

CITY CLERK ORIGINAL

C-7901
01/10/2012

When recorded, return to:

City Clerk
CITY OF GLENDALE
5850 West Glendale Avenue
Glendale, Arizona 85301

LEASE AGREEMENT

This Lease Agreement ("Agreement") is executed to be effective the 10th day of ~~February~~ ^{January}, 2012, between the City of Glendale, an Arizona municipal corporation ("City"), and Inter Technologies, Inc., a Virginia corporation authorized to do business in the State of Arizona ("Lessee").

RECITALS

- A. The City is the owner of real property located at 5754 West Glenn Drive, Glendale, Arizona ("the Premises").
- B. Lessee desires to lease the Premises in order to occupy and operate a music recording studio and music practice rooms and provide music-related classes and workshops, among other things.
- C. The City desires to make available music and other cultural events to members of the public, including students, residents and tourists.
- D. The City recognizes the benefits that cultural arts provide communities and the educational opportunities the Lessee will provide, as well as the contribution the Lessee will provide to the economic vitality of downtown Glendale.
- E. The City is willing to lease the Premises to Lessee on the terms and conditions specified herein.

AGREEMENT

1. Grant of Lease

- 1.1 The City leases to Lessee the Premises consisting of approximately 6,559 square feet of space located at 5754 West Glenn Drive, Glendale, Arizona which is depicted on Exhibit A of this Agreement.
- 1.2 The purpose of the lease of the Premises by the City to the Lessee under the terms and conditions set forth herein is to provide for Lessee's:
 - a. Operation and rental of a music studio and recording space;
 - b. Rental of music practice space;
 - c. Conduct of educational classes and workshops related to music;
 - d. Offering of live music shows;
 - e. Offering of art exhibits and other cultural shows and events;

- f. Marketing, rental and sale of musical instruments and audio-visual equipment; and
 - g. Marketing, rental and sale of music-related merchandise.
 - h. Business office space for Lessee and its affiliated business, Jivemind.
- 1.3 By this Agreement, Lessee is granted the following privileges, uses, and rights related to the Premises:
- a. Use of public parking spaces located in the public parking lot located directly north of the Premises, as shown on Exhibit A of this Agreement, by the Lessee, its agents, employees, and invitees. Notwithstanding the preceding sentence, use of these parking spaces by the Lessee, its agents, employees, and invitees is not allowed during the City's Signature Festivals. Upon Lessee's request to the City's Marketing Department, the City will provide ten passes to Lessee for access at no cost to the Palmaire public parking garage during the City's Signature Festivals for use by the Lessee, its agents, employees, and invitees.
 - b. Ingress and egress from and to the Premises over and across the public sidewalks, roadways, and parking lot serving the Premises, as well as ingress and egress over and across the Civic Center Plaza to be utilized by the Lessee, its agents, employees, and invitees.
- 1.4 All rights and privileges granted in the Agreement are non-exclusive.
- 1.5 Lessee is required to operate and hold the Premises open to the public ("Operating Hours") a minimum of 32 hours per week, unless different Operating Hours are agreed to in writing by the City's Economic Development Director. Lessee is required to have Operating Hours during event hours for all City of Glendale Signature Festivals. The 2011-12 Signature Festival Calendar is attached as Exhibit B. The schedule for future Signature Festival events will be available from the City's Marketing Department and provided to Lessee upon request.
- 1.6 Lessee is required to offer the following events during each Term:
- a. Four (4) music concerts, open to the public free of charge, at the Glendale Municipal Amphitheater, located adjacent to City Hall at 5850 West Glendale Avenue, Glendale, Arizona. Dates for these concerts must be coordinated with and approved by the City's Marketing Department at least six months in advance of the concert.
 - b. Twenty-four (24) music concerts and ten (10) other cultural events held at locations within the Glendale municipal boundaries. Lessee may charge for admission to these events.
 - c. For all concerts and events held at a location other than the Premises, Lessee must obtain all required City, County, and/or State permits and licenses, as well as provide a certificate of insurance naming the City as an additional insured.
- 1.7 Lessee will actively work with schools located in the City and youth organizations serving City residents to establish relationships and provide access to music services. During each

Term, Lessee will make written offers to provide its services at discounted rates of at least 15% to at least five public primary or secondary schools located within the City.

1.8 Lessee may not use the Premises for any purposes other than those specified herein.

2. **Term**

2.1 Lessee's lease of the Premises is for twelve (12) months commencing on February 1, 2012 and expiring on January 31, 2013, unless sooner terminated pursuant to the provisions of this Agreement.

