



WASHOE COUNTY

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CM/ACM	<u>KS</u>
Finance	<u>DN</u>
DA	<u>SH</u>
Risk Mgt.	<u>DE</u>
HR	<u>N/A</u>
Comptroller	<u>CH</u>

STAFF REPORT BOARD MEETING DATE: July 26, 2016

DATE: July 1, 2016

TO: Board of County Commissioners

FROM: Dave Solaro, Architect, P.E., Director,
Community Services Department, 328-3624, dsolaro@washoecounty.us

THROUGH: Kevin Schiller, Assistant County Manager

SUBJECT: Approve a First Amendment to Lease Agreement between Washoe County and 865 Tahoe Boulevard Associates for continued occupancy of office space for the Incline Justice Court located at 865 Tahoe Boulevard, Incline Village, Nevada, for a 60 month term, effective October 1, 2016 through September 30, 2021 [\$83,493.12 annually plus 3% annual increases in years 2017 and 2019]. (Commission District 1.)

SUMMARY

Washoe County currently leases office space for the Incline Justice Court and Incline Constable at 865 Tahoe Boulevard, Incline Village, Nevada. In order to renew the Lease Agreement with a previously negotiated 60 month term, notice needs to be given by Washoe County to the Lessor 90 days in advance of the termination date of the agreement.

Strategic Objective supported by this item: Stewardship of Our Community.

PREVIOUS ACTION

On December 13, 2011, the Board of County Commissioners (Board) approved a Lease Agreement with 865 Tahoe Boulevard Associates, LLC for 60 months – October 2011 through September 2016.

On December 14, 2010, the Board approved the First Amendment to Lease to acknowledge the transfer of ownership from the Newman Family Trust to 865 Tahoe Boulevard Associates, LLC.

On July 13, 2010, the Board approve a Lease Agreement for a fifty-three month term, commencing July 1, 2010 and terminating on June 30, 2014 to accept a lease concession of three months waived rent in FY 2010/11 and 2011/12.

The Board has approved multiple lease agreements related to this occupancy for utilization of the Centerpointe Professional Building since 1985.

AGENDA ITEM # S.F.

BACKGROUND

The current leased space includes 4,523 square feet of office space utilized for the Incline Justice Court and Constable. Multiple Lease Agreements and Amendments to Lease Agreements have been approved by the Board in the past for the continued occupancy and/or to increase leased office space to accommodate the needs of the Court.

The most recent Lease Agreement approved in October 2011, has a negotiated lease rate for the term of the Agreement (October 1, 2011 through September 30, 2016) and contains a renewal clause that allows for continued occupancy of the Incline Justice Court for an additional 60 months with a 3% increase in rent in years two and four.

The lease has standard funding out clauses, as well as a 90 day notice to cancel in the event the County acquires a building to provide the same function.

FISCAL IMPACT

The First Amendment to Lease Agreement is for a 60 month term - October 1, 2016 through September 30, 2021. Per the terms of the original Lease Agreement, the Agreement may be extended for 60 months at a fixed rate that includes 3% increases in year two (2017) and year four (2019). Funds are available in the Incline Justice Court Cost Center 125100-710600.

Lease Term	Monthly Rate	Annual Rate
10/01/2016 – 9/30/2017	\$6,957.76	\$83,493.12
10/01/2017 – 9/30/2019	\$7,236.80	\$86,841.60
10/01/2019 – 9/30/2021	\$7,462.95	\$89,555.40

RECOMMENDATION

It is recommended that the Board of County Commissioners approve a First Amendment to Lease Agreement between Washoe County and 865 Tahoe Boulevard Associates for continued occupancy of office space for the Incline Justice Court located at 865 Tahoe Boulevard, Incline Village, Nevada, for a 60 month term, effective October 1, 2016 through September 30, 2021 [\$83,493.12 annually plus 3% annual increases in years 2017 and 2019].

