



CITY COUNCIL

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Tuesday, June 2, 2015

Public Facilities Authority

Following the Regular Meeting

SPECIAL CALLED MEETING OF THE CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY (THE "AUTHORITY")

CALL TO ORDER

ROLL CALL

NEW BUSINESS

- 1. PFA-15-01** Approval of a Lease Agreement between the Sandy Springs Public Facilities Authority and CH Realty IV/MK, L.L.C. for space located at 4410 Bankers Circle, Suite A, Atlanta, GA 30360

ADJOURNMENT



TO: John McDonough, City Manager

FROM: Kenneth DeSimone, Chief of Police

DATE: May 15, 2015 for submission on the Agenda of the May 19, 2015 City Council Meeting

ITEM: Approval of contract for the lease of warehouse for use as an active shooter response training facility.

Background

The agreed-upon definition of an active shooter by U.S. government agencies—including the White House, U.S. Department of Justice/FBI, U.S. Department of Education, and U.S. Department of Homeland Security/Federal Emergency Management Agency—is an individual actively engaged in killing or attempting to kill people in a confined and populated area.

The FBI has identified 160 active shooter incidents that occurred in the United States between 2000 and 2013. The study results identified 73 (45.6%) of 160 incidents occurred in areas of commerce. Educational environments were identified as the second-largest location grouping 39 (24.4%). 27 of these incidents occurred in schools and resulted in 57 individuals killed and 60 individuals wounded.

Sandy Springs has one of the highest ratios of Fortune 500 companies per capita in the U.S., including the worldwide headquarters for UPS and Newell Rubbermaid. In addition, the City's three hospitals contain 40% of the metro area's hospital beds, and generates services for multiple outpatient centers and supports services.

The City of Sandy Springs is served by seven public elementary schools, two public middle schools and two public high schools which are all part of the Fulton County School system. There are also 15 private schools in the City. The City's Police Department is responsible for being the first responder to any active shooter incident in these schools.

Discussion

The Police Department is seeking to increase our preparedness and response to active shooter scenarios. As a part of this initiative, we want to outfit a facility for the purpose of providing active shooter response training to our officers. Currently, any training of this type must be done when these facilities are closed for business. This facility will give us the ability to set up various building/room layouts (i.e. mock school, business, and retail



facilities). By having this multi-use facility we can provide training at any time. This will aid in scheduling and overtime issues associated with having limited hours for training. To that end, we would like to enter into a lease with CH Realty IV/MK, L.L.C. for a warehouse facility at 4410 Bankers Circle, Atlanta, Georgia.

Section V.B.1.c. of the Department of Justice policy regarding the use of Federal Equitable Sharing Funds provides for the use of Asset Forfeiture Funds for leased law enforcement facilities. The Department currently has approximately \$591,000 in this fund, which can be used to pay for the lease and any upgrades to the facility.

Alternatives

We have worked with David Rubenstein to find a facility that will meet our needs and there are currently no other viable alternatives.

Recommendation

Staff recommends acceptance of the contract with CH Realty IV/MK, L.L.C..

Attachment

1. Department of Justice Equitable Sharing Program
2. Lease contract with CH Realty IV/MK, L.L.C.

*City
Manager*

Department of Justice Equitable Sharing Program

Interim policy guidance regarding the use of equitable sharing funds

Effective immediately, the policies outlined below replace the existing policies included in the Department of Justice *Guide to Equitable Sharing for State and Local Law Enforcement Agencies (2009) (Guide)* Section VIII.A.1 and 2. These policies will be incorporated into the next edition of the *Guide*.

V. What Are the Uses of Equitably Shared Property?

Asset forfeiture is a powerful tool that provides valuable resources to state and local law enforcement that may not have otherwise been available. Equitably shared funds must be used in accordance with this *Guide* for law enforcement purposes that directly supplement the appropriated resources of the recipient law enforcement agency. Sharing will be withheld from any state or local law enforcement agency where the governing body, state or local law, regulation, or policy requires or directs 1) specific expenditures of shared funds, 2) the transfer of federal equitable sharing funds to non-law enforcement agencies, or 3) expenditures for non-law enforcement purposes.

To avoid a conflict of interest or the appearance of a conflict of interest, any person or members of his or her immediate family who was involved in an investigation which led to the forfeiture of property to be sold is prohibited from purchasing, either directly or indirectly, that forfeited property.

A. General guidance on Supplantation and Budgeting

1. **Supplantation**—Shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency or any other ultimate recipient agency. Shared funds **shall not be used** to replace or supplant the appropriated resources of the recipient. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the Department of Justice will examine the law enforcement agency's budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds **increase the entire law enforcement budget**. The Department of Justice may terminate sharing with law enforcement agencies that are not permitted by their governing body to benefit directly from equitable sharing.

Example of Improper Supplantation: A police department receives \$100,000 in federal sharing money only to have its budget cut \$100,000 by the city council. In this instance, the police department has received no direct benefit from equitable sharing whatsoever. Rather, the city as a whole has received the benefit of the sharing.

- 2 Anticipated shared property should not be budgeted**—Agencies should not “spend it before you get it” or budget anticipated receipts. Receiving agencies may not commit to the spending of sharing funds for a certain purpose in advance. For example, if a local law enforcement agency files a Form DAG-71 and anticipates a 50 percent share of \$100,000, the anticipated \$50,000 should not be obligated or budgeted for two reasons: (1) the completion of the forfeiture is uncertain; and (2) the amount of the sharing that will ultimately be approved is also uncertain. However, agencies may earmark or budget sharing funds already received.

B. Use of shared funds

Except as noted in this *Guide*, equitably shared funds shall be used by law enforcement agencies for law enforcement purposes only. The uses outlined below are examples of permissible and impermissible expenditures. If an agency is unsure whether a proposed expenditure is permissible, it should email afmls.aca@usdoj.gov.

Shared funds may be used for any permissible agency expenditure and may be used by both sworn and non-sworn law enforcement personnel, except as noted in salaries. The fact that shared property was forfeited by a particular unit or as a result of a particular federal violation does not limit its use to purchases only for that unit or to further investigations only for that particular federal violation. If an agency wishes to support a multi-agency expenditure, such as a new payroll system or city municipal building, with a non-law enforcement agency, the law enforcement agency’s costs based on its use may be calculated on a pro-rata basis.

1. Permissible uses

- a. **Law enforcement operations and investigations**—the support of investigations and operations that further the law enforcement goals or missions. For example, payments to informants, purchase of evidence, buy-back programs, “buy” money, reward money (annual dues paid to a crime tip organization or payment for a specific reward for information in a specific case), recruitment and advertisement costs, and translation and interpretation services.
- b. **Law enforcement training and education**—the training of investigators, prosecutors, and sworn and non-sworn law enforcement personnel in any area that is necessary to perform official law enforcement duties. For example, training and conference registration fees, speaker fees, or costs to produce training curriculum. This provision does not permit donations or the transfer of funds to associations or organizations providing training.

Tuition for law enforcement classes necessary to the performance of sworn or non-sworn personnel’s official duties is also permitted. For example, criminal justice,

language, constitutional law, accounting/finance, or forensics classes could be permissible provided that the employee's regular duties require knowledge of such topics.

- c. **Law enforcement, public safety, and detention facilities**—the costs associated with the purchase, lease, construction, expansion, improvement, or operation of law enforcement or detention facilities used or managed by the recipient agency. For example, the costs of leasing, operating, and furnishing an off-site undercover narcotics facility. Capital improvements should not be made on leased property or space since the law enforcement agency will not benefit from the improvements upon termination of the lease.

Approval from AFMLS is required prior to building new facilities or making structural changes to existing facilities. Approval is not required for cosmetic or non-structural improvements such as cabling, electrical, interior walls, carpeting, or furniture costs.

- d. **Law enforcement equipment**—the costs associated with the purchase, lease, maintenance, or operation of law enforcement equipment for use by law enforcement personnel that supports law enforcement activities. For example, furniture, file cabinets, office supplies, telecommunications equipment, copiers, safes, fitness equipment, computers, computer accessories and software, body armor, uniforms, firearms, radios, cellular telephones, electronic surveillance equipment, vehicles (e.g., patrol and unmarked vehicles), animals and animal-related expenses.
- e. **Joint law enforcement/public safety operations** – the costs associated with the purchase of multi-use equipment and operations used by both law enforcement and non-law enforcement personnel. For example, 911 call center equipment, defibrillators, search and rescue boats, aircraft, and diving equipment. These expenditures are exempt from the pro-rata calculation. This provision does not include equipment to be used solely by non-law enforcement personnel, such as fire and EMS vehicles.
- f. **Contracting for services** – the costs associated with a contract for a specific service that supports or enhances law enforcement is permitted. For example, helicopter services, feasibility studies, forensic accountant for a specific case, auditor to perform an audit of equitable sharing funds, subject matter expert, grant writer, software developer. Contracts for long-term and/or full-time employment services or services that should be provided by an agency employee are not permitted.
- g. **Law enforcement travel and per diem**—the costs associated with travel and transportation to perform or in support of law enforcement duties and activities.

All related costs must be in accordance with the agency's per diem policy and must not create the appearance of extravagance or impropriety.

- h. **Law enforcement awards and memorials**—the costs associated with the purchase of plaques and certificates for law enforcement personnel in recognition of a law enforcement achievement, activity, or training. Shared funds may not be used to pay awards in the form of cash or cash equivalents such as stored value cards.

Shared funds may be used to pay the costs for commemorative plaques, displays, or memorials on law enforcement property that serve to recognize or memorialize a law enforcement officer's contributions, such as a memorial plaque or stone in honor of an agency's officers killed in the line of duty. The plaque, display, or memorial must not create the appearance of extravagance.

- i. **Drug and gang education and other awareness programs**—the costs associated with conducting awareness programs by law enforcement agencies. For example, meeting costs, motivational speakers, child identification kits, and anti-crime literature or software.
- j. **Matching funds**—the costs associated with paying a state or local law enforcement agency's matching contribution or share in a state or federal grant program for items other than salaries, provided that the grant funds are used for a permissible law enforcement purpose in accordance with this *Guide*. For information regarding the use of equitable sharing funds to match federal salary grants, *see* Section V.B.3.
- k. **Transfers to other law enforcement agencies**—cash transfers of shared funds from one state or local law enforcement agency to another. In order to receive a cash transfer of shared funds, the law enforcement agency must be compliant with the Agreement, Certification, and Audit provisions of this *Guide* (*see* Section X). All cash transfers must be used in accordance with the permissible use provisions of this *Guide*. The agency transferring funds is responsible for verifying that the recipient agency is eligible to receive sharing. The transfer must be reported on the Equitable Sharing Agreement and Certification form filed by both the transferring and recipient agencies. Transferring agencies must verify the recipient agency's compliance at the time of transfer on the agency compliance list found on AFMLS' public website.
- l. **Support of community-based programs**—transfers of shared funds from a state or local law enforcement agency to a state, county, or local governmental agency or community non-profit organization (501(c)(3) or (4)). An agency may, at its discretion, transfer up to a total of \$25,000 of its shared funds annually to community-based programs whose missions are supportive of and consistent with a law enforcement effort, policy, and/or initiative. Examples include a drug

treatment facility, job skills program, or a youth program with drug and crime prevention education. The chief law enforcement officer must approve the transfer and must ensure the recipient is a qualified entity.

2. Impermissible uses

- a. **Use of forfeited property by non-law enforcement personnel**—Personnel from non-law enforcement agencies are not permitted to use shared vehicles, forfeited property, or items taken for official use or purchased with shared funds.
- b. **Creation of endowments or scholarships**—Shared funds may not be used to create or establish endowments or scholarships.
- c. **Uses contrary to the laws of the state or local jurisdiction**—Shared funds and property may not be used for any purpose that would constitute an illegal or improper use of state or local law enforcement funds or property under the laws, rules, regulations, and orders of the state or local jurisdiction of which the agency is a part.
- d. **Personal or political use of shared assets**—Shared funds may not be used for any use that creates the appearance that shared funds are being used for political gain or personal benefit. For example, campaign paraphernalia, gym memberships, bar, union, or other individual dues.
- e. **Purchase of food and beverages**—Shared funds may not be used to pay for food and beverages (alcoholic and non-alcoholic) except for meals during local operations. Shared funds may be used to purchase food and beverages if state or local law or rules governing reimbursement of expenses permit officers to be reimbursed for such expenses. For example, meals purchased for officers engaged in a disaster operation, such as earthquake or hurricane relief, or per diem for meals while an officer is on official travel.
- f. **Extravagant expenditures**—Recipient agencies should use federal sharing funds prudently and in such a manner as to avoid any appearance of extravagance, waste, or impropriety. For example, tickets to social events, hospitality suites at conferences, or meals or travel in excess of the per diem.
- g. **Petty cash accounts and stored value cards**—Shared funds may not be used to establish petty cash accounts, purchase prepaid credit cards (except for use as a form of payment for buy-back programs), or any other type of transaction where expenditures are not monitored and tracked to ensure permissibility in accordance with this *Guide*.

- h. **Purchase of items for other law enforcement agencies** – Shared funds may not be used to purchase equipment or other permissible items for other law enforcement agencies. To ensure proper tracking and accounting of funds, agencies wishing to support other participating law enforcement agencies must transfer the cash required for such purchases to the recipient law enforcement agency. The recipient law enforcement agency must report the receipt of funds and the expenditure on its annual Equitable Sharing Agreement and Certification form. See Section V.B.1.k for inter-agency transfer of funds.
- i. **Costs related to lawsuits** – Shared funds may not be used to pay attorney fees, settlement payments, or any other related costs of lawsuits involving the agency or its employees.
- j. **Loans** – Shared funds may not be used as advance payment for expenditures being reimbursed or paid by other funds. For example, OCDETF overtime reimbursements and appropriated funds.
- k. **Money laundering operations** – Shared funds may not be used to support state and local undercover money laundering operations.

