

50-R-11

A RESOLUTION

Authorizing the Lease of Certain Space within the City's Service Center to Evanston Community Media Center from September 15, 2011 to September 14, 2014

WHEREAS, the City of Evanston owns certain real property legally commonly known as 2020 Asbury Avenue, Evanston, Illinois (the "Real Estate"); and

WHEREAS, said Real Estate is improved with a facility that services City vehicles and other facility and maintenance operations for the City (the "Service Center"); and

WHEREAS, the Evanston Community Media Center, an Illinois non-profit corporation desires to rent certain commercial office space within the Service Center from the City to operate a public, education, and government access television programming and production in accordance in with the Service Agreement dated July 29, 2002 between the City and the Evanston Community Media Center;

WHEREAS, the City Council of the City of Evanston has determined that the best interests of the City of Evanston would be served by the leasing of a portion of the Service Center to, and executing of a lease with, the Evanston Community Media Center.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign and the City Clerk is hereby authorized and directed to attest on behalf of the City of Evanston a Lease, by and between the City of Evanston as Lessor and the Evanston Community Media Center as Lessee, for certain second floor space for a term of three (3)

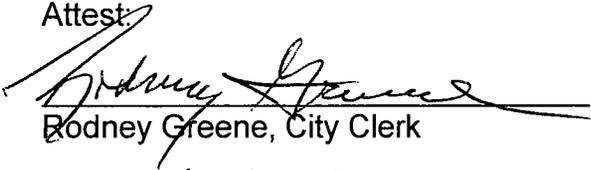
years at a rental rate of \$1.00 (One and no/100 Dollars) per month for the term of September 15, 2011 to September 14, 2014, in substantial conformity with that Lease attached hereto as Exhibit A and made a part hereof.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional terms and conditions on the Lease of aforesaid room space as may be determined to be in the best interest of the City.

SECTION 3: That this Resolution 50-R-11 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: September 12, 2011

EXHIBIT A

***Lease between the City of Evanston and
the Evanston Community Media Center
from September 15, 2011 through September 14, 2014***

LEASE AGREEMENT

THIS LEASE ("Lease") is made and entered into as of the 12 day of September, 2011, by and between **CITY OF EVANSTON**, an Illinois municipal corporation and a home rule unit of the State of Illinois (the "Landlord") and **EVANSTON COMMUNITY MEDIA CENTER, INC.**, an Illinois non-profit corporation ("ECMC" or the "Tenant") for a certain commercial office space located at 2020 Asbury Avenue, Evanston, Illinois 60201.

In consideration of the rents, covenants and conditions hereafter set forth, the Landlord and Tenant hereby agree as follows:

1. BASIC LEASE PROVISIONS. In addition to the other terms which are elsewhere defined in this Lease, the following words and phrases, whenever used in this Lease, shall have the meanings set forth in this Section 1.

- (a) Date of Lease: October 1, 2011
- (b) Landlord: The City of Evanston
2200 Ridge Avenue
Evanston, Illinois 60201
- (c) Tenant: Evanston Community Media Center
1285 Hartney Avenue
Evanston, IL 60202
- (d) Premises: 2020 Asbury Avenue
(see Paragraph 2) Office # _____
Evanston, Illinois 60201
- (e) Possession Date: October 1, 2011
- (f) Lease Term: Three Years (ending September 30, 2014)
- (g) Base Rent: \$ 1.00/per year
- (h) Renewal: Two one-year renewal options at the Base Rent provided for in Paragraph 5.
- (i) Delivery of Premises: Landlord will deliver the Premises to Tenant no later than the Possession Date in "broom-clean" state with all building systems functional and in good condition and repair, except as provided herein. Tenant to perform the build-out of the Improvements (defined below in Subsection 1(q)) to the Premises at its own expense

