

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 18, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: LEASE FOR SPACE FOR THE ALEXANDRIA POLICE PATROL, PARKING ENFORCEMENT AND COMMUNITY SUPPORT UNITS

**ISSUE:** Consideration of a five-year lease, with two one-year renewal options, for property located at 2200 Mill Road (American Trucking Association).

**RECOMMENDATION:** That City Council authorize the City Manager to execute, on behalf of the City, and to deliver the lease (Attachment I), in substantially the form presented to the Council with such changes as are approved by the City Manager and the City Attorney. The execution of the lease by the City Manager shall constitute conclusive evidence of his approval, and that of the City Attorney, of any and all changes from the documents made available to Council.

**BACKGROUND:** In May 2003, Council approved two leases for space at 2034 Eisenhower Avenue for the Police Administration and Criminal Investigations Sections. These leases were the first considered in a planned series of actions aimed at mitigating facility space shortfalls and construction impacts at the Public Safety Center (PSC). This proposed lease for 12,922 square feet of office space at 2200 Mill Road (American Trucking Associations) is the final lease component of the plan to alleviate these spaces shortfalls. Execution of the lease will allow the required flexibility within the PSC facility to accommodate internal space moves during the slab replacement project.

This proposed lease was identified during the FY 2004 capital budget deliberations as one element of the overall lease requirement of approximately 55,000 square feet of office space for defined Police programs. The space is within walking distance of the Public Safety Center and would be occupied by 188 employees of the Alexandria Police Department's Patrol, Parking Enforcement and Community Support Units. These projects were recommended and included as part of the FY 2004 operating budget and the FY 2004 - FY 2009 Capital Improvement Program (CIP).

**DISCUSSION:** Locating suitable office space with sufficient parking within a reasonable proximity to the current PSC that will accept police type use continues to be a challenge. During this process staff considered available space in the 200 block of Eisenhower and the 4000 block of Ford Avenue prior to determining that the proposed site best meets the requirements of the program and the budget.

The proposed lease for 12,922 square feet of office space includes 26 parking spaces at 2200 Mill Road. The 26 parking spaces combined with the 50 spaces currently leased from ATA provide a total 76 on-site parking spaces. These spaces would be dedicated to employee parking and the Police fleet vehicles will remain secured at the PSC. The proximity of the PSC to 2200 Mill Road makes this arrangement operationally viable over the next five to seven years.

The proposed lease is for a five year term with two one-year renewal options for a total of seven years. The 2200 Mill Road lease is proposed at \$22 per square foot plus a proportionate share of increases over a 2003 base year for utilities, real estate taxes, and common area maintenance.

The landlord has agreed to make the necessary improvements according to City plans and specifications. The space to be occupied is in good condition and does not require extensive buildout. The anticipated lease commencement date is December 30, 2003. City improvements to the space not included in the Landlord's work are telephone system installation and cabling; furniture; LAN network connection and IT equipment; an internal security system; and the Police Radio System. The Police will have complete control and access to the space on a 24-hour, seven-day-a-week basis.

**FISCAL IMPACT:** The estimated FY 2004 cost for the 12,922 square feet of office space on Mill Road, assuming a December 30, 2003, occupancy date, is \$142,000 and is included in the Approved FY 2004 Police Department Operating budget.

The capital build-out costs for the leased space are estimated at \$200,000 including the technology, security and communications costs, and are included as part of the Approved FY 2004 - FY 2009 CIP.

**ATTACHMENT:** 2200 Mill Road Lease

**STAFF:**

Michele Evans, Assistant City Manager

Edward Mandley, Director, Department of General Services

Peter Geiling, Deputy Director, Department of General Services

## DEED OF LEASE

THIS DEED OF LEASE, made this \_\_\_ day of June, 2003, by and between AMERICAN TRUCKING ASSOCIATIONS, INC., a District of Columbia corporation ("**Landlord**"), and the City of Alexandria, a municipal corporation of the Commonwealth of Virginia ("**Tenant**").

### WITNESSETH:

#### 1. RENTABLE SPACE/PREMISES.

1.01. In consideration of the rents, mutual covenants and agreements set forth in this Deed of Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, for a term and upon the conditions set forth in this Deed of Lease, the premises consisting of approximately twelve thousand, nine hundred and twenty-two (12,922) square feet of rentable space in (the "**Premises**") on the second floor of the office building located at 2200 Mill Road, Alexandria, Virginia 22314 (the "**Building**"), inclusive of a proportionate share of the common areas of same Building. Tenant deems and approves that, for purposes of this Deed of Lease and all related calculations utilizing square footage contained in this Deed of Lease, the square footage of the Premises is twelve thousand, nine hundred and twenty-two (12,922).

1.02. The "**Common Areas**" of the Building shall include rest rooms, mechanical rooms, main lobby entrance area, elevator lobby, and external halls. The Premises is represented on the plan attached hereto as Exhibit A; reserving, however, to Landlord, space for necessary pipes, vents, conduits, wires, and other similar items necessary for building operation and/or leading to and from portions of the Building not hereby leased, which will not unreasonably interfere with Tenant's use of the Premises.

1.03. Tenant further agrees to take good care of the Premises, fixtures, appurtenances (such as doors, floors, walls, and windows), furniture and equipment in and on the Premises.

1.04. Existing furniture and equipment located in the Premises at the time of execution of this Deed of Lease shall be made available to Tenant for purchase or lease at fair market value. Any purchase or lease shall be evidenced by a separate writing.

#### 2. LEASEHOLD IMPROVEMENTS.

2.01. Landlord shall deliver the Premises to Tenant on the date (the "**Commencement Date**") that Landlord has completed, at Landlord's sole cost and expense, carpet cleaning, painting and new ceiling tile and selected demolition of the Premises (the "**Demolition Work**") per Tenant's plan attached hereto as Exhibit B as reasonably approved in writing by Landlord and in compliance with all governmental requirements, including the elimination of any hazardous environmental conditions and the proper handling or disposal of any hazardous substances, or waste materials that are applicable to the Demolition Work. Landlord shall work with Tenant to identify their emergency back-up needs and shall attempt to add these needs to the Landlord's existing back-up system. Should the Landlord not be able to handle all of the Tenants emergency needs with the existing system, it will then become the responsibility of the Tenant. Tenant shall accept the Premises in "as-is" condition, subject to Landlord's performance of the above noted work and Demolition. It is further agreed that, during the "**Term**" (as defined in subsection 3.01 below) of this Deed of Lease, and prior to the Rent Commencement Date, as defined in subsection 4.01.02 of this Deed of Lease, Tenant shall improve and alter the Premises to meet its spacing needs in accordance with the plans and specifications attached hereto as Exhibit C and pursuant to this Deed of Lease. It is further agreed that Tenant's occupation of the Premises on the Rent Commencement Date shall be conclusive acknowledgement on Tenant's part that the Premises are in

good and tenantable condition.

2.02. In this Deed of Lease, the term "Improvements" means any alteration, decoration, addition, installation, modification, and improvement in and to Premises, performed by Tenant during the Term of this Deed of Lease. Such Improvements shall be conducted by and/or under the direction of Tenant or individuals contracted by Tenant, including, but not limited to, the general contractor, construction manager, subcontractor(s), and architect, in accordance with this Deed of Lease and the specifications and plans agreed to in writing prior to any performance of the Improvements, by Tenant and Landlord, whose approval will not be unreasonably withheld or delayed. However, Tenant must use Landlord's sprinkler, controls and fire/life safety subcontractors, and structural and mechanical engineers. All such Improvements specifications and plans shall meet all applicable codes, and all Improvements made, whether structural or otherwise, in or to the Premises or any part thereof, shall satisfy governmental (Federal, state and local) statutes, rules, regulations, ordinances, or orders. All Improvements, including without limitation paneling, partitions, railings, mezzanine floors, galleries, and the like, shall, unless Landlord elects otherwise, become the property of Landlord and shall remain upon, and be surrendered with the Premises, as a part thereof, at the end of the term hereof. Before commencing work on the Improvements, Tenant shall (a) give Landlord at least five days written notice of the proposed commencement of work on Improvements in order to give Landlord an opportunity to prepare, post and record such notice as may be permitted by law to protect Landlord from having its interest in the Premises or the Building subject to a mechanic's lien and (b) shall secure, at Tenant's own expense, a completion and lien indemnity bond, satisfactory to Landlord, for said work. Any mechanic's lien filed against the Premises or against the Building or the land upon which the Building is located for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, shall be discharged by Tenant, by bond or otherwise.

2.03. Tenant shall bear all costs for Improvements under this Deed of Lease. If the costs for Improvements are fronted by the Landlord, the costs for the Improvements shall be amortized over the Term of this Deed of Lease at a rate of seven per cent (7%) per annum and shall be paid monthly in addition to the base rental rate.

3. **TERM.** 3.01. Subject to the Landlord's and Tenant's rights to terminate this Deed of Lease as set forth in this Deed of Lease, the Term of this Deed of Lease shall commence on the Commencement Date, as defined in subsection 2.01 above, and shall terminate at midnight on that date which is five (5) years after the "Rent Commencement Date," as such term is defined in subsection 4.01.02 below.

3.02. Provided that Tenant is not in Default, Tenant shall have the right and option to extend this Deed of Lease for a period of two (2) years commencing on the day following the expiration of the initial Term of this Deed of Lease. The extension shall be upon all of the same terms and conditions contained in this Deed of Lease, and the Adjusted Base Annual Rent shall continue to be adjusted according to subsection 4.01.02. In order to exercise this option, Tenant must give Landlord written notice of such exercise not later than one hundred eighty (180) days prior to the date on which the initial Term is to expire.

3.03. The parties agree that Landlord shall retain the right to terminate this Deed of Lease on October 1, 2004 or anytime thereafter with not less than one hundred and eighty (180) days' notice to Tenant of Landlord's intent to terminate. Should Landlord exercise its right to terminate and gives Tenant one hundred and eighty (180) days' notice, as set forth above, Landlord shall pay Tenant, upon Tenant's vacating the Building, a termination fee equal to Two Dollars (\$2.00) per rental square foot of the Premises. Should Landlord exercise its right to terminate and gives Tenant more than one hundred eighty (180) days' but less than three hundred sixty (360) days' notice, Landlord shall pay Tenant, upon Tenant's vacating the Building, a termination fee equal to One Dollar (\$1.00) per rental square foot of

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the Premises. No termination fee shall be paid if notice of three hundred sixty (360) days or more are given to Tenant of Landlord's intent to terminate. The termination fee to be paid by Landlord to Tenant shall also not be applicable if Tenant exercises any option to terminate under this Deed of Lease, or if this Deed of Lease terminates due to Tenant's default.

3.04. Termination Due to Appropriations.

(a) Appropriation by City. It is acknowledged by the parties hereto that there is governmental policy which requires a termination clause based on yearly appropriation for the Tenant's budget. Therefore, the Tenant's continued occupancy of the Premises for the full Term is dependent upon the appropriation of funds for the leasing of the Premises at the beginning of each fiscal year of the City of Alexandria. In the event that funds are not appropriated for the leasing of the Premises, Tenant shall furnish Landlord with a written notice from Tenant's Budget Office that funds were not appropriated by the City of Alexandria. This notice shall be given to Landlord not less than forty-five (45) days prior to the beginning of the fiscal year involved, or if approval of the final budget for such fiscal year is not obtained at least fifty (50) days prior to the beginning of any applicable fiscal year, then within five (5) days after approval of the final budget for the fiscal year involved. In the event that funds are not appropriated for the leasing of the Premises, then, upon payment of the Liquidated Damages described below, this Lease shall become null and void and this Lease shall terminate at the end of the then current fiscal year. In such event, Tenant shall vacate the Premises prior to the beginning of the next City of Alexandria fiscal year.

