

RESOLUTION NO.: R-2019-093

ORIGINAL
STAMPED IN RED

Authorizing the City Manager to execute Fifth Lease Amendment between the City of Columbia and First-Citizens Bank & Trust Company for lease of approximately 34,221 square feet of 1225 Lady Street

BE IT RESOLVED by the Mayor and City Council this 15th day of October, 2019, that the City Manager is hereby authorized to execute the attached Fifth Lease Amendment, or on a form approved by the City Attorney, between the City of Columbia and First-Citizens Bank & Trust Company for lease of approximately 34,221 square feet of office space on the first floor, second floor and basement of 1225 Lady Street.

Requested by:

Assistant City Manager Palen



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 10/15/2019

Final Reading: 10/15/2019

FIFTH LEASE AMENDMENT

THIS FIFTH LEASE AMENDMENT (the "*Amendment*"), made between FIRST-CITIZENS BANK & TRUST COMPANY, a North Carolina banking corporation, as successor by merger with First Citizens Bank and Trust Company, Inc. (herein called "*Landlord*"), and THE CITY OF COLUMBIA, a municipality in the State of South Carolina (herein called "*Tenant*").

WITNESSETH:

WHEREAS, Landlord is the owner of that certain commercial office building located at 1225 Lady Street, in the City of Columbia, Richland County, South Carolina (the "*Building*"); and

WHEREAS, Landlord and Tenant entered into that certain Office Lease Agreement dated May 8, 2007, (the "*Initial Lease*") pursuant to which Landlord leases to Tenant the Demised Premises being more particularly described in the Lease; and

WHEREAS, the Initial Lease was previously amended by First Amendment to Lease dated June 6, 2007, Second Amendment to Lease dated on or about August 2, 2007, Third Amendment to Lease dated August 20, 2011, and Fourth Amendment to Lease dated May 31, 2017 (collectively the "*Prior Amendments*" and together with the Initial Lease the "*Lease*"); and

WHEREAS, Tenant has requested and, subject to the terms and conditions set forth herein, Landlord agrees to reduce the size of the Demises Premises as of the Effective Date; and

WHEREAS, Landlord intends to lease portions of the Building formerly subject to the Lease to third party tenants and, as a result, desires to amend the Lease in order to contemplate multiple tenants occupying the Building; and

WHEREAS, Landlord and Tenant desire and agree to modify the Lease to reflect: (i) the square footage and floor plan of the Demised Premises as amended hereby, and (ii) to make such other changes to the Lease as set forth herein; and

WHEREAS, capitalized terms used but not defined in this Amendment shall have the meanings prescribed to them in the Lease.

NOW THEREFORE, for and in consideration of the mutual promises and undertakings of the parties as set forth herein and in the Lease, Five and no/100 (\$5.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. The above-stated recitals are incorporated herein as if repeated verbatim.
2. Demised Premises. Prior to the Effective Date, the Demised Premises which is leased to Tenant under the Lease is (described in Article A of the Lease) is comprised of all portions of the Building and contains approximately 41,633 rentable square feet. As of the Effective Date, and subject to the terms and conditions set forth herein, the Demised Premises shall be reduced to 34,221 rentable square feet located on the first (1st) and second (2nd) floor(s) and the basement of the Building. The Demised Premises that shall remain subject to the terms and conditions of the Lease, as adjusted hereby, shall be as approximately shown on the floor plan attached hereto as Exhibit "A" and incorporated herein by reference. As of the Effective Date, all references in the Lease to the Demised Premises shall hereafter refer to the Demised Premises as adjusted herein, together with the non-exclusive rights to the Common Areas as described below.
3. Release. As of the Effective Date, Tenant shall have no further claim to the portion of the Building comprising 7,412 rentable square feet, located on the first (1st) floor of the Building, formerly occupied by Tenant, and released and removed from the description of the Demised Premises in Section 2 above (and including any and all installations made therein by Tenant, except Tenant shall have the right, prior to the Effective Date, to remove its merchandise, personal property, and trade fixtures, and any other removable items which are the property of the Tenant) (said released portion being the "*Released Space*"); and, Tenant does hereby remise, release and forever quit claim to the Landlord its successors and assigns, all interest it acquired in the Released Space by any construction or installation it has performed or caused to be performed therein. Tenant shall remain liable for the performance of all of its obligations and for the payment of rent and other charges which it is to pay to the Landlord for the Released Space pursuant the provisions of the Lease, which shall be accrued as of the Effective Date, and for the performance of all other terms, covenants and provisions of the Lease to the Effective Date. After the Effective Date, Landlord and Tenant hereby release and discharge each other from any and all claims, actions and liabilities as to the Released Space *only*, provided, however, that either party shall have the right to enforce any then unsatisfied obligation of the other party maturing prior to the Effective Date.
4. Common Areas. Tenant acknowledges that Landlord intends to lease the Released Space to one or more third party tenants and, as such, as of the Effective Date, and notwithstanding anything in the Lease to the contrary, Tenant shall no