- (j) Real Estate Taxes and Operating Expenses: Landlord will be responsible for the payment of the real estate taxes and the costs of owning, operating, maintaining, and repairing the Building and Premises. The Landlord will not be responsible for maintaining or repairing Tenant improvements and fixtures.
- (k) Utilities: Landlord will be responsible for the payment of ALL utilities, including internet access (1 static IP level), electricity, gas and water and other related expenses. However, the Tenant shall be responsible for: gas and electricity service only during the construction of the improvements and prior to the Premises being Operational, (defined in Section 1(q)). The Tenant shall also be responsible for any and all cell phone charges and television charges for use at the Premises. The Tenant is permitted to use the Landlord's copy machine and will reimburse the Landlord for said use per month at the rate of \$.10/per page.
- (l) Permitted Use: Operation of a Public, Education, and Government Access television programming and production in accordance with the Service Agreement between the City of Evanston and the Evanston Community Media Center.
- (m) Security Deposit: No Deposit Required
- (n) Hazard Insurance: Landlord to procure fire and hazard insurance on the Premises.
- (o) Tenant Insurance: Tenant to carry commercial liability insurance and insure all equipment, and personal property.
- (p) Signage: Tenant may install its signage at its own expense, to be approved by Landlord and such approval not to be reasonably withheld.
- (q) Improvements: The Parties agree and acknowledge that the Schedule "A" attached to this Lease is a proposed description of the proposed improvements to the Premises by the Tenant. The Landlord will not be providing any office furniture or other items for use by the Tenant. The Tenant shall install a HVAC unit for the Premises during the improvements at its own expense. The Premises shall be considered operational for Tenant when the improvements provided on Schedule "A" are nearly or fully complete ("Operational").

Lastly, the Tenant shall also install a security camera to interface with the Landlord's existing Cisco phone system for the Premises.

2. **PREMISES.** Landlord does hereby lease and rent to Tenant, and Tenant does hereby lease, take and rent from Landlord the Premises. The Landlord will cause the halls, corridors, and other parts of the building adjacent to the Premises to be lighted, cleaned and generally cared for, accidents and unavoidable delays excepted. Landlord will provide heat and air-conditioning for the Premises when required by outside temperature. Tenant shall comply with such rules and regulations of the City of Evanston Service Center Facility for the necessary, proper, and orderly care of the building in which the Premises are located. No modifications, alterations, additions, installations, or renovations, except decorating, shall be undertaken by the Tenant without first obtaining the written permission from the Landlord for items costing more than \$2,500.00, such approval not to be unreasonably withheld. The cost of all alterations and additions, if applicable, shall be borne by the Tenant and shall remain for the benefit of Landlord, see Schedule "A" for further detail regarding said improvements. The Tenant is granted access to the Premises Monday – Friday 9 a.m. to 10 p.m., Saturday 9 a.m. – 5 p.m., and no access on Sunday.. The Tenant shall have use of the adjacent parking, common areas, loading dock access, within reason, and use of the bathroom facilities. The Landlord will provide five (5) parking spaces on the Service Center parking deck, which is designated for employees, volunteers, and persons with disabilities. The Landlord is also permitting use of the visitor parking lot across the street from the Service Center, just east of Green Bay Road and Simpson Street. Lastly, the Tenant will be provided space in the Landlord's IT Control room, which is located on the second floor of the Service Center for PEG master control equipment, including the head end for Comcast service.

3. **PERMITTED USE.** The sole permitted use that Tenant shall use the Premises shall be for general office use and the operation of a public, educational, and government Access television programming and production in accordance with the Service Agreement between the City of Evanston and the Evanston Community Media Center (the "Permitted Use"). Tenant shall not use the Premises for any other purpose except the Permitted Use without the prior written approval of Landlord. The Landlord shall provide a U.S. Postal mail box at the service center for mail delivery to the Premises. All applicable laws, ordinances, and City policies shall be observed by the Parties in and around the Premises. The City of Evanston Municipal Code provisions are herein incorporated by reference and made a part of this Lease.