2.2 Subject to the City's consent, Lessee may renew this Agreement annually for an additional 12-month period ("Renewal Term") for up to a maximum of four Renewal Terms, subject to the same terms and conditions set forth herein, provided that Lessee is not in default of any of its obligations under this Agreement at the time of renewal or on more than one occasion during the previous Term or Renewal Term of this Agreement.

2.3 To exercise a renewal option Lessee must:

a. Deliver to the Economic Development Director:

1. Written notice of its intention to seek a renewal term at least 90 days prior to any expiration of this Agreement; and
2. Proof of insurance as required by this Agreement, which proof must be presented with the notice of the intent to seek a renewal term.

b. Obtain City Manager's written consent to Renewal Term. The City will provide a written response within 30 days of receiving Lessee's notice of intention to seek a Renewal Term under subsection (a) above.

3. **Rent**

3.1 Lessee's rent for the lease of the Premises is as follows:

a. From the effective date until January 31, 2013 ("Initial Term"), the total rent will be \$17,500.

b. Rent for the Initial Term is payable as follows:

1. A lump sum of \$8,750.02 payable at the time the Agreement is executed by Lessee.
2. Six equal monthly payments of \$1,458.33 payable on the first day of the month beginning on the sixth month of the Initial Term and continuing for six months, for a total of \$8,749.98.

c. Rent for each 12-month Renewal Term, if any, is payable in 11 monthly installments of approximately one-twelfth (1/12) of the total annual rent or \$1,458.33 and one monthly installment of \$1,458.37, payable beginning on the first day of the month of the first month of the Renewal Term and continuing for 12 months.

- 3.2 Lessee must remit payment to the City on the first day of each month to the City's finance and accounting office at 5850 West Glendale Avenue, Glendale, Arizona 85301.
- 3.3 If Lessee fails to pay any rent in full on or before the fifth day following the due date, the unpaid amount will accrue interest at a rate of 18% per annum from the due date until payment in full is made.
- 3.4 City's acceptance of any monies from Lessee is not an admission of the sufficiency of the amount of the payment, and the City reserves all legal rights to question the accuracy of Lessee's payments.

4. **Books and Records**

Lessee will prepare and submit to the Economic Development Director by December 1 of each year this Agreement is in effect a report of all of Lessee's activities for the previous year, including but not limited to: concerts, events, exhibits, workshops, classes, visitor counts, shows, activities, sales, media coverage, publicity and actual Operating Hours.

5. **Improvements**

- 5.1 Lessee will spend at least \$10,000 for tenant improvements including, but not limited to, installation of a music recording studio and at least 2 music practice rooms, painting of interior walls, installation of new flooring where required and agreed upon by the City.
- 5.2 All improvements and modifications made by Lessee must be constructed in a good, workmanlike manner and must comply with all applicable City, state and federal laws, codes, and requirements, including without limitation, the public procurement requirements of Title 34, Arizona Revised Statutes.
- 5.3 Lessee must secure written approval by the City prior to starting any improvement to or modification of the Premises.
 - a. Before commencing any improvements or modifications, Lessee will submit detailed construction plans and specifications to the City; and upon completion of any improvements or modifications, Lessee will furnish to the City two complete sets of detailed plans and specifications of the work as completed.
 - b. Prior to starting any construction of improvements or modifications to the Premises, Lessee must secure all applicable building permits, approvals and required insurance.
 - c. Lessee will begin construction of any improvements and modifications to the Premises within a reasonable period of time following the approval of the City and the issuance of a building permit, if necessary, for the construction, and construction must be completed in accordance with the schedule listed for completion or as otherwise agreed upon by the City. Lessee may begin construction at any time after the Agreement is recorded and after Lessee pays the lump sum of \$8,750.02 required by Section 3.1(b)(1), above, as long as all necessary approvals and permits have been obtained by Lessee.

- 5.4 Lessee will furnish any additional information concerning any proposed or completed improvements or modifications that the City considers necessary with regard to the safety of the Premises.
- 5.5 Prior to the commencement of any construction on the Premises, Lessee must provide the City with payment and performance bonds in amounts equal to the full amount of the written construction contract and which comply with A.R.S. §§ 34-222 and 34-223.
- a. The payment bond is solely for the protection of claimants supplying labor or materials for required construction, and the performance bond is solely for the protection of the City, conditioned upon the faithful performance of the required construction.
- b. Each bond must be filed with the City Clerk immediately upon execution.
- 5.6 Without waiving any prohibition against liens being placed upon public property, Lessee must keep the Premises and all improvements free of any mechanic's or materialmen's liens or liens of any kind or nature for any work done, labor performed or material furnished on or to the Premises and, if any lien is filed, Lessee must, at its sole cost, cause the lien to be removed from the Premises within 30 days of notice.
- 5.7 All improvements and modifications made by Lessee which permanently attach to the Premises become the property of the City upon expiration or termination of this Lease, at no cost to the City, free of any security interest or claims of any kind. The Parties intend that the audio/video equipment installed by Lessee, such as mixing boards, speakers, etc., may be removed by Lessee and that Lessee must repair any damage to the Property caused by their removal, such as repairs to walls, ceilings, floor, floor coverings, etc.
- 5.8 Lessee is not entitled to any offset or credit in rent or otherwise from the City in connection with improvements made by Lessee under this Agreement.