(b) Liquidated Damages. In the event that Tenant shall give Landlord such notice of failure by the City to appropriate funds for the leasing of the Premises, and intention to terminate the Lease, then, on or before the effective date of such termination, Tenant shall pay to Landlord, as liquidated damages and not as a penalty (the "Liquidated Damages") an amount equal to the sum of (i) the unamortized portion of the cost of the initial leasehold improvements made by Landlord plus any commissions paid by Landlord in connection with this Lease (which amount has been determined to be \_\_\_\_\_) amortized over the Lease Term of five (5) years, plus (ii) Rent for six (6) months following the effective date of such termination.

4. RENT. 4.01. Tenant covenants and agrees to pay rent to Landlord during the Term of this Deed of Lease, without notice, demand, or invoice, and without offset, abatement or reduction, and without deductions, setoff or counterclaim, except as otherwise provided herein, as follows:

4.01.01. The annual base rent to be paid by Tenant to Landlord shall be Twenty Two Dollars (\$22.00) per rentable square foot of the Premises, as described in subsection 1.01 above, per year of this Deed of Lease (the "Base Annual Rent") and shall be paid in equal monthly installments of Twenty-Three Thousand, Six Hundred and Ninety Dollars (\$23,690) during the first year of this Deed of Lease's Term, payable in lawful United States currency, and commencing on the Rent Commencement Date.

4.01.02. (a) Upon the first anniversary of the Rent Commencement Date, as herein defined, and each anniversary of the Rent Commencement Date thereafter, the Base Annual Rent to be paid by Tenant to Landlord for the Premises shall be the greater of the Base Annual Rent and the Adjusted Base Annual Rent, the Adjusted Base Annual Rent as determined by the following formula using the Consumer Price Index ("CPI"), as further defined in subsection 4.01.02(b) below:

*Multiply Base Annual Rent by the fraction obtained from dividing the  
CPI as of the Renewal Date by the CPI as of Rent Commencement Date* ("CPI Adjusted BAR")

<i>Subtract the Base Annual Rent from the CPI Adjusted BAR</i>	<i>("BAR Difference")</i>
<i>Multiply <u>BAR Difference</u> by 40%</i>	<i>("40% Total")</i>
<i>Add the <u>40% Total</u> to the Base Annual Rent</i>	<i>("Adjusted Base Annual Rent")</i>

(b) The CPI means the "Index" now known as the "United States Bureau of Labor Statistics, Revised Consumer Price Index for All Urban Consumers (CPI-U, All Items for Washington, D.C. SMSA (1967=100))." In the event the CPI is discontinued, ceases to incorporate a significant number of the items now incorporated therein, or if a substantial change is made in such CPI, the parties hereto shall attempt to agree on an alternative formula to achieve the Adjusted Base Annual Rent.

(c) The "Rent Commencement Date" shall be the earlier of the date on which the Tenant first occupies the Premises and January 1, 2004, the later being contingent upon Landlord's delivery of the demolished Premises pursuant to the Demolition Plan by no later than thirty (30) days following the execution of this Deed of Lease. Should Landlord fail to deliver the demolished Premises to Tenant by the thirtieth (30<sup>th</sup>) day following the execution of this Deed of Lease, and should Tenant fail to occupy the Premises prior to January 1, 2004, the January 1, 2004 Rent Commencement Date shall be extended one day for each day past the thirtieth (30<sup>th</sup>) day following the execution of this Deed of Lease that Landlord fails to deliver the Premises, e.g., if this Deed of Lease is executed on November 1, 2003, and Landlord delivers the demolished Premises to Tenant on December 15, 2003, and Tenant does not occupy the Premises before January 1, 2004, the Rent Commencement Date shall be January 15, 2004.

(d) Within fifteen (15) business days after the occurrence of the Rent Commencement Date, Landlord and Tenant shall execute a First Amendment to the Deed of Lease (substantially in the form of Exhibit D attached hereto and made a part hereof) setting forth the Rent Commencement Date and the Lease Expiration Date.

4.01.03. "Additional Rent" shall mean Tenant's Proportionate Share of Operating Expenses and taxes required to be paid by Tenant hereunder, the amortized costs of Improvements as set forth in subsection 2.03, and any lease of furniture payments as set forth in subsection 1.04. The term "Rent" shall mean Base Annual Rent, Adjusted Base Annual Rent and Additional Rent.

4.01.04. Tenant agrees to pay to Landlord all monthly installments of Rent due, on or before the first day of each calendar month during the Term of this Deed of Lease, except that, upon the execution of this Deed of Lease, Tenant shall pay Landlord in advance the first month's Base Annual Rent payment of \$23,690 ("Advance Rent"). All payments of Base Annual Rent, Adjusted Base Annual Rent, Additional Rent, and Advance Rent shall be made payable to Landlord or to such other such person, firm or corporation as Landlord may designate in writing, and shall be made to Landlord at Landlord's Address as set forth in subsection 22.05 below or to such other party or at some other office as Landlord may designate from time to time by written notice to Tenant.

If the Rent Commencement Date shall occur on a day other than the first day of a calendar month, the Base Annual Rent for the period commencing with the Rent Commencement Date until the first date of the following month shall be apportioned on a pro rate basis at the rate of one-thirtieth (1/30<sup>th</sup>) of the monthly installment of Base Annual Rent.

If any monthly installment or partial installment of Rent or any other sum payable to Landlord is not received by Landlord on or before the seventh (7<sup>th</sup>) day following the date such payment is due and payable, then Tenant shall pay a late charge equal to ten percent (10%) of such payment due and payable. Such payment and any such late charge shall bear interest at a per-annum rate of eighteen percent (18%) from the date such payment or charge was due until the date such payment or charge was

paid.

4.01.05. Failure to pay any installment of Rent, late charge or any additional fee, within ten (10) days after written notice by Landlord of non-payment, is a default under this Deed of Lease. Upon such default, Landlord may terminate this Deed of Lease, and the provisions of Section 16 of this Deed of Lease shall apply.

If Tenant is in monetary default of this Deed of Lease, as provided in Section 16 below, more than two (2) times during any twelve (12) month period of the lease term, then Landlord shall have the right to elect whether or not to allow Tenant to cure such repeated default. In the event of Landlord elects not to allow Tenant to cure the repeated default, Landlord shall have all rights and remedies provided herein and by law. In addition, following each second consecutive monthly installment of Rent that remains unpaid for longer than ten (10) days beyond the date on which the same is due and payable, Landlord may, in addition to all other rights and remedies provided herein and by law, require that (i) beginning the first monthly installment of Rent next due, the rent shall no longer be paid in monthly installments but shall be payable in advance on a quarterly basis, and/or (ii) Tenant shall increase the amount of the Security Deposit with Landlord by an amount equal to two (2) months' Base Rent.

If Landlord shall at any time accept Rent after it shall become due and payable, such acceptance shall not excuse delay upon subsequent occasion, or constitute or be construed as a waiver of any or all of Landlord's rights hereunder, and Landlord shall have the same remedies for default in the payment of Base Annual Rent or Adjusted Base Annual Rent.

4.03.4.02. The "Base Year" shall be the calendar year commencing on January 1, 2004. Commencing on the first anniversary of the Rent Commencement Date and continuing thereafter during each calendar year or portion thereof during the Term of this Deed of Lease, and any extensions thereto, Tenant shall pay its Proportionate Share (as defined below) of increases in Operating Expenses (as defined below) over the Base Year to Landlord as Additional Rent, in accordance with subsection 4.01.03 above and without diminution, set-off or deduction. Such payment shall be made in monthly installments of one-twelfth (1/12<sup>th</sup>) of Tenant's Proportionate Share of Operating Expenses for the then-current calendar year, which shall be based on Landlord's reasonable estimate of total Operating Expenses for such calendar year. Landlord shall give Tenant at least sixty (60) days' notice of any increase in Tenant's Proportionate Share of Operating Expenses over the prior year. "Tenant's Proportionate Share" shall be the ratio that the number of rentable square feet of the Premises bears to the total number of rentable square feet of space in the Building (157,074 total building rentable square feet). As of the date of this Deed of Lease, Tenant's Proportionate Share is equal to 8.2 percent (tenant's share divided by the total building rentable square feet). "Operating Expenses" shall mean expenses incurred by Landlord with respect to the ownership, operation, maintenance, security, servicing, or repair of the Building and land, where "Land" is defined as the approximate four (4) acres appurtenant to and under the Building and Parking facilities, including without limitation:

- (1) Costs incurred in connection with the provision of electricity, water, sewer, power, natural gas (if any), oil and other fuels, and other utilities to the Building, and other utilities or energy charges (including surcharges, connection fees and water treatment);

- (2) Management fees and/or on-site office, if applicable, and the salaries, wages, and other direct or indirect personnel costs such as payroll taxes, workman's compensation insurance, and uniforms, dry cleaning and laundering of same, if required, of engineers, superintendents, watchman, security personnel, host or day porter, and other Building maintenance employees, and other employees of Landlord and the employees of Landlord's agents and contractors allocable to the work of such employees, engaged in the operation maintenance, security, servicing or repair of the Building- or Property (if applicable and except as otherwise restricted in the exemptions listed below);
- (3) Costs of service, access control, and maintenance contracts, including, but not limited to contracts for HVAC, elevator, janitorial, and extermination;
- (4) Maintenance, repair, replacement, painting, re-flooring/carpeting, and other Common Area redecoration expenses pursuant to Section 1.02, meeting room facilities, and including without exception chillers, boilers, controls, elevators, and security systems;
- (5) Costs incurred in connection with the operation, maintenance and repair of all parking areas, garages and related facilities serving the Building;
- (6) Depreciation for capital expenditures made by Landlord to reduce operating expenses if Landlord reasonably estimates that the annual reduction in operating expenses or exceeds such depreciation or to comply with legal or insurance requirements or the requirements of the holder of any Mortgage, together with interest at the rate paid by Landlord on any fund borrowed for such capital expenditures;
- (7) Charges for janitorial, cleaning, access control, window cleaning, caulking, and snow and trash removal services;
- (8) Charges allocated by or to Landlord and assessments imposed, including by any organization now or hereafter established to manage or maintain common areas and facilities of the Building, including charges allocated or assessments imposed to finance capital improvements or repairs in such common areas;
- (9) Any business, professional and occupational license fees, tax and insurance premiums payable by Landlord with respect to the Building;
- (10) Reasonable reserves for replacements, repairs and contingencies;
- (11) Any cost or expense incurred by Landlord in connection with providing (directly or indirectly) transportation assistance or service to or from the Building or in administering any transportation management program if required by any governmental agency or instrumentality, and for which Tenant shall only be responsible for its proportionate share if Tenant is granted use of same;
- (12) Any other expense incurred by Landlord in owning, managing, maintaining, repairing, or operating the Building or Land, or allocated by or to Landlord or the Building or Land for managing, operating maintaining or repairing common areas and facilities of the Building or Land, including without limitation, lobby, meeting rooms, sidewalks, driveways, parking facilities, roadways, grounds, and exterior window cleaning.