longer have exclusive rights to the Building; rather, the Lease is hereby amended as necessary to state that the Tenant shall have the non-exclusive right to use all corridors, elevators, lobby areas, restrooms, sidewalks, driveways, loading docks, parking areas, and other common facilities, areas and improvements located in the Building or on the Landlord's property on which the Building and Demised Premises are located ("*Landlord's Property*"), and provided by Landlord for the general use in common by any tenant(s) of the Building or Landlord's Property, and their respective employees, business invitees and customers in or about the Building and Landlord's Property (collectively, the "*Common Areas*"). Tenant acknowledges that Landlord shall have the right to lease or otherwise make any remaining portion of the Building or Landlord's Property not deemed to be the Demised Premises (as adjusted hereby) available to any third party.

5. Article 3 "Insurance/Indemnity", Section (B) "Property Insurance" of the Lease is hereby deleted and replaced in its entirety with the language appearing below. The remainder of Article 3 not replaced hereby shall remain in full force and effect.

"B. "Property Insurance" Landlord shall obtain and keep in force during the term of this Lease a policy or policies of insurance covering loss or damage to the premises, in the amount of the full replacement value thereof, providing against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, special extended perils (Special Cause of Loss Form) and loss of rents. Tenant shall pay during the term hereof, in addition to Rent, Tenant's Pro Rata Share of all premiums for the insurance required under this Paragraph 3(B). Tenant agrees that it will not do or keep anything in or about the Demised Premises which will contravene the Landlord's policies insuring against loss or damage by fire or other hazards, or which will prevent the Landlord from procuring such policies in companies acceptable to the Landlord. The costs incurred by Landlord to procure and maintain any policy or policies of insurance required of Landlord under this Article 3 shall be included in the Operating Expenses."

6. Article 5 "Repair and Care of Building by Tenant" of the Lease is hereby deleted and replaced in its entirety with the language appearing below.

"5. **REPAIR AND CARE OF BUILDING BY TENANT:** Tenant shall, throughout the initial term of this Lease and any renewals thereof, as its own expense, maintain in good order and repair the Demised Premises, including all improvements located thereon, except those repairs expressly required to be made by Landlord. Tenant shall also maintain a pest control treatment contract for the Demised Premises. Tenant agrees to return said Demised Premises to Landlord at the expiration or prior termination of this Lease in as good condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted."

7. Article 6 "Repair and Care of Building by Landlord" of the Lease is hereby deleted and replaced in its entirety with the language appearing below.

"6. **REPAIR AND CARE OF BUILDING BY LANDLORD:** Landlord shall, as part of the Operating Expenses to be reimbursed by Tenant, make all repairs to the Property, the Building, the Demised Premises, and/or the Common Areas, including but not limited to, the plumbing, heating air-conditioning and ventilation system with associated conduits and duct work (collectively the "HVAC"), electric wiring (with the exception of low voltage wiring), and lighting apparatus, necessary to keep the Demised Premises and other areas of the Landlord's Property in proper order, repair and condition, including replacements or repair of all damages or broken fixtures and appurtenances, except for any repairs or replacements required thereto by reason of the acts of the Tenant, its employees, agents, invitees, licensees, or contractors. Landlord shall be responsible for all required replacements of major components of the said equipment including all cost of installation. Tenant shall promptly report in writing to Landlord any defective condition which Landlord is required to repair or replace, and failure to report such defects makes Tenant responsible to Landlord for any liability, costs or attorney's fees incurred by Landlord by reason of such defect. Landlord shall not be obligated to make any repair or replacement required of it until notice in writing from Tenant of need for same. Landlord shall have reasonable time in which to make such repair or replacement."

8. Article 9 "Payment of Taxes and Other Assessments" of the Lease is hereby deleted and replaced in its entirety with the language appearing below.

