

RESOLUTION NO.: R-2014-102

*Authorizing the City Manager to commence negotiations with NAI Avant for a building lease to locate the Police Evidence and Property Storage Facility*

ORIGINAL  
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 21st day of October, 2014, that the City Manager is hereby authorized to commence negotiations with NAI Avant for a lease, on a form to be approved by the City Attorney, which shall meet the minimum conditions as set forth on the attached for a building to locate the Police Evidence and Property Storage Facility.

BE IT FURTHER RESOLVED that as time of the essence the City Manager is authorized to execute a lease, after approval by the City Attorney, should the minimum terms and conditions as set forth on the attached be met.

Requested by:

Assistant City Manager Gentry \_\_\_\_\_

  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 10/21/2014  
Final Reading: 10/21/2014

## Police Evidence and Property Storage Facility Minimum Requirements

Minimum Square Footage: 58,000 square feet  
Terms: 60 months  
Base Rent: \$3.70 square foot maximum

The Lease shall be delivered on a net basis. Lessor shall be responsible for the roof, structure, and the floor including but not limited to the costs of any repairs or replacements, unless such repair or replacement is caused by the negligent acts of Lessee. Lessor shall be responsible for all major HVAC repairs so long as Lessee has HVAC maintenance contract in place and damage is not caused by direct neglect from Lessee.

Lessee shall have the right to conduct a mold assessment at the Premises. Should mold be found within the building. Lessor shall analyze extent and will decide at that time to conduct the remediation. Should Lessor be unwilling to perform based on cost, Lessee shall have no further obligation to move forward with the Lease.

In addition to Base Rent, Lessee shall pay all expenses related to the operation of the Property so that the rent payable to Lessor shall be absolutely net. Such expenses include but not limited to: real estate taxes, insurance, management, and maintenance.

The premises shall be used for warehousing, light assembly, general office purposes, and other ancillary uses.

Lessor shall provide Lessee with one (1) Five year option period to renew the Lease at rental rate to be negotiated. Lessee shall give notice of its intention to extend six (6) months prior to lease expiration.

Lessor shall use its best efforts to work with Lessee on securing a mutually agreeable subordination and non-disturbance agreement with Landlord's lender.



807 Gervais, Suite 301  
 Columbia, South Carolina 29201  
 803.254.0100  
 1.888.251.0102

STATE OF SOUTH CAROLINA)

**LEASE**

COUNTY OF RICHLAND)

THIS AGREEMENT, made this 30<sup>th</sup> day of January, 2015, by and between Edens/Graham Partners, LLC, or its assigns, hereinafter called "Landlord," and City of Columbia, hereinafter called "Tenant."

**WITNESSETH**

In consideration of the covenants and agreement of the respective parties herein contained, the parties hereto, for themselves, their heirs, successors, distributees, executors, administrators, legal representatives and permitted assigns, do hereby agree as follows:

**A. Leased Premises:**

Landlord by these presents does hereby demise and let unto Tenant, and Tenant leases and hires from Landlord all those certain Premises, together with the buildings and other improvements thereon, for the term and upon the rental and the covenant and agreements of the respective parties herein set forth. Said Premises are situate, lying and being in the State of South Carolina, County of Richland, City of Columbia, located at 715 Bluff Road. Further described in the Richland County tax map records as Parcel # 11202, block 06, and lot 02 and outlined in Exhibit "A" attached. The Leased Premises hereunder contains 58,187 square feet and the total area of the building is approximately 58,187 square feet. Tenant's Pro Rata Share is 100%.

**B. Term and Delivery of Premises:**

TO HAVE AND TO HOLD said Premises unto Tenant for a term of sixty-one (61) months, beginning on the date upon which Landlord provides Tenant with a copy of an Approved Report (as that term is defined in Section 4 hereof) (the "Commencement Date"), and ending on the date sixty-one (61) months thereafter.

**C. Covenants and Conditions of Lease:**

This Lease is made on the following covenants and conditions which are expressly agreed to by Landlord and Tenant:

1. **Rent:** Tenant covenants to pay as rent to Landlord, beginning on the earliest date upon which Landlord has completed the Required Work (as that term is defined in Section 4 hereof) and delivered to Tenant a copy of an Approved Report, as follows:

Date	Monthly Base Rent	Annual Base Rent	PSF
Months 1 – 37 of the term of the Lease	\$16,971.20	\$203,654.40	\$3.50
Months 38 – 61 of the term of the Lease	\$17,941.00	\$215,291.90	\$3.70

Additionally, Tenant shall pay to Landlord as its monthly contribution to the taxes and building insurance, the initial annual sum of Forty Seven Thousand and Seventy and no/100ths Dollars, (\$47,070) payable in equal monthly installments of Three Thousand Nine Hundred and Twenty Two and 50/100ths Dollars (\$3,922.50).