3 Salaries

Equitable sharing funds may not be used to pay the salaries and benefits of sworn or non-sworn law enforcement personnel. The purpose of this rule is to protect the integrity of the Asset Forfeiture and Equitable Sharing Programs so that the prospect of receiving equitable sharing funds does not influence, or appear to influence, law enforcement decisions.

Exceptions: Equitable sharing funds may be used to pay the salaries and benefits of current law enforcement officers and personnel in the limited situations listed below.¹

Task force agencies may only pay salaries as a match to a federal grant or officer overtime. To avoid a conflict of interest, at no time can a task force member's full salary be paid with equitable sharing funds.

- (1) **Matching federal grants**—Shared funds may be used to pay the match requirement for the salaries and benefits of current sworn and non-sworn law enforcement personnel funded by federal grant programs.

¹ For the purposes of this provision, prosecutors and members of the National Guard are considered sworn law enforcement personnel.

(2) **Overtime of officers and investigators**—Shared funds may be used to pay the overtime and benefits of current sworn and non-sworn law enforcement personnel involved in law enforcement operations.

(3) **Salary of an officer hired to replace an officer assigned to a task force**—Shared funds may be used to pay the salary and benefits of current, sworn law enforcement officers hired to fill vacancies created when a law enforcement agency assigns officers to a task force. The replacement officer cannot engage in the seizure of assets or narcotics law enforcement as a principal duty. A principal duty is a duty that the officer is expected to perform regularly.

In order to pay the replacement officer's salary with equitably shared funds, the task force to which the agency assigned an officer must be a law enforcement entity constituted under federal, state, or local law that is primarily engaged in specific and targeted law enforcement activities involving more than one law enforcement agency. In addition, the chief law enforcement officer of the agency assigning an officer must not maintain direct day-to-day operational control of the task force although he or she may participate in the policy-level control of such task force.

When a law enforcement agency has assigned an officer and paid for the replacement as specified above, and it becomes necessary to return the officer from the task force, the law enforcement agency may continue to use forfeited funds to pay for the salary and benefits of the replacement officer for a period not to exceed six months.

(4) **Specialized programs**—Shared funds may be used pay the salary and benefits of current, sworn law enforcement officers assigned to specialized programs which do not generally involve traditional law enforcement functions. For example, School Resource Officers (SRO) or officers assigned to programs such as DARE. SROs and other officers assigned to specialized programs must be employed by the law enforcement agency. If the officer does not serve in this position on a full time basis, only the pro rata portion of the salary and benefits covering the time worked in the specialized position may be paid with shared funds.

LEASE AGREEMENT
Basic Lease Information

Lease Date: _____, 2015

Landlord: **CH REALTY IV/MK, L.L.C.**, a Delaware limited liability company

Tenant: **CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY**, a public authority of the State of Georgia

Premises: That certain space commonly known as Suite A, containing approximately 10,000 square feet, in the building whose street address is 4410 Bankers Circle, Atlanta, Georgia 30360 (the “**Building**”). The Premises are outlined on the plan attached to the Lease as Exhibit A. The land on which the Building is located (the “**Land**”) is described on Exhibit B. The term “**Project**” shall collectively refer to the Building, the Land and the driveways, parking facilities, loading dock areas, roadways, and any similar improvements and easements associated with the foregoing or the operation thereof.

Term: Sixty-four (64) full calendar months, plus any partial month from the Commencement Date to the end of the month in which the Commencement Date falls, starting on the Commencement Date and ending at 5:00 p.m. local time on the last day of the 64th full calendar month following the Commencement Date, subject to adjustment and earlier termination as provided in the Lease.

Commencement Date: The earlier of (a) the date on which Tenant occupies any portion of the Premises and begins conducting business therein, or (b) May 6, 2015; provided, that if Landlord is unable to deliver possession of the Premises to Tenant by such date, then, as provided in Section 3 of the Lease, Tenant shall accept possession of the Premises on the date Landlord tenders possession thereof to Tenant, which date will then be the “**Commencement Date**”.

Basic Rent: Basic Rent shall be the following amounts for the following periods of time:

Lease Month	Annual Basic Rent Rate Per Square Foot	Monthly Basic Rent
1 – 12	\$4.25	\$3,541.67*
13 – 24	\$4.38	\$3,650.00
25 – 36	\$4.51	\$3,758.33
37 – 48	\$4.65	\$3,875.00
49 – 60	\$4.79	\$3,991.67

61 – 64	\$4.93	\$4,108.33
*Basic Rent for Lease Months 1 – 4 will be conditionally abated in accordance with <u>Exhibit E</u> .		

As used herein, the term “**Lease Month**” means each calendar month during the Term (and if the Commencement Date does not occur on the first day of a calendar month, the period from the Commencement Date to the first day of the next calendar month shall be included in the first Lease Month for which Basic Rent is payable for purposes of determining the duration of the Term and the monthly Basic Rent rate applicable for such partial month).

Additional Rent: Tenant’s Proportionate Share of Operating Costs and Taxes.

Security Deposit: \$4,858.33

Rent: Basic Rent, Additional Rent, and all other sums that Tenant may owe to Landlord or otherwise be required to pay under the Lease.

Initial Monthly Payment of Rent: The following shall constitute Tenant’s initial monthly payment of Rent required pursuant to Section 4 of the Lease, which shall be adjusted as and when required under the terms of the Lease:

Basic Rent:	\$3,541.67
Additional Rent:	
Tenant’s Proportionate Share of Operating Costs:	\$216.67
Tenant’s Proportionate Share of Taxes:	\$533.33
Total Initial Monthly Payment:	\$4,291.67

Permitted Use: Classroom, administration, and close-quarters paintball training scenarios (no live ammunition). Such training will take place multiple times per month during normal business hours.

Tenant’s Proportionate Share – Building: 12.50%, which is the percentage obtained by dividing (a) the number of square feet in the Premises as stated above by (b) the 80,000 square feet in the Building. Landlord and Tenant stipulate that the number of square feet in the Premises and in the Building set forth above is conclusive and shall be binding upon them.

Initial Liability Insurance Amount: \$2,000,000.

Manager's
Address: CH Realty IV/MK, L.L.C.
c/o Seefried Industrial Properties, Inc.
3333 Riverwood Parkway, Suite 200
Atlanta, Georgia 30339
Attention: Property Manager
Telephone: 678.904.1906
Telecopy: 404.266.3864

Tenant's Address:	Prior to Commencement Date:	Following Commencement Date:
	_____	_____
	_____	_____
	_____	_____
	Attention: _____	Attention: _____
Telephone: _____ - _____ - _____	Telephone: _____ - _____ - _____	
Telecopy: _____ - _____ - _____	Telecopy: _____ - _____ - _____	

Landlord's Address:	CH Realty IV/MK, L.L.C. c/o Seefried Industrial Properties, Inc. 3333 Riverwood Parkway, Suite 200 Atlanta, Georgia 30339 Attention: Property Manager Telephone: 678.904.1906 Telecopy: 404.266.3864	With a copy to: CH Realty IV/MK, L.L.C. 3819 Maple Avenue Dallas, Texas 75219 Attention: Asset Manager – MK Portfolio Telephone: 214-661-8000 Telecopy: 214-445-8041
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The foregoing Basic Lease Information is incorporated into and made a part of the Lease identified above. If any conflict exists between any Basic Lease Information and the Lease, then the Lease shall control.

LANDLORD:

CH REALTY IV/MK, L.L.C.,
a Delaware limited liability company

By: Crow Holdings Managers, L.L.C.,
a Texas limited liability company,
its manager

By: _____
Name: _____
Title: _____

TENANT:

CITY OF SANDY SPRINGS PUBLIC
FACILITIES AUTHORITY, a public authority
of the State of Georgia

By: _____
Name: _____
Title: _____

LEASE

This Lease Agreement (this “**Lease**”) is entered into as of _____, 2015, between:

CH REALTY IV/MK, L.L.C., a Delaware limited liability company (“**Landlord**”), and

CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY, a public authority of the State of Georgia (“**Tenant**”).

1. **Definitions and Basic Provisions.** The definitions and basic provisions set forth in the Basic Lease Information (the “**Basic Lease Information**”) executed by Landlord and Tenant contemporaneously herewith are incorporated herein by reference for all purposes. Additionally, the following terms shall have the following meanings when used in this Lease: “**Affiliate**” means any person or entity which, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the party in question; “**Building’s Structure**” means the Building’s exterior walls, roof, elevator shafts (if any), footings, foundations, structural portions of load-bearing walls, structural floors and subfloors, and structural columns and beams; “**Building’s Systems**” means the Building’s HVAC, life-safety, plumbing, electrical, and mechanical systems; “**including**” means including, without limitation; “**Laws**” means all federal, state, and local laws, ordinances, rules and regulations, all court orders, governmental directives, and governmental orders, and all interpretations of the foregoing, and all restrictive covenants affecting this Lease or the Project, and “**Law**” means any of the foregoing; “**Tenant’s Off-Premises Equipment**” means any of Tenant’s equipment or other property that may be located on or about the Project (other than inside the Premises); and “**Tenant Party**” means any of the following persons: Tenant; any assignees claiming by, through, or under Tenant; any subtenants claiming by, through, or under Tenant; and any of their respective agents, contractors, employees, licensees, guests and invitees.

2. **Lease Grant.** Subject to the terms of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises. Additionally, subject to the terms of this Lease and Landlord’s rules and regulations therefor, Tenant and its employees and invitees shall have a non-exclusive license to use, in common with others, any applicable driveways, loading dock areas, roadways and other similar improvements designated by Landlord from time to time as common areas for the common use and enjoyment of all tenants and occupants of the Project.

3. **Tender of Possession.** Landlord and Tenant presently anticipate that possession of the Premises will be tendered to Tenant in the condition required by this Lease on or about May 6, 2015 (the “**Estimated Delivery Date**”). If Landlord is unable to tender possession of the Premises in such condition to Tenant by the Estimated Delivery Date, then (a) the validity of this Lease shall not be affected or impaired thereby, (b) Landlord shall not be in default hereunder or be liable for damages therefor, and (c) Tenant shall accept possession of the Premises when Landlord tenders possession thereof to Tenant. By occupying the Premises, Tenant shall be deemed to have accepted the Premises in their condition as of the date of such occupancy, subject to the performance of punch-list items that remain to be performed by Landlord, if any. Within ten days after request by Landlord, Tenant shall execute and deliver to Landlord a letter in a form reasonably acceptable to Landlord confirming (1) the Commencement Date and the

expiration date of the initial Term, (2) that Tenant has accepted the Premises, and (3) that Landlord has performed all of its obligations with respect to the Premises (except for punch-list items specified in such letter); however, the failure of the parties to execute such letter shall not defer the Commencement Date or otherwise invalidate this Lease. Occupancy of the Premises by Tenant prior to the Commencement Date shall be subject to all of the provisions of this Lease excepting only those requiring the payment of Basic Rent and Additional Rent. This Lease shall create the relationship of landlord and tenant between Landlord and Tenant; no estate shall pass out of Landlord, and Tenant has only a usufruct which is not subject to levy or sale. Landlord discloses to Tenant, and Tenant acknowledges, that Landlord is the owner of record of the Building and of the Premises and that Seefried Industrial Properties, Inc. (the "**Manager**") is authorized to manage the Building and the Premises on behalf of Landlord. The address of Landlord and the address of the Manager is set forth in the Basic Lease Information.

4. **Rent.**

(a) **Payment.** Tenant shall timely pay to Landlord Rent, without notice, demand, deduction or set off (except as otherwise expressly provided herein), by good and sufficient check drawn on a national banking association at Landlord's address provided for in this Lease or as otherwise specified by Landlord and shall be accompanied by all applicable state and local sales or use taxes. The obligations of Tenant to pay Basic Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Basic Rent, adjusted as herein provided, shall be payable monthly in advance. The first monthly installment of Basic Rent shall be payable contemporaneously with the execution of this Lease; thereafter, Basic Rent shall be payable on the first day of each month beginning on the first day of the second full calendar month of the Term. The monthly Basic Rent for any partial month at the beginning of the Term shall equal the product of 1/365 of the annual Basic Rent in effect during the partial month and the number of days in the partial month, and shall be due on the Commencement Date. Payments of Basic Rent for any fractional calendar month at the end of the Term shall be similarly prorated. Tenant shall pay Additional Rent at the same time and in the same manner as Basic Rent.

(b) **Operating Costs.**

(1) Tenant shall pay to Landlord Tenant's Proportionate Share of the annual Operating Costs (defined below). Landlord may make a good faith estimate of Tenant's Proportionate Share of Operating Costs to be due by Tenant for any calendar year or part thereof during the Term. During each calendar year or partial calendar year of the Term, Tenant shall pay to Landlord, in advance concurrently with each monthly installment of Basic Rent, an amount equal to the estimated Tenant's Proportionate Share of Operating Costs for such calendar year or part thereof divided by the number of months therein. From time to time, Landlord may estimate and re-estimate the amount of Tenant's Proportionate Share of Operating Costs to be due by Tenant and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, the monthly installments of Tenant's Proportionate Share of Operating Costs payable by Tenant shall be appropriately adjusted in accordance with the estimations so that, by the end of the calendar year in question, Tenant shall have paid all of Tenant's Proportionate Share of Operating Costs as estimated by Landlord. Any amounts paid based on such an estimate shall be subject to

adjustment as herein provided when actual Operating Costs are available for each calendar year.