4. **TERM.** The term of this Lease (the "Term") shall be for a period of three (3) years commencing on October 1, 2011 (the "Possession Date") and ending on September 30, 2014 (the "Expiration Date"). After the Lease is terminated, the Tenant shall leave the Premises in broom clean condition and shall turn over any and all keys to the City Manager or his or her designee. Subject to Section 8 herein, and excluding damage by fire or other casualty and action of Landlord, Tenant shall pay for any and all damage to the interior of the Premises beyond normal wear and tear and shall do so within thirty (30) days of invoicing by the City. If the Tenant desires to renew the Lease for another term; the Tenant shall give Landlord sixty days written notice of said intention to elect to exercise said option to renew. Tenant is permitted to renew the Lease for two one-year options at the Base Rent specified in Paragraph 1(g).

5. **RENT.** Tenant agrees to pay Landlord or Landlord's agent as rental for the Premises, the yearly Base Rent due under the terms of this Lease on the 1st day of October of each year.

6. **NO LIENS.** Tenant shall not permit to be created nor to remain undischarged any lien, encumbrance or charge to become, a lien or encumbrance or charge upon the Premises by any of Tenant's creditors or resulting from leasehold improvements. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work in the Premises shall be filed against the Premises, Tenant shall, within sixty (60) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit or bond or obtain title insurance over the same. If Tenant shall fail to cause such lien or notice of lien to be discharged by either paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings or obtain title insurance over the same, Landlord shall be entitled, if Landlord so elects, to defend any prosecution of an action for foreclosure of such lien and any money reasonably paid by Landlord and all reasonable costs and expenses, including attorneys' fees, reasonably incurred by Landlord in connection therewith, together with interest thereon at shall be paid by Tenant to Landlord within thirty (30) days following Tenant's receipt of Landlord's written demand. In the event Tenant diligently contests any such claim of lien, Tenant agrees to indemnify, defend, and hold harmless Landlord from any and all reasonable out of pocket costs, liability and damages, including attorneys' fees resulting therefrom, and, if requested, upon demand, Tenant agrees to immediately deposit with Landlord cash or surety bond in form and with a company reasonably satisfactory to Landlord in an amount equal to the amount of such contested claim.

7. **TENANT INSURANCE OBLIGATIONS.** Tenant shall, at the time of signing the Lease and during the entire term hereof, keep in full force and effect a Comprehensive General Liability policy in the amount of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) with respect to the Premises, with provisions reasonably acceptable to Landlord, and the activities of Tenant in the Premises. The Tenant shall furnish copies of a Certificate of Insurance with the Landlord named as an additional insured with an insurance company acceptable to the Landlord. The Tenant shall furnish, when requested, a certified copy of the policy to the Landlord. An insurance company having less than an A- Policyholder's Rating by the Alfred M. Best Company will not be considered acceptable.

8. **PERSONAL PROPERTY AND WAIVER OF SUBROGATION.** Tenant shall be responsible for insuring all or its own personal property and equipment of Tenant, and equipment located on the Premises. Notwithstanding anything to the contrary contained herein, The Landlord and Tenant shall not be liable to the other for any loss or damage caused by water damage or any of the risks that are or could be covered by a standard all risk hazard insurance policy with an extended coverage endorsement, or for any business interruption, and there shall be no subrogated claim by one party's insurance carrier against the other party's carrier arising out of any such loss.

9. **QUIET ENJOYMENT.** Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements on Tenant's part to be performed, Tenant shall at all times during the Term have the quiet enjoyment and possession of the Premises.

10. CERTAIN RIGHTS RESERVED TO LANDLORD. In addition to those rights identified above, Landlord reserves the following rights:

- (a) to decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy if Tenant should permanently vacate the Premises during or prior to the last sixty (60) days of the Term or any part thereof;
- (b) to retain pass keys to the Premises;
- (c) to take any and all measures, including, without limitation, inspections, repairs, and alterations to all or any part of the Premises, as may be necessary or desirable for the safety, protection or preservation of the Premises or Landlord's Interests or as may be necessary or desirable in the operation of the commercial portions of the Premises; and

Landlord may enter upon the Premises with reasonable notice to tenant and may exercise any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Tenant's use or possession and without being liable in any manner to Tenant. Landlord agrees that it shall not interfere with the Tenant's use and occupancy unless Landlord determines in its reasonable discretion that such interference is necessary.