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "Move to approve the First Amendment to Lease Agreement between Washoe County and 865 Tahoe Boulevard Associates for continued occupancy of office space for the Incline Justice Court located at 865 Tahoe Boulevard, Incline Village, Nevada, for a 60 month term, effective October 1, 2016 through September 30, 2021 [\$83,493.12 annually plus 3% annual increases in years 2017 and 2019]."

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (“First Amendment”) is made and entered into this ____ day of _____, 2016, by and between 865 Tahoe Boulevard Associates, hereinafter referred to as “Lessor”, and WASHOE COUNTY, a political subdivision of the State of Nevada, hereinafter referred to as “Lessee”.

WITNESSETH

WHEREAS, Lessor is the sole owner of the premises located at 865 Tahoe Boulevard, Incline Village, Washoe County, Nevada (Property); and

WHEREAS, Lessee through previous contractual agreements has been occupying certain space in the Property since July 1984, and is currently occupying 4,523 square feet within Suite #301, under that Lease Agreement dated December 13, 2011; (“Lease Agreement”); and

WHEREAS, Lessor and Lessee mutually agree to continue to lease that certain office space described above and extend the term of the Lease agreement dated December 13, 2011, for an additional 60 month period, pursuant to Section Five of the Agreement, with a change to Section Two (Term of Lease), and Section Three (Rental and Common Area Expense);

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Lessor and Lessee hereby agree to renew the Lease Agreement to extend the term as follows:

SECTION TWO

TERM OF LEASE

The term of this First Amendment to Lease Agreement shall be 60 months commencing October 1, 2016, and terminating on September 30, 2021, for the rental of 4,523 square feet of office space.

SECTION THREE

RENTAL AND COMMON AREA EXPENSE

Effective upon the commencement date as defined in Section Two, Lessee agrees to pay Lessor, at such place, as Lessor shall designate from time to time in writing, rent for the Premises described in Section One of the Lease Agreement, as follows:

- A. Base Monthly Rent:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)
)
County of Contra Costa)

On _____, 2016, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

LEASE AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of December, 2011, by and between 865 Tahoe Boulevard Associates, LLC hereinafter referred to as "Lessor" and WASHOE COUNTY, NEVADA, a political subdivision of the State of Nevada, hereinafter called "Lessee".

WITNESSETH:

WHEREAS, Lessor is the sole owner of the premises located at 865 Tahoe Boulevard, Incline Village, Washoe County, Nevada; and

WHEREAS, Lessee through previous contractual agreement has been occupying space in the premises since July 1984; and

WHEREAS, the parties desire by this Agreement to define their respective rights, duties and liabilities for the continued occupancy of 4,523 sf of office space from Lessor for the Incline Justice Court and other associated offices; and

WHEREAS, upon final execution, it is the parties intent that this Agreement will supersede and replace any and all previous agreements between the parties, that are related to this specific location; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

SECTION ONE

DESCRIPTION OF PREMISES

Lessor hereby leases unto Lessee, and Lessee hereby leases from Lessor, approximately 4,523 sf of space (Premises") in the building generally known and designated as 865 Tahoe Boulevard, Incline Village, Washoe County, Nevada, 89451 ("building"), Suites #301, #305, #307, #309 and #311 collectively containing 4,523, together with the nonexclusive use of all common areas, including parking area, entrances, hallways, and restrooms in common with Lessor and other lessees of Lessor. Lessee, its employees and invitees shall also have the right to utilize two designated parking spaces and the remainder of the parking area on an undesignated basis in common with other lessees and their employees and invitees.

Unless otherwise specified, "Premises" shall include only that portion used exclusively by Lessee.

SECTION TWO

TERM OF AGREEMENT

The term of this Agreement shall be for a sixty month term, commencing October 1, 2011 and terminating on September 30, 2016, unless sooner terminated or extended upon mutual agreement of the parties or as otherwise provided herein.