(2) The term “Operating Costs” means all expenses and disbursements (subject to the limitations set forth below) that Landlord incurs in connection with the ownership, operation, and maintenance of the Project, determined in accordance with sound accounting principles consistently applied, including the following costs: (i) wages and salaries of all on-site employees at or below the grade of senior building manager engaged in the operation, maintenance or security of the Project (together with Landlord’s reasonable allocation of expenses of off-site employees at or below the grade of senior building manager who perform a portion of their services in connection with the operation, maintenance or security of the Project), including taxes, insurance and benefits relating thereto; (ii) property management fees and expenses that are related to the Project (not to exceed five percent (5%) of the gross revenues of the Project); (iii) all supplies and materials used in the operation, maintenance, repair, replacement, and security of the Project; (iv) cost of all utilities (including fuel, gas, electricity, water, sewer, and other services) for the common areas and other non-tenant areas of the Project (e.g., mechanical, electrical and telecommunications rooms) as reasonably determined by Landlord; (v) repairs, replacements, and general maintenance of the Project including paving and parking areas, roads, roof repairs (Landlord is responsible for replacement of the roof as provided in Section 7), alleys and driveways, trash collection, sweeping and removal of trash for the common areas, mowing and snow removal, landscaping and exterior painting, the cost of maintaining utility lines, fire sprinklers and fire protection systems, exterior lighting, and mechanical and plumbing systems serving the Project and, to the extent the following items serve more than one tenant in the Project, dock doors, drains and sump pumps; (vi) fair market rental and other costs with respect to the management office for the Project; (vii) service, maintenance and management contracts for the operation, maintenance, management, repair, replacement, and security of the Project (including alarm service, window cleaning, and elevator maintenance); (viii) costs of professional services rendered for the general benefit of the Project; (ix) environmental insurance or environmental management fees; (x) the cost of any insurance deductibles for insurance required to be maintained by Landlord; (xi) insurance expenses; and (xii) costs for improvements made to the Project which, although capital in nature, are expected to reduce the normal operating costs (including all utility costs) of the Project, as amortized using a commercially reasonable interest rate over the time period reasonably estimated by Landlord to recover the costs thereof taking into consideration the anticipated cost savings, as determined by Landlord using its good faith, commercially reasonable judgment, as well as capital improvements made in order to comply with any Law hereafter promulgated by any governmental authority or any new interpretations of any Law hereafter rendered with respect to any existing Law, as amortized using a commercially reasonable interest rate over the useful economic life of such improvements as determined by Landlord in its reasonable discretion. If the Project is part of an industrial park complex (the “Complex”), Operating Costs and Taxes (defined below) for the Complex may be prorated among the Project and the other buildings of the Complex, as reasonably determined by Landlord.

Operating Costs shall not include costs for 1) capital improvements made to the Project, other than capital improvements described in Section 4(b)(2)(xii) and except for items which are generally considered maintenance and repair items, such as painting of common areas, replacement of carpet in elevator lobbies (if any), and the like; 2) repair, replacements and general maintenance paid by proceeds of insurance or by Tenant or other third parties; 3) interest, amortization or other payments on loans to Landlord; 4) depreciation; 5) leasing commissions; 6) legal expenses for services, other than those that benefit the Project tenants generally (e.g., tax disputes); 7) Taxes; 8) renovating or otherwise improving space for occupants of the Project or vacant space in the Project; and 9) salaries and benefits for off-site personnel to the extent not directly involved with the Project.

(3) Tenant shall also pay Tenant's Proportionate Share of the Taxes for each year and partial year falling within the Term. Tenant shall pay Tenant's Proportionate Share of Taxes in the same manner as provided above for Tenant's Proportionate Share of Operating Costs. "**Taxes**" means taxes, assessments, and governmental charges or fees whether federal, state, county or municipal, and whether they be by taxing districts or authorities presently taxing or by others, subsequently created or otherwise, and any other taxes and assessments (including non-governmental assessments for common charges under a restrictive covenant or other private agreement that are not treated as part of Operating Costs) now or hereafter attributable to the Project (or its operation), excluding, however, penalties and interest thereon and federal and state taxes on income (if the present method of taxation changes so that in lieu of or in addition to the whole or any part of any Taxes, there is levied on Landlord a capital tax, sales tax or use tax directly on the rents received therefrom or a franchise tax, assessment, or charge based, in whole or in part, upon such rents for the Project, then all such taxes, assessments, or charges, or the part thereof so based, shall be deemed to be included within the term "**Taxes**" for purposes hereof). Taxes shall include the costs of consultants retained in an effort to lower taxes and all costs incurred in disputing any taxes or in seeking to lower the tax valuation of the Project. For property tax purposes, Tenant waives all rights to protest or appeal the appraised value of the Premises, as well as the Project, and all rights to receive notices of reappraisement.

(4) By April 1 of each calendar year, or as soon thereafter as practicable, Landlord shall furnish to Tenant a statement of Operating Costs and Taxes for the previous year (the "**Operating Costs and Tax Statement**"). If Tenant's estimated payments of Operating Costs or Taxes under this Section 4(b) for the year covered by the Operating Costs and Tax Statement exceed Tenant's Proportionate Share of such items as indicated in the Operating Costs and Tax Statement, then Landlord shall promptly credit or reimburse Tenant for such excess; likewise, if Tenant's estimated payments of Operating Costs or Taxes under this Section 4(b) for such year are less than Tenant's Proportionate Share of such items as indicated in the Operating Costs and Tax Statement, then Tenant shall promptly pay Landlord such deficiency.

(5) For purposes of calculating Additional Rent under Section 4(b), the maximum increase in the amount of Controllable Operating Costs (defined below) that may be included in calculating such Additional Rent for each calendar year after 2015

shall be limited to 8% per calendar year on a cumulative, compounded basis; for example, the maximum amount of Controllable Operating Costs that may be included in the calculation of such Additional Rent for each calendar year after 2015 shall equal the product of the 2015 Controllable Operating Costs and the following percentages for the following calendar years: 108% for 2016; 116.64% for 2017; 125.97% for 2018; 136.05% for 2019; etc. “**Controllable Operating Costs**” shall mean all Operating Costs which are within the reasonable control of Landlord; thus, excluding taxes, insurance, utilities, snow removal costs, costs incurred to comply with governmental requirements, and other costs beyond the reasonable control of Landlord.

5. **Delinquent Payment; Handling Charges.** All past due payments required of Tenant hereunder shall bear interest from the date due until paid at the lesser of eighteen percent per annum or the maximum lawful rate of interest (such lesser amount is referred to herein as the “**Default Rate**”); additionally, Landlord, in addition to all other rights and remedies available to it, may charge Tenant a fee equal to the greater of (a) \$50.00 or (b) five percent of the delinquent payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant’s delinquency. In no event, however, shall the charges permitted under this Section 5 or elsewhere in this Lease, to the extent they are considered to be interest under applicable Law, exceed the maximum lawful rate of interest.

6. **Security Deposit.** Contemporaneously with the execution of this Lease, Tenant shall pay to Landlord the Security Deposit, which shall be held by Landlord to secure Tenant’s performance of its obligations under this Lease. The Security Deposit is not an advance payment of Rent or a measure or limit of Landlord’s damages upon an Event of Default (as defined herein). Landlord may, from time to time following an Event of Default and without prejudice to any other remedy, use all or a part of the Security Deposit to perform any obligation Tenant fails to perform hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. Subject to the requirements of, and conditions imposed by, Laws applicable to security deposits under commercial leases, Landlord shall, within the time required by applicable Law, return to Tenant the portion of the Security Deposit remaining after deducting all damages, charges and other amounts permitted by Law. Landlord and Tenant agree that such deductions shall include, without limitation, all damages and losses that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of any breach of this Lease by Tenant. The Security Deposit may be commingled with other funds, and no interest shall be paid thereon. If Landlord transfers its interest in the Premises, Landlord may assign the Security Deposit to the transferee and, upon such transfer and the delivery to Tenant of an acknowledgement of the transferee’s responsibility for the Security Deposit as provided by Law, Landlord thereafter shall have no further liability for the return of the Security Deposit.

7. **Landlord’s Maintenance Obligations.** This Lease is intended to be a net lease; accordingly, Landlord’s maintenance obligations are limited to the replacement of the Building’s Structure. Landlord shall not be responsible for (a) any such work until Tenant notifies Landlord of the need therefor in writing or (b) alterations to the Building’s Structure required by applicable law because of Tenant’s use of the Premises (which alterations shall be Tenant’s responsibility). The Building’s Structure does not include skylights, windows, glass or plate glass, doors or overhead doors, special fronts, or office entries, dock bumpers, dock plates or

levelers, loading areas and docks, and loading dock equipment, all of which shall be maintained by Tenant. Landlord's liability for any defects, repairs, replacement or maintenance for which Landlord is specifically responsible for under this Lease shall be limited to the cost of performing the work. Additionally, Landlord shall maintain the parking areas, and other common areas of the Building, including driveways, alleys, landscape and grounds surrounding the Premises and utility lines in a good condition, consistent with the operation of a bulk warehouse/industrial or service center facility, including maintenance, repair, and replacement of rail tracks serving the Premises, the exterior of the Building (including painting), landscaping, sprinkler systems, and any items normally associated with the foregoing. All costs in performing the work described in the foregoing sentence shall be included in Operating Costs. Tenant shall promptly notify Landlord in writing of any work required to be performed under this Section 7, and Landlord shall not be responsible for performing such work until Tenant delivers to Landlord such notice. Additionally, in no event shall Landlord be responsible for alterations to the Building's Structure required by applicable Law because of Tenant's use of the Premises (which alterations shall be made by Tenant at its sole cost and expense). Notwithstanding anything to the contrary contained herein, Landlord shall, in its sole and absolute discretion, determine the appropriate remedial action required of it to satisfy its maintenance obligations hereunder (e.g., Landlord shall, in its sole discretion, determine whether, and to the extent, repairs or replacements are the appropriate remedial action).

8. **Improvements; Alterations; Tenant's Maintenance and Repair Obligations.**

(a) **Improvements; Alterations.** Improvements to the Premises shall be installed at Tenant's expense only in accordance with plans and specifications which have been previously submitted to and approved in writing by Landlord. Tenant shall not paint or install lighting or decorations, signs, window or door lettering, or advertising media of any type visible from the exterior of the Premises without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion; provided, Landlord will not unreasonably withhold, condition, or delay its consent to cosmetic, non-structural alterations that do not affect the Building's Structure or the Building's Systems and that comply with all applicable Laws. All alterations, additions, and improvements shall be constructed, maintained, and used by Tenant, at its risk and expense, in accordance with all Laws; Landlord's consent to or approval of any alterations, additions or improvements (or the plans therefor) shall not constitute a representation or warranty by Landlord, nor Landlord's acceptance, that the same comply with sound architectural and/or engineering practices or with all applicable Laws, and Tenant shall be solely responsible for ensuring all such compliance.

(b) **Repairs; Maintenance.** Tenant shall maintain the Premises, including the loading areas, dock, and loading dock equipment that exclusively service the Premises, in a clean, safe, and operable condition, reasonable wear and tear excepted, and shall not permit or allow to remain any waste or damage to any portion of the Premises. Additionally, Tenant, at its sole expense, shall repair, replace and maintain in good condition and in accordance with all Laws and the equipment manufacturer's suggested service programs, all portions of the Premises, Tenant's Off-Premises Equipment and all areas, improvements and systems exclusively serving the Premises including loading docks, sump pumps, dock wells, dock equipment and loading areas, dock doors, dock seals, overhead doors, dock levelers and similar leveling equipment, plumbing, water, fire sprinkler system, and sewer lines up to points of

common connection, entries, doors, ceilings, windows, interior walls, and the interior side of demising walls, and heating, ventilation and air conditioning systems, and other building and mechanical systems serving the Premises. Such repair and replacements include capital expenditures and repairs whose benefit may extend beyond the Term. Upon thirty (30) days prior written notice, Landlord may perform Tenant's maintenance obligations at Tenant's cost. Tenant shall repair or replace, subject to Landlord's direction and supervision, any damage to the Building caused by a Tenant Party. If Tenant fails to make such repairs or replacements within 15 days after the occurrence of such damage, then Landlord may make the same at Tenant's cost. If any such damage occurs outside of the Premises, then Landlord may elect to repair such damage at Tenant's expense, rather than having Tenant repair such damage. The cost of all maintenance, repair or replacement work performed by Landlord under this Section 8 shall be paid by Tenant to Landlord within 30 days after Landlord has invoiced Tenant therefor. Notwithstanding the foregoing provisions of this Section 8(b), provided that Tenant enters into and maintains a preventative maintenance agreement for the heating, ventilation and air conditioning systems serving the Premises (the "**Premises HVAC**") in form and substance reasonably satisfactory to Landlord, to the extent Tenant requests that Landlord replace a unit of the Premises HVAC prior to the end of the Term (except to the extent replacement is necessitated by Tenant's negligence or willful misconduct in which case Tenant shall be responsible for all costs), and Landlord agrees that such replacement is required, Landlord shall pay the actual cost of such replacement (subject to Tenant's payment as specified below), it being understood and agreed that the cost of said improvement or replacement shall be amortized over a term of fifteen (15) years, beginning on the first day of the calendar month after the calendar month in which the replacement occurs, which amortization shall be based upon equal payments of principal and interest over said fifteen (15) year term, and interest shall be at the rate of nine percent (9%) per annum. Throughout that portion of the Term during which such amortization occurs, Tenant shall pay, as Additional Rent, simultaneously with its payment of each installment of Basic Rent hereunder, beginning on the first day of the first calendar month after the replacement is installed, the amortized amount, including interest as specified above.