11. DEFAULT REMEDIES.

- (a) Any one of the following events shall be deemed to be an event of default hereunder by Tenant subject to Tenant's right to cure:
 - (1) Tenant shall fail to pay rent within five (5) days, at the time and place when and where due;
 - (2) Tenant shall fail to maintain the insurance coverage as set forth herein;
 - (3) Tenant shall fail to comply with any term, provision, condition or covenant of this Lease, other than the payment of Rent, and shall not cure, or commence the good faith cure of any such failure, within thirty (30) days after written notice to the Tenant of such failure, provided that if such cure cannot be effected within 30 days, Tenant shall not be in default hereunder so long as Tenant commences such cure or has requested bids for such cure within 45 days and diligently pursues the completion and in good faith and Tenant does subsequently cure said default within 60 days; and
 - (4) Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent, or shall file a petition in any proceeding seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting, or fail timely to contest, the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of

any trustee, receiver or liquidator of Tenant or any material part of it's properties.

(b) Upon the occurrence of any event of default, Landlord shall have the option to pursue any one or more of the following remedies subject to the laws of the State of Illinois and the Tenants right to cure:

(1) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, but if Tenant fails to do so, Landlord may, without further notice and without prejudice to any other remedy Landlord may have for possession or arrearages in Rent or damages for breach of contract, enter upon the Premises and expel or remove Tenant and its effects, by force, if necessary, without being liable to prosecution or any claim for damage herefore; and Tenant agrees to Indemnify Landlord for all loss and damage which Landlord may suffer by reason of such lease termination, whether through inability to re-let the Premises, or through decrease in Rent, or otherwise. In the event of such termination, Landlord may, at its option, declare the entire amount of the Rent which would become due and payable during the remainder of the Term to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all Rent theretofore due, provided, however, that such payments shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment in advance of the Rent for the remainder of the Term.

(2) Landlord may recover from Tenant upon demand all of Landlord's costs, charges and expenses, including the fees and costs of counsel, agents and others retained by Landlord which have been incurred by Landlord in enforcing Tenant's obligations hereunder, subject to Landlord prevailing on its claims.

(c) Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided or available to Landlord at law or in equity, or constitute a forfeiture or waiver of any Rent due hereunder or of any damages suffered by Landlord.

12. INDEMNITY. Tenant agrees that the mayor, department and divisions officials, officers, agents, attorneys, and employees of the Landlord shall not be liable for any claim of any kind or in any amount for any injury to or death or persons or damage to property of Tenant or any other person. Tenant shall indemnify and hold Landlord harmless from all liability whatsoever, and from all losses, costs and expenses (including without limitation attorneys' fees and expenses) incurred or suffered as a result of or related to any real or claimed damage or injury related to Tenant's negligence, gross negligence, or acts of intentional misconduct. In the event that Tenant is named as a defendant in any legal proceeding arising from any acts of gross negligence or intentionally wrongful acts of Landlord for any injury or any claimed damage occurring at the Premises, then Landlord shall indemnify and hold Tenant harmless from all liability whatsoever, and from all losses, costs and expenses (including without limitation attorneys' fees and expenses) incurred or suffered as a result of or related to any real or claimed damage or injury provided that a) Landlord is named as a defendant in the legal proceeding; b) the claim arises from acts of gross negligence or intentional misconduct by the Landlord; c) Tenant's own negligent act or intentional misconduct; and d) the claim is unrelated to Tenant's use and occupancy of the Premises, subject to Section 8 herein.