The following items shall be excluded from Operating Expenses:

- (1) Expenses resulting from the negligence or willful misconduct of Landlord, its agents, contractors or employees;
- (2) Legal fees arising out of the construction, operation, use, occupation or maintenance of the Building, or enforcement of provisions of any agreements affecting the Building, and legal fees incurred in the negotiations of leases with other Building tenants or in litigation with other Building tenants;
- (3) Architectural fees and acquisition of "Fine Art" or specialty decorative items;
- (4) Costs for which Landlord is reimbursed by its insurance carrier or any other party;
- (5) Any reserves for bad debts or rent loss;
- (6) The cost of any services or benefits provided to other tenants in the Building which are not provided to Tenant;
- (7) That pro rata portion of the salaries and compensation of Landlord's employees that is not directly attributable to Building support, maintenance, and security.
- (8) Ground rent;
- (9) Fees for services rendered with respect to the Building by entities controlled by or under common control with Landlord to the extent that such fees exceed the market rate payable for such services if rendered by unrelated third parties;
- (10) Fines, penalties, late payment charges and interest;
- (11) Costs of repairs or replacements caused by the exercise of any condemnation rights by any public or quasi public authority to the extent that Landlord receives compensation for same from the condemning authority;
- (12) Inheritance, estate, succession, transfer, gift, special tax assessments, excess profit taxes, profit tax or capital levy payable by Landlord or similar taxes on Landlord's business;
- (13) That pro rata portion of any rent paid for Landlord's leasing office, or any other offices or spaces of Landlord or any related entity, unless otherwise stated in this Deed of Lease.
- (14) Charges for utilities for tenant space in the Building, unless otherwise stated in this Deed of Lease;
- (15) Any costs associated with any concession granted to other tenants in the Building (e.g., moving expenses);
- (16) All payments related to the sale, financing, or leasing of the Building; and
- (16) Costs arising from the presence within the Building of "**Hazardous Materials.**"

For purposes of this Deed of Lease, "**Hazardous Materials**" shall mean any substance or material defined or designated as a hazardous or toxic waste, material or substance, or other similar term, by any

federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time.

If at any time during the Term, less than ninety-five percent (95%) of the total rentable square feet of office space in the Building is occupied by tenants, the amount of Operating Expenses for such calendar year shall be deemed to be the amount of Operating Expenses as reasonably estimated by Landlord that would have been incurred if the percentage of occupancy of the Building during such calendar year was ninety-five percent (95%).

Within one hundred twenty (120) days after the expiration of each calendar year during the Term, Landlord shall furnish to Tenant a statement (the "Expense Statement") showing the actual Operating Expenses for such calendar year. In case of an underpayment, Tenant shall, within thirty (30) days after the receipt of such statement, pay to Landlord an amount equal to such underpayment. In case of an overpayment, Landlord shall credit the next monthly rental payment by Tenant with an amount equal to such overpayment. Additionally, if this Deed of Lease shall have expired, Landlord shall apply such excess against any sums due from Tenant to Landlord and shall refund any remainder to Tenant within one hundred and twenty (120) days after the expiration of the Term.

The Expense Statement shall be conclusive and binding on Tenant, unless objected to in writing by Tenant within one hundred and twenty (120) days following Tenant's receipt thereof, at which time Tenant shall have the right, at its sole expense, to have Landlord's books and records relating to Operating Expenses and/or Real Property Taxes audited by a certified public accountant (CPA) designated by Tenant. Such CPA shall be required to sign a confidentiality agreement and shall only be permitted to disclose to Tenant the difference, if any, between the amount of Operating Expenses reported in the Expense Statement and the Operating Expenses determined by the CPA during the time period in question (the "Discrepancy"). If such audit proves that the Discrepancy represents an overpayment by Tenant of greater than five percent (5%) of actual Operating Expenses, then Landlord shall pay the actual costs of such audit.

4.03: In addition to Tenant's Proportionate Share of Operating Expenses, Tenant shall, commencing on the first anniversary of the Rent Commencement Date and continuing thereafter during each calendar year or portion thereof during the Term of this Deed of Lease, or extensions thereto, pay as Additional Rent to Landlord, without diminution, set-off or deduction, Tenant's Proportionate Share of increases in Real Estate Taxes (as defined below) over the Base Year (as defined in 4.02). Such payment shall be made in monthly installments of one-twelfth (1/12<sup>th</sup>) of Tenant's Proportionate Share of Real Property Taxes for the then-current calendar year, which shall be based on Landlord's reasonable estimate of total Real Estate Taxes for such calendar year. Landlord shall give Tenant at least sixty (60) days' notice of any increase in Tenant's Proportionate Share of Real Estates over the prior year.

"Real Estate Taxes" shall mean all real taxes including general and special assessments, ordinary or extraordinary, foreseen or unforeseen, assessed, levied or imposed upon the Landlord or the Building or the Land, or assessed, levied or imposed upon the fixtures, machinery, equipment or systems in, upon or used in connection with the operation of the Building or the Land under the current or any future taxation or assessment system or modification of, supplement to, or substitute for such system. Real Estate Taxes shall include all reasonable expenses (including, but not limited to, attorneys' fees, disbursements and actual costs) incurred by Landlord in obtaining or attempting to obtain a reduction of such taxes, rates or assessments, including any legal fees and costs incurred in connection with contesting or appealing the amounts or the imposition of any Real Estate Taxes. In the event Real Estate Taxes (including special assessments) may be paid in installments, they may be paid in installments or lump sum, at Landlord's election (and in such event Real Estate Taxes shall include such installments

and interest paid on the unpaid balance of the assessment, or the entirety thereof, as applicable). The foregoing notwithstanding, Real Estate Taxes shall not include: (i) any franchise, corporation, income or net profits tax which may be assessed against Landlord, (ii) transfer taxes assessed against Landlord, (iii) penalties or interest on any late payments of Landlord, and (iv) personal property taxes of Tenant.

If at any time or times during such calendar year it appears to Landlord that Tenant's Share of Real Estate Taxes for such calendar year will vary from Landlord's estimate by more than five percent (5%) on an annualized basis, Landlord may, by sixty (60) days' written notice to Tenant, revise its estimate for such calendar year and Tenant's estimated payments hereunder for such calendar year shall thereupon be based on such revised estimate.

In the event Tenant has overpaid Landlord for Tenant's Share of the Real Estate Taxes, and such overpayment has been verified, Landlord shall, at Tenant's discretion, refund Tenant the amount of the overpayment within thirty (30) days of the date Landlord first became aware of such verified overpayment, or shall credit such verified overpayment towards Tenant's next month's Rent; however, should Tenant be delinquent in any Rent, Additional Rent, or other monies owed to Landlord, such verified overpayment shall automatically be applied to such outstanding amounts.

In the event Tenant has underpaid Landlord for Tenant's Share of the Real Estate Taxes, and such underpayment has been verified, Tenant shall pay Landlord the amount of underpayment within thirty (30) days of the date Tenant is first notified of such underpayment.

4.04. In addition to Tenant's Proportionate Share of Operating Expenses and Real Estate Taxes, as set forth above, Tenant shall pay, prior to delinquency, all personal property taxes payable with respect to the property of Tenant located in the Premises or the Building, and shall provide promptly, upon request of Landlord, written proof of such payment.

4.05. In the event that any sales tax or excise tax is imposed by any governmental authority on the rent payable by Tenant hereunder, such sales tax or excise tax shall be paid by Tenant.

**5. USE OF PREMISES.** 5.01. The Premises shall be used by the Tenants solely for the purpose of operating therein headquarters, administrative and office functions associated with the Alexandria Police Department, including, but not limited to Patrol Section, and Parking and Traffic Section; *provided, however, that no use of the Premises shall be made for the detention (other than investigative detention; provided, however, that such investigative detention shall not disrupt the preservation of good order in the building or disturb the other tenants' and occupants' quiet enjoyment of the building), housing or processing of suspects, prisoners or other persons, including magisterial activities such as the booking or release of prisoners.* No other use may be made of the Premises without the express written consent of the Landlord.

**6. RULES AND REGULATIONS.** 6.01. Tenant, its officers, and invitees, as herein defined, shall abide by and observe the rules and regulations attached hereto as Exhibit E. [**"Invitee"** shall mean any invitee, agent, employee, subtenant, assignee, contractor, client, family member, licensee, customer or guest of Tenant]. Landlord reserves the exclusive right to revise or amend said Rules and Regulations, including the adoption of additional Rules and Regulations, if necessary. All revisions, amendments or deletions of the Rules and Regulations shall be effective thirty (30) days following written notice of such changes to Tenant, and shall not be inconsistent with the provisions of this Deed of Lease. Nothing contained in this Deed of Lease shall be construed as imposing upon the Landlord any duty to enforce such rules or any condition or covenant contained in any other lease against any other tenant, and Landlord shall not be liable to Tenant for the violation of such rules and regulations by any other tenant or its

invitees. Landlord shall not enforce any rule or regulation in a manner that discriminates against Tenant.

**7. UTILITIES AND SERVICES.** 7.01. Landlord agrees to furnish at no additional charge to Tenant: (i) heat and air conditioning twenty-four hours a day, seven days a week at a comfort level provided during the normal building hours of 8:00 a.m. to 6:00 p.m. Perimeter office units will provide after-hours heating and cooling . Monday through Friday; (ii) electricity for lighting purposes and operation of Tenant's equipment used and installed in accordance with the terms of this Deed of Lease; (iii) elevator service; and (iv) janitorial, char and trash removal services for the floor's Common Areas, Monday through Friday of each week except for holidays observed by Landlord, and in a manner befitting similar Class "A" office buildings in the Old Town Alexandria market. Any char and janitorial service required for other than Building standard finishes (such as glass partitions, wood flooring, private restrooms, private showers, etc.) shall be subject to charges as Additional Rent.

7.02. Landlord reserves the right to interrupt, curtail, stop, or suspend all services including, but not limited to, those stated in subsection 7.01 above when necessary by reason of accident or emergency, or for repairs, alterations, replacements, or improvements in the reasonable judgment of Landlord. Landlord shall have the right to remove the elevator from service as the same shall be required for moving freight, or for servicing or maintaining the elevator or the Building. There shall be no diminution or abatement of rent or other compensation due from Tenant to Landlord hereunder, except as provided below, nor shall this Deed of Lease be affected or any of Tenant's obligations hereunder reduced, and Landlord shall have no responsibility or liability for any such interruption, curtailment, stoppage, or suspension of services or systems as in this subsection 7.03 above provided, except that Landlord shall exercise reasonable diligence to eliminate cause of same. Notwithstanding the foregoing, in the event any utility service or other service referenced herein shall be interrupted for a period of more than ten (10) business days, and such interruption is not due to factors beyond Landlord's reasonable control, then Rent and all other charges required hereunder shall abate until such services are fully restored.