In the event the annual reconciliation reveals a balance due from Tenant, Landlord will invoice Tenant for the remaining balance of its Pro Rata Share of costs and expenses. Tenant shall have thirty (30) days from the date of such invoice to pay

*fw*

Landlord the balance due. Should the annual reconciliation reveal an overpayment by Tenant, Landlord shall notify Tenant of such overpayment and apply a credit to Tenant's account. Tenant, upon notification from Landlord, may deduct the overpayment from its next Rent due. Should there be an overpayment by Tenant during the last Lease Year, then Landlord shall notify Tenant of such overpayment, and upon Tenant's request, refund any monies due to Tenant forty-five (45) days after the Lease expiration date, provided no other charges due from Tenant are outstanding. Tenant's failure to object to any statement, invoice, or billing rendered by Landlord within a period of ninety (90) days after Tenant's receipt thereof, shall constitute Tenant's acquiescence with respect thereto and shall render such statement, invoice, or billing an account between Landlord and Tenant.

Tenant's obligations hereunder shall survive the expiration or earlier termination of this Lease.

"Rent" is defined as the sum of Base Rent plus estimated annual taxes and building insurance. Each monthly installment of Rent shall be payable in advance at the following address:

NAI Avant, LLC  
PO Box 2267  
Columbia SC 29202

Rent is due on the first day of each month and shall not be withheld for any reason whatsoever.

**2. Security Deposit:** Upon the execution of this Lease, Tenant will deposit with Landlord the sum of Sixteen Thousand Nine Hundred and Seventy One and 20/100 Dollars (\$16,971.20), to serve as security for the faithful performance and observance by Tenant of the terms of this Lease. In the event Tenant defaults with respect to any of the terms of this Lease including, but not limited to the payment of Rent, Landlord may apply the whole or any part of the deposit to the extent required, but Tenant shall remain liable for any additional amounts due. If Tenant shall comply fully with all of the terms of this Lease, the security deposit shall be returned to Tenant upon the expiration of the Lease Term. In the event of the sale or lease of the property of which the Leased Premises are a part, Landlord shall have the right to transfer the unused security deposit to the new purchaser or lessor who shall be responsible to the Tenant for the security deposit and Landlord shall be released from all liability for its return.

**3. Authorized Use:** Tenant agrees not to abandon or vacate the Leased Premises during the Lease Term and shall use the Leased Premises for the following purpose, and for no other purpose whatsoever, without the prior written consent of Landlord first had and obtained: Warehouse, administrative offices, light assembly, and other permitted uses under the zoning ordinance.

**4. Condition of the Premises:** Prior to the Commencement Date Landlord shall complete the work to the building outlined in Exhibit "B" (the "Required Work") and deliver to Tenant a copy of a report from ARM Environmental Services, Inc. that indicates that the Total Spore Count found in samples taken from the interior of the Leased Premises is equal to or less than the Total Spore Count found in samples taken from the exterior of the Leased Premises (an "Approved Report"). Tenant shall have the right, prior to the commencement of the Lease, to conduct an environmental assessment at the building. Should lead paint and/or asbestos be found within the building, Landlord shall analyze extent of damage and will determine at that time to conduct the remediation. Should Landlord be unwilling to perform based on cost or scope of the project, Tenant shall have no further obligation to lease the building. Tenant agrees if, during said term, Tenant shall change the usual method of conducting Tenant's business on the Leased Premises, or should Tenant install thereon or therein any new facilities, Tenant will, at the cost and expense of Tenant, make alterations or improvements in or to the Leased Premises which may be required by reason of any Federal or State Law, or by any municipal ordinance, or regulation applicable thereto.

**5. Repair and Care of Building:** Tenant agrees to keep the interior of the Leased Premises, including, but not limited to, all windows, doors, window and door hardware, glass, plate glass, electrical, plumbing, floor covering, interior walls and ceiling, in good condition and repair, and agrees to replace damaged items, and shall make all necessary repairs, except repairs which are the express responsibility of Landlord hereunder or which are made necessary by reason of fire and other unavoidable casualties to the extent covered by Landlord's property insurance, and excepting reasonable wear and tear. Notwithstanding any provision of this Lease to the contrary, within the repair and replacement responsibilities of Tenant shall be included maintenance and minor repair to heating, ventilating, and air conditioning equipment (the "HVAC"), including heating and air conditioning units, duct work, fans, motors, registers, and grilles. Landlord shall be responsible for HVAC replacement and major repairs. Major repairs are herein defined as any single repair or replacement that exceeds Five Hundred (\$500) Dollars per occurrence. Tenant agrees to procure and maintain an HVAC maintenance contract with a reputable contractor, providing for the maintenance and repair of the HVAC according to manufacturer's specifications and including the replacement of filters at a minimum of four (4) times per year. The HVAC maintenance contract will stipulate at least quarterly maintenance service. Such HVAC maintenance contract must be with a licensed and insured contractor acceptable to Landlord, or if Landlord so elects, with a contractor designated by Landlord. Upon the request of Landlord, Tenant shall furnish Landlord a copy of the HVAC maintenance contract, certified by Tenant to be in full force and effect. If after Landlord's request, Tenant fails to furnish Landlord a certified copy of the requested HVAC maintenance, Landlord shall have the right but not the

obligation to enter into an HVAC maintenance contract for Tenant and Tenant agrees to pay the actual cost of said contract, as Additional Rent due hereunder.