"9. **PAYMENT OF TAXES AND OTHER ASSESSMENTS:**

- (a) Tenant shall timely pay directly to the applicable governmental taxing authorities any and all taxes with respect to any and all of Tenant's personal property which shall at any time be situated in, at or about the Demised Premises, including, but not limited to Tenant's leasehold improvements, trade fixtures, inventory and personal property.

- (b) Landlord shall pay annually all real estate taxes (defined below) assessed or imposed upon the Landlord's Property, the Building, or the Demised Premises which become due or payable during the term of this lease, as the same may be extended. As used in this Lease the term "real estate taxes" shall mean and include all ad valorem real property taxes, public and governmental charges and assessments, including all general, extraordinary or special assessments, or assessments against any of Landlord's personal property now or hereafter located in the Building, all costs and fees incurred by Landlord in contesting or negotiating with public authorities (Landlord having the sole authority to conduct such a contest or enter into such negotiations) as to any of the same and all sewer and other taxes and charges, but shall not include taxes on Tenant's personal property described in subsection (a) above. All real estate taxes shall be included as Operating Expenses and shall be paid by Tenant to Landlord in accordance with the terms of the Lease. Tenant shall pay any real estate taxes and all increases in the real estate taxes and other assessments assessed or levied including but not limited to business improvement district assessments against the Demised Premises, the Building or the Landlord's Property, as well as any special assessment imposed upon the Demised Premises for any purpose whatsoever during the term, whether the increase in taxation results from a higher tax rate or an increase in the assessed valuation of the Demised Premises, the Building or the Landlord's Property or of any of the foregoing. If the real estate taxes are increased because of the fixtures added by Tenant, Tenant shall reimburse Landlord for all such real estate taxes so assessed because of said improvements (and such amounts shall not be included in Operating Expenses). Such payment shall be made by Tenant and Landlord not later than thirty (30) days following the date on which Landlord provides Tenant with written evidence of such increase. In the event that any documentary stamp tax, or tax levied on the rental, leasing or letting of the Demised Premises whether local, state, or federal, is required to be paid to the execution hereof, the cost thereof shall be borne by the Tenant."

9. Pro Rata Share. Commencing on the Effective Date, and notwithstanding anything in the Lease to the contrary, Tenant's Pro Rata shall be based on the revised rentable square footage of the Demised Premises set forth herein and shall be deemed to be 82.2% (i.e. 34,221 s.f. / 41,633 s.f.).

10. Article 15 "Payment of Utilities" of the Lease is hereby deleted and replaced in its entirety with the language appearing below.

"15. Utilities and Services. As long as Tenant is not in default under any of the terms of the Lease, and such default is not cured within the cure period(s) set forth herein, Landlord shall furnish the services listed below to the Demised Premises. The cost for all such utilities and services shall be included in Operating Expenses for which Tenant shall reimburse Landlord as provided in the Lease.

- a. Electricity for routine lighting and the use of general office machines such as typewriters, dictating equipment, calculators, personal computers and Lessee's general office equipment and the like, which use 110-volt electric power;
- b. Heat and air conditioning during normal business hours (Monday – Friday 8 am to 5 pm excluding bank holidays). Such heat and air conditioning to be provided by using the existing HVAC systems in the Building, it being expressly understood and agreed by the parties that Lessor specifically shall not be liable for any losses or damages of any sort incurred by Lessee due to any failure of the equipment to function properly, or while it is being repaired, or due to any governmental laws, regulations or restrictions pertaining to the furnishing or use of such heat and air conditioning; unless such failure is due to Lessor's willful neglect or lack of proper maintenance. If Lessee requires HVAC services at any time other than the Normal Business Hours Lessor shall furnish such "after hours" service upon reasonable prior notice from Lessee, and Lessee shall pay Lessor's reasonable cost which are currently \$35/hour after hour HVAC usage which amount is subject to change; provided, however, notwithstanding the foregoing, (i) the first sixty (60) hours of after-hours HVAC service utilized by Lessee in any calendar year during the Term shall be without cost to Lessee, and (ii) Lessor shall provide heat and air conditioning on a 24/7 basis for Lessee's computer network and server equipment with such equipment not being subject to normal business hours of operation;
- c. Furnish elevator service during normal business hours and access outside of normal business hours via secured card key or similar security device;
- d. Lighting replacement for the Demised Premises' standard lights;
- e. Water for drinking purposes;
- f. Hot and cold water for lavatory purposes; and
- g. Sewage."