6. Utilities

- 6.1 Lessee is responsible for:
- a. Arranging and paying for all utility services required on the Premises excluding landscaping and irrigation expenses.
- b. Any communications fees, including telephone, internet, television, etc., which Lessee will arrange and pay directly to the service provider.
- 6.2 City is responsible for the provision and payment of landscaping and irrigation expenses.

7. Acceptance, Maintenance, and Repairs

- 7.1 Prior to commencement of this Agreement, the City made the Premises available to Lessee for inspection and the Lessee accepts possession of the Premises and the improvements thereon "as is" in its present condition.
- 7.2 The City shall maintain and keep the Premises and all of its structural elements in good condition and repair, including but not limited to windows, air-conditioning, heating,

electrical, water, plumbing systems and equipment, roofing, exterior walls, exterior lighting, paving and walkways, and all exterior landscaping and irrigation.

- 7.3 Lessee shall maintain and make all necessary repairs to the furniture, fixtures, and equipment of Lessee. Lessee shall maintain the interior walls of the building located on the Premises, except reasonable wear and tear and any damage or loss for which the City is required to obtain casualty insurance. Lessee shall also repair and maintain all signage.
- 7.4 Lessee is solely responsible, at its cost, for all maintenance and repairs or for any damage caused by Lessee, or its agents, employees or invitees to the Premises.
- a. Lessee must maintain the Premises, including utilities exclusively serving the Premises, whether the repair or maintenance be ordinary or extraordinary, structural or otherwise, and must keep the Premises at all times, in a clean and orderly condition and appearance, including any personal property or fixtures of the Lease.
 - b. Lessee is responsible for regular and routine janitorial services on the Premises.
- 7.5 If Lessee fails to repair or maintain the Premises to the satisfaction of the City, after the City's 30 days' written notice to the Lessee requiring that the maintenance or repair work be completed, the City may:
- a. Terminate this Agreement; or,
 - b. At the City's option, enter the Premises without being deemed to have caused a termination of this Agreement or interference with Lessee's possession of the Premises, to maintain or repair any part of the Premises or its improvements and do all things reasonably necessary to accomplish the work required.
 - 1. All costs incurred by the City as a result of this re-entry must be immediately reimbursed to the City by Lessee upon demand.
 - 2. The City work will be accomplished in such a manner as to not unreasonably interfere with Lessee's operations.
- 7.6 If the City, its officers, employees or agents undertake any work hereunder, Lessee waives any claim for damages, consequential or otherwise, resulting therefrom.
- 7.7 The City's rights set forth in this section in no way affect or alter the primary obligations of the Lessee and do not impose upon the City any obligations unless specifically stated otherwise herein.

8. **Additional Obligations of Lessee**

- 8.1 Lessee must conduct its operations in an orderly and proper manner so as to not unreasonably annoy, disturb, endanger or be offensive to others.
- 8.2 Lessee must comply with all written instructions of the City in disposing of its trash and refuse and use a system of refuse disposal approved by the City.
- 8.3 Lessee must not commit nor permit to be done:

- a. Anything which may result in the commission of a nuisance, waste or injury on or to the Premises.
- b. Any act or thing upon the Premises that may constitute a hazardous condition so as to increase the risk attendant upon the operations permitted by this Agreement or that may invalidate or conflict with any fire insurance policies or regulations.
- c. Anything that may interfere with the effectiveness or accessibility of the drainage system, sewage system, fire protection system, alarm system, fire hydrants and hoses, if any, that are installed or located on the Premises.
- d. Any overloading of a floor, structure, or structural member on the Premises.
- e. Interfere with the free access and passage of others to space adjacent to the Premises.

8.4 Lessee will take measures to ensure security of the Premises.

9. Assignment and Subletting

- 9.1 Lessee may not assign or sub-lease any of its interest under this Agreement, nor permit any other person to occupy the Premises, without the prior written consent of the City.
- a. City will not unreasonably withhold consent so long as Lessee's proposed assignee has in the City's sole determination the experience and financial capacity to continue Lessee's operations at the level of service required herein.
 - b. As a condition of approval, Lessee will submit biographical and financial information of the proposed assignee or sub-lessee to the City at least 30 days prior to any transfer of Lessee's interest.
 - c. The terms of this Agreement will be considered incorporated into any sub-lease.
- 9.2 Lessee may not mortgage, encumber, or assign any portion of its right, title, and interest in this Agreement to lenders for any purpose.