**8. MAINTENANCE AND REPAIRS.** 8.01. Subject to casualty or condemnation, Landlord shall, at its expense, use reasonable efforts to maintain, repair and keep in clean, safe, sanitary, and good operating condition and appearance, during the term of this Deed of Lease, all structural parts of the Building including the exterior and roof of the Building, the public lobbies, hallways, all other common areas of the Building, all heating, air-conditioning, and ventilation systems and units, all plumbing and toilet equipment and pipes, all electrical equipment and wiring, all Building mechanical systems, equipment and wiring and all other Building facilities and equipment that are used in or needed for the operation of either the Building or the Premises. However, Landlord shall not be responsible for (1) the repair of damages caused by the negligence, misuse and/or intentional malicious acts or omissions of Tenant, its agents, officers, employees, visitors, licensees, contractors, or suppliers, and/or (2) the repair and maintenance of items installed for or by Tenant which are not of Building standard materials or fixtures not typically utilized in the remainder of the Building, the maintenance and repair of which shall be the responsibility of Tenant. Subject to subsection 7.03 above, there shall be no allowance to Tenant for a diminution of rental value and no liability on the part of Landlord by reason of inconvenience, annoyance or injury to business.

8.02. Except to the extent of Landlord's obligations pursuant to subsection 8.01 above and as may already have been stated, Tenant agrees to keep and maintain the Premises and the fixtures and equipment therein in good, order, clean, safe and sanitary condition and good repair and shall make repairs thereto.

8.03. Tenant will give Landlord immediate notice of any defects of breakage in the structure,

equipment or building fixtures in the Premises. Tenant will not do or permit anything to be done in Premises or the Building or bring or keep anything therein which shall cause cancellation of insurance or in any way increase the risk of fire therein, or which would conflict with the fire laws or regulations, or with any insurance policy upon the Building or any part thereof, or with any statutes, rules or regulations enacted or established by the Commonwealth of Virginia, the City of Alexandria, the Federal government, or a quasi-governmental entity, as further set forth in subsection 15.04 below.

8.04 Tenant shall provide janitor service to and for the Premises, at its cost and expense, without Landlord's prior written consent, provided that the scope of such services shall be at least those set forth in Exhibit E attached hereto and Landlord shall have the right to inspect the compliance by Tenant to such standards and to assess the cleanliness of the Premises, upon forty-eight (48) hours prior notification to Tenant. Landlord shall provide passenger elevator service 24 hours a day, 7 days a week and shall provide freight elevator service during Normal Business Hours.

9. **PARKING.** 9.01. Throughout the term of this Deed of Lease, Tenant shall have a right to use two (2) unreserved parking spaces per one thousand (1,000) rentable square foot of Premises, totaling twenty-six (26) spaces. Included in the above allotment, Tenant shall be entitled to two (2) reserved undercover parking spaces, as assigned by Landlord, during the term of this Deed of Lease.

10. **SIGNAGE.** 10.01. Landlord shall provide a 12" x 12" directional sign displaying Tenant's name and suite number to be located at Landlord's security desk or at some other location in the Building's main lobby as mutually agreed to by the parties. Tenant shall also be permitted to install appropriate signage on its entrance door(s) with the prior written approval of Landlord, which shall not be unreasonably withheld or delayed.

11. **SECURITY/ACCESS.** 11.01. During the term of this Deed of Lease, Landlord shall maintain Building perimeter security during normal Building operating hours, and a secured access system to enter the Building after normal operating hours. On the Commencement Date of this Deed of Lease, Landlord shall provide to Tenant at Landlord's expense, the initial and reasonable allotment of access cards required to access the Building and Premises, but not to exceed the current number of employees of Tenant. Landlord shall charge Tenant for any additional access cards requested by Tenant and supplied by Landlord to Tenant and/or for any lost access cards reported at a direct replacement cost as determined by Landlord.

11.02. Landlord shall permit Tenant to install, at Tenant's sole cost, an electronic security system to control access to the Demised Premises and video monitoring of the parking area. Tenant shall obtain approvals by Landlord prior to any installation, whose permission will not be unreasonably withheld or delayed.

11.03. During the term of this Agreement, Tenant shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days a year. Landlord shall use its best efforts to ensure that at least one elevator is in service at all times, including after normal operating hours, except as required for normal service, maintenance actions, emergency alerts and drills, and other lawfully required interruptions. Landlord shall provide Tenant's employees with the means to access the Premises after normal operating hours during the term of this Deed of Lease as set forth in 11.01 above.

11.04. Landlord may, at any time during Tenant's occupancy, upon forty-eight (48) hours prior notice to Tenant, enter to view the Premises or show the same to others, make repairs to said Building, or exercise any other right of Landlord under this Deed of Lease. Tenant shall provide Landlord with the

means necessary to enter said Premises, without notice in the case of an emergency or as required by law. If Tenant vacates the Premises before the expiration of the term of this Deed of Lease, Landlord shall have the unrestricted right to enter the same after Tenant moving to commence preparations for the succeeding tenant or for any other purpose whatever, without affecting Tenant's obligation to pay rent for the full term.

11.05. Tenant agrees not to obstruct or use the sidewalks, entries, passages, elevators, public corridors, staircases, or other parts of the Building that are not occupied by Tenant for any other purpose than ingress to or egress from the Premises. Telephone distribution boxes of the Tenant, as designated by Landlord, are to remain accessible at all times.

**12. FACILITIES.** 12.01. Tenant shall have access to and use of the cafeteria facilities and second floor janitor's closet for as long as they shall exist in the Building.

12.02. Tenant shall have the right, subject to availability and sufficient notice, to the reasonable use of Landlord's meeting room facilities, specifically designated by Landlord as meeting and conference rooms. Said use shall be at no additional cost and shall be in accordance with the rules and requirements to be established by Landlord to govern the use of said designated rooms. Landlord shall charge tenant for audio-visual equipment use and equipment set-up, which is available, requested by Tenant and supplied by Landlord.

12.03. Landlord shall make available for Tenant's use two hundred (200) square feet of storage space at an additional cost of Twelve Dollars (\$12.00) per square foot of storage space, to be paid to Landlord monthly and simultaneous with Tenant's monthly installments of rent due.

**13. ASSIGNMENT AND SUBLEASE.** 13.01. Tenant shall not, during the term of this Deed of Lease, assign or sublease the Premises in whole or part or its rights or obligations hereunder, or permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, provided that Tenant has not defaulted under this Deed of Lease and subject to Landlord's rights pursuant to subsection 13.04. herein below, Landlord shall not unreasonably withhold its consent to any proposed assignment of this Deed of Lease or subletting of the Premises, provided that (i) the use of the Premises pursuant to such assignment or sublease is in compliance with Section 5 hereof; (ii) the proposed assignee or subtenant is of a type and quality consistent and compatible with a first class office building and with the Building and its tenants; (iii) Landlord is reasonably satisfied with the financial condition of the assignee under any such assignment or the sublessee under any such sublease; and (iv) the initial Tenant remains fully liable as a primary obligor for the payment of all rent and other charges hereunder and for the performance of all its other obligations hereunder. No partial assignment of this Deed of Lease shall be permitted. No assignment or transfer of this Deed of Lease may be effected by operation of law or otherwise without Landlord's prior written consent.

Any assignment, subletting or occupancy, Landlord's consent hereto or Landlord's collection or acceptance of rent from any assignee, subtenant or occupant, shall not be construed as a waiver or release of Tenant from liability hereunder (it being understood that Tenant shall at all times remain primarily liable as a principal and not as a guarantor or a surety) and shall not be construed as relieving Tenant or any assignee, subtenant or occupant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment, subletting or occupancy. Tenant assigns to Landlord any sum due from any assignee, subtenant or occupant of Tenant as security for Tenant's performance of its obligations pursuant to this Deed of Lease. Tenant authorizes each such assignee, subtenant or occupant to pay such sum directly to Landlord if such assignee, subtenant or occupant receives written notice from Landlord

specifying, that such rent shall be paid directly to Landlord. Landlord's collection of such rent shall not be construed as an acceptance of such assignee, subtenant or occupant as a tenant, or a waiver of any default hereunder by Tenant.

All restrictions and obligations imposed pursuant to this Deed of Lease on Tenant or the use and occupancy of the Premises shall be deemed to extend to any subtenant, assignee or occupant of Tenant, and Tenant shall cause such persons to comply with all such restrictions and obligations. Tenant shall not mortgage or hypothecate this Deed of Lease without Landlord's written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion. Tenant shall pay the reasonable expenses (including attorneys' fees, engineer's fees and hourly fees for Landlord's employees and agents) incurred by Landlord in connection with reviewing Tenant request for Landlord to give its consent to any assignment, subletting, occupancy or mortgage, and Landlord's receipt of reimbursement for such expenses from Tenant shall be a condition to Landlord providing its consent to such assignment, subletting, occupancy or mortgage provided, however, that such reimbursement shall not exceed One Thousand Dollars (\$1,000) per request. Such expenses shall be payable as Additional Rent within ten (10) days of Tenant's receipt of a statement therefor.

13.02. If Tenant is a partnership, then any dissolution of Tenant or a withdrawal or change, whether voluntary, involuntary or by operation of law, of partners owning a controlling interest in Tenant shall be deemed an assignment of this Deed of Lease. If Tenant is a corporation or partnership with a corporate general partner, then any dissolution, merger, consolidation or other reorganization of Tenant (or such corporate general partner), or any sale or transfer of a controlling interest of its capital stock, shall be deemed an assignment of this Deed of Lease. If Tenant is a limited liability company or any other type of business entity (other than a partnership or corporation as provided above), then any dissolution, merger consolidation or other reorganization of Tenant, or any sale or transfer of a controlling interest in membership, shares or other form of ownership interest, shall be deemed an assignment of this Deed of Lease. Whether Tenant is a partnership, corporation or any other type of entity, then at the option of the Landlord, a sale of all or substantially all of its assets or a change in its name shall also be deemed an assignment of this Deed of Lease.

13.03. If Tenant desires to assign this Lease or sublet or otherwise transfer all or part of the Premises, then Tenant shall give Landlord written notice ("**Tenant's Request Notice**") of the identity of the proposed assignee or subtenant and its business, all terms of the proposed assignment or subletting, the commencement date of the proposed assignment or subletting (the "**Proposed Commencement Date**"), the areas proposed to be sublet in the event of a sublease (the "**Proposed Sublet Space**") and such other information as Landlord may reasonably request. Tenant shall also transmit therewith the most recent financial statement or other evidence of financial responsibility of such assignee or subtenant and a certification executed by Tenant and such proposed assignee or subtenant stating whether any premium or other consideration is being paid for the proposed assignment or sublease. With respect to any proposed assignment by Tenant or any proposed sublease by Tenant where such sublease constitutes more than thirty percent (30%) of the entire Premises, Landlord agrees to respond in writing to Tenant's Request Notice within thirty (30) days of receipt of such Request Notice. With respect to any proposed sublease by Tenant where such sublease constitutes thirty percent (30%) or less of the entire Premises, Landlord agrees to respond in writing to Tenant's Request Notice within two (2) weeks of receipt of such Request Notice.