11. The following provisions are hereby added as new and additional terms and conditions to the Lease.

"Operating Expenses.

a. As used herein, "Operating Expenses" shall mean all costs of operating and maintaining the Building, the Demised Premises and the Landlord's Property, in a manner deemed by Landlord appropriate for the common interests of tenants in the Building, and consistent with similar office buildings in Columbia, South Carolina. Included among the costs and expenses which constitute Operating Expenses, but not limited thereto, shall be, at the option of Landlord, (i) all reasonable costs and expenses of protecting, operating, managing, repairing, lighting, cleaning, painting, striping, re-surfacing and re-paving the parking areas and driveways, insuring (including, but not limited to, fire and extended coverage insurance on the Building, insurance against liability for personal injury, death and property damage and workmen's compensation insurance, business interruption insurance and rent loss insurance, (but Tenant shall have no interest in such insurance or the proceeds thereof except as set forth herein)) the Demised Premises, the Building (including, but not limited to Common Areas), and Demised Premises, (ii) removing of snow, ice and debris, (iii) police protection, security and security patrol, fire protection, regulating traffic, (iv) inspecting, repairing, maintaining, as necessary, the machinery and equipment used in the operation of the Building, (v) cost and expense of maintaining, repairing and replacing storm and sanitary drainage systems, electrical, gas, water, telephone and fire suppression systems, (vi) cost and expense of installing, maintaining, repairing and replacing burglar or fire alarm systems in the Building, if installed, (vii) cost and expense of landscaping and shrubbery maintenance and replacement, (viii) expenses of and costs incurred for utilities and other services provided by the Landlord hereunder, (ix) administrative overhead costs, including, but not limited to, reasonable management fees, legal, accounting, inspection and consultation fees applicable to the Building and Landlord's Property, and (x) any depreciation costs related to costs incurred by the Landlord for any capital improvements or structural repairs to the Building area to effect labor savings or otherwise reduce Operating Expenses and such expense reduction can be directly measured and demonstrated to Tenant, or non-capital improvement costs required by any change in the laws, ordinances, rules, regulations or orders of any governmental or quasi-governmental authority having jurisdiction over the Building or Landlord's Property. Operating Expenses shall not include any costs or expenses which are incurred for the sole use and purpose of other tenants of the Building or costs and expenses which are reimbursed to Landlord by other tenants of the Building. Notwithstanding the foregoing, it is agreed that the Operating Expenses shall not include: any leasing or marketing or brokerage costs, fees (except Operating Expenses may include management fees), or commissions; any cost of construction to upfit space for occupancy by tenants; any amortization of principal or interest on account of any indebtedness; any legal expenses arising out of any misconduct or negligence of Landlord or any person for which Landlord is responsible or arising out of dealings between any principals constituting Landlord or arising out of any leasing, sale or financing of the Building or the Landlord's Property or any part of either of them; or, except as expressly permitted above, any amortization or depreciation.

b. Commencing on the Effective Date, Tenant shall pay to Landlord, as Additional Rent, Tenant's Pro Rata Share of the Operating Expense in monthly installments on the first day of each calendar month during the term and any extension thereof in amounts as estimated by Landlord. Such monthly installments shall increase or decrease upon notice from Landlord given after the actual or anticipated amounts of Operating Expenses due or payable in a particular calendar year are determined. Following the close of each full or partial calendar year during the term, as the same may be extended, the actual amount of Operating Expenses due or payable shall be computed by Landlord and any excess paid by Tenant during such calendar year over the actual amount Tenant is obligated to pay hereunder shall be credited to Tenant against its future Operating Expenses obligations hereunder, and within thirty (30) days after written notice from Landlord, Tenant shall pay any deficiency owed by Tenant to Landlord."

12. Parking. The Lease is hereby amended so that, as of the Effective Date, and notwithstanding anything in the Lease to the contrary, Tenant shall have the right to use twenty-eight (28) parking spaces in the parking lot located on the Landlord's Property and adjacent to the Building. The parking space made available to Tenant hereunder are identified on the drawing attached hereto and included herein by reference as Exhibit "B".

13. Expiration of Term and Early Termination. The term of the Lease shall expire at 11:59 pm on July 14, 2022; provided, however, that Tenant shall continue to have a one-time right to terminate the Lease. Such early termination date shall be as of 11:59 PM (Eastern) on the fourteenth (14th) day of July, 2020 (the "*Early Termination Date*"); provided, however that Tenant must provide Landlord with prior written notice of its intent to terminate the Lease *prior to* the date that is six (6) months prior to the Early Termination Date ("*Termination Notice*").