10. Signage

- 10.1 Lessee may install signage on the Premises, subject to compliance with the applicable City zoning code requirements.
- 10.2 The number, general type, size and location of signs must be approved in accordance with City's sign review and approval process and approval must be obtained prior to installation.

11. City's Additional Obligations

- 11.1 Within three months after execution of this Agreement, the City, through its Marketing Department, will produce a story to be broadcast on the City's website, cable channel 11, and You Tube Channel concerning the Lessee, its recording studio and offerings. The City will have sole discretion with respect to the content and broadcast times and frequency.

11.2 During the term of this Agreement, the City will post information on Lessee's events and activities within the City on the City's cable channel 11 community calendar, the City's Convention and Visitor's Bureau ("CVB") website (www.visitglendale.com), and through the downtown monthly newsletter (currently Downtown Discovery); include information in other CVB social media products; and allow distribution of brochures at the City's Visitor Center. The City will have sole discretion with respect to availability of these media to Lessee and the content and placement and length of such postings, messages and distributions.

12. Default by Lessee

12.1 The City may terminate this Agreement by giving Lessee 30 days' written notice after any of the following events and Lessee fails to cure the event:

- a. The failure of Lessee to perform any of its obligations under this Agreement, including but not limited to, the failure to timely pay rent, construct tenant improvements, offer the required number of annual concerts and other cultural events, offer discounted services to Glendale schools, submit annual report of activities, and obtain required insurance; or
- b. The taking of possession for a period of ten days or more of substantially all of the personal property used on the Premises belonging to Lessee by or under lawful authority of any legislative act, resolution, rule, order, or decree or any act, resolution, rule, order or decree of any court or governmental board, agency, officer, receiver, trustee, or liquidator.

12.2 If the City terminates this Agreement for default, the City, without further notice to Lessee, may re-enter the Premises and recover damages, including but not limited to, all costs of repossession and re-letting and brokerage commissions for services performed by or for the City.

12.3 Upon the termination of this Agreement for any reason, all rights of Lessee will terminate, including all rights of Lessee's creditors, trustees and assigns, and all others similarly situated as to the Premises.

12.4 Alternatively, the City may elect to:

- a. Institute an action, in equity or at law, to enforce this Agreement;
- b. Take possession of the Premises, without terminating this Agreement, and on behalf of Lessee, re-let the same or any part thereof for a term, shorter, longer, or equal to the then unexpired remainder of the Agreement's term and Lessee must pay any deficiency in the Rent amount; provided however, the City may at any time after taking possession terminate this Agreement by giving notice to Lessee and sue for damages;

- c. Exercise the "Remedies of Landlord" as set forth in Arizona Revised Statutes, Title 33; or
 - d. Exercise any other remedy allowed by law or equity.
- 12.5 Failure by the City to take any authorized action upon default by Lessee of any of its obligations hereunder does not constitute a waiver of default nor of any subsequent default by Lessee.
- 12.6 Acceptance of rent and other fees by the City under this Agreement for any period after a default by Lessee is not a waiver by the City of its right to terminate this Agreement or to seek any other remedy provided herein, nor does acceptance constitute an estoppel of the City or any partial payment does not constitute any form of accord and satisfaction.

13. Default by City

Lessee may terminate this Agreement at any time that it is not in default in its obligations by giving the City 30 days' written notice after any of the following events:

- 13.1 Issuance by a court of competent jurisdiction of an injunction in any way preventing or restraining Lessee's use of any substantial portion of the Premises and thereafter remaining in force for a period of 30 consecutive days;
- 13.2 The inability of Lessee to use any substantial portion of the Premises for a period of 30 consecutive days due to the enactment or enforcement of any law or regulation or because of fire, earthquake or similar casualty, local or airport emergencies or Acts of God or the public enemy; or
- 13.3 The lawful assumption by the United States Government of the operation, control, or use of the Airport or any substantial part of it for military purposes in time of war or national emergency.

14. Indemnification

- 14.1 Lessee must defend, indemnify and hold harmless the City, including its elected or appointed officials, agents, boards, commissions, and employees, from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of Lessee, including its agents, employees, and invitees in connection with Lessee's operations that result directly or indirectly in the injury to or death of any persons or the damage to or loss of any Premises, or arising out of the failure of Lessee to comply with any provisions of this Agreement.
- 14.2 The City will in all instances, except for loss, damages or claims resulting from the sole negligence of the City, be indemnified by Lessee against all such loss, damages or claims.