SECTION THREE

RENTAL AND COMMON AREA EXPENSE

Effective upon the commencement date as defined in Section Two, Lessee agrees to pay Lessor, at such place, as Lessor shall designate from time to time in writing, rent for the Premises described in Section One above, as follows:

A. Base Monthly Rent:

1. The sum of Six Thousand Five Hundred Fifty Eight Dollars and thirty five cents (\$ 6,558.35) per month for the initial twenty four month period commencing October 1, 2011 through September 30, 2013; the rent shall increase by 3% and then be fixed for the next two year period; and again at the beginning of the fifth year, unless changed as specifically provided herein.

B. Base Monthly Rent for each subsequent period shall be as follows:

10/1/13 – 9/30/15	\$1.50 psf	\$6,755.10/mo – 24 months
10/1/15 – 9/30/16	\$1.55 psf	\$6,957.76

C. Common Area expenses shall be paid at the sole cost and expense of Lessor without cost or obligation to Lessee. Common Area expenses mean the total of all items of cost and expense related to owning, maintaining, operating and managing the Common Area as specifically described in Section Four below. The use of all common areas, including parking shall be subject to such reasonable rules and regulations relating to such use as the Lessor may from time to time establish.

D. All rental payments shall be made payable to the Lessor c/o 865 Tahoe Boulevard Associates, LLC, c/o Incline Property Management, 848 Tanager, Suite M, Incline Village, Nevada, 89451. Rent payable hereunder is due the first (1st) day of each month and if not received by the Lessor or properly deposited into the U.S. Mail system by the tenth (10th) day, Lessee agrees to pay a surcharge equivalent to ten (10%) percent of the monthly rental. Notwithstanding the foregoing, no late charge shall be assessed with respect to the first late payment of rent in a twelve (12) month period.

SECTION FOUR

COMMON AREA MAINTENANCE

A. Lessor shall maintain the Common Areas in good condition and repair. The term "Common Areas" means all areas and facilities outside the Premises and within the exterior boundaries of the property that are provided and designated by the Lessor from time to time for the general use and convenience of the Lessee and other lessees, or owners of portions of the property pursuant to reciprocal easement agreements, and their respective invitees and authorized representatives.

B: Common area maintenance shall include, but is not limited to, all such maintenance and repair work as shall be required to preserve and maintain the utility of the Common Area; maintenance, repair, resurfacing, crack filling and sealing of parking lot and painting of common pedestrian walkways, throughways, roadways, service corridors, and patios; sweeping, snow removal, trash disposal and other janitorial services of the common areas; basic maintenance and repair of common elevators; maintenance and repair of the exterior roof, exterior roof coverings, exterior supporting structures, walls and doors; maintenance and servicing of sprinkler systems, gardening and landscaping areas, lighting and all utilities utilized

in connection therewith; reasonable management; and other modifications required for compliance with any statutes, ordinances and/or regulations, including changes in installations for supply of utilities or sanitary facilities or other public facilities and other maintenance in the Lessor's judgment is necessary for the operation of the Common Areas.

SECTION FIVE
OPTION TO RENEW

As long as Lessee remains in good standing, Lessee may have the option to renew this Agreement for a period of Sixty (60) months to commence upon the expiration of this term. Written notice to renew shall be given at least ninety (90) days prior to the expiration of this Agreement. For the renewal term, the lease rate will be fixed for the initial year, and then increase by 3% in year 2 and then in year 4 of the option term. All other terms and conditions contained herein shall continue in full force and effect during the renewal term.

SECTION SIX
HOLDING OVER

Lessee shall provide Lessor with sixty (60) day notice, prior to the expiration of the initial term or any extensions thereof, of their intent to holdover. Any holding over of the Premises by Lessee after the expiration of the term hereof (or any renewal period, as applicable) shall be construed to be a tenancy from month-to-month with no change in the base monthly rent up to a maximum period of four (4) months, after which time Lessee will either quit and vacate the Premises or enter into a new agreement. All other terms and conditions stated herein shall remain in full force and effect to the extent they are not inconsistent with this section. If Lessee fails to surrender the Premises upon the expiration of the holdover period, Lessee shall pay to Lessor as and for base monthly rent the amount of 150% above the current base monthly rent set forth herein. If Lessee fails to surrender the Premises upon the expiration of the holdover period, Lessee shall hold the Lessor harmless from all damages resulting from Lessee's failure to surrender, including without limitation, claims from a succeeding tenant resulting from Lessee's failure to surrender the Premises.