14. Article 32(B) "Option to Renew" of the Lease is hereby deleted in its entirety, and Tenant shall have no further options to renew or otherwise extend the Term of the Lease. Term of the Lease shall expire at 11:59 pm on July 14, 2022 unless terminated earlier as described above.

15. Contingency. This Amendment and all terms and conditions set forth herein is expressly conditioned upon Landlord entering into executed lease(s) with third party(ies) for the Released Space. If Landlord is unable, for any reason, to obtain executed lease(s) for the Released Space, this Amendment shall become null and void and of no further force or effect, and all payments of rents and other charges shall be paid, and Tenant shall remain liable for the performance of all its obligations pursuant to the provisions of the Lease as if this Amendment were never executed.

16. Except as modified or amended hereby, the terms and provisions of the Lease shall remain in full force and effect. If any terms of this Amendment are inconsistent with any one or more terms of the Lease, the terms of this Amendment shall control; provided, however, that all of the provisions of the Lease affected by this Amendment shall be deemed amended, whether or not actually specified herein, if such amendment is clearly necessary to effectuate the intent of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Fifth Lease Amendment to be effective as of the date of the last signature hereinbelow.

WITNESSES:

Quentin McKinney
Ebony Sue

Ericka D. Moore
Suplt

LANDLORD:

FIRST-CITIZENS BANK & TRUST COMPANY,
a North Carolina banking corporation

By: Jenna Lelich
Name: Jenna Lelich
Title: Vice President
Date: 10/30/2019

TENANT:

THE CITY OF COLUMBIA, SOUTH CAROLINA

By: Teresa B. Wilson
Name: Teresa B. Wilson
Title: City Manager
Date: 10/22/2019

APPROVED AS TO FORM

[Signature]

Legal Department City of Columbia, SC

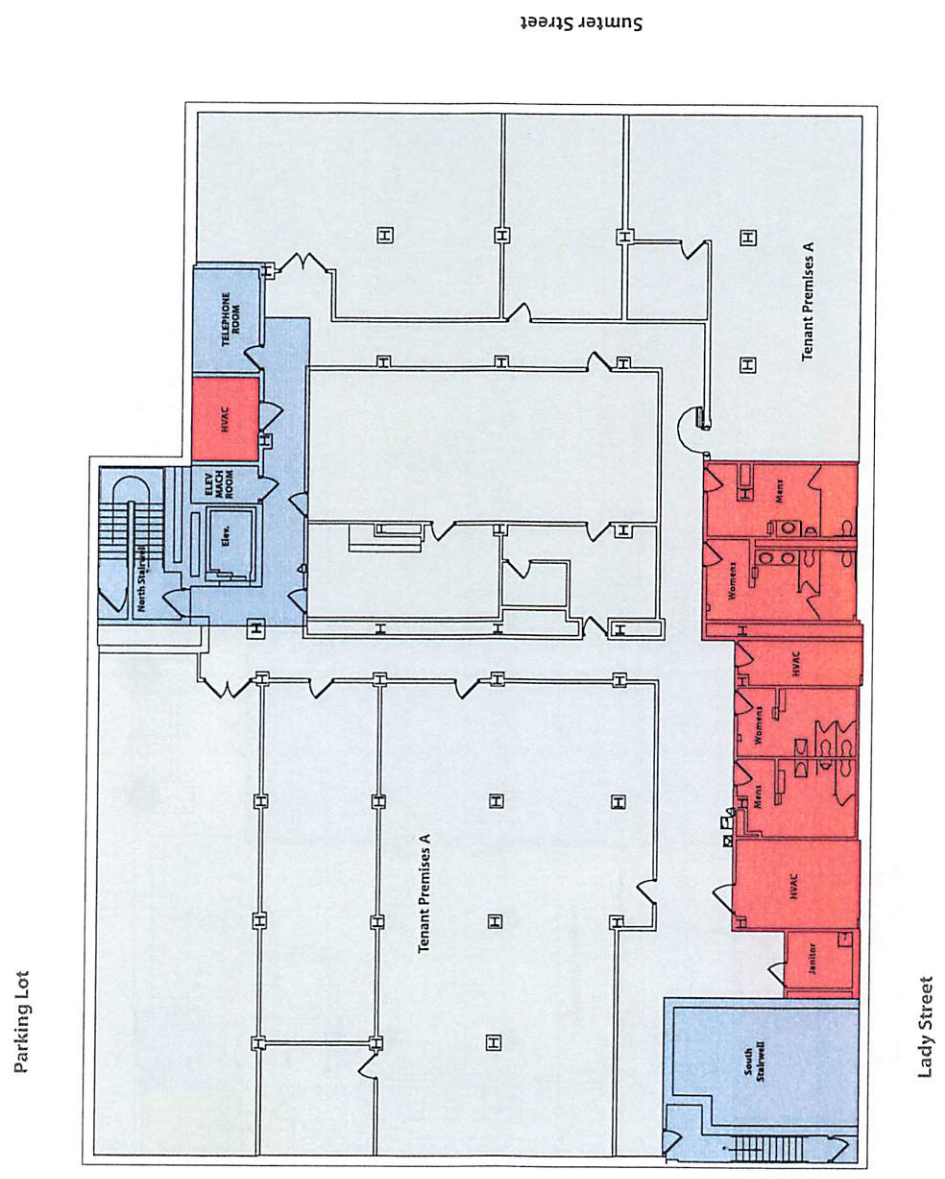
EXHIBIT "A"