- 14.3 The City will give to Lessee prompt notice of any claim made or suit instituted which may subject Lessee to liability under this Section, and Lessee may compromise and defend the same to the extent of its own interest.
- 14.4 The City may, but has no duty to, participate in the defense of any claim or litigation with attorneys of the City's selection without relieving Lessee of any obligations hereunder.
- 14.5 Lessee's obligations hereunder survive any termination of this Agreement or Lessee's activities under this Agreement.

15. Insurance

- 15.1 Lessee must procure and at all times maintain the types and amounts of insurance as set forth in Exhibit C – Insurance.
- 15.2 Lessee must list the City as an additional insured on all policies required by this Agreement. The certificate and policy shall name the City of Glendale as an additional insured and the insurance shall be primary and provide non-contributory coverage. The City shall be an additional insured to the full limits of the liability insurance purchased by the Lessee even if those limits of liability are in excess of those required by this Agreement.
- 15.3 Include contractual liability coverage for the obligation of indemnity assumed in this Agreement.
- 15.4 Policy issuer must possess an A.M. Best Rating of at least A- and be authorized by the State of Arizona Department of Insurance to transact business within Arizona.
- 15.5 Lessee must provide to the Economic Development Director proof of insurance prior to taking possession of the Premises for any purpose and in no event later than 10 calendar days after recordation of the Agreement. Certification must include: name and address of insurance company; policy number; liability coverage amounts; a statement that the policy will not be cancelled or failed to be renewed without 30 days written notice to the City's Risk Manager and Economic Development Director.
- 15.6 In the event Lessee fails to secure or maintain the required insurance.
- a. Upon 30 days' written notice, and Lessee's failure to cure during this notice period, the City may terminate this Agreement; or
 - b. The City may secure the required insurance at Lessee's cost, which will be paid to the City immediately upon demand.

16. Quiet Enjoyment

So long as Lessee timely pays the rent required under this Agreement and performs all of its other obligations under this Agreement, Lessee may peaceably have and enjoy the exclusive use of the Premises and all the privileges granted herein.

17. Damage or Destruction

- 17.1 If the Premises or any improvements thereon, insurable or uninsurable, are damaged or destroyed (except damage or destruction caused by Lessee or its invitees) to such an extent Lessee is prevented from continuing operations, the City will within 30 days provide notice to Lessee that the City:
- a. Will repair or reconstruct the Premises and improvements substantially as they were immediately prior to the casualty, or in a new or modified design, and the time period of the reconstruction or repair; or
 - b. Terminate this Agreement; provided, however,
 - c. If the City fails to provide notice within 30 days of becoming aware of the damage or destruction, and the damage or destruction has not been caused by Lessee or its invitees, Lessee may terminate this Agreement by written notice to the City.
- 17.2 If the City elects to repair or reconstruct as set forth above, the rent provided for herein will be fully abated during the period from the date of the damage or destruction until repair or reconstruction is complete.
- a. Abatement will not exceed the actual time required for arranging for and the doing of the work.
 - b. The City has no obligation to repair or rebuild any fixtures, equipment or other personal property installed by Lessee under this Agreement, whether damage or destruction to the Premises is partial or entire.
 - c. Abatement of rent does not operate as an extension of the Agreement period.
- 17.3 If damage or destruction to the Premises (except damage or destruction caused by Lessee) is partial and does not prevent Lessee from continuing operations, the City will promptly commence repairing the partial damage and pursue the work with diligence.
- a. To the extent that partial damage is covered by any of Lessee's insurance, Lessee will reimburse the City for its costs of repair or replacement.
 - b. If the insurance proceeds exceed the City's costs of repair or replacement, Lessee may retain the excess.
- 17.4 If the improvements on the Premises are damaged or destroyed by fire or any cause whatsoever attributable in whole or in part to any act or omission of Lessee or its agents, employees, or invitees, the above subsections do not apply and this Agreement will continue in full force and effect.
- a. Lessee must promptly repair or rebuild the improvements so damaged or destroyed, at Lessee's own cost, in a good workmanlike manner to the same standards existing at the time of the casualty, subject to applicable building codes existing at the time of repair or rebuilding.

with a copy to:

Jeff Rose
3019 North 14th Street, #406
Phoenix, Arizona 85014

- 19.2 Either party may designate in writing a different address for notice purposes pursuant to this Section.
- 19.3 Any notice given by certified mail is considered received on the next business day after the date of mailing.