(c) **Performance of Work.** All work described in this Section 8 shall be performed only by Landlord or by contractors and subcontractors approved in writing by Landlord, which approval will not be unreasonably withheld, conditioned, or delayed. Tenant shall cause all contractors and subcontractors to procure and maintain insurance coverage naming Landlord, Landlord's property management company and Landlord's asset management company as additional insureds against such risks, in such amounts, and with such companies as Landlord may reasonably require. Tenant shall provide Landlord with the identities, mailing addresses and telephone numbers of all persons performing work or supplying materials prior to beginning such construction and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable Laws. All such work shall be performed in accordance with all Laws and in a good and workmanlike manner so as not to damage the Building (including the Premises, the Building's Structure and the Building's Systems). All such work which may affect the Building's Structure or the Building's Systems must be approved by the Building's engineer of record, at Tenant's expense and, at Landlord's election, must be performed by Landlord's usual contractor for such work. All work affecting the roof of the Building must be performed by Landlord's roofing contractor, and no such work will be permitted if it would void or reduce the warranty on the roof.

(d) **Mechanic's Liens.** All work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party shall be deemed authorized and ordered by Tenant only, and Tenant shall not permit any mechanic's liens to be filed against the Premises or the Project in connection therewith. Upon completion of any such work, Tenant shall deliver to Landlord final lien waivers from all contractors, subcontractors and materialmen who performed such work. If such a lien is filed, then Tenant shall, within ten days after Landlord has delivered notice of the filing thereof to Tenant (or such earlier time period as may be necessary to prevent the forfeiture of the Premises, the Project or any interest of Landlord therein or the imposition of a civil or criminal fine with respect thereto), either (1) pay the amount of the lien and cause the lien to be released of record, or (2) diligently contest such lien and deliver to Landlord a bond or other security reasonably satisfactory to Landlord. If Tenant fails to timely take either such action, then Landlord may pay the lien claim, and any amounts so paid, including expenses and interest, shall be paid by Tenant to Landlord within ten days after Landlord has invoiced Tenant therefor. Landlord and Tenant acknowledge and agree that their relationship is and shall be solely that of "landlord-tenant" (thereby excluding a relationship of "owner-contractor," "owner-agent" or other similar relationships). Accordingly, all materialmen, contractors, artisans, mechanics, laborers and any other persons now or hereafter contracting with Tenant, any contractor or subcontractor of Tenant or any other Tenant Party for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises, at any time from the date hereof until the end of the Term, are hereby charged with notice that they look exclusively to Tenant to obtain payment for same. Nothing herein shall be deemed a consent by Landlord to any liens being placed upon the Premises, the Project or Landlord's interest therein due to any work performed by or for Tenant or deemed to give any contractor or subcontractor or materialman any right or interest in any funds held by Landlord to reimburse Tenant for any portion of the cost of such work. Tenant shall defend, indemnify and hold harmless Landlord and its agents and representatives from and against all claims, demands, causes of action, suits, judgments, damages and expenses (including attorneys' fees) in any way arising from or relating to the failure by any Tenant Party to pay for any work performed, materials furnished, or obligations incurred by or at the request of a Tenant Party. This indemnity provision shall survive termination or expiration of this Lease.

(e) **Janitorial Services.** Tenant, at its sole expense, shall provide its own janitorial services to the Premises and shall maintain the Premises in a clean and safe condition. Tenant shall store all trash and garbage within the area and in receptacles designated from time to time by Landlord and shall, at its sole expense, arrange for the regular pickup of such trash and garbage at times, and pursuant to reasonable regulations, established by Landlord from time to time.

9. **Utilities.** Tenant shall pay for all water, gas, electricity, heat, telephone, sewer, sprinkler charges and other utilities and services used at the Premises, together with any taxes, penalties, surcharges, connection charges, maintenance charges, and the like pertaining to Tenant's use of the Premises. Landlord may, at Tenant's expense, separately meter and bill Tenant directly for its use of any such utility service. To the extent any utility service for the Premises is submetered, the meter shall be read by Landlord or Landlord's designee, and Tenant shall pay to Landlord, within 30 days after receipt of an invoice therefor, the cost of such service based on rates charged for such service by the utility company furnishing such service, including all fuel adjustment charges, demand charges and taxes. To the extent that any particular utility is

not separately metered or submetered as provided above (e.g., water or sewer charges), Landlord shall, using its good-faith, reasonable judgment, allocate the expenses for such utility among the existing tenants of the Project based upon density, usage, and other factors in Landlord's reasonable judgment. Tenant, at its expense, shall obtain all utility services for the Premises (other than a utility that is submetered or otherwise provided to the Premises by Landlord), including making all applications therefor, obtaining meters and other related equipment, and paying all deposits and connection charges. Landlord shall not be liable for any interruption or failure of utility service to the Premises, and such interruption or failure of utility service shall not be a constructive eviction of Tenant, constitute a breach of any implied warranty, or, except as provided in the next sentence, entitle Tenant to any abatement of Tenant's obligations hereunder. If, however, Tenant is prevented from using the Premises for more than 25 consecutive business days because of the unavailability of any such service and such unavailability was caused by Landlord and restoration of such service is within the reasonable control of Landlord, then Tenant shall, as its exclusive remedy be entitled to a reasonable abatement of Rent for each consecutive day (after such 25-day period) that Tenant is so prevented from using the Premises. Rent shall not abate by reason of the interruption, insufficiency, unavailability or discontinuance of such service if such unavailability or discontinuance was not caused by Landlord and restoration of such service is not within the reasonable control of Landlord.

10. **Use.** Tenant shall continuously occupy and use the Premises only for the Permitted Use and shall comply with all Laws relating to this Lease and/or the use, condition, access to, and occupancy of the Premises or any portion of the Project and will not commit waste, overload the Building's Structure or the Building's Systems or subject the Premises to use that would damage the Premises. Notwithstanding anything in this Lease to the contrary, as between Landlord and Tenant, (a) Tenant shall bear the risk of complying with Title III of the Americans With Disabilities Act of 1990, any state laws governing handicapped access or architectural barriers, and all rules, regulations, and guidelines promulgated under such laws, as amended from time to time (the "**Disabilities Acts**") in the Premises, and (b) Landlord shall bear the risk of complying with the Disabilities Acts in the common areas of the Building, other than compliance that is necessitated by the use of the Premises for other than the Permitted Use or as a result of any alterations or additions, including any initial tenant improvement work, made by or on behalf of a Tenant Party (which risk and responsibility shall be borne by Tenant). The Premises shall not be used for any use which is disreputable, creates extraordinary fire hazards, or results in an increased rate of insurance on the Building, or for the storage of any Hazardous Materials (except as provided in Section 27 hereof). Outside storage, including storage of trucks or other vehicles, is prohibited without Landlord's prior written consent. If, because of a Tenant Party's acts or because Tenant vacates the Premises, the rate of insurance on the Building or its contents increases, then such acts shall be an Event of Default, Tenant shall pay to Landlord the amount of such increase on demand, and acceptance of such payment shall not waive any of Landlord's other rights. Tenant shall conduct its business and control each other Tenant Party so as not to create any nuisance or unreasonably interfere with other tenants or Landlord in its management of the Building. Tenant shall not permit any objectionable noises, odors, vibrations, dust, gas, exhaust or smoke to emanate from the Premises (or from any facility or equipment servicing the Premises); nor place or permit any radio or television antenna, satellite dish, loudspeaker or amplifier on the roof or exterior walls or outside the Premises or where the same

can be seen or heard from outside the Premises; nor interfere with any other tenant's use of or access to the common area or the parking areas serving the Building and the Project.

11. **Assignment and Subletting.** Tenant shall not, without the prior written consent of Landlord, (a) assign, transfer, or encumber this Lease or any estate or interest herein, whether directly or by operation of law, (b) permit any other entity to become Tenant hereunder by merger, consolidation, or other reorganization, (c) if Tenant is an entity other than a corporation whose stock is publicly traded, permit the transfer of an ownership interest in Tenant so as to result in a change in the current control of Tenant, (d) sublet any portion of the Premises, (e) grant any license, concession, or other right of occupancy of any portion of the Premises, or (f) permit the use of the Premises by any parties other than Tenant (any of the events listed in Section 11(a) through 11(f) being a "**Transfer**"). Landlord shall not unreasonably withhold its consent to any assignment or subletting of the Premises, provided that the proposed transferee (1) is creditworthy, (2) has a good reputation in the business community, (3) will use the Premises for the Permitted Use (thus, excluding, without limitation, uses for credit processing and telemarketing) and will not use the Premises in any manner that would conflict with any exclusive use agreement or other similar agreement entered into by Landlord with any other tenant of the Building or Complex, (4) will not use the Premises, Building or Project in a manner that would materially increase the pedestrian or vehicular traffic to the Premises, Building or Project, (5) is not another occupant of the Building or Complex, and (6) is not a person or entity with whom Landlord is then, or has been within the six-month period prior to the time Tenant seeks to enter into such assignment or subletting, negotiating to lease space in the Building or Complex or any Affiliate of any such person or entity; otherwise, Landlord may withhold its consent in its sole discretion. Tenant shall provide Landlord with a written description of all terms and conditions of the proposed Transfer, copies of the proposed documentation, and the following information about the proposed transferee: name and address of the proposed transferee and any entities and persons who own, control or direct the proposed transferee; reasonably satisfactory information about its business and business history; its proposed use of the Premises; banking, financial, and other credit information; and general references sufficient to enable Landlord to determine the proposed transferee's creditworthiness and character. Concurrently with Tenant's notice of any request for consent to a Transfer, Tenant shall pay to Landlord a fee of \$750.00 to defray Landlord's expenses in reviewing such request, and Tenant shall also reimburse Landlord immediately upon request for its reasonable attorneys' fees incurred in connection with considering any request for consent to a Transfer. No Transfer shall release Tenant from its obligations under this Lease, but rather Tenant and its transferee shall be jointly and severally liable therefor. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers. Tenant shall pay to Landlord, immediately upon receipt thereof, the excess of (1) all compensation received by Tenant for a Transfer less the costs reasonably incurred by Tenant with unaffiliated third parties (i.e., brokerage commissions and tenant finish work) in connection with such Transfer (such costs shall be amortized on a straight-line basis over the term of the Transfer in question) over (2) the Rent allocable to the portion of the Premises covered thereby.

Notwithstanding the foregoing provisions of this Section 11, Tenant may Transfer all or part of its interest in this Lease or all or part of the Premises (a "**Permitted Transfer**") to an Affiliate of Tenant (a "**Permitted Transferee**") without the written consent of Landlord. Tenant shall promptly notify Landlord of any such Permitted Transfer. Tenant shall remain liable for the performance of all of the obligations of Tenant hereunder. Additionally, the Permitted Transferee shall comply with all of the terms and conditions of this Lease, including the Permitted Use, and the use of the Premises by the Permitted Transferee may not violate any other agreements affecting the Premises, the Building, the Complex, Landlord or other tenants of the Building or Complex. No later than 30 days after the effective date of any Permitted Transfer, Tenant agrees to furnish Landlord with (A) copies of the instrument effecting any of the foregoing Transfers, (B) documentation establishing Tenant's satisfaction of the requirements set forth above applicable to any such Transfer, and (C) evidence of insurance as required under this Lease with respect to the Permitted Transferee. The occurrence of a Permitted Transfer shall not waive Landlord's rights as to any subsequent Transfers. Any subsequent Transfer by a Permitted Transferee shall be subject to the terms of this Section 11.

12. **Insurance; Waivers; Subrogation; Indemnity.**

(a) **Tenant's Insurance.** Effective as of the earlier of (1) the date Tenant enters or occupies the Premises, or (2) the Commencement Date, and continuing throughout the Term, Tenant shall maintain the following insurance policies: (i) commercial general liability insurance in amounts of \$1,000,000 per occurrence with a general aggregate limit of \$2,000,000. Tenant shall furnish to Landlord certificates of such insurance and such other evidence satisfactory to Landlord of the maintenance of all insurance coverages required hereunder at least ten days prior to the earlier of the Commencement Date or the date Tenant enters or occupies the Premises, and at least 15 days prior to each renewal of said insurance, and Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord at least 30 days before cancellation or a material change of any such insurance policies. All such insurance policies shall be in form, and issued by companies with a Best's rating of A+:VII or better, reasonably satisfactory to Landlord. If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of 10% of such cost.

(b) **No Subrogation; Waiver of Property Claims.** Landlord and Tenant each waives any claim it might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy of the types described in this Section 12 that covers the Project, the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, or is required to be insured against under the terms hereof, **regardless of whether the negligence of the other party caused such Loss (defined below)**. Additionally, Tenant waives any claim it may have against Landlord for any Loss to the extent such Loss is caused by a terrorist act. Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party. Notwithstanding any provision in this Lease to the contrary, Landlord, its agents, employees and contractors shall not be liable to Tenant or to any party claiming by, through or under Tenant for (and Tenant hereby releases

Landlord and its servants, agents, contractors, employees and invitees from any claim or responsibility for) any damage to or destruction, loss, or loss of use, or theft of any property of any Tenant Party located in or about the Project, caused by casualty, theft, fire, third parties or any other matter or cause, **regardless of whether the negligence of any party caused such loss in whole or in part.** Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for damage to, any property of any Tenant Party located in or about the Project.

(c) **Indemnity.** Subject to Section 12(b), to the extent permitted by applicable Law, Tenant shall defend, indemnify, and hold harmless Landlord and its representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including reasonable attorneys' fees) arising from any injury to or death of any person or the damage to or theft, destruction, loss or loss of use of, any property or inconvenience (a "**Loss**") (1) occurring in or on the Project (other than within the Premises) to the extent caused by the negligence or willful misconduct of any Tenant Party, (2) occurring in the Premises, or (3) arising out of the installation, operation, maintenance, repair or removal of any property of any Tenant Party located in or about the Project, including Tenant's Off-Premises Equipment. **It being agreed that this indemnity is intended to indemnify Landlord and its agents against the consequences of their own negligence or fault, even when Landlord or its agents are jointly, comparatively, contributively, or concurrently negligent with Tenant, and even though any such claim, cause of action or suit is based upon or alleged to be based upon the strict liability of Landlord or its agents; however, such indemnity shall not apply to the sole or gross negligence or willful misconduct of Landlord and its agents.** The indemnities set forth in this Lease shall survive termination or expiration of this Lease and shall not terminate or be waived, diminished or affected in any manner by any abatement or apportionment of Rent under any provision of this Lease. If any proceeding is filed for which indemnity is required hereunder, the indemnifying party agrees, upon request therefor, to defend the indemnified party in such proceeding at its sole cost utilizing counsel satisfactory to the indemnified party.