Upon request of Landlord, Tenant shall furnish Landlord copies of work orders to insure compliance and condition of the system. If Tenant refuses or neglects to repair the HVAC properly as required hereunder and to the reasonable satisfaction of Landlord as soon as reasonably possible after written demand, Landlord may, but shall not be required to do so, make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Landlord's costs for making such repairs, upon presentation of a bill therefore.

Tenant shall at all times keep the Leased Premises in a neat, orderly and safe condition. Tenant agrees to use reasonable diligence to keep the sidewalks and outside areas immediately adjoining the Leased Premises free from ice and snow, and at all times broom-clean, free of trash, litter or obstructions of any kind. Tenant agrees to clean adequately said Leased Premises as needed from time to time during the term of this Lease, and Tenant will keep clean the inside and outside of all glass in the doors and windows of the Leased Premises. Tenant will maintain the Leased Premises in a sanitary condition and free of pets, animals, insects, rodents, termites, vermin and other pests. Tenant agrees to adequately heat and cool the Leased Premises, and Tenant shall at all times keep the Leased Premises at a temperature sufficiently high to prevent freezing of water pipes and fixtures. Tenant shall, in accordance with governmental regulations, at its expense, including any and all governmental fees, provide for the regular removal of all trash, rubbish and garbage from the Leased Premises. Tenant shall not permit the burning of any rubbish or garbage in or about the Leased Premises. If garbage and rubbish is to be accumulated by dumpsters, canisters or containers on Leased Premises, Landlord shall have the right to reasonably regulate the method of accumulation for health and aesthetic purposes. Tenant agrees to return said Premises to Landlord at the expiration or prior termination of this lease in as good condition and repair as when received, natural wear and tear, damage by storm, fire, lightning, or other natural casualty excepted.

Through the term of the Lease, and extensions herein, Landlord shall maintain the roof, building structure, foundation, underground utilities to the building, overhead power lines to the building, and major HVAC repairs/replacements. All other repairs shall be at the expense of the Tenant.

**6. Environmental Matters:** Tenant may cause or permit certain Hazardous Substances and/or Hazardous Materials to be used, stored, generated or disposed of on or in the Leased Premises by Tenant, Tenant's agents, employees, contractors or invitees provided it is used, stored, generated or disposed of only in accordance with the International Building Code and Occupational Health and Safety Administration standards and all applicable laws. If the Leased Premises become contaminated in any manner caused by the actions or inactions of Tenant, Tenant shall reimburse Landlord for all reasonable costs incurred by Landlord as a result of such contamination by Tenant, including, without limitation, all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or political subdivision. Without limitation of the foregoing, if Tenant causes or permits the presence of any Hazardous Substances and/or Hazardous Materials on the Leased Premises and such results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Leased Premises to the condition existing prior to the presence of any such Hazardous Substances and/or Hazardous Materials on the Leased Premises. Tenant shall undertake no testing for Hazardous Substances and/or Hazardous Materials on the Leased Premises or take any remedial actions without in each instance obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Upon notification of Tenant and when accompanied by authorized agent(s) of Tenant, Landlord shall have access to the Leased Premises in order to investigate and test with respect to any suspected release of Hazardous Substances and/or Hazardous Materials in contravention of this subparagraph, and to access the Leased Premises as needed for any remedial action deemed necessary by Landlord. However, Landlord shall at all times while on the Leased Premises during the term of the Lease, be accompanied by one (1) or more designated agents of Tenant.

Tenant shall not intentionally or unintentionally discharge, Release or emit, or permit to be discharged, Released or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by Landlord or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Leased Premises or elsewhere, or (b) the condition, use or enjoyment of the Premises or any other real or personal property.

**7. Alteration of Buildings and Installation of Fixtures and Other Appurtenances:** Tenant may, with prior written consent of Landlord, but at Tenant's own cost and expense in a good, workmanlike manner, make such alterations and repairs in the building as Tenant may require for the conduct of its business without, however, materially altering the basic character of the building or improvements, or weakening any structure on the Leased Premises. Tenant shall have the right, without the permission of Landlord, to erect, at Tenant's sole cost and expense, such temporary partitions, including office partitions, as may be necessary to facilitate the handling of Tenant's business and to install electrical fixtures, additional lights and wiring and other trade appliances. Any alterations or improvements to the Leased Premises, including but not limited to partitions, all electrical fixtures, lights and wiring, shall at the option of Landlord, become the property of Landlord, at the expiration or sooner termination of this Lease. Should Landlord request Tenant to remove all or any part of the above mentioned items Tenant shall do so prior to the expiration of this Lease and repair the Leased Premises as described below. Temporary shelves, bins, and machinery installed by Tenant shall remain the property of Tenant and may be removed by Tenant at any time; provided, however, that all covenants, including rent, due hereunder to Landlord shall have complied with and paid. At the expiration or sooner termination of this Lease, or any extension thereof, Tenant shall remove said shelves,

bins and machinery, and repair, in good and workmanlike manner, all damage done to the Leased Premises by such removal. Tenant shall not exercise the right and privilege granted by this Article 7 in such manner as to damage or affect the structural qualities of the building. Before any work is begun, Tenant agrees to furnish Landlord with hold harmless agreements from all contractors protecting against mechanics liens.