20. Severability

If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining terms shall remain effective, if elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

21. Taxes and Licenses

- 21.1 Lessee shall pay any leasehold tax, possessory interest tax, sales tax, personal property tax, transaction privilege tax or other exaction assessed or assessable as a result of its occupancy of the Premises or conduct of business under authority of this Agreement, including any tax assessable on the City. If a statute or judicial decision results in the imposition of a real property tax on the interest of the City, the tax must also be paid by Lessee for the period this Agreement is in effect.
- 21.2 Lessee acknowledges that it may be considered, a "prime lessee," as defined in A.R.S. § 42-6201, and that it may, or in the future, may be subject to government property lease excise tax liability under this Agreement. Lessee further acknowledges that any failure by Lessee to pay taxes due under this paragraph after notice and an opportunity to cure constitutes a default that could result in divesting Lessee of any interest in or right to occupancy of the Premises.
- 21.3 Lessee must, at its own cost, obtain and maintain in full force and effect during the term of this Lease all licenses and permits required for all operations authorized by this Agreement.

22. Litigation

- 22.1 This Agreement is governed by the laws of the State of Arizona and any action taken hereunder will be filed within the courts of Maricopa County.
- 22.2 In the event of any litigation or arbitration between the City and Lessee arises under this Agreement, the successful party is entitled to recover its reasonable attorney's fees and expert witness fees and other costs incurred in connection with the litigation or arbitration.

23. Right of Entry Reserved

- 23.1 The City may at all reasonable times enter upon the Premises for any lawful purpose so long as the action does not unreasonably interfere with Lessee's use, occupancy or security of the Premises.

- 23.2 Without limiting the foregoing, the City and any furnisher of utilities and other services has the right, at its own cost, whether for its own benefit or for the benefit of others, to repair, maintain, or replace existing and future utility, mechanical, electrical, plumbing, roofing, and other systems, and to enter upon the Premises to make repairs, replacements or alterations that are, in the opinion of the City, necessary or advisable and from time to time to construct or install over, in or under the Premises systems or parts and use the Premises for access to other parts of neighboring property otherwise not conveniently accessible.
- 23.3 If any personal property of Lessee obstructs the access of the City or any utility company providing service to any of the existing utility, mechanical, electrical and other systems, Lessee must move the obstruction, as directed by the City or utility company.
- a. If Lessee fails to move the property after direction, the City or the utility company may move it, and Lessee must pay the cost of moving the obstruction immediately upon demand.
 - b. Lessee hereby waives any claim to the City or utility company for damages as a result of the involuntary removal, except for claims for damages arising from the City's or the utility company's sole negligence.

24. Remedies Are Non-Exclusive

All remedies provided in this Lease are considered cumulative and additional, not in lieu of or exclusive of, each other, or of any remedy available to the City or Lessee at law or in equity. The exercise of any remedy or the existence of other remedies does not prevent the exercise of any other remedy.

25. Time is of the Essence

Time is of the essence with regard to the performance of all of the Parties' obligations as set forth in this Agreement.

26. Miscellaneous

- 26.1 This Agreement constitutes the entire agreement between the Parties, except as to documents incorporated herein by reference, and supersedes all prior negotiations, understandings and agreements between the Parties concerning the matters.
- 26.2 This Agreement is to be interpreted, applied, and enforced according to the fair meaning of its terms and not construed strictly in favor of or against either Party, regardless of which Party may have drafted any of its provisions.
- 26.3 No provision of this Agreement may be waived or modified except by a writing signed by the Party against whom such waiver or modification is sought to be enforced.
- 26.4 The terms of this Agreement are binding upon and inure to the benefit of the Parties' successors and assigns.
- 26.5 Immigration Law and Compliance.

- a. Lessee, and on behalf of any subcontractor, warrants to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
 - b. Any breach of warranty of this section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
 - c. The City retains the legal right to inspect the papers of any of Lessee's or subcontractor employee who performs work under this Agreement to ensure that the Lessee or any subcontractor is compliant with the warranty under this section.
 - d. The City may conduct random inspections, and upon request of the City, Lessee must provide copies of papers and records of Lessee demonstrating continued compliance with the warranty under this section.
 - e. Lessee agrees to keep papers and records available for inspection by the City during normal business hours.
 - f. Lessee must cooperate with the City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
 - g. Lessee must incorporate into any subcontract agreements that are allowable under this Agreement, if any, the same obligations imposed upon Lessee and expressly accrue those obligations directly to the benefit of the City.
 - h. Lessee must require any allowable subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
 - i. Warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
 - j. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
- 26.6 Prohibitions. Lessee certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

27. **Good Standing and Authority**

The Parties represent and warrant that each is duly formed and validly existing under laws of Arizona and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

28. **Conflicts**

This Lease is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

29. **Exhibits**

Exhibit A – Diagram of Leased Premises

Exhibit B – Signature Festival Calendar 2011-12 Season

Exhibit C – Insurance Requirements

(Signatures Appear on Following Page)

EXECUTED to be effective on the date specified above.