13. **Subordination; Attornment.**

(a) This Lease shall be subordinate to any deed to secure debt, deed of trust, mortgage, ground lease or other security instrument (each, a "**Mortgage**"), that now or hereafter covers all or any part of the Premises (the mortgagee under any such Mortgage is referred to herein as a "**Landlord's Mortgagee**"). The provisions of this Section shall be self-operative and no further instrument of subordination shall be required; however, Tenant shall execute and return to Landlord (or such other party designated by Landlord) within ten days after written request therefor such documentation as Landlord or Landlord's Mortgagee may reasonably request to evidence the subordination of this Lease. Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

(b) **Attornment.** Tenant shall attorn to any party succeeding to Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of lease, or otherwise, upon such party's request, and shall execute such agreements confirming such attornment as such party may reasonably request.

(c) **Notice to Landlord's Mortgagee.** Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail, to any Landlord's Mortgagee whose address has been given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations hereunder.

(d) **Landlord's Mortgagee's Protection Provisions.** If Landlord's Mortgagee shall succeed to the interest of Landlord under this Lease, Landlord's Mortgagee shall not be: (1) liable for any act or omission of any prior lessor (including Landlord); (2) bound by any rent or additional rent or advance rent which Tenant might have paid for more than the current month to any prior lessor (including Landlord), and all such rent shall remain due and owing, notwithstanding such advance payment; (3) bound by any security or advance rental deposit made by Tenant which is not delivered or paid over to Landlord's Mortgagee and with respect to which Tenant shall look solely to Landlord for refund or reimbursement; (4) bound by any termination, amendment or modification of this Lease made without Landlord's Mortgagee's consent and written approval, except for those terminations, amendments and modifications permitted to be made by Landlord without Landlord's Mortgagee's consent pursuant to the terms of the loan documents between Landlord and Landlord's Mortgagee; (5) subject to the defenses which Tenant might have against any prior lessor (including Landlord); and (6) subject to the offsets which Tenant might have against any prior lessor (including Landlord) except for those offset rights which (A) are expressly provided in this Lease, (B) relate to periods of time following the acquisition of the Building by Landlord's Mortgagee, and (C) Tenant has provided written notice to Landlord's Mortgagee and provided Landlord's Mortgagee a reasonable opportunity to cure the event giving rise to such offset event. Landlord's Mortgagee shall have no liability or responsibility under or pursuant to the terms of this Lease or otherwise after it ceases to own an interest in the Project. Nothing in this Lease shall be construed to require Landlord's Mortgagee to see to the application of the proceeds of any loan, and Tenant's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing any loan.

14. **Rules and Regulations.** Tenant shall comply with the rules and regulations of the Project which are attached hereto as Exhibit C, as amended from time to time by Landlord. Tenant shall be responsible for the compliance with such rules and regulations by each Tenant Party.

15. **Condemnation.** If the entire Building or Premises are taken by right of eminent domain or conveyed in lieu thereof (a "**Taking**"), this Lease shall terminate as of the date of the Taking. If any material portion, but less than all, of the Building becomes subject to a permanent Taking, or if Landlord is required to pay any of the proceeds arising from a Taking to a Landlord's Mortgagee, then Landlord may terminate this Lease by delivering written notice thereof to Tenant within 30 days after such Taking, and Basic Rent and Additional Rent shall be apportioned as of the date of such Taking. If Landlord does not so terminate this Lease, then this

Lease will continue, but if any portion of the Premises has been taken, Rent shall be abated on a reasonable basis as to that portion of the Premises rendered untenable by the Taking. If any Taking occurs, then Landlord shall receive the entire award or other compensation for the Land, the Building and other improvements taken; however, Tenant may separately pursue a claim (to the extent it will not reduce Landlord's award) against the condemnor for the value of Tenant's personal property which Tenant is entitled to remove under this Lease, moving costs, loss of business and other claims it may have.

16. **Fire or Other Casualty.**

(a) **Repair Estimate.** If the Premises or the Building are damaged by fire or other casualty (a "**Casualty**"), Landlord shall, within 90 days after such Casualty, deliver to Tenant a good faith estimate (the "**Damage Notice**") of the time needed to repair the damage caused by such Casualty.

(b) **Tenant's Rights.** If a material portion of the Premises is damaged by Casualty such that Tenant is prevented from conducting its business in the Premises in a manner reasonably comparable to that conducted immediately before such Casualty and Landlord estimates that the damage caused thereby cannot be repaired within 270 days after the commencement of repairs (the "**Repair Period**"), then Tenant may terminate this Lease by delivering written notice to Landlord of its election to terminate within 30 days after the Damage Notice has been delivered to Tenant.

(c) **Landlord's Rights.** If a Casualty damages the Premises or a material portion of the Building and (1) Landlord estimates that the damage to the Premises cannot be repaired within the Repair Period, (2) the damage to the Premises exceeds 50% of the replacement cost thereof (excluding foundations and footings), as estimated by Landlord, and such damage occurs during the last two years of the Term, (3) regardless of the extent of damage to the Premises, the damage is not fully covered by Landlord's insurance policies or Landlord makes a good faith determination that restoring the Building would be uneconomical, or (4) Landlord is required to pay any insurance proceeds arising out of the Casualty to a Landlord's Mortgagee, then Landlord may terminate this Lease by giving written notice of its election to terminate within 30 days after the Damage Notice has been delivered to Tenant.

(d) **Repair Obligation.** If neither party elects to terminate this Lease following a Casualty, then Landlord shall, within a reasonable time after such Casualty, begin to repair the Premises and shall proceed with reasonable diligence to restore the Premises to substantially the same condition as they existed immediately before such Casualty; however, Landlord shall not be required to repair or replace any alterations or betterments within the Premises (which shall be promptly and with due diligence repaired and restored by Tenant at Tenant's sole cost and expense) or any furniture, equipment, trade fixtures or personal property of Tenant or others in the Premises or the Building, and Landlord's obligation to repair or restore the Premises shall be limited to the extent of the insurance proceeds actually received by Landlord for the Casualty in question. If this Lease is terminated under the provisions of this Section 16, Landlord shall be entitled to the full proceeds of the insurance policies providing coverage for all alterations, improvements and betterments in the Premises (and, if Tenant has failed to maintain insurance on such items as required by this Lease, Tenant shall pay Landlord

an amount equal to the proceeds Landlord would have received had Tenant maintained insurance on such items as required by this Lease).

(e) **Abatement of Rent.** If the Premises are damaged by Casualty, Rent for the portion of the Premises rendered untenantable by the damage shall be abated on a reasonable basis from the date of damage until the completion of Landlord's repairs (or until the date of termination of this Lease by Landlord or Tenant as provided above, as the case may be), unless a Tenant Party caused such damage, in which case, Tenant shall continue to pay Rent without abatement.

17. **Personal Property Taxes.** Tenant shall be liable for all taxes levied or assessed against personal property, furniture, or fixtures placed by Tenant in the Premises or in or on the Building or Project.

18. **Events of Default.** Each of the following occurrences shall be an "**Event of Default**":

(a) **Payment Default.** Tenant's failure to pay Rent within five days after Landlord has delivered written notice to Tenant that the same is due; however, an Event of Default shall occur hereunder without any obligation of Landlord to give any notice if Tenant fails to pay Rent when due and, during the 12 month interval preceding such failure, Landlord has given Tenant written notice of failure to pay Rent on one or more occasions;

(b) **Intentionally Omitted.**

(c) **Estoppel.** Tenant fails to provide any estoppel certificate after Landlord's written request therefor pursuant to Section 26(e) and such failure shall continue for five days after Landlord's second written notice thereof to Tenant;

(d) **Insurance.** Tenant fails to procure, maintain and deliver to Landlord evidence of the insurance policies and coverages as required under Section 12(a);

(e) **Mechanic's Liens.** Tenant fails to pay and release of record, or diligently contest and bond around, any mechanic's lien filed against the Premises or the Project for any work performed, materials furnished, or obligation incurred by or at the request of Tenant, within the time and in the manner required by Section 8(d);

(f) **Other Defaults.** Tenant's failure to perform, comply with, or observe any other agreement or obligation of Tenant under this Lease and the continuance of such failure for a period of more than 30 days after Landlord has delivered to Tenant written notice thereof; and

(g) **Insolvency.** The filing of a petition by or against Tenant (the term "**Tenant**" shall include, for the purpose of this Section 18(g), any guarantor of Tenant's obligations hereunder) (1) in any bankruptcy or other insolvency proceeding; (2) seeking any relief under any state or federal debtor relief law; (3) for the appointment of a liquidator or receiver for all or substantially all of Tenant's property or for Tenant's interest in this Lease; (4) for the reorganization or modification of Tenant's capital structure; or (5) in any assignment for the benefit of creditors proceeding; however, if such a petition is filed against Tenant, then such

filing shall not be an Event of Default unless Tenant fails to have the proceedings initiated by such petition dismissed within 90 days after the filing thereof.

19. **Remedies.** Upon any Event of Default, Landlord may, in addition to all other rights and remedies afforded Landlord hereunder or by law or equity, take any one or more of the following actions:

(a) **Termination of Lease.** Terminate this Lease by giving Tenant written notice thereof, in which event Tenant shall pay to Landlord the sum of (1) all Rent accrued hereunder through the date of termination, (2) all amounts due under Section 20(a), and (3) an amount equal to (i) the total Rent that Tenant would have been required to pay for the remainder of the Term discounted to present value at a per annum rate equal to the "Prime Rate" as published on the date this Lease is terminated by *The Wall Street Journal*, Southeast Edition, in its listing of "Money Rates" minus one percent, minus (ii) the then present fair rental value of the Premises for such period, similarly discounted. Any such payment shall constitute liquidated damages to Landlord, Landlord and Tenant acknowledging and agreeing that it is difficult to determine the actual damages Landlord would suffer by virtue of an event of default and that the agreed-upon liquidated damages are not punitive or a penalty and are just, fair and reasonable, all in accordance O.C.G.A. Section 13-6-7;

(b) **Termination of Possession.** Terminate Tenant's right to possess the Premises without terminating this Lease by giving written notice thereof to Tenant, in which event Tenant shall pay to Landlord (1) all Rent and other amounts accrued hereunder to the date of termination of possession, (2) all amounts due from time to time under Section 20(a), and (3) all Rent and other net sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Premises during such period, after deducting all costs incurred by Landlord in reletting the Premises. If Landlord elects to proceed under this Section 19(b), Landlord may remove all of Tenant's property from the Premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, Tenant, without becoming liable for any loss or damage which may be occasioned thereby. Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord in its sole discretion may determine (including a term different from the Term, rental concessions, and alterations to, and improvement of, the Premises); however, Landlord shall not be obligated to relet the Premises before leasing other portions of the Building or Complex and Landlord shall not be obligated to accept any prospective tenant proposed by Tenant unless such proposed tenant meets all of Landlord's leasing criteria. Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or to collect rent due for such reletting. Tenant shall not be entitled to the excess of any consideration obtained by reletting over the Rent due hereunder. Reentry by Landlord in the Premises shall not affect Tenant's obligations hereunder for the unexpired Term; rather, Landlord may, from time to time, bring an action against Tenant to collect amounts due by Tenant, without the necessity of Landlord's waiting until the expiration of the Term. Unless Landlord delivers written notice to Tenant expressly stating that it has elected to terminate this Lease, all actions taken by Landlord to dispossess or exclude Tenant from the Premises shall be deemed to be taken under this Section 19(b). If Landlord elects to proceed under this Section 19(b), it may at any time elect to terminate this Lease under Section 19(a);

(c) **Perform Acts on Behalf of Tenant.** Perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including, but not limited to, collection costs and legal expenses), an administrative fee equal to 15% of such expenses, plus interest on such expenses and fees at the Default Rate;

(d) **Suspension of Services.** Suspend any services required to be provided by Landlord hereunder without being liable for any claim for damages therefor; or

(e) **Alteration of Locks.** Additionally, with or without notice, and to the extent permitted by Law, Landlord may alter locks or other security devices at the Premises to deprive Tenant of access thereto, and Landlord shall not be required to provide a new key or right of access to Tenant.

20. **Payment by Tenant; Non-Waiver; Cumulative Remedies.**

(a) **Payment by Tenant.** Upon any Event of Default, Tenant shall pay to Landlord all costs incurred by Landlord (including court costs and reasonable attorneys' fees and expenses) in (1) obtaining possession of the Premises, (2) removing and storing Tenant's or any other occupant's property, (3) repairing, restoring, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant, (4) if Tenant is dispossessed of the Premises and this Lease is not terminated, reletting all or any part of the Premises (including brokerage commissions, cost of tenant finish work, and other costs incidental to such reletting), (5) performing Tenant's obligations which Tenant failed to perform, and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the default. To the full extent permitted by law, Landlord and Tenant agree the federal and state courts of the state in which the Premises are located shall have exclusive jurisdiction over any matter relating to or arising from this Lease and the parties' rights and obligations under this Lease.

(b) **No Waiver.** Landlord's acceptance of Rent following an Event of Default shall not waive Landlord's rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord's rights regarding any future violation of such term. Landlord's acceptance of any partial payment of Rent shall not waive Landlord's rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord's acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.