SECTION SEVEN

USE OF PREMISES

A. Lessee shall use the Premises for conducting the business activities of Washoe County Incline Justice Court, Incline Constable, or for other related general government purposes. Lessee shall not use, or permit said Premises or any part thereof to be used for any purpose other than the conduct of the necessary business of Washoe County government.

B. Lessee shall not conduct or at any time knowingly permit its employees, agents or visitors to conduct activity on the Premises that is unlawful or in violation of any federal or state statute, code or regulation.

SECTION EIGHT

TENANT IMPROVEMENTS AND REPAIRS

A. The parties hereby acknowledge that the Premises are in good condition, are architecturally acceptable to Lessee, and shall not be altered, repaired or changed except as provided herein.

B. Lessee agrees that it shall not erect partitions, install or change any doors or windows, or place any nails, screws or other implements or fasteners into the wood work or walls, except such items as are necessary to suitably decorate or make the Premises attractive for the purposes intended, without the prior written consent of Lessor. Upon Lessor's request, Lessee shall prepare plans and specifications of such work and submit the same to Lessor for its approval prior to making such alterations or improvements. Said approvals will not be unreasonably withheld.

C. The parties agree that all the erections, additions, fixtures and improvements made by Lessee in or upon said Premises, which cannot be removed without substantially affecting the integrity of the building, shall remain upon the Premises at the termination of said term by lapse of time or otherwise, without compensation to Lessee. All of Lessee's movable equipment, office furniture, shelving and any decorative items, which can be removed without substantially affecting the integrity of the Building, shall be removed by Lessee at its expense.

D. The erection, construction, installation or making of any improvements shall be accomplished in a workmanlike manner and in compliance with all applicable federal, state, county and municipal laws and regulations.

SECTION NINE

LESSOR IMPROVEMENTS

A. Lessor reserves the right from time to time and at its own expense to make such improvements, alterations, renovations, changes, and repairs in and about the building in which the Premises are located, as Lessor shall deem necessary or desirable, provided Lessor gives Lessee, prior to entering the Premises, a minimum 48 hours notice of its intent to do so. Except where such improvements, alterations, changes and repairs unreasonably disrupt Lessee's use and peaceful enjoyment of the Premises, Lessee shall make no claim against Lessor for abatement of rent for interference with Lessee's leasehold interest or for loss or damage to its business during such improvements, alterations, changes and repairs.

B. Lessor shall make all improvements in a safe, workmanlike manner so as not to prove hazardous to Lessee and/or the public.

SECTION TEN

MAINTENANCE, REPAIRS AND INSPECTIONS

A. Lessor, at its sole cost and expense, shall be responsible for performing periodic maintenance to the interior of the Premises in a reasonable and timely manner. Lessor however shall not be responsible for making repairs or replacements caused by willful destruction or negligence by Lessee, Lessee's contractors, agents, and employees.

B. Lessor, at its own expense shall provide exterior window cleaning on a periodic basis and shall keep the Premises at all times in a neat, clean and sanitary condition, and shall neither commit nor permit any waste or nuisance thereon.

C. Lessor shall maintain, repair and replace at its sole cost and expense, the parking areas and sidewalks, the elevators, roof, exterior walls and windows, and overhead roll-up doors on or at the property in which the Premises are located, together with all central mechanical equipment, to specifically include all heating, ventilating and air conditioning equipment,

necessary to provide service to the Premises and maintain the Premises in a reasonable and safe manner and in full compliance with all federal, state and local laws.

D. Lessee shall keep the Premises free from any liens arising out of any work that it may perform, or materials furnished, or obligations incurred by Lessee. Lessee shall have thirty (30) days from the date of notice of said lien, as provided by Lessor, within which to remove said encumbrance without breaching the provisions of this Agreement.

E. Lessee shall permit Lessor or its authorized agent to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs or maintaining the building in which the Premises are located.