**8. ADA Provision:** Tenant shall be liable for any cost, claim or alteration arising from the Americans with Disabilities Act which is:

- (A) resulting from any improvement or alteration of the Leased Premises made by Tenant; or
- (B) resulting from Tenant's use of the Leased Premises.

Landlord shall be liable for any cost, claim or alteration arising from the Americans with Disabilities Act which results from improvements or alterations hereafter made by Landlord to the Leased Premises.

**9. Payment of Taxes and Other Assessments:** Landlord shall pay annually all real estate taxes on the Leased Premises existing at the commencement of this Lease. However, Tenant shall upon demand, reimburse Landlord for all taxes and other assessments assessed or levied against the Premises. Tenant shall pay Landlord on an estimated monthly payment schedule outlined above in paragraph C.1 the prorated monthly estimate for real property taxes. Should the tax bill adjust in any given calendar year, Landlord shall furnish to Tenant a copy of the paid tax bill and Tenant shall reimburse Landlord the difference with Fifteen (15) days from receipt. If the final year of the Lease term fails to coincide with the tax year, then any tax during which the term ends shall be reduced by the pro rata part of such tax beyond the Lease term.

In the event that any documentary stamp tax, or tax levied on the rental, leasing or letting of the Premises whether local, state or federal is required to be paid to the execution hereof, the cost thereof shall be borne by the Tenant.

**10. Condemnation:** In the event any part of the Leased Premises shall be taken or condemned at any time during the term hereof through the exercise of power of eminent domain, with or without litigation, and Tenant shall determine that the remaining portion of Premises are not reasonably suitable for its use and occupation, Tenant may, by giving written notice to Landlord within sixty (60) days after the date of such taking or condemnation, terminate this Lease as of a date to be set forth in said notice, but not earlier than thirty (30) days after the date of the notice, and Landlord shall refund any unearned rent paid in advance by Tenant. If the Tenant does not terminate this Lease as provided above, this Lease shall continue in force as to the remaining portion of the Leased Premises and in such event the monthly rental thereafter payable by Tenant hereunder shall be adjusted and pro-rated in the exact ratio which the value of the Premises remaining after such taking or condemnation bears to the value of the Leased Premises immediately preceding the taking or condemnation, and Landlord shall, at its own expense, make any repairs or alterations to said Premises which may be necessary to restore the Premises, in so far as possible, to their condition prior to the taking or condemnation.

In the event any part of the Leased Premises shall be taken or condemned at any time during the term hereof through the exercise of power of eminent domain, with or without litigation, and the remainder of the Leased Premises shall not, in the option of Landlord, constitute an economically feasible operating unit, Landlord may, by giving notice to Tenant within sixty (60) days after the date of such taking or condemnation terminate this Lease as of a date (to be set forth in said notice) not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of the termination date.

In the event of the taking or condemnation of all or any portion of the Leased Premises and if the Landlord and/or Tenant terminates the Lease as provided above, Landlord and Tenant shall together pursue the claim against the condemning or taking authority for the value of the property taken or condemnation and Tenant shall receive from the condemnation award the value of his improvements, if any, so taken; Tenant shall receive no other part of the condemnation award. If the Lease is not terminated, Landlord shall receive the entire award in the condemnation proceeding.

**11. Erection and Removal of Signs:** Tenant may place suitable signs on the Leased Premises for the purpose of indicating the nature of the business carried on by Tenant in said Leased Premises; provided, however, that such signs shall be in keeping with other signs in the district where the Leased Premises are located; and provided, further that the location shall not damage the Leased Premises in any manner. At the termination of this Lease, Landlord may require that Tenant remove his sign, and any damage to the Leased Premises caused by removal shall be promptly repaired by Tenant.

**12. Glass Breakage and Vandalism:** Tenant agrees to immediately replace broken or damaged glass with glass of comparable quality and characteristics which meets appropriate agency building code requirements, excepting breakage covered under Landlord's normal fire and extended coverage insurance policy. Tenant shall make any repairs or replacements caused by vandalism to the Premises or any part thereof, if said damage is not covered by Landlord's insurance.