CITY OF GLENDALE,
an Arizona municipal corporation

By: *Harold Skub for*
Ed Beasley, City Manager

ATTEST:

Pamela Hanna
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

Craig Tindall
Craig Tindall, City Attorney

LESSEE
Inter Technologies, Inc.,
a Virginia corporation authorized to do business
in Arizona

Jeff Rose
By: *Jeff Rose*
Its: *Southwest Regional Director*

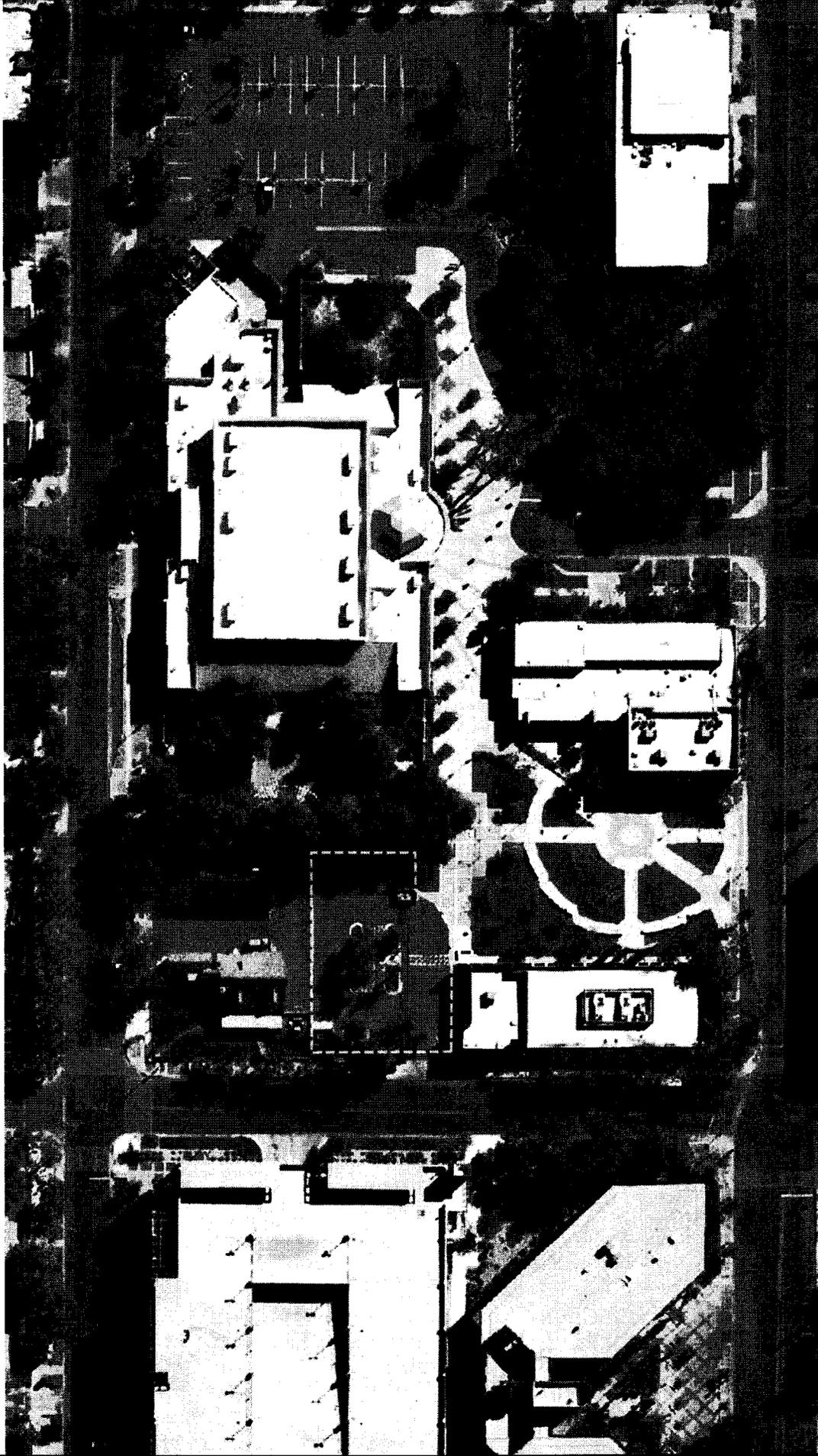
EXHIBIT A

Lease Agreement

Property Depiction of 5754 West Glenn Drive

(See Attached)

Jivemind: Downtown Glendale Map



— Jivemind premises

- - - Shared ingress/egress

Shared parking



EXHIBIT B

Lease Agreement

Signature Festival Calendar 2011-12 Season

(See Attached)