13.04. Landlord shall have the right in its sole and absolute discretion to terminate this Deed of Lease with respect to (i) a proposed assignment of this Deed of Lease other than those permitted by subsection 13.06 hereof, or (ii) any proposed sublet space which constitutes more than thirty percent (30%) of the entire Premises, by sending Tenant written notice within thirty (30) days after Landlord's

receipt of Tenant Request Notice. If Tenant proposes a sublet and if the Proposed Sublet Space is more than thirty percent (30%) of the entire Premises but does not constitute the entire Premises and Landlord elects to terminate this Deed of Lease with respect to the Proposed Sublet Space, then (a) Tenant shall tender the Proposed Sublet Space to Landlord on the Proposed Commencement Date as if the Proposed Commencement Date had been originally set forth in this Deed of Lease as the expiration date of the Lease term with respect to the Proposed Sublet Space, and (b) as to all portions of the Premises other than the Proposed Sublet Space, this Deed of Lease shall remain in full force and effect except that the Additional Rent payable pursuant to Section 4 above and the Base Annual Rent and Adjusted Base Annual Rent shall be reduced proportionately.

Should Landlord exercise its right to terminate this Deed of Lease with respect to any Proposed Sublet Space constituting more than thirty percent (30%) of the entire Premises, Tenant shall pay half of all necessary and reasonable expenses related to the construction of demising wall(s). Landlord shall not be responsible in any way for the construction of demising wall(s), the installation of electrical outlets (if otherwise inaccessible), relocation and/or installation of adjoining light fixtures, wiring, HVAC, sprinkler and fire alarm systems, and vents, or other such improvements which are requested by any subtenant of Proposed Sublet Space and/or are required to permit the operation of the Proposed Sublet Space separate from the balance of the Premises by any subtenant of Proposed Sublet Space.

If Tenant assigns this Deed of Lease or if Tenant subleases the Premises and the Proposed Sublet Space constitutes more than thirty percent (30%) of the entire Premises, and if Landlord elects to terminate this Deed of Lease in accordance with this subsection 13.04, then (i) Tenant may, at its discretion, negate Landlord's termination of this Deed of Lease by withdrawing and/or terminating such assignment of the Deed of Lease or sublease of the Proposed Sublet Space, and by notifying Landlord within five (5) business days of Landlord's termination notification, of Tenant's intent to continue performing as Tenant under this Deed of Lease; or (ii) Tenant shall tender the Premises to Landlord on the Proposed Commencement Date and the Lease Term shall terminate on the Proposed Commencement Date.

13.05. In the event that Tenant assigns all or sublets all or any portion of the Premises, Tenant shall pay to Landlord as Additional Rent an amount equal to fifty percent (50%) of the difference between (i) all sums paid to Tenant or its agent by or on behalf of such assignee or subtenant under the assignment or sublease, such amounts adjusted for costs directly related to such assignment or sublease (brokerage commissions, reasonable attorneys' fees, improvement allowance spent for the improvement of the Premises if an assignment or Proposed Sublet Space if a sublease, and rental abatement if paid to subtenant), as amortized over term of such assignment or sublease; and (ii) the Base Annual Rent, Adjusted Base Annual Rent and Additional Rent paid by Tenant under this Deed of Lease and attributable to the portion of the Premises assigned or sublet.

13.06. Notwithstanding anything to the contrary contained in Section 13 hereto, Tenant may, upon at least thirty (30) days' prior written notice to Landlord (the "Affiliate Assignment Notice"), but subject to Landlord's prior written consent (which shall not be unreasonably withheld or delayed), assign this Deed of Lease, or sublet all or portion of the Premises to a Qualified Tenant Affiliate (hereinafter defined), provided that the business operations of the proposed assignee or subtenant (which shall be disclosed in the Affiliate Assignment Notice) does not conflict with any exclusivity or other limitation that may be imposed upon Landlord, and no default exists hereunder and no event exists which event with notice and/or the passage of time would constitute a default hereunder if not cured within the applicable cure period. A "Qualified Tenant Affiliate" shall mean a corporation or other entity which (i) shall control, be controlled by or be under common control with Tenant or which results from a merger or consolidation with Tenant or succeeds to all the business and assets of Tenant; (ii) is of a type and

quality consistent with the first-class nature of the Building; (iii) has the financial capacity and creditworthiness to undertake and perform the obligations of this Deed of Lease or the sublease; (iv) is not a party by whom any suit or action could be defended on the ground of sovereign immunity; (v) in the case of a merger or consolidation, has a net worth and general creditworthiness immediately after such merger or consolidation at least equal to the net worth and general creditworthiness immediately after such merger or consolidation. For purposes of the immediately preceding sentence, "control" shall be deemed to be ownership of more than fifty percent (50%) of the legal and equitable interest of the controlled corporation or other business entity. In the event of any assignment to a Qualified Tenant Affiliate, Tenant shall remain fully liable to perform the obligations of the Tenant under this Deed of Lease, such obligations to be joint and several with the obligations of the Qualified Tenant Affiliate as tenant under this Deed of Lease.

**14. FIRE CLAUSE.** 14.01. This Deed of Lease is made on condition that, if the Premises or any part thereof, or the elevators, hallways, stairways or other approaches thereto, be damaged or destroyed by fire or other casualty from any cause, so as to render said Premises and/or approaches unfit for use and occupancy, a just and proportionate part of the rent, according to the nature and extent of the injury to said Premises and/or approaches, shall be suspended or abated until said Premises and approaches have been put in good condition for use and occupancy. Landlord will proceed at its expense and as expeditiously as may be practicable to repair the damage, unless, because of the substantial extent of the damage or destruction, Landlord should decide not to repair or restore the Premises or the Building, in which event and at Landlord's sole option, Landlord may terminate this Deed of Lease forthwith, by giving Tenant a written notice of its intention to terminate within ninety (90) days after the date of the casualty. Notwithstanding anything to the contrary contained herein, if, following any casualty resulting in damage or destruction to the Premises or Building pursuant to this Section, such damage or destruction shall not be repaired within a period of one hundred eighty (180) days following the date of such damage or destruction, then Tenant shall have the right to terminate this Deed of Lease by notice to Landlord.

14.02. Tenant shall not use bring or keep, or permit to be brought or kept in or at the Building, including but not limited to Rental Space, any flammable, combustible, or explosive fluid, material, chemical or substance, except for small quantities or chemicals used in standard office equipment or O.C. Spray or other personal weapons carried by sworn municipal, federal or state law enforcement officers. Tenant shall promptly notify Landlord of any known malfunctions or absences of fire detection and/or sprinkler systems.

**15. INDEMNIFICATION AND INSURANCE.** 15.01. Landlord, its employees and agents shall not be liable to Tenant, its Invitees, as defined in subsection 6.01 above, or any other person or entity for any damage, compensation, or claim to or by any person or property in or about the Premises, including, but not limited to, injury on or from the approaches, entrances, streets, sidewalks or corridors thereto, interruption in the use of the Premises or any equipment therein, any accident or damage resulting from any use or operation (by Landlord, Tenant or any other person or entity) of elevators or heating, cooling, electrical, sewage, or plumbing equipment or apparatus; termination of this Lease by reason of damage to the Premises or the Building; fire, robbery, theft, vandalism, mysterious disappearance, or any other casualty; actions of any other tenant of the Building or of any other person or entity; failure or inability of Landlord to furnish any utility or service specified in this Deed of Lease; any injury from any environmental hazard whatsoever in, on or about the Premises or the Building or any part thereof; and leakage in any part of the Premises or the Building, or from water, rain, ice, or snow that may leak into, or flow from, any part of the Premises or the Building. Any property stored or placed by Tenant or Invitees in or about the Premises or the Building shall be at the sole risk of Tenant, and Landlord shall not in any manner be held responsible therefore. If any employee of Landlord receives any package or

article delivered for Tenant, then such employee shall be acting as Tenant's agent for such purpose and not as Landlord's agent. For purposes of this Section, the term "Building" shall be deemed to include the Property. Notwithstanding the foregoing provisions of this Section, Landlord shall not be released from liability to Tenant for any damage caused by Landlord's willful misconduct or negligence. Tenant on its own behalf and on behalf of the classes of people identified in this sentence, hereby waives all claims against Landlord, its officers, directors, employees, and agents for any entry into the Premises except for any criminal or negligent conduct committed by or on the behalf of Landlord. Tenant shall immediately notify Landlord of any detectable condition in or about the Premises. Landlord shall not be liable and Tenant hereby waives all claims for damages that may be reasonably caused by Landlord in reentering and taking of possession of the Premises as herein provided.

15.02. Tenant agrees to indemnify and hold harmless Landlord from and against any and all costs, damages, claims, liabilities, or expenses (including without liability attorneys' fees) incurred by or claimed against Landlord directly or indirectly, for any injury or damage to any person or property whatsoever, occurring in, on or about the Premises or any part thereof, or occurring in, on or about the Building or any facilities thereof (including without limitation, lobbies, elevators, stairways, passageways or hallways), the use of which Tenant may have in conjunction with other tenants of the Building, when such entry or damage shall be caused in part or in part by the neglect, willful neglect, act, or omission of any duty with respect to the same by Tenant and its Invitees or as a result of or in any way arising from Tenant's use and occupancy of the Premises or the Building. Any such cost, damage, claim, liability, or expense incurred by Landlord for which Tenant is obligated to reimburse Landlord hereunder shall be deemed Additional Rent. Tenant agrees to indemnify Landlord for all assessments, license fees, taxes, liens, increase in insurance rates, or other liabilities incurred by Landlord to the acts or omissions of Tenant, its officers or Invitees.

Landlord hereby agrees to defend, indemnify and hold Tenant harmless from and against any and all costs, damages, claims, penalties and expenses, including reasonable attorneys' fees and court costs, incurred by or claimed against Tenant, directly or indirectly relating to the use and occupancy of the Premises by Landlord prior to the Commencement Date.

The parties hereto waive any and all rights of recovery, claim, action, or cause of action, against each other, their respective agents, officers, and employees, for any loss or damage that may occur to the Leased Premises or the Building and to all property, whether real, personal, or mixed, located in the Leased Premises or the Building, by reason of fire, the elements, or any other cause normally insured against under the terms of standard fire and extended coverage insurance policies of the type prescribed from time to time for use in respect of the Leased Premises and the Building, regardless of cause or origin, including negligence of the parties hereto, their respective agents, and employees. Each party agrees to provide the other with reasonable evidence of the insurance carrier's consent to such a waiver of subrogation.

15.03. Tenant agrees to procure and keep in force at its expense during the term of this Deed of Lease, or extensions thereto, the following insurance:

15.03.01. Commercial general liability insurance coverage on an "occurrence basis" against claims for personal injury, occurring in or about the Premises, covering the operation of Tenant and any subtenants, licensees, and concessionaires of Tenant, and including, without limitation, bodily injury, death and broad form property damage, in combined single limits of not less than One Million Dollars (\$1,000,000) per occurrence and a Two Million Dollar (\$2,000,000) general aggregate, with an excess (umbrella) liability insurance in the amount of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) annually in the aggregate; provided however, that no such limits

shall be deemed a limitation of the liability of Tenant hereunder, and with coverage to include a per location endorsement; contractual liability recognizing provisions of this Deed of Lease; coverage for independent contractors; auto liability coverage for owned, hired, and non-owned vehicles with a Five Hundred Thousand Dollars (\$500,000) combined single limit; fire legal liability in the amount of Five Hundred Thousand Dollars (\$500,000); and other broad form endorsements that would be carried by a prudent individual conducting a business similar to Tenant's business. Such insurance shall be primary and not contributing to any insurance available to Landlord and Landlord's insurance shall be in excess thereto.