13. LIABILITY FOR ACTS OR NEGLIGENCE. Subject to Section 8 hereof, and excluding damage by fire or casualty, if any damage to the Premises, or any part thereof, results from any act or neglect of Tenant or its invitees or other guests, agents, customers, invitees or other guests of its customers, or employees, independent contractors, or the like, Tenant shall immediately repair the same; provided, however, that Landlord may, at its option, repair such damage and Tenant shall, upon demand by the Landlord, reimburse the Landlord forthwith for the total cost of such repairs. All personal property belonging to Tenant shall be at the sole risk of the Tenant and such other person only and the Landlord shall not be liable for damage, theft or misappropriation thereof.

14. DESTRUCTION OR DAMAGE. In the event of destruction of or damage to, the Premises by fire or other casualty, Landlord shall use the proceeds of its insurance to promptly rebuild and restore the Premises to their condition immediately prior to such destruction or damage. Landlord shall rebuild and restore the Premises to the condition of the Premises that existed on the Possession Date. In the event that the proceeds have been applied to indebtedness secured by any mortgage on the Premises, or are otherwise unavailable or the proceeds of insurance are not sufficient to pay for the cost of rebuilding or restoration, and Landlord elects not to make an equivalent amount of funds available to rebuild and restore the Premises, then Landlord or Tenant may terminate this Lease and the Parties rights hereunder and the Parties shall be released of its obligations and this Lease shall cease and terminate as of the date the other Party receives written notice of such election, and neither party hereto shall have any further obligation to the other.

15. CONDEMNATION.

(a) If the whole or any part of the demised Premises shall be taken by any public authority under the power of eminent domain, the Lease term shall cease as of the day of possession shall be taken by such authority if such is of the entire demised Premises and any rents shall be prorated as of said date. If the entire premises are not taken, but such taking is more than 20% of the Premises the Tenant shall have the option to terminate this lease. If the taking is less than 20% and such taking would cost the tenant monies to reconfigure/ restructure the business premises or make it not practical to continue said business, tenant shall have the option to terminate the lease upon 30 days written notice to Landlord.

(b) All compensation awarded for any taking under the power of eminent domain, whether in whole or in part of the demised premises shall be the property of the landlord, however, the landlord shall not be entitled to any award made expressly to the tenant for the taking of the tenant's business value, furniture, fixtures or leasehold improvements (exclusive of the Landlord's contributions).

16. ATTORNEYS' FEES AND EXPENSES. If at any time during the Term of this Lease either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease, or any default hereunder, each party to pay its own attorneys fees and costs.

17. **ENTIRE AGREEMENT.** This Lease contains the entire agreement of the parties with respect to the Premises and no representations or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. No failure of Landlord to exercise any power given Landlord hereunder or to insist upon strict compliance by Tenant of any obligation hereunder, and no custom or practice at variance with the terms hereof, shall constitute a waiver of Landlord's right to demand strict compliance with the terms hereof.

18. **TIME.** Time is of the essence of this Lease, and of each term, condition and provision hereof.