**13. Right of Access by Landlord:** During any reasonable time before the Commencement Date of this Lease, Landlord or its authorized representative may enter upon the Leased Premises, or any portion thereof, and any appurtenances thereto (with persons, and materials, if required) for any of the following purposes:

- (A) inspecting the Leased Premises; and

- (B) making any required repairs, replacements, or alterations which Landlord may be required to perform under this Lease, or which Landlord may deem desirable for the Leased Premises; and
- (C) showing the Leased Premises to prospective purchasers, lenders, or tenants.

At no time after the Commencement Date of this Lease may the Landlord or its authorized representative enter the Leased Premises unless with advance notice to Tenant of at least twenty-four (24) hours and only if accompanied by an authorized agent or agents of Tenant. Any contractor or agent of Landlord working on behalf of Landlord at or inside the Leased Premises must pass a background check conducted by Tenant and be accompanied by an authorized agent or agents of Tenant at all times while on the Leased Premises. Tenant shall use its best efforts to accommodate all reasonable requests by Landlord to enter the Leased Premises for the purposes described above according to the terms of this Section.

Landlord shall have the right to place upon the storefront of the Leased Premises a "for lease" or "for rent" sign at any time within the period of one hundred twenty (120) days prior to the expiration of the Lease Term, unless Tenant has executed a new lease for the Premises or exercises any renewal or extension option granted herein.

**14. Force Majeure:** If either Landlord or Tenant shall fail to timely perform any of its obligations under this Lease (excluding Tenant's financial obligations, i.e. payment of Rent, Rent or additional Rent) as a result of Force Majeure (as hereinafter defined), such party shall not be liable for loss or damage for such failure and the other party shall not be released from any of its obligations under this Lease. If either Landlord or Tenant is delayed or prevented from performing any of its obligations as a result of Force Majeure, the period of such delay or prevention shall be added to the time herein provided for the performance of any such obligation.

Force Majeure shall mean any period of delay which arises from or through Acts of God; strikes, lockouts, or labor difficulty; explosion, sabotage, accident, riot, or civil commotion; act of war, fire or other casualty; and delays caused by the other party.

**15. Payment of Utilities:** Tenant shall contract for and pay all charges for sewerage, water, gas, electricity, and other public utilities used on the Leased Premises, including all replacements of light bulbs, tubes, ballasts, and starters. Landlord may pay any delinquent bills incurred by Tenant during the lease term which bills may create a lien on the Leased Premises and shall upon demand be immediately reimbursed by Tenant. Said payments shall be treated as additional Rent even though the lease term may have expired.

**16. Assignment and Subletting:** Neither this Lease nor any interest herein may be assigned by Tenant voluntarily or involuntarily, by operation of law, and neither all nor any part of the Leased Premises shall be sublet by Tenant without the written consent of Landlord first had and obtained; however, Landlord agrees not to withhold its consent unreasonably for Tenant to sublet the Leased Premises. In no event shall any assignment or sublease of the Leased Premises release or relieve Tenant from any obligation of this Lease

**17. Insurance:**

a. Landlord agrees to keep the Premises fully insured (appraised value) against all perils covered under a normal fire and extended coverage insurance policy including loss of rents; however, Tenant shall, reimburse Landlord for Tenant's Pro Rata Share of the cost of the premium of such insurance policy on a monthly basis as outlined above in paragraph C.1. If the premium increases or decreases at any point during the Term of the Lease, Landlord will notify Tenant and will reconcile accordingly.

b. If the Leased Premises or any part thereof shall be damaged or destroyed by fire or other casualty, Landlord shall promptly repair all such damage and restore the Leased Premises without expense to Tenant, subject to delays due to adjustment of insurance claims, strikes and other causes beyond Landlord's control. If such damage or destruction shall render the Premises untenantable in whole or in part, the rent shall be abated wholly or proportionately as the case may be until the damage shall be repaired and the Premises restored. If the damage or destruction shall be so extensive as to require the substantial rebuilding (i.e., expenditure of fifty (50%) percent or more of the replacement cost) of the building or buildings on the Leased Premises, Landlord or Tenant may elect to terminate this Lease by written notice to the other given within thirty (30) days after the occurrence of such damage or destruction.

c. Landlord and Tenant hereby release each other from liability for loss or damage occurring on or to the Leased Premises or the Premises of which they are a part or to the contents of either thereof, caused by fire or other hazards ordinarily covered by fire and extended coverage insurance policies not caused by the negligence of the Releasee, and each waives all rights of recovery against the other for such loss or damage. Willful misconduct lawfully attributable to either party, whether in whole or in part a contributing cause of the casualty giving rise to the loss or damage, shall not be excused under the foregoing release and waiver.