F. Lessor is solely responsible for compliance with, and all expense related thereto, the requirements of the Americans Disability Act (ADA), including any and all necessary modifications, and also changes in installations for supply of utilities or sanitary facilities.

SECTION ELEVEN

UTILITIES, JANITORIAL, TELEPHONE AND TAXES

A. All gas, electricity, water, sewer, and other public utility uses specifically used upon and separately metered to the Premises shall be at the sole cost and expense of Lessee.

B. Lessor shall provide standard janitorial service and trash removal for the interior of the Premises, at the sole cost and expense of Lessor. Lessor shall provide interior window cleaning on a periodic basis, in accordance with Lessor's established schedule.

C. Lessee shall pay for all telephone service costs incurred for installation of equipment and establishment of initial service and for ongoing monthly service charges for equipment, fees, line and toll charges or any changes thereto specifically requested by Lessee.

D. Lessee agrees to pay to Lessor in each year of demised term or any extensions thereof as additional rental an amount equal to twelve percent (12%) its prorata share of the real estate taxes and special assessments on the property and improvements hereby demised. Lessee shall pay during the period of the Lease that portion of said real estate taxes and assessments as the floor area of the demised premises bear to the total floor area of the building to be leased. Said payment will be limited to the specific term of occupancy.

E. Lessor shall be totally responsible for the timely payment of all tax bills levied against the demised premises. In turn, Lessor shall submit a quarterly billing less any penalties,

finer or interest assessed for late or defaulted payment for Lessee's proportionate share or a maximum of twelve (12) percent of the tax bill as it applies to this Lease. Said billing to be accompanied by a copy of the actual tax billing.

F. Lessor shall pay costs for all real property taxes and/or assessment fees without cost or obligation to the Lessee, except as provided in Section Eleven (E) above.

SECTION TWELVE

SIGNS

Lessee agrees that no sign or advertisement shall be painted or affixed to any part of the outside of the building in which the Premises are situated without the approval of Lessor, which consent shall not be unreasonably withheld.

SECTION THIRTEEN

WAIVER

Any failure on the part of either party to take action against the other for any breach or covenant herein shall not be construed to constitute a waiver of any other or subsequent breach.

SECTION FOURTEEN

DESTRUCTION OF PREMISES

In the event of a partial destruction of the Premises or the buildings of which the Premises is a part during the term or renewal of this Agreement, from any cause, Lessor shall forthwith repair the same within one hundred-twenty (120) days, provided such repair can be made within said period under the laws and regulations of the state, federal, county or municipal authorities. If required repairs are commenced promptly, this Agreement shall not be modified, except that Lessee shall be entitled to a proportionate reduction of base rent if a portion of the Premises are rendered unusable or substantially impaired while repairs are being made. If such repairs cannot be made in one hundred-twenty (120) days, this Agreement may be terminated at the option of either party. Either party shall notify the other of such party's election to terminate the Agreement within twenty-one (21) days following the date Lessee receives written notice from Lessor of its inability to repair the building within the one hundred-twenty (120) day period due

to such damage or destruction. A total destruction of the building in which the Premises is situated shall terminate this Agreement. This provision is not intended to affect the rights of either party to seek recovery against the person responsible for the damages, subject, however, to the provision of Section Fifteen below.

SECTION FIFTEEN

CONDEMNATION

In the event that any part of the Premises shall be condemned or taken by any county, federal, state or other authority for any purpose, then the term of this Agreement shall cease on the part so taken from the day the possession of that part is required for any public purpose. The base rent shall be paid up to that day and thereafter the Lessee or the Lessor shall have the right to either cancel this Agreement or to continue in the possession of the remainder of the same under the terms herein provided, except that the base rent shall be reduced in proportion to the area of that portion of the Premises taken for such public purpose. All damages awarded as compensation for diminution in value to the leasehold or to the fee of the Premises shall belong to and be the property of Lessor. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damages to Lessee's business by reason of the condemnation and for or on account of any cost or loss to which Lessee might be put in removing Lessee's furniture, fixtures, equipment and leasehold improvements.