19. **HOLDING OVER.** Upon termination of this Lease, by lapse of time or otherwise, Tenant shall surrender the Premises (and all keys thereto) in the same condition as at commencement of the Term, excepting only reasonable wear and tear and loss by insured casualty. If Tenant remains in possession after expiration of the Term, Tenant agrees to yield up immediate and peaceable possession to Landlord, and if failing to do so, in connection with the expiration of the Term or any termination hereof by the Parties, the Tenant shall pay the sum of one hundred fifty and no/100 Dollars (\$150.00) per day, for the time such possession is withheld. The Landlord or its legal representative at any time after the expiration of the Term, without notice, to re-enter the Premises, and to expel, remove and put the Tenant or any person(s) occupying the said Premises, using such force as may be necessary, and to repossess and enjoy the Premises against as before this Lease, without prejudice to any remedies which might otherwise be used for arrears of rent or breach of covenants; or in cases the said Premises shall be abandoned, deserted, or vacated and remain unoccupied five days consecutively, the Tenant hereby authorizes and requests the Landlord to re-enter the Premises and remove all property found therein, regardless of ownership, place them in some regular storage warehouse or other suitable storage, at Tenant's expense, for no more than forty-five days, and to proceed to re-rent the Premises at the Landlord's option and discretion and apply all money so received after paying the expenses of removal toward the rent accruing under this Lease. This request shall not be construed as requiring compliance therewith on the part of the Landlord. If the Tenant shall fail to pay the rent at the times, place and in the manner above provided, and the same shall remain unpaid five (5) business days after the day whereon the same should be paid, the Landlord by reason thereof shall be authorized to declare the term ended and the Tenant hereby agrees that the Landlord, its agents or assigns may begin suit for possession and/or rent. In the event of re-entry and removal of the articles found on the Premises and personally owned by Tenant or others, the Tenant hereby authorizes and requests the Landlord to sell the same at public or private sale within fifteen (15) days after storage time period provided above. The proceeds of said sale shall be applied to the expenses of storage, removal, sale expenses and back due rent.

20. **ASSIGNMENT AND SUBLETTING.** This Lease shall bind and inure to the benefit of each of the parties, their respective heirs, successors, and assigns; provided however, that Tenant shall not assign its interest under this lease or sublet all or any portion of the Premises without first obtaining Landlord's prior written consent in writing, which consent will not be unreasonably withheld. No assignment or sublease shall relieve Tenant of its obligation to pay rent or perform other obligations required by this lease unless Landlord agrees in writing at the

time the assignment is made, and no consent to one assignment or subletting shall be consent to any further assignment or subletting. Notwithstanding the foregoing, Tenant shall have the right to assign this Lease or sublet the Premises to any parent, subsidiary, or affiliate of Tenant, including any successor to Tenant by merger.

21. SEVERABILITY. If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable to any extent, neither the remainder of this Lease nor the application of such term, covenant or condition to any other person or circumstance shall be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

22. TENANT SIGNAGE. Tenant agrees that any signage installed on the Premises will comply in all respects with applicable governmental requirements and Tenant will obtain and pay the cost of any required sign permits. All signage, bulletins, posters must be reviewed and approved by the Landlord, prior to Tenant posting the same. Landlord's consent shall not be withheld unreasonably.

23. GOVERNING LAW AND TIME LIMITATION. This Lease shall be construed and enforced in accordance with the laws of the State of Illinois. All disputes relating to the interpretation and enforcement of the provisions of this Lease shall be resolved exclusively by the federal or state court located in Cook County, Illinois, and the parties hereto hereby submit to the jurisdiction and venue of the court for such purpose.

24. NOTICES. Notices sent to the Landlord, should be mailed to the address set forth in Paragraph 1(b) of this Lease and notice to the Tenant should be mailed to the address set forth in Paragraph 1(c) of this Lease. A mailed notice is must be sent via certified mail, return receipt requested and effective three (3) business days after deposit in the U.S. Mail. Notice given by overnight courier is effective upon delivery. .

25. REPRESENTATIONS OF LANDLORD. Landlord hereby represents to Tenant that: (a) Landlord is the owner of the Premises and no mortgage or similar instrument affects the Premises; and (b) to the Landlord's knowledge, the Premises may lawfully be used for the Permitted Use under applicable laws.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, both of said Landlord and Tenant have caused this Lease to be executed as of the date and year first above written by a duly authorized officer or manager of each of the respective parties.

**Landlord: THE CITY OF EVANSTON,
an Illinois home rule municipal corporation**

By: Wally Bobkiewicz

Its: City Manager, Wally Bobkiewicz

Tenant: EVANSTON COMMUNITY MEDIA CENTER, INC.