**18. Surrender of Leased Premises:** Tenant agrees to deliver all keys and to surrender the Leased Premises at the expiration, or sooner termination, of this Lease, or any extension thereof, broom-clean in the same condition as when said Premises were delivered to Tenant, or as altered, pursuant to the provisions of this Lease, ordinary wear and tear, damage by the elements excepted. Should Tenant fail to remove its personal property upon abandonment, expiration, termination or

recovery of possession by Landlord, then upon such abandonment, expiration, termination or recovery of possession and after ten (10) days' written notice to Tenant, which notice shall also be conspicuously posted on the Leased Premises, all personal property of any nature then remaining on the Leased Premises shall be deemed abandoned and title thereto shall vest exclusively to Landlord, unless Landlord shall give notice to Tenant to remove all or any part of such personal property in which event Tenant shall promptly, at its own expense, remove same or Landlord may do so at Tenant's expense and said expense shall be treated as additional Rent hereunder. Tenant hereby waives any claim for loss of damage arising from Landlord's dealing with Tenant's personal property pursuant to the terms of this Article and agrees to reimburse Landlord for all costs associated with the same.

**19. Holdover:** Should Tenant hold over the Leased Premises or any part thereof after the expiration of the term of this Lease, unless otherwise agreed in writing, such holding over shall be deemed to be occupying as a tenant at sufferance at a rent equal to 150% of the Rent paid for the last month under this Lease and all other terms and conditions shall apply.

**20. Quiet Enjoyment:** If and so long as Tenant pays the rents reserved by this lease and performs and observes all the covenants and provisions hereof, Tenant shall quietly enjoy the Leased Premises, subject, however, to the terms of this Lease, and Landlord will warrant and defend Tenant in the enjoyment and peaceful possession of the Leased Premises throughout the term of this Lease.

**21. Waiver of Covenants:** It is agreed that the waiving of any of the covenants of this Lease agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provision herein contained.

**22. Default by Tenant:** This Lease is made upon the condition that the Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth, and if any of the following events of default shall occur, to-wit: (a) any installment of Rent, additional Rent, taxes, or any other sums required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid for fifteen (15) days after written demand therefor, or (b) there by any default on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant (unless such default cannot reasonably be cured within fifteen (15) days and Tenant shall have commenced to cure said default within said fifteen (15) days and continues diligently to pursue the curing of the same), or (c) Tenant shall file a petition in bankruptcy or be adjudicated a bankrupt, or file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation, or make an assignment for the benefit of creditors, or (d) any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Leased Premises shall be appointed in any action, suit or proceeding by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the leasehold estate hereby created shall be taken on execution or by other process of law, or (f) Tenant shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall vacate or abandon the Leased Premises, then and in any of said cases, Landlord at its option may terminate this lease with full right to sue for and collect all sums or amounts with respect to which Tenant may then be in default and accrued up to the time of such entry, including damages to Landlord by reason of any breach or default on the part of Tenant, or Landlord may, if it elects to do so, bring suit for the collection of such rents and damages without entering into possession of the Leased Premises or voiding this Lease.

If Tenant at any time shall fail to pay any taxes, assessments, or liens, or to make any payment or perform any act required by this Lease to be made or performed by it, Landlord, without waiving or releasing Tenant from any obligation or default under this lease, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Tenant.

All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity.

**23. Exculpation:** Tenant specifically agrees to look solely to Landlord's interest in the Leased Premises for recovery of any judgment from Landlord, it being specifically agreed that neither Landlord nor anyone claiming under Landlord shall ever be personally liable for any such judgment. In no event shall Landlord ever be liable to Tenant for any indirect or consequential damages.

**24. Bankruptcy:** In the event a petition in a bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the property of Tenant shall be filed against Tenant in any court, pursuant to any statute either of the United States or of any state (hereinafter referred to as "Bankruptcy Law"), and if, within thirty (30) days thereafter, Tenant fails to secure a discharge thereof, or in the event Tenant shall voluntarily file any such petition or make an assignment for the benefit of creditors or petition for or enter into an arrangement, or if this Lease is taken under writ of execution (herein called "Act of Bankruptcy"), then Tenant shall be deemed in breach and default of this Lease and Landlord, in its discretion and at its election may, to the extent permitted by law, elect to cancel and terminate this Lease. Upon the cancellation and termination of this Lease pursuant to the provisions of this Article 35, Landlord, in addition to all the remedies provided by law, shall be entitled to all its remedies set forth in this Lease upon Tenant's default.

In the event this Lease is assumed or assigned by a trustee pursuant to the provisions of the prevailing Bankruptcy Law, then the trustee shall cure any default under this Lease and shall provide such adequate assurance of future performance of this Lease as is required by the Bankruptcy Law including the following:

- (A) the source of Rent and other considerations due under this Lease;
- (B) that any Percentage Rent due under this Lease will not decline;
- (C) the assumption or assignment of this Lease will not breach any provision such as a radius, location, use or exclusivity provisions in any other lease, finance agreement or master agreement relating to the Leased Premises; and
- (D) the assumption or assignment of this Lease will not disrupt any tenant mix or balance.

In the event the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Law, then this Lease shall be deemed rejected and Landlord shall have the right to immediate possession of the Leased Premises, and shall be entitled to all remedies provided by the Bankruptcy Law for damages for breach and/or termination of this Lease.