(c) **Cumulative Remedies.** Any and all remedies set forth in this Lease: (1) shall be in addition to any and all other remedies Landlord may have at law or in equity, (2) shall be cumulative, and (3) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future. Additionally, Tenant shall defend, indemnify and hold harmless Landlord, Landlord's Mortgagee and their respective

representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages and expenses (including reasonable attorneys' fees) arising from Tenant's failure to perform its obligations under this Lease.

21. **Intentionally Omitted.**

22. **Surrender of Premises.** No act by Landlord shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. At the expiration or termination of this Lease, Tenant shall deliver to Landlord the Premises in the condition in which Landlord delivered the Premises to Tenant, with all improvements located therein in good repair and condition, free of Hazardous Materials placed on the Premises during the Term, broom-clean, reasonable wear and tear (and condemnation and Casualty damage not caused by Tenant, as to which Sections 15 and 16 shall control) excepted, and shall deliver to Landlord all keys to the Premises. Provided that Tenant has performed all of its obligations hereunder, Tenant may remove all unattached trade fixtures, furniture, and personal property placed in the Premises or elsewhere in the Building by Tenant (but Tenant may not remove any such item which was paid for, in whole or in part, by Landlord or any wiring or cabling unless Landlord requires such removal). Additionally, at Landlord's option, Tenant shall remove such alterations, additions, improvements, trade fixtures, personal property, equipment, wiring, conduits, cabling, and furniture (including Tenant's Off-Premises Equipment) as Landlord may request; however, Tenant shall not be required to remove any addition or improvement to the Premises or the Project if Landlord has specifically agreed in writing that the improvement or addition in question need not be removed. Tenant shall repair all damage caused by such removal. All items not so removed shall, at Landlord's option, be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to Tenant and without any obligation to account for such items; any such disposition shall not be considered a strict foreclosure or other exercise of Landlord's rights in respect of the security interest granted under Section 21. The provisions of this Section 22 shall survive the end of the Term.

23. **Holding Over.** If Tenant fails to vacate the Premises at the end of the Term, then Tenant shall be a tenant at sufferance and, in addition to all other damages and remedies to which Landlord may be entitled for such holding over, (a) Tenant shall pay, in addition to the other Rent, Basic Rent equal to 150% of the Rent payable during the last month of the Term, and (b) Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease. The provisions of this Section 23 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

24. **Certain Rights Reserved by Landlord.** Provided that the exercise of such rights does not unreasonably interfere with Tenant's occupancy of the Premises, Landlord shall have the right to enter the Premises at all reasonable hours to show the Premises to prospective purchasers or lenders, and at any time during the last 12 months of the Term (or earlier if Tenant

has notified Landlord in writing that it does not desire to renew the Term) or at any time following the occurrence of an Event of Default, to enter the Premises at all reasonable hours to show the Premises to prospective tenants. The rights reserved by Landlord under this Section 24 are not exhaustive.

25. Intentionally Omitted.

26. Miscellaneous.

(a) **Landlord Transfer.** Landlord may transfer any portion of the Project and any of its rights under this Lease. If Landlord assigns its rights under this Lease, then Landlord shall thereby be released from any further obligations hereunder arising after the date of transfer, provided that the assignee assumes in writing Landlord's obligations hereunder arising from and after the transfer date.

(b) **Landlord's Liability.** The liability of Landlord (and its partners, shareholders or members) to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under the terms of this Lease or any matter relating to or arising out of the occupancy or use of the Premises and/or other areas of the Building shall be limited to Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from the interest of Landlord in the Building, and Landlord (and its partners, shareholders or members) shall not be personally liable for any deficiency. The provisions of this Section shall survive any expiration or termination of this Lease.

(c) **Force Majeure.** Other than for Tenant's obligations under this Lease that can be performed by the payment of money (e.g., payment of Rent and maintenance of insurance), whenever a period of time is herein prescribed for action to be taken by either party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorist acts or activities, governmental laws, regulations, or restrictions, or any other causes of any kind whatsoever which are beyond the control of such party.

(d) **Brokerage.** Neither Landlord nor Tenant has dealt with any broker or agent in connection with the negotiation or execution of this Lease, other than Seefried Industrial Properties, Inc. and Cresa Partners of Georgia, L.L.C., whose commissions shall be paid by Landlord pursuant to separate written agreements. Tenant and Landlord shall each indemnify the other against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any other broker or agent claiming the same by, through, or under the indemnifying party.

(e) **Estoppel Certificates.** From time to time, Tenant shall furnish to any party designated by Landlord, within ten days after Landlord has made a request therefor, a certificate signed by Tenant confirming and containing such factual certifications and representations as to this Lease as Landlord may reasonably request. If Tenant does not deliver to Landlord the certificate signed by Tenant within such required time period, Landlord, Landlord's Mortgagee and any prospective purchaser or mortgagee, may conclusively presume and rely upon the following facts: (1) this Lease is in full force and effect; (2) the terms and

provisions of this Lease have not been changed except as otherwise represented by Landlord; (3) not more than one monthly installment of Basic Rent and other charges have been paid in advance; (4) there are no claims against Landlord nor any defenses or rights of offset against collection of Rent or other charges; and (5) Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of the presumed facts.

(f) **Notices.** All notices and other communications given pursuant to this Lease shall be in writing and shall be (1) mailed by first class, United States Mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address specified in the Basic Lease Information, (2) hand delivered to the intended addressee, (3) sent by a nationally recognized overnight courier service, or (4) sent by facsimile transmission during normal business hours followed by a confirmatory letter sent in another manner permitted hereunder. All notices shall be effective upon delivery to the address of the addressee (even if such addressee refuses delivery thereof). The parties hereto may change their addresses by giving notice thereof to the other in conformity with this provision.

(g) **Separability.** If any clause or provision of this Lease is illegal, invalid, or unenforceable under present or future laws, then the remainder of this Lease shall not be affected thereby and in lieu of such clause or provision, there shall be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

(h) **Amendments; Binding Effect; No Electronic Records.** This Lease may not be amended except by instrument in writing signed by Landlord and Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord, and no custom or practice which may evolve between the parties in the administration of the terms hereof shall waive or diminish the right of Landlord to insist upon the performance by Tenant in strict accordance with the terms hereof. Landlord and Tenant hereby agree not to conduct the transactions or communications contemplated by this Lease by electronic means, except by facsimile transmission as specifically set forth in Section 26(f); nor shall the use of the phrase "in writing" or the word "written" be construed to include electronic communications except by facsimile transmissions as specifically set forth in Section 26(f). The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives, except as otherwise herein expressly provided. This Lease is for the sole benefit of Landlord and Tenant and other than Landlord's Mortgagee, no third party shall be deemed a third party beneficiary hereof.

(i) **Quiet Enjoyment.** Provided Tenant has performed all of its obligations hereunder, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through, or under Landlord, but not otherwise, subject to the terms and conditions of this Lease.

(j) **Entire Agreement.** This Lease constitutes the entire agreement between Landlord and Tenant regarding the subject matter hereof and supersedes all oral statements and prior writings relating thereto. Except for those set forth in this Lease, no representations, warranties, or agreements have been made by Landlord or Tenant to the other with respect to this

Lease or the obligations of Landlord or Tenant in connection therewith. The normal rule of construction that any ambiguities be resolved against the drafting party shall not apply to the interpretation of this Lease or any exhibits or amendments hereto.

(k) **Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, LANDLORD AND TENANT EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF OR WITH RESPECT TO THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO.

(l) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

(m) **Recording.** Tenant shall not record this Lease or any memorandum of this Lease without the prior written consent of Landlord, which consent may be withheld or denied in the sole and absolute discretion of Landlord, and any recordation by Tenant shall be a material breach of this Lease. Tenant grants to Landlord a power of attorney to execute and record a release releasing any such recorded instrument of record that was recorded without the prior written consent of Landlord.

(n) **Water or Mold Notification.** To the extent Tenant or its agents or employees discover any water leakage, water damage or mold in or about the Premises or Project, Tenant shall promptly notify Landlord thereof in writing.

(o) **Joint and Several Liability.** If Tenant is comprised of more than one party, each such party shall be jointly and severally liable for Tenant's obligations under this Lease. All unperformed obligations of Tenant hereunder not fully performed at the end of the Term shall survive the end of the Term, including payment obligations with respect to Rent and all obligations concerning the condition and repair of the Premises.

(p) **Financial Reports.** Within 15 days after Landlord's request, Tenant will furnish Tenant's most recent audited financial statements (including any notes to them) to Landlord, or, if no such audited statements have been prepared, such other financial statements (and notes to them) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements.

(q) **Landlord's Fees.** Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees, within 30 days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

(r) **Telecommunications.** Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to and within the Building, for the installation and

operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems (“**Telecommunications Services**”), for part or all of Tenant’s telecommunications from the Building to any other location without Landlord’s prior written consent. All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Laws and Landlord’s policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to any Tenant Party in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services.

(s) **Confidentiality**. Tenant acknowledges that the terms and conditions of this Lease are to remain confidential for Landlord’s benefit, and may not be disclosed by Tenant to anyone, by any manner or means, directly or indirectly, without Landlord’s prior written consent; however, Tenant may disclose the terms and conditions of this Lease if required by Law or court order, to its attorneys, accountants, employees and existing or prospective financial partners provided same are advised by Tenant of the confidential nature of such terms and conditions and agree to maintain the confidentiality thereof (in each case, prior to disclosure). Tenant shall be liable for any disclosures made in violation of this Section by Tenant or by any entity or individual to whom the terms of and conditions of this Lease were disclosed or made available by Tenant. The consent by Landlord to any disclosures shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future disclosure.

(t) **Security Service**. Tenant acknowledges and agrees that, while Landlord may (but shall not be obligated to) patrol the Building, Landlord is not providing any security services with respect to the Premises or Tenant’s Off-Premises Equipment and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any area where Tenant’s Off-Premises Equipment is located or any other breach of security with respect to the Premises or Tenant’s Off-Premises Equipment.

(u) **List of Exhibits**. All exhibits and attachments attached hereto are incorporated herein by this reference.

Exhibit A - Outline of Premises
Exhibit B - Description of the Land
Exhibit C - Building Rules and Regulations
Exhibit D - Tenant Finish-Work
Exhibit E – Rent Abatement Provisions

(v) **Prohibited Persons and Transactions**. Tenant represents and warrants to Landlord that Tenant is currently in compliance with and shall at all times during the Term (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control (“**OFAC**”) of the Department of the Treasury (including those named on OFAC’s Specially Designated Nationals and Blocked Persons List) and any statute, executive

order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism), or other governmental action relating thereto.

(w) **Landlord/Tenant Relationship.** This Lease shall create the relationship of landlord and tenant between Landlord and Tenant. No estate shall pass out of Landlord. Tenant has only a usufruct under Georgia law, not subject to levy and sale.

(x) **No Invasive Testing.** Tenant shall not undertake, nor shall Tenant permit any Tenant Party to undertake, any invasive investigation, drilling or sampling of the soil or groundwater at the Project without the prior written consent of Landlord, which consent shall be in Landlord's sole discretion.

27. **Environmental Requirements.**

(a) **Prohibition against Hazardous Materials.** Except for Hazardous Materials contained in products used by Tenant in *de minimis* quantities for ordinary cleaning and office purposes, Tenant shall not, nor shall it permit or cause any party to, bring any Hazardous Materials upon the Premises or in the Project or transport, store, use, generate, manufacture, dispose, or release any Hazardous Materials on or from the Premises or the Project without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and all requirements of this Lease. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture, or release of Hazardous Materials on the Premises or in the Project, Tenant shall promptly notify Landlord of any spill, release, discharge or disposal of Hazardous Materials at, on, under or from the Premises or Property in violation of any Environmental Requirements, and Tenant shall promptly deliver to Landlord a copy of any notice of violation relating to the Premises or the Project of any Environmental Requirement.

(b) **Environmental Requirements.** The term "**Environmental Requirements**" means all Laws regulating or relating to health, safety, or environmental conditions at, on, in, under, or about the Premises or the Project or the environment or natural resources, including the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act and all state and local counterparts thereto, and any common or civil law obligations including nuisance or trespass, and any other requirements of Section 14 and Exhibit C of this Lease. The term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant that is or could be regulated under any Environmental Requirement or that may adversely affect human health or the environment, including any solid or hazardous waste, hazardous substance, asbestos, petroleum (including crude oil or any fraction thereof, natural gas, synthetic gas, polychlorinated biphenyls (PCBs), and radioactive material). For purposes of Environmental Requirements, to the extent authorized by law, Tenant is and shall be deemed to be the responsible party, including the "owner" and "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises or the Project by a Tenant Party and the wastes, by-products, or residues generated, resulting, or produced therefrom.

(c) **Removal of Hazardous Materials.** Tenant, at its sole cost and expense, shall remove all Hazardous Materials stored, disposed of or otherwise released by a Tenant Party onto or from the Premises or the Project, in a manner and to a level satisfactory to Landlord in its sole discretion, but in no event to a level and in a manner less than that which complies with all Environmental Requirements and does not limit any future uses of the Premises or the Project or require the recording of any deed restriction or notice regarding the Premises or the Project. Tenant shall perform such work at any time during the period of this Lease upon written request by Landlord or, in the absence of a specific request by Landlord, before Tenant's right to possession of the Premises terminates or expires. If Tenant fails to perform such work within the time period specified by Landlord or before Tenant's right to possession terminates or expires (whichever is earlier), Landlord may at its discretion, and without waiving any other remedy available under this Lease or at law or equity (including an action to compel Tenant to perform such work), perform such work at Tenant's cost. Tenant shall pay all costs incurred by Landlord in performing such work within ten days after Landlord's request therefor. Such work performed by Landlord is on behalf of Tenant and Tenant remains the owner, generator, operator, transporter, and/or arranger of the Hazardous Materials for purposes of Environmental Requirements. Tenant agrees not to enter into any agreement with any person, including any governmental authority, regarding the removal of Hazardous Materials that have been disposed of or otherwise released onto or from the Premises or the Project without the written approval of the Landlord.