15.03.02. Personal property insurance, insuring all property located in the Premises, including furniture, equipment, fittings, installations, trade fixtures, inventory, fixtures, supplies, and personal property. Such insurance shall be written on a replacement cost basis in an amount equal to one hundred percent (100%) of the full replacement value of the aggregate of the foregoing; it being understood that no lack or inadequacy of insurance by Tenant shall in any event make Landlord subject to any claim by virtue of any theft or loss or damage to any uninsured or inadequately insured property.

15.03.03. During the course of construction of any leasehold Improvements performed by Tenant or on Tenant's behalf to Premises pursuant to this Deed of Lease or any alterations by Tenant until completion thereof, Builder's Risk Insurance on a "special causes of loss basis" (including collapse) on a completed value (non-reporting) form for full replacement value covering all work incorporated in the Building and all materials and equipment in and about the Premises.

15.03.04. Workers' Compensation, employer's liability, occupation disease, employee benefit, and other insurance in the statutory amounts required by the laws of the Commonwealth of Virginia with broad-form all-states endorsement, and with a waiver of subrogation endorsement waving rights of subrogation against Landlord, in form and amount satisfactory to Landlord.

15.03.05. All policies shall be issued by companies having a Best's rating of at least A-XI, unless otherwise required by the Prime Lease (as defined in Section 20 below), the U.S. government, the law, or market changes. All policies shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Tenant which might otherwise result in a forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deduction against Tenant. Tenant will deliver certificates of insurance evidencing each policy to Landlord as soon as practicable after the placing of the required insurance, but not later than ten (10) business days prior to the date Tenant takes possession of all or any part of the Premises (unless otherwise provided above). All policies shall contain an undertaking by their insurers to notify Landlord in writing, by registered or certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in the scope or limits of coverage, cancellation, or other termination thereof. All policies shall name Landlord, Landlord's lender and Gateway South Associates ("Gateway", as defined below) as additional insureds and shall be evidenced by such on a Certificate of Insurance issued to Landlord.

15.04. Tenant will not keep, use, sell or offer for sale in, or upon the Premises any article which may be prohibited by any insurance policy periodically in force covering the Building and the leasehold improvements. If Tenant's occupancy or business in or on the Premises, whether or not Landlord has consented to the same, results in any increase in premiums for the insurance periodically carried by Landlord with respect to the Building or the leasehold improvements, Tenant shall pay any such increase in premiums as additional rent within ten (10) business days after being billed therefore by Landlord.

15.05. If any of the Landlord's insurance policies shall be canceled or cancellation shall be

threatened or the coverage thereunder reduced or threatened to be reduced in any way because the use of the Premises or any part thereof by Tenant or any assignee or subtenant of Tenant or by anyone Tenant permits on the Premises, and, if Tenant fails to remedy the condition giving rise to such cancellation or reduction of coverage, within forty-eight (48) hours after written notice thereof, Landlord may, at its option, either terminate this Lease or enter upon the Premises and attempt to remedy the condition, and Tenant shall promptly pay the cost thereof to Landlord as additional rent. If Landlord is unable or elects not to remedy such condition, then Landlord shall have all of the remedies provided for in this Deed of Lease in the event of Default by Tenant. Notwithstanding the foregoing provisions of this Section 15, if Tenant fails to remedy as aforesaid, Tenant shall be in default of its obligations hereunder and Landlord shall have no obligation to remedy such default.

15.06. All personal property of Tenant, its agents, employees, visitors, licensees, contractors, or suppliers, in and on said Premises, shall be and remain at their sole risk, and Landlord shall not be liable to them for any damage to, loss of, or injury to such personal property [or omission of] or arising from any act of negligence of any other persons, or from any other cause, whether natural or caused by man, except for cause due to the sole negligence of Landlord.

15.07. Landlord shall at all times during the Term hereof maintain in effect policies of insurance covering the Building, in an amount not less than those required under the Prime Lease and existing agreements with Landlord's lender(s).

**16. DEFAULTS.** 16.01. Each of the following events ("Event of Default") shall be a default hereunder by Tenant and a breach of this Deed of Lease: (i) if Tenant shall violate any covenant or agreement providing for the payment of Rent or Additional Rent and such violation shall continue for ten (10) days after written notice by Landlord of non-payment; (ii) if Tenant shall assign, transfer, encumber, sublet or permit the use of the Premises by others without the prior written consent of Landlord; (iii) if Tenant shall be adjudicated as bankrupt, whether voluntarily or involuntarily, or make any general assignment for the benefit of creditors, or take or attempt to take the benefit of any Insolvency, Receivership, or Bankruptcy Act; (iv) if a receiver or trustee shall be appointed for, or to take possession of, all or a substantial part of the property of Tenant or Tenant's leasehold interest, if such possession is not restored to Tenant within thirty (30) days of the taking; (v) if the Premises are vacated or abandoned by Tenant before the expiration or termination of the Term without Tenant having paid the full rental for the remainder of such term (vi) if there be any attachment, execution or other judicial seizure of all or a substantial part of the assets of Tenant or Tenant's leasehold, where such an attachment, execution or seizure is not discharged within thirty (30) days of the filing; (vii) if the estate of Tenant be transferred or passed to, or devolve upon, any other person or corporation by law; or (viii) if Tenant shall be in substantial default in fulfilling any of the material covenants and conditions of this Deed of Lease (other than financial default) and such default shall continue for fifteen (15) days after written notice thereof from Landlord to Tenant, or, if such default cannot be cured within such additional time as is reasonably required, provided Tenant is diligently pursuing such cure.

16.02. In the Event of Default, Landlord shall have the right to terminate this Deed of Lease upon written notice to Tenant. This Deed of Lease shall be considered terminated upon the fifteenth (15<sup>th</sup>) day following receipt of said notice. Immediately upon termination, Landlord shall be entitled to: (i) the retaking and occupation of Premises; (ii) any unpaid Rent, pro-rated, for the period of occupancy, Additional Rent, late charges and fees, all in accordance with Sections 3 and 4 above and this subsection 16.02; (iii) any damages sustained to the Premises to be paid by Tenant; (iv) repayment of a pro-rata percentage of the Improvement Reimbursement, equaling the remaining months of the Deed of Lease divided by total number of months of the Term of this Deed of Lease, multiplied by the Improvement

Reimbursement (the "Improvement Repayment"), and (v) any court costs, leasing commissions, and reasonable attorney fees arising from such default.

16.03. In the event of any default by Tenant as defined in 16.01, Tenant grants to Landlord as security for the performance of Tenant's obligations hereunder, a lien upon and a security interest in Tenant's existing or hereafter acquired personal property, including but not limited to goods, wares, chattels, fixtures, furniture, equipment, inventory and other assets of Tenant (excluding Tenant's personal and business files) which are located in the Premises or Building or used in connection with the business to be conducted in the Premises (in total, the "Assets"). Such lien shall be in addition to Landlord's rights of distraint. Tenant shall promptly upon request from Landlord, provide Landlord with a detailed inventory of all such Assets. Additionally, within five (5) business days after request, Tenant shall execute, acknowledge and deliver to Landlord a financing statement and any other document submitted to Tenant evidencing or establishing such lien and security interest. Tenant hereby specifically waives any and all exemptions that may be allowed by law; and such lien may be enforced in any other lawful manner at the option of Landlord. During any period Tenant is in default under this Deed of Lease, and during the applicable notice and cure periods, Tenant shall not sell, transfer or remove from the Premises any or all of the Assets.

16.04. Landlord's Default. (a) Landlord shall be in default hereunder if Landlord neglects or fails to perform or observe any of the material terms, covenants or conditions contained in this Lease on Landlord's part to be performed or observed. Notwithstanding anything to the contrary contained in the immediately preceding sentence, Landlord shall not be in default unless the neglect or failure is not remedied by Landlord within thirty (30) days after Tenant shall have given written notice to Landlord specifying such neglect or failure, unless such default is of such a nature that it cannot be cured within such thirty (3) day period, in which case no default shall be deemed to have occurred, so long as Landlord shall commence the curing of the default within such thirty (30) day period, and shall thereafter diligently and continuously prosecute during of the same.

(b) Tenant, at any time Landlord is in default hereunder, may avail itself of any legal and equitable remedies available to it. Tenant shall also have the right, at its sole option, to immediately and without notice cure such default for the account, and at the expense, of Landlord. Tenant may recover from Landlord the amount so incurred by Tenant to cure such default. Any such amount shall accrue interest at the rate of eighteen percent (18%) per annum beginning on the tenth day (10<sup>th</sup>) after written notice of the amount due is provided to Landlord.

17. SURRENDER & RESTORATION. 17.01. Unless as otherwise expressly provided for in this Deed of Lease, and most specifically provided for in subsection 16.02 above, Tenant shall have the right and shall be obligated to remove from the Premises, prior to or at the expiration or other termination of this Deed of Lease, all movable furniture, furnishings or equipment installed in the Premises at the expense of and not belonging to Landlord ("Tenant's Property", which may include property belonging to Tenant, Tenant's officers, employees or agents), and to surrender possession of the Premises and all fixtures and furnishings connected therewith in good repair, order and condition in all respects in the same order and condition in which the Premises existed at the Rent Commencement Date, reasonable wear and use thereof and damage by fire, other unavoidable casualty only excepted. Tenant agrees that it will not occupy, retain or allow occupancy or retention by any subtenant or possession of the Premises at any time after the expiration of the Term, without prior written consent of Landlord. If Tenant shall fail to perform any of the foregoing obligations following fifteen (15)-days' written notice to remove Tenant's Property, Tenant's Property shall become the property of Landlord, and shall be surrendered with the Premises as a part thereof. Upon such surrender, Landlord is authorized to sell or dispose of such articles and effects left on the Premises. In the event of sale, the proceeds of any such sale shall be

applied toward the expenses, including but not limited to storage charges, thus incurred, and Tenant agrees to pay any balance promptly.

17.02. All Improvements to the Premises or Building made by either party shall, unless written notice by Landlord is given to the contrary in accordance with this Agreement, immediately become the property of Landlord and shall remain upon and be surrendered with the Premises, as a part thereof at the end of the term hereof without disturbance, molestation or injury.

17.03. In the event that Tenant shall not immediately surrender the Premises upon termination (i.e., hold over), Tenant, at the option of the Landlord, shall become a month-to-month Tenant at one hundred and fifty percent (150%) of the rent that is or would have been in effect during the last month of the Term of this Deed of Lease, subject to all of the terms, conditions, covenants, and agreements of this Deed of Lease. After said termination of Term and hold over is granted to Tenant upon a month-to-month basis, Tenant shall give to Landlord at least thirty (30) days' written notice of any intention to quit the Premises, and Tenant shall be entitled to thirty (30) days' written notice by Landlord to quit the Premises, unless Tenant is in default hereunder, in which event Tenant shall not be entitled to any notice to quit, the usual thirty (30) days' written notice to quit being hereby expressly waived. Notwithstanding the foregoing provisions of this subsection, in the event that Tenant shall hold over after termination, then at any time prior to Landlord's acceptance of rent from Tenant as a monthly Tenant hereunder, Landlord, at its option, may forthwith re-enter and take possession of the Premises without process, or by any legal process in force in the Commonwealth of Virginia. Tenant shall be liable to Landlord for all damages which Landlord suffers because of any holding over by Tenant, and Tenant shall indemnify Landlord against all claims made against Landlord resulting from Landlord's delay in delivering possession of the Premises to any other tenant, prospective Tenant, owner, or prospective owner.