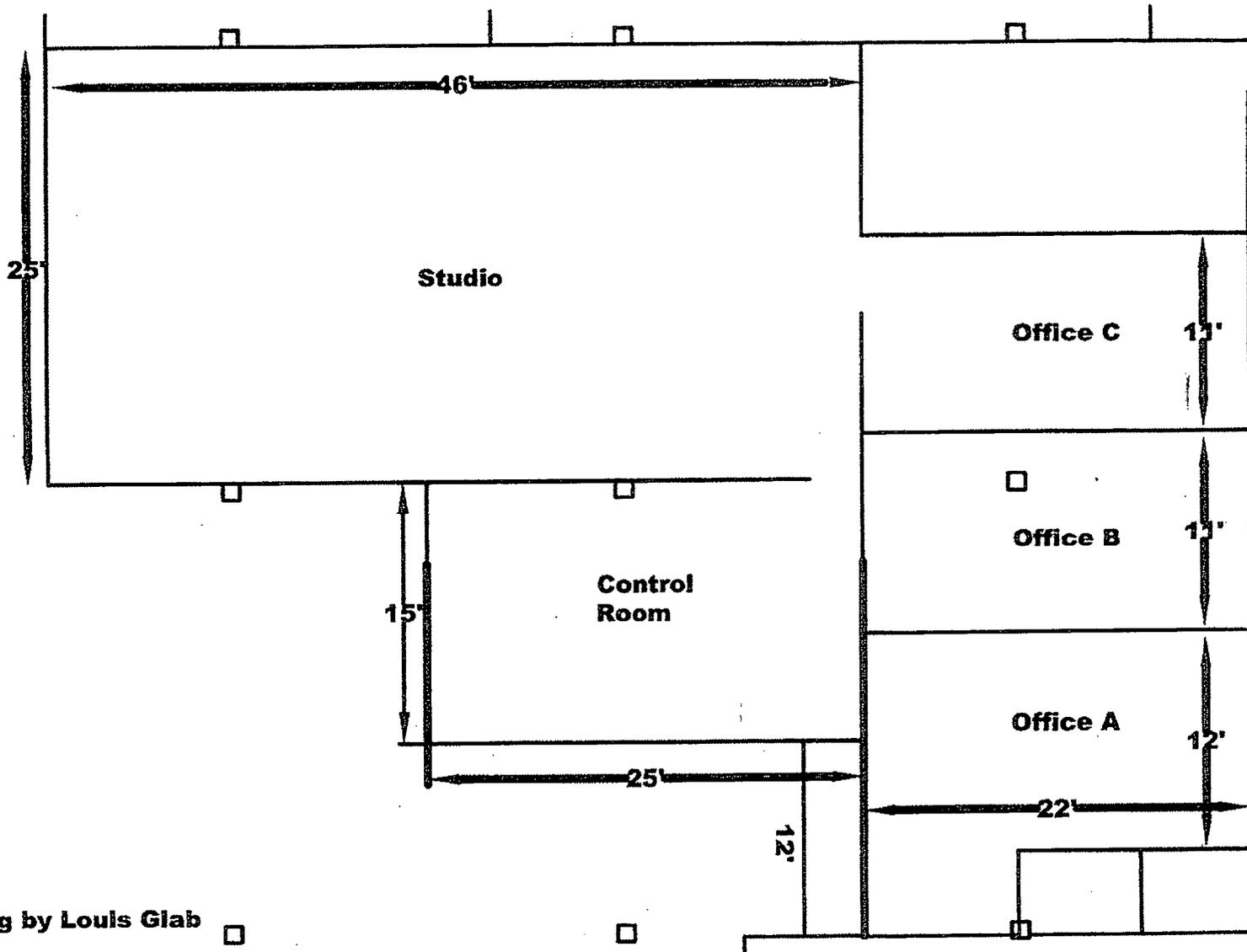
By: Gary Brooks

Its: President, Gary Brooks

Approved as to form:
W. Grant Farrar
W. Grant Farrar
Corporation Counsel

**SCHEDULE A
TENANT'S IMPROVEMENTS**

[see attached schedule]



Drawing by Louis Glab