(d) **Tenant's Indemnity.** To the extent permitted by applicable Law, Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including diminution in value of the Premises or the Project and loss of rental income from the Project), liabilities (INCLUDING ANY STRICT LIABILITY), claims, demands, actions, suits, damages (including punitive damages), expenses (including remediation, removal, repair, corrective action, or cleanup expenses), and costs (including actual attorneys' fees, consultant fees or expert fees and including removal or management of any asbestos brought into the Premises or the Project or disturbed in breach of the requirements of this Section 27, regardless of whether such removal or management is required by Law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials or any breach of the requirements under this Section 27 by a Tenant Party regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant under this Section 27 shall survive any expiration or termination of this Lease.

(e) **Inspections and Tests.** Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Section 27, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant. Tenant shall promptly notify Landlord of any communication or report that Tenant makes to any governmental authority regarding any possible violation of Environmental Requirements or

release or threat of release of any Hazardous Materials onto or from the Premises or the Project. Tenant shall, within five days of receipt thereof, provide Landlord with a copy of any documents or correspondence received from any governmental agency or other party relating to a possible violation of Environmental Requirements or claim or liability associated with the release or threat of release of any Hazardous Materials onto or from the Premises or the Project. Upon request, Tenant shall provide Landlord with an inventory of Hazardous Materials located at, on or in the Premises and copies of any Material Safety Data Sheet in Tenant's possession required by any Environmental Requirement or related to any Hazardous Material.

(f) **Tenant's Financial Assurance in the Event of a Breach.** In addition to all other rights and remedies available to Landlord under this Lease or otherwise, Landlord may, in the event of a breach of the requirements of this Section 27 that is not cured within 30 days following notice of such breach by Landlord, require Tenant to provide financial assurance (such as insurance, escrow of funds or third party guarantee) in an amount and form satisfactory to Landlord. The requirements of this Section 27 are in addition to and not in lieu of any other provision in this Lease. Tenant's obligations under this Section 27 shall also apply to the areas where Tenant's Off-Premises Equipment is located.

28. **Parking.** Tenant shall have the non-exclusive right, in common with other tenants of the Building to use such parking spaces associated with the Building as are allocated to Tenant by Landlord. Landlord shall use its reasonable discretion in allocating parking spaces to the tenants of the Building, taking into consideration all factors Landlord deems relevant, including the density and type (e.g., office or industrial) of use conducted by the tenants of the Building in their respective premises. Landlord reserves the right to initiate steps to control the parking utilization through gates, access cards, hang-tags or other means as appropriate. Initially, Tenant shall have the non-exclusive right to use its proportionate share of the parking spaces associated with the Building. Parking spaces will be available to Tenant without charge during the initial Term. Landlord shall not be responsible for enforcing Tenant's parking rights against third parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.

This Lease is executed on the respective dates set forth below, but for reference purposes, this Lease shall be dated as of the date first above written. If the execution date is left blank, this Lease shall be deemed executed as of the date first written above.

LANDLORD:

CH REALTY IV/MK, L.L.C.,
a Delaware limited liability company

By: Crow Holdings Managers, L.L.C.,
a Texas limited liability company,
its manager

By: _____
Name: _____
Title: _____

Execution Date: _____

TENANT:

CITY OF SANDY SPRINGS PUBLIC
FACILITIES AUTHORITY, a public authority of
the State of Georgia

By:_____

Name:_____

Title:_____

Execution Date:_____

EXHIBIT A
OUTLINE OF PREMISES

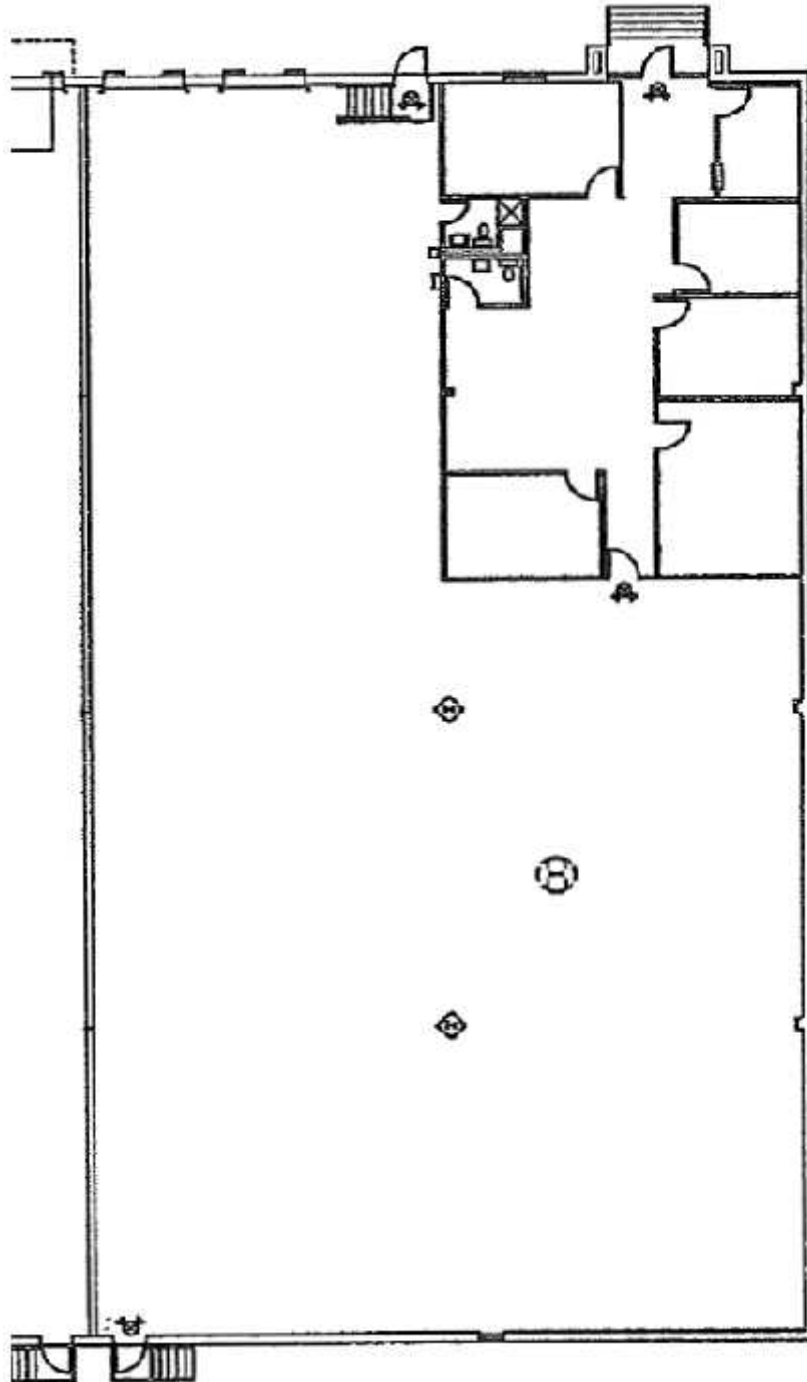


EXHIBIT B

DESCRIPTION OF THE LAND

All that tract or parcel of land lying and being in Land Lot 249 of the 6th District of DeKalb County, Georgia, and being more particularly described as follows:

Being a portion of Lot 6, Block B, Northeast Atlanta Industrial Park, recorded in Plat Book 65, Page 112, DeKalb County, Georgia, Records.

Beginning at a rebar found on the southwesterly right-of-way line of Bankers Circle (60'R/W) 1135.69 feet southwesterly from the intersection formed by the southwesterly right-of-way line of said Bankers Circle with the southeasterly right-of-way line of said Bankers Industrial Drive, as measured along the right-of-way line of Bankers Circle, and following the curvature thereof, (said rebar found being the true point of beginning); thence extending S55°-06'-54"W 305.56 feet to a rebar set; thence extending N29°-41'-23"W 221.50 feet to a rebar found; thence extending N31°-27'-36"W 127.95 feet to a rebar found; thence extending N42°-04'-42"W 52.05 feet to an open top pipe found; thence extending N47°-38'36"W 129.98 feet to a rebar found; thence extending N67°-08'08"W 42.20 feet to a rebar set; thence extending N23°-41'29"E 293.00 feet to a rebar set; thence extending S65°-08'12"E 329.81 feet to a rebar found and the westerly right-of-way line of said Bankers Circle; thence extending southerly along said right-of-way line following the curvature thereof 214.16 feet to a rebar set, said curve having a chord distance of 208.59 feet with a bearing of S12°-08'59"E seconds East and a radius of 269.91 feet; thence extending along the southwesterly right-of-way line of said Bankers Circle S34°- 53'-26"E 237.89 feet to the point of beginning.

EXHIBIT C

BUILDING RULES AND REGULATIONS

The following rules and regulations shall apply to the Premises, the Building, the parking areas associated therewith, and the appurtenances thereto:

1. Sidewalks, doorways, vestibules, halls, stairways, loading dock areas and associated overhead doors, and other similar areas shall not be obstructed by tenants or used by any tenant for purposes other than ingress and egress to and from their respective leased premises and for going from one to another part of the Building.

2. Plumbing (including outside drains and sump pumps), fixtures and appliances shall be used only for the purposes for which designed, and no sweepings, rubbish, rags or other unsuitable material shall be thrown or deposited therein. Damage resulting to any such fixtures or appliances from misuse by a tenant or its agents, employees or invitees, shall be paid by such tenant.

3. No signs, advertisements or notices shall be painted or affixed on or to any windows or doors or other part of the Building visible from the exterior of the Premises without the prior written consent of Landlord. Except as consented to in writing by Landlord or in accordance with Tenant's building standard improvements, no draperies, curtains, blinds, shades, screens or other devices shall be hung at or used in connection with any window or exterior door or doors of the Premises. No awning shall be permitted on any part of the Premises. Tenant shall not place anything against or near glass partitions or doors, or windows which might appear unsightly from outside the Premises.

4. Tenant, at its expense, shall be responsible for providing all door locks in the Premises and shall provide to Landlord, at Tenant's expense, contemporaneously with the installation of such devices, a master key, card keys, access codes or other means to allow Landlord immediate access to all areas within the Premises.

5. Landlord may prescribe weight limitations and determine the locations for safes and other heavy equipment or items, which shall in all cases be placed in the Building so as to distribute weight in a manner acceptable to Landlord which may include the use of such supporting devices as Landlord may require. All damages to the Building caused by the installation or removal of any property of a tenant, or done by a tenant's property while in the Building, shall be repaired at the expense of such tenant.

6. Corridor doors, when not in use, shall be kept closed. Nothing shall be swept or thrown into the corridors, halls, elevator shafts or stairways. No birds or animals (other than seeing-eye dogs) shall be brought into or kept in, on or about any tenant's leased premises. No portion of any tenant's leased premises shall at any time be used or occupied as sleeping or lodging quarters.

7. Tenant shall not make or permit any vibration or improper, objectionable or unpleasant noises or odors in the Building or otherwise interfere in any way with other tenants or

persons having business with them. Tenant shall not introduce, disturb or release asbestos or PCB's into or from the Premises.

8. Tenant shall not keep in the Building any flammable or explosive fluid or substance. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises without the prior written consent of Landlord. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Building.

9. Landlord will not be responsible for lost or stolen personal property, money or jewelry from tenant's leased premises or public or common areas regardless of whether such loss occurs when the area is locked against entry or not.

10. Tenant shall not conduct any activity on or about the Premises or Building which will draw pickets, demonstrators, or the like.

11. All vehicles are to be currently licensed, in good operating condition, parked for business purposes having to do with Tenant's business operated in the Premises, parked within designated parking spaces, one vehicle to each space. No vehicle shall be parked as a "billboard" vehicle in the parking lot. Any vehicle parked improperly may be towed away. Tenant, Tenant's agents, employees, vendors and customers who do not operate or park their vehicles as required shall subject the vehicle to being towed at the expense of the owner or driver. Landlord may place a "boot" on the vehicle to immobilize it and may levy a charge of \$50.00 to remove the "boot." Tenant shall indemnify, hold and save harmless Landlord of any liability arising from the towing or booting of any vehicles belonging to a Tenant Party.

12. No tenant may enter into phone rooms, electrical rooms, mechanical rooms, or other service areas of the Building unless accompanied by Landlord or the Building manager.

13. Tenant shall not permit storage outside the Premises or dumping of waste or refuse or permit any harmful materials to be placed in any drainage system or sanitary system in or about the Premises.

14. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises.

15. Tenant will not permit any Tenant Party to bring onto the Project any handgun, firearm or other weapons of any kind, illegal drugs or, unless expressly permitted by Landlord in writing, alcoholic beverages.

16. Tenant shall not permit its employees, invitees or guests to smoke in the Premises or any other area shared in common with other tenants in the Building, or permit its employees, invitees, or guests to loiter at the Building entrances for the purposes of smoking. Landlord may, but shall not be required to, designate an area for smoking outside the Building.

EXHIBIT D

TENANT FINISH-WORK (TENANT PERFORMS THE WORK)

1. **Acceptance of Premises.** Except as set forth in this Exhibit, Tenant accepts the Premises in their “**AS-IS**” condition on the date that this Lease is entered into.