If this Lease shall be guaranteed on behalf of Tenant, all of the provisions of this Article with respect to the bankruptcy of Tenant, etc., shall be deemed to read "Tenant or the Guarantor hereof."

**25. Failure to Perform Covenant:** Any failure on the part of either party to this Lease to perform any obligation hereunder, and any delay in doing any act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction or any other similar cause beyond the control of the party so failing to perform, to the extent and for the period that such continues, save and except that the provisions of this paragraph shall not excuse a non-payment of Rent or other sums due hereunder on its due date.

**26. Rights of Successors and Assigns:** The covenants and agreements contained in the within Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, their heirs, successors, distributees, executors, administrators, legal representatives, assigns and upon their respective successors, in interest, except as expressly otherwise herein provided.

**27. Liens:** Tenant will not permit any lien for moneys owing by Tenant to remain against the Leased Premises for a period of more than thirty (30) days following discovery of the same by Tenant; provided, however, that nothing herein contained shall prevent Tenant, in good faith and for good cause, from contesting in the courts the claim or claims of any person, firm or corporation growing out of Tenant's operation of the Leased Premises or costs of improvements by Tenant on the said Premises, and the postponement of payment of such claim or claims, until such contest shall finally be decided by the courts shall not be a violation of this agreement or any covenant thereof. Should any such lien be filed and not released or discharged or action not commenced to declare the same invalid within thirty (30) days after discovery of the same by Tenant, Landlord may at Landlord's option (but without any obligation so do) pay and discharge such lien and may likewise pay and discharge any taxes, assessments or other charges against the Leased Premises which Tenant is obligated hereunder to pay and which may or might become a lien on said Premises.

**28. Tenant's Estoppel Certificate:** Within seven (7) business days after each request by Landlord is received by Tenant, Tenant shall deliver an Estoppel Certificate to Landlord ("Estoppel Certificate"). The Estoppel Certificate shall be in writing, and shall be executed on behalf of Tenant by persons having appropriate authority. Each Estoppel Certificate shall be made in favor of Landlord, any mortgagee, any assignee, any purchaser or any other person specified by Landlord.

Each Estoppel Certificate shall contain information required by Landlord, and satisfactory to any mortgagee, assignee, purchaser or other person specified by Landlord including, but not limited to the following:

- (A) ratifying this Lease;
- (B) specifying the Commencement Date and termination date of this Lease Term;
- (C) certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be so stated);
- (D) that all conditions and obligations under this Lease to be performed by Landlord have been satisfied or stating those not performed;
- (E) that there are no defenses or offsets against the enforcement of this Lease by Tenant or specifying any such defenses;
- (F) the amount of current Rent and the date to which all Rent has been paid;
- (G) any contractual Rent modifications beyond the date of estoppel;

- (H) the approximate number of square feet of floor space in the Leased Premises;
- (I) that no Rent has been paid in advance or specifying any such advance Rent; and
- (J) the amount of the security deposit held by Landlord.

If Tenant fails to execute, acknowledge and deliver to Landlord or any mortgagee, assignee, purchaser or other person specified by Landlord a statement in accordance with the foregoing provision of this paragraph 31 within seven (7) business days after the receipt of such request, such shall constitute an acknowledgment by Tenant that this Lease is unmodified and in full force and effect and that all conditions and obligations under this Lease to be performed by Landlord have been satisfied, and that there are no defenses or offsets against the enforcement of this Lease by Tenant.

**29. Construction of Lease:** The word "Landlord" as used herein shall refer to the individual, individuals, partnership, or corporation called "Landlord." The word "Tenant" shall likewise refer to the individual, individuals, partnership, or corporation called "Tenant." Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural when the sense requires.

**30. Paragraph Headings:** The paragraph headings as to the contents of particular paragraphs herein, are inserted only for convenience and are in no way to be construed as part of such paragraph or as a limitation on the scope of the particular paragraph to which they refer.

**31. Authority:** In the event Tenant and/or the Guarantor of Tenant's obligations hereunder shall be a corporation or limited liability company, the persons executing this Lease on behalf of Tenant hereby individually covenant and warrant that: Tenant is a duly qualified corporation or limited liability company; all steps have been taken prior to the date hereof to qualify Tenant to do business in the State in which the Leased Premises is located; all franchise and corporate or limited liability company taxes have been paid to date; all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due; and those persons executing this Lease on behalf of Tenant are duly qualified and authorized to bind, and in fact do bind, the corporation or limited liability company.

In the event Tenant hereunder shall be a partnership, either general or limited, the persons or entities executing this Lease on behalf of Tenant hereby individually covenant and warrant that: Tenant is a duly qualified partnership; all steps have been taken prior to the date hereof to qualify Tenant to do business in the State in which the Leased Premises is located, if required by law; all franchise and partnership taxes have been paid to date; all future forms, reports, fees and other documents necessary to comply with applicable law will be filed when due; and those entities executing this Lease on behalf of the partnership are duly qualified to bind, and in fact do bind, the partnership.

