right to reserve, with customary signage, up to 4 parking spaces for its exclusive use directly in front of the building on such Owner's Tract. Such spaces must be within such Owner's Tract, and the reservation of the parking spaces as provided hereunder shall be applicable during normal business hours only. Such reservation shall not entitle the Owner to construct any garage, carport or other structure upon any of the reserved parking space or spaces or any Tract.

9. Declarant or any Owner of a Common Area located in a Tract shall have the right to close, temporarily, a portion of said Common Area(s) to such an extent, when in the opinion of the Owner that such Common Area is in need of repair or restoration or to prevent a dedication thereof or an accrual of any rights in any person or in the general public therein. Any temporary closing of Common Area(s) shall be performed in a manner which will cause minimal interference and interruption of the Common Areas.

10. If a Tract Owner is not maintaining its Common Area in a reasonably clean environment consistent with the intent of this Declaration, the other Tract Owner may give written notice to the Tract Owner not maintaining its Common Area, requesting that action be taken in order to maintain the environmental integrity of all Common Areas so that they are not degraded nor deteriorated. If a Tract Owner receiving such written notice fails to take corrective action within ten (10) days of the date of the notice being given, the other Tract Owner(s) may provide general maintenance, clean-up, sweeping and striping service to the Common Area owned by said Tract Owner. Any and all costs and expenses including but

not limited to management and administrative costs and fees incurred by the Tract Owner(s) shall be on behalf of said Tract Owner failing to take such action, and be due and payable.

If a Tract Owner fails or refuses to pay for the fees and costs of the clean-up and maintenance of its Common Areas as provided in this Declaration, upon ten (10) days written notice from the Tract Owner(s) expending such costs, that Tract Owner(s) shall have the right, in addition to all remedies available at law, to file an Affidavit of such non-payment which shall be recorded in the Real Property Records of El Paso County, Texas and the recording of same shall be considered a lien and/or mechanics lien upon said Tract of the Property and enforceable in accordance with the laws of the State of Texas.

11. No Owner of a Tract or any part thereof shall use or permit any portion of such Tract or building to be used for a period of twenty-five (25) years from the date herein for an adult entertainment establishment, including without limitation, an adult bookstore, adult motion picture theater, nude or semi-nude live entertainment club or sexually oriented business as such or similar terms are defined from time-to-time in the El Paso Municipal Code or other applicable ordinances or laws. Without limitation on any other remedy which may be available to an Owner for a breach of this restriction, this restriction may be enforced by injunction.

12. The easements, rights and privileges herein granted shall be used and enjoyed in such a manner as not to cause any unreasonable interference with the conduct and operations of any business existing and operating within the Property.

13. The easements herein granted, the restrictions and reservations hereby imposed and the agreements and covenants herein contained shall be perpetual easements, restrictions, reservations and covenants running with the Property and shall inure to the benefit of, and be binding upon the Declarant it's assigns and all future Owners of all or any portion of the Property described herein and their respective heirs, legal representatives, successors and assigns.

14. Any dispute arising under the provisions of the declaration set forth below is subject to arbitration and in accordance with under the Texas General Arbitration Act.

15. This Declaration may be amended, changed and modified at any time by Declarant in order to further define, change or clarify the covenants, restrictions and provisions contained herein. Any such amendment, change or modification of this Declaration by Declarant can be made with or without the approval of any subsequent Tract Owner(s). This Declaration may also be amended, changed and modified upon the affirmative vote of all Owners of the Property only at such time that Declarant is no longer a Tract Owner. Only Declarant and the Tract Owner(s) shall have the right to enforce any covenant, easement, restrictions, reservations or provision contained herein or any amendments thereto. Any amendment to this agreement shall be filed in the Deed of Records of El Paso County, Texas, and shall be effective and binding upon all Tracts and Owners upon such filing.

16. The Property shall be held, transferred, improved, sold, conveyed, used and occupied subject to the Easements, restrictions, reservations and covenants described herein, which easements, covenants and restrictions shall be covenants running with the Property and enforceable against all subsequent Owners of all or any portion thereof.

17. The easements, restrictions, reservations and covenants described herein shall be binding and enforceable by and against and shall inure to the benefit of Declarant and their respective agents, successors and assigns, including, without limitation, any and all subsequent Owners of the Property or any portions thereof.

CITY CLERK DEPT
2024 JUN 25 PM2:35

18. This Declaration shall be construed and governed in accordance with the laws of the State of Texas.

19. In the event any party to this Contract employs attorneys to protect or enforce its rights hereunder, the prevailing party shall recover from the non-prevailing party all reasonable attorneys' fees and costs, incurred in enforcing the terms of this Declaration.

20. In the event that any one or more of the provisions of this Declaration should be held invalid or unenforceable for any reason, the remaining provisions of this Declaration will remain in full force and effect and in no way will be affected, impaired or invalidated.

21. Any waiver as to any of the terms or conditions of this Agreement shall not operate as a future waiver of the same terms and conditions or prevent the future enforcement of any of the terms and conditions hereof enforcement of any of the terms and conditions hereof.

DECLARANT:

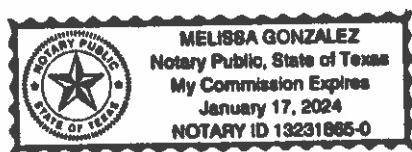
Tomlin Partners, LLC, a Texas limited liability company

By: *Blair L. McBr...*
Its: VP - JMT Properties, Inc., its manager

STATE OF TEXAS

COUNTY OF EL PASO

The foregoing instrument was acknowledged before me this 3rd day of March, 2021 by Rebecca Mcbroom, as the manager of Tomlin Partners, LLC, a Texas limited liability company.



Melissa Gonzalez
Notary Public, State of Texas

EXHIBIT D

CONDITION OF PREMISES UPON DELIVERY BY LANDLORD

Tenant accepts the Premises in their As-Is condition upon Landlord's delivery and shall be responsible for their repairs, maintenance and replacement as per Paragraph 7 of the Lease. Tenant shall have the right to inspect the Premises upon Landlord delivery and shall not be responsible for deficiencies in the following items upon moving out.

1. Cove base molding throughout the Premises.
2. Ceiling tiles throughout the Premises.
3. Air vents throughout the Premises.
4. Window blinds throughout the Premises.
5. Electrical outlets throughout the Premises.
6. Light switches throughout the Premises.
7. Ceiling light fixtures throughout the Premises.
8. Junction boxes throughout the Premises.
9. Door latches throughout the Premises.
10. Waterlines throughout the Premises.
11. Door stops throughout the Premises.
12. Doorframes throughout the Premises.
13. Building interior paint throughout the Premises.