2. **Space Plans.** On or before the execution of this Lease, Landlord and Tenant have approved a space plan depicting improvements to be installed in the Premises, which plans are attached to this Exhibit as *Schedule 1* (the “**Space Plans**”)

3. **Working Drawings.**

(a) **Preparation and Delivery.** Following the date of this Lease, Tenant shall provide to Landlord for its approval final working drawings, prepared by Hughes Turner Phillips (the “**Architect**”), of all improvements that Tenant proposes to install in the Premises; such working drawings shall include the partition layout, ceiling plan, electrical outlets and switches, telephone outlets, drawings for any modifications to the mechanical and plumbing systems of the Building, and detailed plans and specifications for the construction of the improvements called for under this Exhibit in accordance with all applicable Laws.

(b) **Approval Process.** Landlord shall notify Tenant whether it approves of the submitted working drawings within ten business days after Tenant’s submission thereof. If Landlord disapproves of such working drawings, then Landlord shall notify Tenant thereof specifying in reasonable detail the reasons for such disapproval, in which case Tenant shall, within three business days after such notice, revise such working drawings in accordance with Landlord’s objections and submit the revised working drawings to Landlord for its review and approval. Landlord shall notify Tenant in writing whether it approves of the resubmitted working drawings within five business days after its receipt thereof. This process shall be repeated until the working drawings have been finally approved by Tenant and Landlord. If Landlord fails to notify Tenant that it disapproves of the initial working drawings within ten business days (or, in the case of resubmitted working drawings, within five business days) after the submission thereof, then Landlord shall be deemed to have approved the working drawings in question.

(c) **Landlord’s Approval; Performance of Work.** If any of Tenant’s proposed construction work will affect the Building’s Structure or the Building’s Systems, then the working drawings pertaining thereto must be approved by the Building’s engineer of record. Landlord’s approval of such working drawings shall not be unreasonably withheld, provided that (1) they comply with all Laws, (2) the improvements depicted thereon do not adversely affect (in the reasonable discretion of Landlord) the Building’s Structure or the Building’s Systems (including the Building’s restrooms or mechanical rooms), the exterior appearance of the Building, or the appearance of the Building’s common areas or elevator lobby areas, (3) such working drawings are sufficiently detailed to allow construction of the improvements in a good and workmanlike manner, and (4) the improvements depicted thereon conform to the rules and regulations promulgated from time to time by Landlord for the construction of tenant

improvements (a copy of which has been delivered to Tenant). As used herein, “**Working Drawings**” means the final working drawings approved by Landlord, as amended from time to time by any approved changes thereto, and “**Work**” means all improvements to be constructed in accordance with and as indicated on the Working Drawings, together with any work required by governmental authorities to be made to other areas of the Building as a result of the improvements indicated by the Working Drawings. Landlord’s approval of the Working Drawings shall not be a representation or warranty of Landlord that such drawings are adequate for any use or comply with any Law, but shall merely be the consent of Landlord thereto. Tenant shall, at Landlord’s request, sign the Working Drawings to evidence its review and approval thereof. After the Working Drawings have been approved, Tenant shall cause the Work to be performed in accordance with the Working Drawings.

4. **Contractors; Performance of Work.** The Work shall be performed only by licensed contractors and subcontractors approved in writing by Landlord, which approval shall not be unreasonably withheld. All contractors and subcontractors shall be required to procure and maintain insurance against such risks, in such amounts, and with such companies as Landlord may reasonably require. Certificates of such insurance, with paid receipts therefor, must be received by Landlord before the Work is commenced. The Work shall be performed in a good and workmanlike manner free of defects, shall conform strictly with the Working Drawings, and shall be performed in such a manner and at such times as and not to interfere with or delay Landlord’s other contractors, the operation of the Building, and the occupancy thereof by other tenants. All contractors and subcontractors shall contact Landlord and schedule time periods during which they may use Building facilities in connection with the Work (e.g., elevators, excess electricity, etc.).

5. **Construction Contracts.**

(a) **Tenant’s General Contractor.** Tenant shall enter into a construction contract with a general contractor selected by Tenant and approved by Landlord (the “**Contractor**”) in a form acceptable to Tenant’s representative for the Work, which shall comply with the provisions of this Section 5 and provide for, among other things, (1) a one-year warranty for all defective Work; (2) a requirement that Tenant’s Contractor maintain general commercial liability insurance of not less than a combined single limit of \$5,000,000, naming Landlord, Landlord’s property management company, Landlord’s asset management company, Landlord’s Mortgagee, Tenant, and each of their respective Affiliates as additional insureds; (3) a requirement that the contractor perform the Work in substantial accordance with the Space Plans and the Working Drawings and in a good and workmanlike manner; (4) a requirement that the contractor is responsible for daily cleanup work and final clean up (including removal of debris); and (5) those items described in Section 5(b) (collectively, the “**Approval Criteria**”). Landlord shall have three business days to notify Tenant whether it approves the proposed construction agreements. If Landlord disapproves of the proposed construction agreements, then it shall specify in reasonable detail the reasons for such disapproval, in which case Tenant shall revise the proposed construction agreements to correct the objections and resubmit them to Landlord within two business days after Landlord notifies Tenant of its objections thereto, following which Landlord shall have two business days to notify Tenant whether it approves the revised construction agreements. If Landlord fails to notify Tenant that it disapproves of the construction agreements within three business days after the initial construction agreements or

two business days after the revised construction agreements (as the case may be) are delivered to Landlord, then Landlord shall be deemed to have approved the construction agreements.

(b) **All Construction Contracts.** Unless otherwise agreed in writing by Landlord and Tenant, each of Tenant's construction contracts shall: (1) provide a schedule and sequence of construction activities and completion reasonably acceptable to Landlord, (2) be in a contract form that satisfies the Approval Criteria, (3) require the contractor and each subcontractor to name Landlord, Landlord's property management company, Landlord's asset management company, and Tenant as additional insured on such contractor's insurance maintained in connection with the construction of the Work, (4) be assignable following an Event of Default by Tenant under this Lease to Landlord and Landlord's Mortgagees, and (5) contain at least a one-year warranty for all workmanship and materials.

6. **Change Orders.** Tenant may initiate changes in the Work. Each such change must receive the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed; however, if such requested change would adversely affect (in the reasonable discretion of Landlord) (a) the Building's Structure or the Building's Systems (including the Building's restrooms or mechanical rooms), (b) the exterior appearance of the Building, or (c) the appearance of the Building's common areas or elevator lobby areas, Landlord may withhold its consent in its sole and absolute discretion. Tenant shall, upon completion of the Work, furnish Landlord with an accurate architectural "as-built" plan of the Work as constructed, which plan shall be incorporated into this Exhibit D by this reference for all purposes. If Tenant requests any changes to the Work described in the Space Plans or the Working Drawings, then such increased costs and any additional design costs incurred in connection therewith as the result of any such change shall be added to the Total Construction Costs.

7. **Definitions.** As used herein "**Substantial Completion,**" "**Substantially Completed,**" and any derivations thereof mean the Work in the Premises is substantially completed (as reasonably determined by Landlord) in accordance with the Working Drawings. Substantial Completion shall have occurred even though minor details of construction, decoration, landscaping and mechanical adjustments remain to be completed.

8. **Walk-Through; Punchlist.** When Tenant considers the Work in the Premises to be Substantially Completed, Tenant will notify Landlord and within three business days thereafter, Landlord's representative and Tenant's representative shall conduct a walk-through of the Premises and identify any necessary touch-up work, repairs and minor completion items that are necessary for final completion of the Work. Neither Landlord's representative nor Tenant's representative shall unreasonably withhold his or her agreement on punchlist items. Tenant shall use reasonable efforts to cause the contractor performing the Work to complete all punchlist items within 30 days after agreement thereon.

9. **Total Construction Costs.** The entire cost of performing the Work (including design of and space planning for the Work and preparation of the Working Drawings and the final "as-built" plan of the Work, costs of construction labor and materials, electrical usage during construction, additional janitorial services, general tenant signage, related taxes and insurance costs, licenses, permits, certifications, surveys and other approvals required by Law, all of which costs are herein collectively called the "**Total Construction Costs**") shall be paid

by Tenant. Upon approval of the Working Drawings and selection of a contractor, Tenant shall promptly execute a work order agreement which identifies such drawings and itemizes the Total Construction Costs and sets forth the Construction Allowance.

10. **Construction Management.** Landlord or its Affiliate or agent shall supervise the Work and coordinate the relationship between the Work, the Building and the Building's Systems.

11. **Construction Representatives.** Landlord's and Tenant's representatives for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative upon written notice to the other:

Landlord's Representative:	CH Realty IV/MK, L.L.C. c/o Seefried Industrial Properties, Inc. 3333 Riverwood Parkway, Suite 200 Atlanta, Georgia 30339 Attention: Property Manager Telephone: 678.904.1906 Telecopy: 404.266.3864
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Tenant's Representative:	_____ c/o _____ _____ _____ Telephone: _____ Telecopy: _____
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12. **Miscellaneous.** To the extent not inconsistent with this Exhibit, Sections 8(a) and 22 of this Lease shall govern the performance of the Work and Landlord's and Tenant's respective rights and obligations regarding the improvements installed pursuant thereto.

SCHEDULE 1

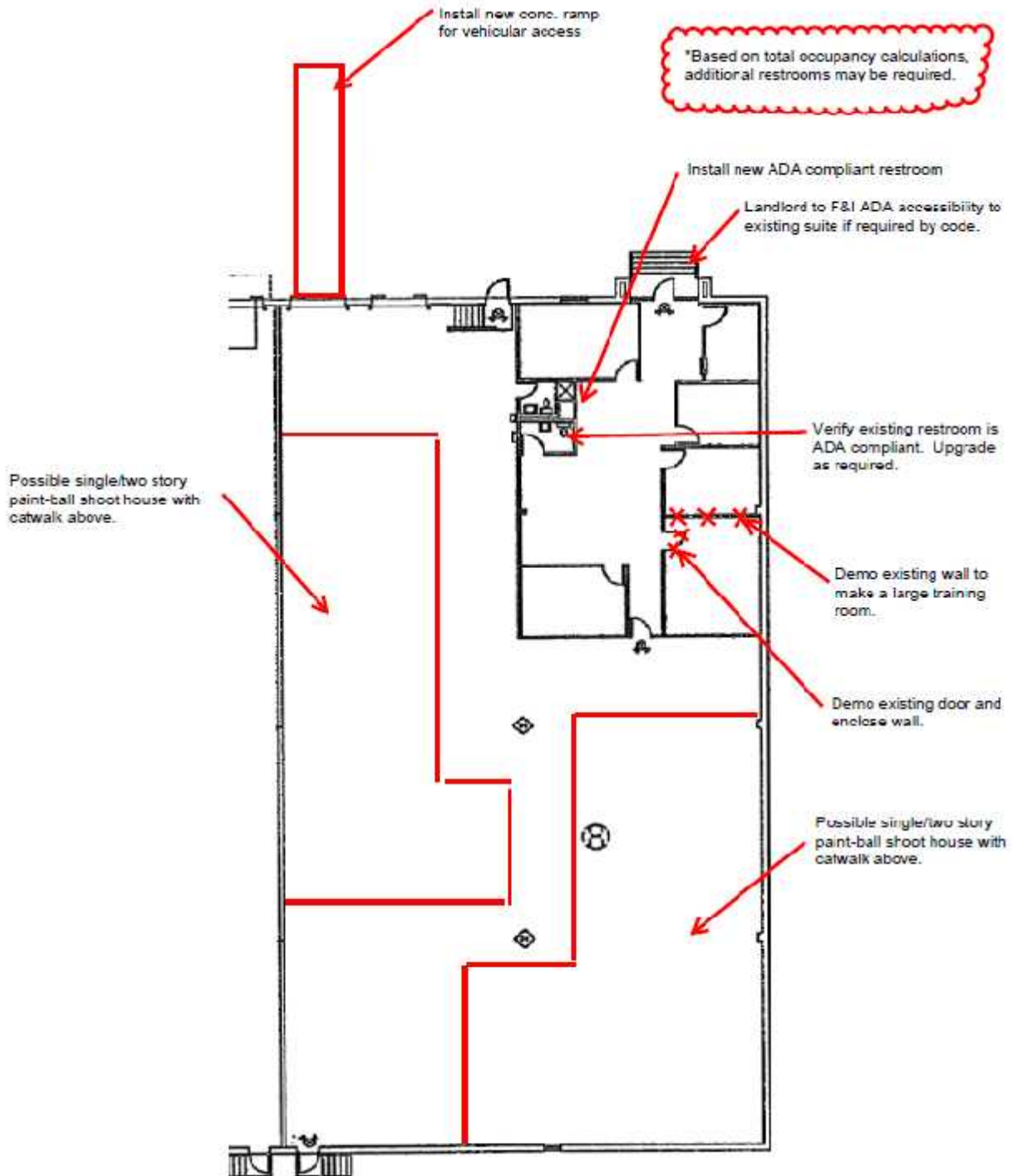


EXHIBIT E

RENT ABATEMENT PROVISIONS

Basic Rent shall be conditionally abated during the first four (4) Lease Months of the initial Term. Commencing with the first day of the fifth (5th) Lease Month of the initial Term, Tenant shall make Basic Rent payments as otherwise provided in this Lease. Notwithstanding such abatement of Basic Rent (a) all other sums due under this Lease, including Additional Rent, shall be payable as provided in this Lease, and (b) any increases in Basic Rent set forth in this Lease shall occur on the dates scheduled therefor.

The abatement of Basic Rent provided for in this Exhibit is conditioned upon Tenant's full and timely performance of all of its obligations under this Lease. If at any time during the Term an Event of Default by Tenant occurs, then the abatement of Basic Rent provided for in this Exhibit shall immediately become void, and Tenant shall promptly pay to Landlord, in addition to all other amounts due to Landlord under this Lease, the full amount of all Basic Rent herein abated.