Historic Downtown Glendale Special Events, Festival and Promotions

September 2011-December 2012

2011

September

10 Teddy Bear Day

October

1 Artwerks First Saturdays

1 Open Air Market

8 Fire Prevention Day & Parade

10-14 Glendale High School Centennial Celebration

15 Front Porch Festival & Old Towne Marketplace

November

5 Artwerks First Saturdays

5 Open Air Market

5 For the Love of Flowers

12 15th Annual Holiday Open House

25-26 Glendale Glitters Spectacular Weekend

December

2-3 Glendale's Spirit of Giving Weekend

3 Artwerks First Saturdays

3 Open Air Market

9-10 Glendale's Winter Wonderland Weekend

16-17 Glendale's Jingle Bell Rockin' Nights

2012

January

7 Artwerks First Saturdays

7 Open Air Market

14 Glendale Glitter & Glow Block Party

February

3-5 Glendale Chocolate Affaire

4 Artwerks First Saturdays

4 Open Air Market

25 Bear Hunt with Arizona Search Dogs

March

3 Artwerks First Saturdays

3 Open Air Market

3 Paris in the Spring French Market

April

7 Artwerks First Saturdays

7 Open Air Market

14-15 Glendale Jazz & Blues Festival

21 Sidewalk & Porch Sale

May	
5	Artwerks First Saturdays
5	Open Air Market
12	Mother's Day Celebration
12-20	National Tourism Week
18	Catlin Court/58 th Ave. Girl's Night Out
29	Catlin Cash Promotion Begins
June	
7, 14, 21, 28	46 th Annual Glendale Summer Band Concerts
TBD	Watermelon Festival
TBD	Cookbook Promotion
July	
5, 12, 19	46 th Annual Glendale Summer Band Concerts
21	Christmas in July
August	
4	Dog Days of Summer
24-25	Catlin Cash Redemption Days
September	
8	Teddy Bear Day
October	
6	Artwerks First Saturdays
6	Open Air Market
6	Fire Prevention Day & Parade
20	Front Porch Festival & Old Towne Marketplace
November	
3	Artwerks First Saturdays
3	Open Air Market
3	For the Love of Flowers
10	16 th Annual Holiday Open House
23-24	Glendale Glitters Spectacular Weekend
30	Glendale Glitters December Holiday Weekends
December	
1, 7, 8, 14, 15, 21, 22	Glendale Glitters December Holiday Weekends
1	Artwerks First Saturdays
1	Open Air Market

*Dates subject to change
Updated 10/19/11*

EXHIBIT C

Lease Agreement

Insurance Requirements

1. Lessee's Insurance

Lessee shall at its expense procure and maintain throughout the Term the following insurance policies: (a) commercial liability insurance in amounts of not less than a combined single limit of \$1,000,000 (the "Initial Liability Insurance Amount") or such other amounts as City may from time to time reasonably require, insuring Lessee, City, City's officers, employees and other agents and their respective affiliates against all liability for injury to or death of a person or persons or damage to property arising from the use and occupancy of the Premises, (b) contractual liability insurance coverage sufficient to cover Lessee's indemnity obligations hereunder, (c) all-risk property insurance covering the full value of Lessee's property and improvements (including the initial tenant improvements), and other property (including property of others) in the Premises, (d) business interruption insurance, (e) automobile liability insurance for all owned, non-owned and hired vehicles in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage per occurrence, and (f) worker's compensation and employer's liability coverage in the amounts required by law. Lessee's insurance shall provide primary coverage to City when any policy issued to City provides duplicate or similar coverage, and in such circumstance City's policy will be excess over Lessee's policy. Lessee shall furnish certificates of such insurance and such other evidence satisfactory to City of the maintenance of all insurance coverages required hereunder, and Lessee shall obtain a written obligation on the part of each insurance company to notify City at least 30 days before cancellation or a material change of any such insurance. All such insurance policies shall be in form, and issued by companies, reasonably satisfactory to City. The term "affiliate" shall mean any person or entity which, directly or indirectly, controls, is controlled by, or is under common control with the party in question.

2. City's insurance

City shall carry throughout the Term (a) fire and extended coverage insurance on the Building and all improvements therein (other than leasehold improvements) for their full replacement value, including a rent loss endorsement for at least 12 months and (b) commercial liability insurance with respect to all common areas of the Building in an amount not less than a combined single limit of \$5,000,000; all such coverages shall be subjected to commercially reasonable deductible amounts.

3. Additional Insurance

Lessee may be required to obtain such other types and amounts of insurance as the City's Risk Manager may reasonably determine to be necessary for the Lessee's operations.

Recorded by:
City Clerk's Office
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
ELECTRONIC RECORDING
20120028625,01/13/2012 11:48,
C7901-24-1-1--N

CITY OF GLENDALE, ARIZONA

AGREEMENT C- 7901
(Lease Agreement)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)