**18. CONDEMNATION.** 18.01. This Deed of Lease shall be terminated and the rental payable hereunder shall be abated to the date of such termination in either of the two following events, namely: (i) the forcible leasing, condemnation or taking of the Premises or any part thereof by any competent authority under right of eminent domain for any public or quasi-public use or purpose; and (ii) the condemnation by competent authority of any public or quasi-public use or purpose of twenty-five percent (25%) or more of the Building in which the Premises are located. The forcible leasing by any competent authority of any portion of said Building other than the Premises will have no effect whatever upon this Leasing. In case of any taking or condemnation, whether or not the term of this Deed of Lease shall cease and terminate, the entire award shall be the property of Landlord, and Tenant hereby assigns to Landlord all its right, title and interest in and to any such award. Tenant, however, shall be entitled to claim, prove and receive in the condemnation proceeding such awards as may be allowed for fixtures and other equipment installed by it, but only if such awards shall be made by the Court in addition to the award made by it to Landlord for the land and improvements or part thereof so taken.

**19. SUBORDINATION CLAUSE.** 19.01. Subject to the provisions herein set forth, this Deed of Lease shall subordinate in lien to any first mortgage or deed of trust which is now or shall be hereafter placed upon the property of which the Premises are a part and all amendments and extensions thereof; provided, however, that in the event the Beneficiary under any Deed of Trust against the property shall require this Deed of Lease to be superior and paramount to such Deed of Trust, Tenant agrees to execute and deliver any instruments reasonably required for such purpose.

19.02. Tenant shall, without charge, within ten (10) business days after receipt of request by Landlord, execute, acknowledge and deliver to Landlord a written estoppel certificate certifying to Landlord, or mortgagee, assignee of a mortgagee, or any purchaser of the Building, or any other person designated by Landlord, as of the date of such estoppel certificate, the following: (i) whether Tenant is in

possession of the Premises; (ii) the term of the Deed of Lease has commenced and the full rental is now accruing; (iii) that Tenant has accepted possession of the Premises and is currently operating its business therein; (iv) that any improvements required by the Deed of Lease have been made to the satisfaction of Tenant; (v) whether there are then existing any set-offs, charges, liens, claims, or defenses against the enforcement of any right hereunder including rent or other charges due (if so, specifying the same in detail); (vi) that Tenant has no knowledge of any then uncured defaults on the part of Landlord of Landlord's obligations under this Deed of Lease (or, if Tenant has knowledge of any such uncured defaults, specifying the same in detail); (vii) that Tenant has no knowledge of any event having occurred that authorizes the termination of this Deed of Lease by Tenant (or, if Tenant has such knowledge, specifying the same in detail); and (viii) the address to which notices to Tenant should be sent are as set forth in the Deed of Lease (or, if not, specifying the correct address).

**20. PRIME LEASE.** 20.01. Landlord is the Lessee under that certain lease dated March 17, 1982 between Landlord and Gateway South Associates ("Gateway"), a Virginia limited partnership (the "Prime Lease"), whereby Landlord leases from Gateway certain real property and the Building (collectively, the "Original Premises") of which the Premises is a part. The initial term of this Prime Lease is scheduled to expire on July 31, 2004, unless Tenant exercises its option. Except as provided herein, this Deed of Lease is and shall be at all times subject and subordinate to the Prime Lease; provided, however, that if Gateway requires this Deed of Lease to be superior and paramount to the Prime Lease, Tenant agrees to execute and deliver any instruments reasonably required for such purpose, provided that such instruments do not materially alter the terms of this Deed of Lease. Should such instruments materially alter the terms of this Deed of Lease, Tenant shall have the option to terminate this Deed of Lease or agree to the material alterations and execute and deliver the required instruments.

20.02. Landlord agrees to maintain the Prime Lease during the entire term of this Deed of Lease, subject, however, to any early termination of the Prime Lease without the fault of Landlord, and to comply with or perform Landlord's obligations under the Prime Lease and to hold Tenant free and harmless and from all liabilities, judgments, costs, damages, claims or demands arising out of Landlord's failure to comply with or perform Landlord's obligations under the Prime Lease.

20.03. Landlord warrants that under the Prime Lease, Gateway may not, absent Landlord's default of Prime Lease, terminate or impair Landlord's right to lease the Original Premises or Landlord's right to purchase the Original Premises as set forth in the Prime Lease.

In the event the Prime Lease shall terminate for reasons of Landlord's default on its Prime Lease, this Deed of Lease shall terminate on the date of termination of the Prime Lease.

**21. RIGHTS OF LANDLORD.** 21.01. As may or may not already have been granted in this Deed of Lease, Landlord reserves the right: (i) to have pass keys or cipher lock codes to the Premises; (ii) to grant to anyone the exclusive right to conduct any particular business or undertaking in the Building; and (iii) to affix or display "For Rent" signs.

21.02. Landlord further reserves the right to reconfigure the layout of the Building, except for the portion of the Premises occupied by Tenant, provided that such reconfiguration does not diminish Tenant access to that portion of the Premises occupied by Tenant or services covered herein, unless otherwise stated herein. Without limiting the generality of subsection 8.02 above, Landlord shall have the right to remove, alter, improve or rebuild all or any part of the Building, except for the that portion of the Premises occupied by Tenant, which are covered by other provisions set forth in this Deed of Lease. In connection with making repairs, alterations, additions, and Improvements as provided for in the Deed of Lease, Landlord shall have the right of reasonable access to the Premises, as well as the right to take

into, upon and through such Premises or any other part of the Building, additions or Improvements, as well as the right in the course of such work to close entrances, doors, corridors, elevators, or other Building facilities or temporarily to abate the operations of such facilities without being deemed or held guilty of an eviction of Tenant without any abatement of Rent hereunder provided that all such work shall be performed in such a manner so as to minimize the disturbance of Tenant's occupancy.

21.03. Provided Landlord reasonably minimizes any interference with Tenant's use of the Premises, Landlord shall not be liable to Tenant for any expense, injury, loss, or damage resulting from its exercise of any rights under this Section, all claims against Landlord for any and all such liability being hereby expressly released by Tenant. Landlord shall be reasonably and non-negligent in its interference with the business of Tenant.

21.04. Landlord shall have the right to use any and all means which Landlord may deem proper to open all of the doors in, upon, and about the Premises, excluding Tenant's vaults and safes, in any emergency in order to obtain entry to Premises. Any entry to the Premises obtained by Landlord by any of said means shall not be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

21.05. Landlord reserves the right to name and rename the Building, and change the Building address.

**22. MISCELLANEOUS.**

22.01. **Severability.** If any term, covenant or condition of this Deed of Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Deed of Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Deed of Lease shall be valid and enforced to the fullest extent permitted by law.

22.02. **No Waiver.** No waiver of any breach of any covenant, condition or agreement herein shall operate as a waiver of the covenant, condition or agreement itself, or of any subsequent breach thereof.

22.03. **Entirety of Agreement.** This Deed of Lease together with any Attachments, Exhibits and Addenda, embodies the entire agreement and understanding between the parties and supersedes all prior negotiations, agreements and understandings. Any provision of this Deed of Lease may be modified, waiver or discharged only by an instrument in writing signed by both parties.

22.04. **Notice.** All notices hereunder shall be deemed to have been given three (3) business days after they have been mailed in the United States Post Office by certified mail, postage prepaid, return receipt requested, addressed to, or hand delivered to and receipted acknowledged in writing by, Landlord or Tenant, respectively, at the following addresses or to such other addresses as the parties may designate in writing:

For Landlord: American Trucking Associations, Inc.,  
2200 Mill Road,  
Alexandria, Virginia 22314  
Attn: Chief Operating Officer

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Fax Number: (703) 548-1940

With a copy to: American Trucking Associations, Inc.  
2200 Mill Road  
Alexandria, Virginia 22314  
Attn: Director of Administration  
Fax Number: (703) 548-1940

For Tenant: Alexandria Police Department  
2203 Mill Road  
Alexandria, Virginia 22314  
Attn: Division Chief Facilities and Security Management  
Fax Number: (703) 838-6345

With a copy to: Alexandria Police Department  
2003 Mill Road  
Alexandria, Virginia 22314  
Attn: Facilities Manager  
Fax Number: (703) 838-6345

22.05. **Domicile.** Tenant hereby elects domicile at the Premises for the purpose of service of all notices, writs of summons, or other legal documents, or process, in any suit, action or proceeding which Landlord may undertake under this Deed of Lease.

22.06. **Governing Law.** This Deed of Lease shall be construed and governed by the laws of the Commonwealth of Virginia. The parties agree that no ambiguity herein shall be constructed presumptively against any party.

22.07. **Successors.** This Deed of Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors, and assigns subject to the Landlord's prior written consent.

22.08. **Sale of Building.** In the event of a foreclosure sale(s) of the Building, or sale thereof under the Deed of Trust securing Landlord's mortgagee, or early termination of the Prime Lease due to Landlord's default, Tenant shall, upon request, attorn to and acknowledge the purchaser of the Building at such sale or the prime lessor, as the case may be, as Landlord hereunder, unless beneficiary or such purchaser(s), or trustee(s), shall, at or prior to the time of such sale or within sixty (60) days thereafter, notify the Tenant in writing to vacate and surrender the leased premises within ninety (90) days from the date of sale, in the event of which notice any such lease shall fully terminate and expire at the end of the said period of ninety (90) days from and after the date of the foreclosure sale, and any such lease shall be subject to the further condition that if such lease shall be so continued in full force and effect the Tenant shall not be credited as against such purchaser(s) with any rent allocable to the period after such foreclosure sale and paid more than thirty (30) days in advance of its due date.

22.09. **Arbitration.** The parties hereby agree that should any dispute arise under the terms of this Agreement the matter in dispute shall be submitted to a mutually agreeable arbitrator or panel of arbitrators under the commercial arbitration rules of the American Arbitration Association for resolution. The parties agree to divide the costs of arbitration equally.

22.19. **No Partnership.** Nothing contained in this Deed of Lease shall be deemed or construed to

**DEED OF LEASE AGREEMENT BETWEEN ATA AND CITY OF ALEXANDRIA      DRAFT**

create a partnership or joint venture of, or between, Landlord and Tenant, or create any other partnership between the parties hereto other than that of Landlord and Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto executed this Deed of Lease of the date first above written.