[Floor Plan Showing "New" Demised Premises]

Basement

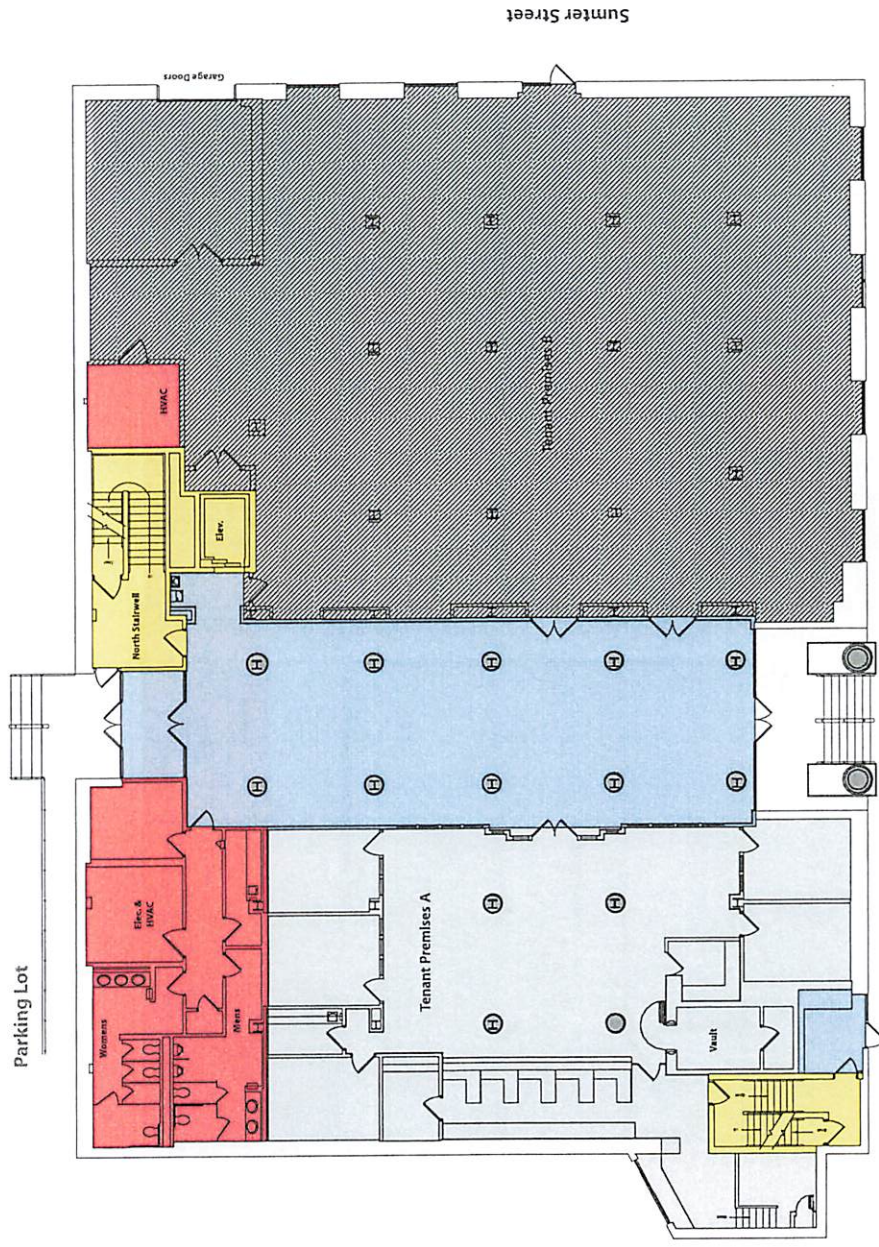
BOMA 2017 Area Calculations

Project: First Citizens
 Location: 1235 Lady Street, Columbia SC
 Date: Revised October 3, 2019



- Occupant Storage Area
- Building Service Area
- Tenant Area

- Major Vertical Penetrations
- Floor Service Area
- Building Amenity Area



Lady Street

Sunter Street

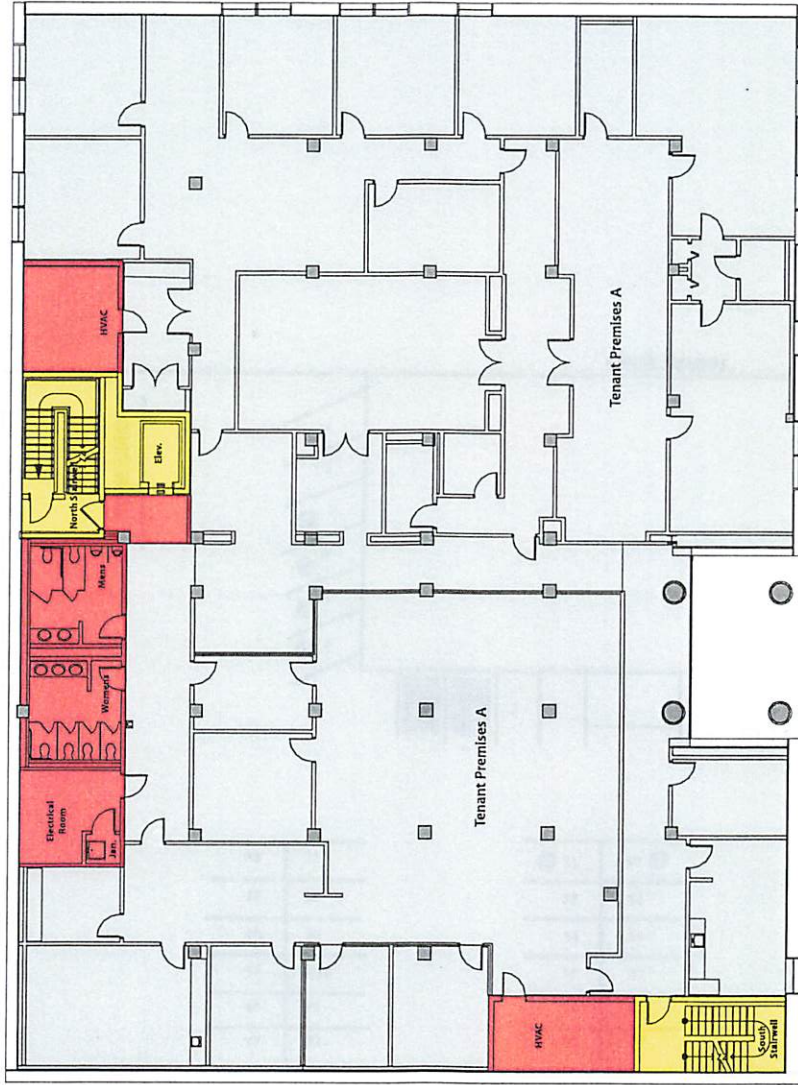
- Major Vertical Penetrations
- Floor Service Area
- Building Amenity Area
- Occupant Storage Area
- Building Service Area
- Tenant Area

Floor Two

BOMA 2017 Area Calculations

Project: First Citizens
 Location: 1225 Lady Street Columbia SC
 Date: Revised October 3, 2019

Parking Lot



Sumter Street

Lady Street

- Major Vertical Penetrations
- Floor Service Area
- Building Amenity Area

- Occupant Storage Area
- Building Service Area
- Tenant Area

EXHIBIT "B"

[Drawing to Show 28 Parking Spaces]