SECTION SIXTEEN

INDEMNIFICATION

A. Lessor shall hold harmless, indemnify and defend Lessee from and against any loss, damage, claim, suit or liability due to injury, including death, or property damage, to any third party arising out of the negligent acts or omissions of the Lessor, its agents or employees, in connection with the ownership of the Premises and the Lessor's duties and responsibilities pursuant to this Agreement.

B. Lessee shall hold harmless, indemnify and defend Lessor from and against any loss, damage, claim, suit or liability due to injury, including death, or property damage, to any

third party arising out of the negligent acts or omissions of the Lessee, or its employees, arising out of the use of the demised Premises and the Lessee's duties and responsibilities pursuant to this Agreement and to the fullest extent provided by law and in the manner authorized by law.

C. Pursuant to Nevada Revised Statutes, Chapter 41 and without waiving any provisions thereof, Lessee, shall hold harmless, indemnify and defend Lessor from and against any loss, damage, claim, suit or liability due to injury, including death, or property damage, to any third party arising out of the negligent or alleged negligent acts or omissions of the Lessee, its agents, contractors or employees, arising out of the use of the Premises and the Lessee's duties and responsibilities pursuant to this Agreement.

SECTION SEVENTEEN

INSURANCE

A. Lessor, at its sole cost and expense, shall:

(1) Secure and maintain fire and extended insurance on the building in which the Premises are located in an amount and coverage determined by Lessor during the term or any extended term of this Agreement.

(2) Secure and maintain a policy of comprehensive or commercial general liability coverage (occurrence form), in an amount of not less than \$1,000,000 per occurrence, and at least \$1,000,000 annual aggregate during the term of this Agreement. Lessee shall be added as an additional "insured" to this policy for any injury to person or damage to property occurring on the premises. Lessee shall be provided with a certificate of insurance and endorsements evidencing such coverage. Reasonable cost associated with compliance of this requirement shall be at the expense of Lessee.

(3) Lessor hereby expressly waives and releases any cause of action or right of recovery which Lessor may have hereafter against the Lessee for any loss or damage to the Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk covered by insurance; and,

(4) Lessor shall obtain a waiver from any insurance carrier with which Lessor carries fire, explosion or any other risk coverage insuring the building and other improvements releasing its subrogation rights against Lessee.

B. Lessee shall:

(1) Maintain fire insurance on all contents owned by the Lessee located at the Premises.

(2) Lessee may fund any financial obligation relating to its negligence and Liability through a program of self-funding administered by its Risk Management Division. Any and all claims related to the use of the Premises by Lessee shall be forwarded to Lessee in a timely manner.

(3) Lessee hereby expressly waives and releases any cause of action or right of recovery which Lessee may have hereafter against the Lessor for any loss or damage to the Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk covered by Lessee's insurance and,

(4) In the event Lessee's occupancy causes any increase of premium for Lessor's insurance on the Premises, or any parts thereof, above the rate applicable to the type of occupancy identified in the Agreement, Lessor shall notify Lessee in writing of such increase. Lessee shall have fifteen (15) days after receipt of written notification from Lessor of such increase to correct or mitigate, if applicable, said circumstances that resulted in the need for a premium increase. If Lessee is unable to mitigate or correct said hazardous occupancy, where applicable, Lessee shall upon written agreement pay the increased premium or terminate said Agreement.

SECTION EIGHTEEN

HAZARDOUS SUBSTANCES

A. Lessee shall not cause or permit any hazardous substances to be used, stored, manufactured, released or disposed in or upon the Premises, except in the minimum quantities as are customary and usual in connection with Lessee's permitted use. If the Premises become contaminated as a result of a violation by Lessee of this Section Eighteen, for which Lessee is legally liable, Lessee shall indemnify, defend and hold Lessor harmless from all related claims, judgments, penalties, costs or losses, including all expenses incurred for investigation, removal, remediation and restoration mandated by federal, state and local governments, together with Lessor's attorney's fees.