**LESSOR:**

**AMERICAN TRUCKING ASSOCIATIONS, INC.,**  
a District of Columbia nonprofit corporation

Witness or Attest:

\_\_\_\_\_

By: \_\_\_\_\_  
David B. Barefoot, Chief Operating Officer

Date: \_\_\_\_\_

**LESSEE:**

**CITY OF ALEXANDRIA,** a municipal corporation of  
the Commonwealth of Virginia

Witness or Attest:

\_\_\_\_\_

By: \_\_\_\_\_  
Philip Sunderland, City Manager

Date: \_\_\_\_\_

**EXHIBIT 'D' -- D R A F T**

**FIRST AMENDMENT TO THE DEED OF LEASE  
BETWEEN  
AMERICAN TRUCKING ASSOCIATIONS, INC. AND THE CITY OF ALEXANDRIA**

This First Amendment to the Deed of Lease ("First Amendment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between American Trucking Associations, Inc. (Landlord) and the City of Alexandria (Tenant).

**WITNESSETH**

WHEREAS, the undersigned parties executed a certain Deed of Lease on November \_\_\_\_\_, 2003, by which, in consideration of the rents, mutual covenants and agreements set forth in the Deed of Lease, Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord certain premises consisting of approximately twelve thousand, nine hundred and twenty-two (12,922) square feet of rentable space (the "Premises") on the second (2<sup>nd</sup>) floor of the office building located at 2200 Mill Road, Alexandria, Virginia 22314 (the "Building"), inclusive of a proportionate share of the common areas of same Building.

WHEREAS, the term of said Deed of Lease commenced on the Commencement Date of \_\_\_\_\_, 2004, and shall terminate at midnight on that date which is five (5) years after the Rent Commencement Date;

WHEREAS, said Deed of Lease defines Rent Commencement Date as the earlier of the date on which the Tenant first occupies the Premises January 1, 2004, the later being contingent upon Landlord's delivery of the demolished Premises by no later than thirty (30) days following the execution of said Deed of Lease, which for purposes of this Deed of Lease is December 1, 2003; in the case of such failure to deliver, such Rent Commencement Date shall be extended one day for each day past December 1, 2003; and

WHEREAS, given that the Lease Termination Date is contingent upon a definitive Rent Commencement Date and such Rent Commencement Date was yet undetermined at the time of said Deed of Lease's execution, said Deed of Lease requires that a First Amendment be issued within fifteen (15) days after the occurrence of the Rent Commencement Date establishing the Rent Commencement Date and the Lease Expiration Date, as defined by said Deed of Lease and determined by factual circumstances.

NOW, THEREFORE, in compliance with said Deed of Lease, the parties hereby agree that:

1. The Rent Commencement Date of said Deed of Lease shall be \_\_\_\_\_, 2004.
2. The Lease Expiration Date of said Deed of Lease shall be \_\_\_\_\_, 2009.

Witness or Attest:

**AMERICAN TRUCKING ASSOCIATIONS, INC.**

Date: \_\_\_\_\_

By:

\_\_\_\_\_  
David B. Barefoot, Chief Operating Officer

Date: \_\_\_\_\_

By:

\_\_\_\_\_  
Philip Sunderland, City Manager

EXHIBIT 'E'  
OF LEASE AGREEMENT  
ATA HEADQUARTERS BUILDING  
RULES AND REGULATIONS

For the sake of this Exhibit, Tenant shall refer to and mean Tenant and Tenant's Affiliates, as defined in the Lease Agreement, and Tenant's agents, employees, visitors, licensees, contractors, suppliers using such Premises with Tenant's permission and/or under Tenant's supervision.

1. No part or the whole of the sidewalks, plaza areas, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls of the Building or the Real Property shall be obstructed or encumbered by Tenant or used for any purpose other than ingress and egress to and from the space demised to such Tenant.
2. No projects shall be attached to the outside walls or windows of the Building. No curtains, blinds or shades shall be attached to or hung in, or used in connection with a window or door of the space demised to Tenant without the prior written consent of Landlord, and if approved, shall be in accordance with the color scheme approved by Landlord.
3. No sign, advertisement, object, notice or other lettering shall be exhibited, inscribed, painted or affixed on any part of the outside or inside of Tenant's premises, so as to be visible from the exterior, without prior written consent of Landlord, whose approval shall not be unreasonably withheld, and except for signage identical to that previously displayed.
4. No show cases or other articles shall be put in front of or affixed to any part of the exterior of the Building, nor placed in the halls, corridors, vestibules or other public parts of the Building without the prior written consent of Landlord.
5. The water and wash closets and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags, or other substances (including, without limitation, coffee grounds) shall be thrown therein. All damage resulting from any misuse of the plumbing fixtures by Tenant shall be borne by the Tenant.
6. Tenant shall not mark, paper, paint, bore into, make any alterations or additions, or in any way deface any part, including equipment and fixtures ("Build-Outs"), of the leased space or the Building of which it forms a part, without the prior written consent of Landlord. No wires shall be installed except in conduits, ducts or outlets established for that purpose, unless prior written consent of Landlord has been obtained. Tenant shall not lay carpeting, so that the same shall come in direct contact with the floor of the leased space, and, if Tenant desires to install carpeting, an underlayment shall be first laid, without the use of cement or other similar adhesive material. If Tenant desires to install any floor covering other than carpeting, subject to the prior consent of Landlord, such floor covering shall be installed in accordance with the manufacturer's specifications. If Tenant restricts access to underfloor ducts system by laying any floor covering, Tenant shall be responsible for providing access thereto at its expense upon request of Landlord.

7. No bicycles or vehicles of any kind, except those required by the disabled, shall be brought into or kept in or about the leased Premises or the Building, with the exception of the Garage areas. No cooking shall be done or permitted by any Tenant in the leased space, without the prior written consent of Landlord, provided, however, that the heating, refrigeration and preparing of beverages and light snacks shall be permitted if there are appropriate facilities and equipment for such purposes and subject to the prior written consent of Landlord. Tenant shall be permitted to have a microwave and small refrigerator within the Premises but must use its best efforts to not cause or permit any unusual or objectionable odors to be produced upon or emanate from the leased Premises. Should such odors caused without intent, Tenant agrees to use its best efforts to remove such odor.
8. Neither the whole nor any part of the Premises demised to Tenant shall be used for manufacturing, or for the sale at auction of merchandise, goods or property.
9. Tenant shall use its best efforts not to make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with the other tenants or occupants of the Building or neighboring buildings or premises whether by the use of any musical instrument, radio, television set, or other audio device, unmusical noise, whistling, singing or in any other way. Nothing shall be thrown out of any door, windows, passageways, or stairs.
10. All moving of safes, freight, furniture or bulky matter of any description, to and from the leased Premises, shall only take place within the confines of specified elevators, passageways or stairs, and during the hours designated by Landlord. There shall not be used in any spaced, or in the public halls of the Building, either by Tenant or by jobbers or others, in the delivery or receipt of merchandise, any hand trucks, except those equipped with rubber tires and side guards. Landlord shall not be responsible for any damage to or changes for moving same. Safes and other heavy objects shall not be positioned or installed by Tenant until size and location are approved in writing by Landlord's Building Operations Department.
11. Tenant shall not use or occupy or permit any portion of the space demised to Tenant to be used or occupied as an employment bureau or for the storage, manufacture, or sale of liquor, narcotics or drug. Tenant shall not engage or pay any employees in the Building, except those actually working for Tenant in the Building. Tenant may, however, from time to time, advertise, giving the address of the Building, for workers which Tenant intends to hire as permanent employees of Tenant's business(es).
12. Tenant shall not purchase or contract for waxing, rug shampooing, venetian blind washing or interior glass washing, furniture polishing, servicing of lamps other than Building Standard lamps, removal of any garbage from any dining or eating facility, or for towel service in the leased Premises except from contractors companies or persons approved by Landlord's Building Operations Department.
13. Landlord reserves the right to control and operate the public portions of the Building and the public facilities, as well as facilities furnished for the common use of the tenants, in such manner as it deems best for the benefit of the tenants generally, including, without limitation, the right to exclude from the Building during non-business hours, all persons who do not identify themselves

satisfactorily to Landlord. It is known that Tenant shall be operating and accessing the facility on a 24-hour basis. Tenant shall be liable to Landlord for all acts of person(s) within the facility after normal building hours.

14. No Premises demised by Tenant shall be used, or permitted to be used, for lodging or sleeping or for any immoral or illegal purpose.
15. The requirements of Tenant will be attended to only upon application of the office of Landlord. Landlord's Building Operations employees and/or contractors shall not be required to perform, and shall not be requested by Tenant to perform, any work outside of their regular duties, unless under specific instructions from the office of Landlord or Landlord's Building Operations Department.
16. Canvassing, soliciting and peddling in the Building are prohibited, and Tenant shall cooperate to prevent the same.
17. Generally, animals are prohibited in the building. Service animals shall be allowed on an as-needed basis, which right may be limited at Landlord's discretion in the event such use disrupts the preservation of good order in the building or disturbs the other tenants' and occupants' quiet enjoyment of the building. Tenant is solely liable for any loss or damage to person or property caused by these animals.
18. Employees of Landlord other than those expressly authorized are prohibited from receiving any packages or other articles delivered to the Building for Tenant and, should any such employee receive any such package or article, he/she in so doing shall be the agent of such Tenant and not Landlord.
19. Tenant shall not install or permit or allow installation of a television antenna on or affixed to any portion of the exterior of the Premises or Building or on the windows without the prior written consent of the Landlord.
20. Tenant shall not knowingly tie in, or permit others to tie in, to the electrical or water supply of the Building without prior written consent of the Landlord's Building Operations.
21. Tenant shall not remove, alter or replace the Building Standard ceiling light diffusers in any portion of the leased Premises without the prior written consent of Landlord.
22. Except for purposes of emergency, notices, posters or advertising media will not be permitted to be affixed in the elevators, elevator lobbies, main lobbies, corridors, or exterior of the Building.
23. Landlord does not maintain and repair store finishes or fixtures. However, should the need for maintenance or repairs arise, Landlord will, upon Tenant's request, arrange for the work to be done at Tenant's expense.
24. Business machines and mechanical equipment, belong to Tenant, which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree to

- be objectionable to Landlord or to any tenant in the Building shall be installed and maintained by Tenant, at Tenant's expense on vibration eliminators or other devices sufficient to eliminate such noise and vibration.
25. No vending machines shall be permitted to be placed or installed in any part of the Building by Tenant. Landlord reserves the right to place or install vending machines in any of the common areas of the Building.
  26. Landlord reserves the right to rescind, amend, alter, or waive any of the foregoing Rules and Regulations at any time when, in its judgment, it deems it necessary, desirable or proper for its best interests and for the best interests of the tenants, and shall notify Tenant, in writing, to the City of Alexandria, General Services Department, of such and no such rescission, amendment, alteration or waiver of any rule or regulation in favor of one tenant shall operate as a alteration or waiver in favor of any other tenant. Landlord shall not be responsible to any tenant for the non-observance or violation by any other tenant of any of these Rules and Regulations at any time.
  27. Tenant shall immediately notify Landlord's Administration & Building Operations Department of any serious breakage, sickness, fire or disorder, which comes to its attention in its Premises or any of the common areas of the Building.
  28. For purposes of these Rules and Regulations, Landlord's Building Operations Department shall mean the duly designated representative of Landlord to manage the Building.

AGREED BY:

CITY OF ALEXANDRIA

AMERICAN TRUCKING ASSOCIATIONS, INC.

\_\_\_\_\_  
Philip Sunderland, City Manager

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David B. Barefoot, Chief Operating Officer