**32. Notices:** All notices required to be given to the parties shall be delivered by hand, sent by United States registered or certified mail, return receipt requested, postage paid or express delivery by a nationally recognized courier at the addresses shown below:

To the Landlord at the following address:

NAI Avant, LLC  
PO Box 2267  
Columbia SC 29202  
Attn: Property Management

To the Tenant at the following address:

D.O. Box 147  
Columbia, SC 29201

Any such notice shall be considered given on the date of such hand delivery, deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided herein) in which to respond to such notice shall commence on the date of hand or courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice.

All usual or ordinary correspondence shall be sent by regular mail. Each party shall promptly notify the other in writing of any change of address. Any such notice, demand, or communication from an attorney acting or purporting to act on behalf of a party shall be deemed to be notice from such party provided that such attorney is authorized to act on behalf of such party.

**33. Confidentiality:** Tenant and its agents, employees, officers, directors, accountants and attorneys agree to keep the financial terms of this Lease strictly confidential, and shall not disclose, directly or indirectly, such terms to any

person or entity without first obtaining the prior written consent of Landlord; provided, however, that Landlord's consent shall not be required for any disclosure (i) to Tenant's officers, directors, employees, lenders, accountants, attorneys or current or potential investors in, or purchasers of Tenant's business; or (ii) when compelled by applicable laws, regulations or court orders.

**34. Notice to Mortgagee:** After receiving written notice from any person, firm, or other entity, that it holds a mortgage (which term shall include a deed of trust) which includes as part of the mortgaged premises the Leased Premises, Tenant shall, so long as such mortgage is outstanding, be required to give to such holder the same notice as is required to be given to Landlord under the terms of this Lease, but such notice may be given by Tenant to Landlord and such holder concurrently. It is further agreed that such holder shall have the same opportunity to cure any default, and the same time within which to effect such curing, as is available to Landlord plus an additional sixty (60) days and such further time as shall be required to gain control over the Leased Premises in order to effect such cure; and if necessary to cure such a default, such holder shall have access to the Leased Premises.

**35. Subordination:** Tenant's rights under this Agreement shall at all times be subordinate to and subject to any mortgage which is now or later placed on the property of which the Premises is a part; and if requested, Lessee shall execute promptly any certificate that Owner may request to specifically implement the subordination outlined in this paragraph.

**36. No Estate in Land:** This Lease creates only the relationship of Landlord and Tenant between Landlord and Tenant. Tenant has only the right of use and enjoyment of the Demised Premises and not an estate of years and no estate shall pass out of Landlord.

**37. Entire Agreement:** This Lease constitutes the entire Lease between the parties, and no modification hereof shall be valid unless made in writing and signed by Landlord.

**38. Nonwaiver:** Failure of Landlord to insist upon strict compliance with the terms of this Lease shall not constitute a waiver of Landlord's right to act on any violation.

**39. Remedies Cumulative:** All remedies under this Lease or by law or equity shall be cumulative.

**40. Counterparts:** The Signatories may execute this Lease Agreement in one or more counterparts, with each counterpart being deemed an original Lease, but with all counterparts being considered one Lease.

**41. Choice of Law:** THIS AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE STATE OF SOUTH CAROLINA WITHOUT REGARD FOR CONFLICTS OF LAW PRINCIPLES. IT WAS EXECUTED IN THE STATE OF SOUTH CAROLINA AND IS INTENDED TO BE VALID IN ALL JURISDICTIONS OF THE UNITED STATES OF AMERICA AND ALL FOREIGN NATIONS.

**42. Additional Provisions:** Insofar as the following provisions conflict with any other provisions of the Lease, the following shall control:

- (a) The submission of this document for examination does not constitute an option or offer to lease space at the Property. This document shall have no binding effect on the parties unless executed by the Landlord and the Tenant and a fully executed copy is delivered to the Tenant.
- (b) EACH PARTY ACKNOWLEDGES THAT HE/SHE HAS READ THIS LEASE PRIOR TO SIGNING, HAS CONSULTED WITH AN ATTORNEY REGARDING SAME, AND AGREES TO ALL TERMS CONTAINED HEREIN.
- (c) Landlord shall provide Tenant with Five (5) one (1) year option periods to renew the Lease at rental rate to be negotiated. Tenant shall give notice of its intention to extend Six (6) months prior to lease expiration.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

WITNESSES:  
*Jane McLaughlin*

*MA Hall*

LANDLORD: Edens/Graham Partners, LLC, or its assigns

By: *Joe Edens*

Its: Manager

TENANT: City of Columbia

By: *Jerisa Wilson*

Its: City Manager

APPROVED AS TO FORM

*Jane Lisowski*  
Legal Department City of Columbia, SC

**Exhibit "A"**

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*AW*

**Exhibit "B"**

Landlord shall make the following building improvements prior to the Commencement Date:

- Paint (two colors) and carpet (standard commercial grade) throughout the front and rear office space
- Service all overhead doors and dock levelers
- Replace damaged ceiling tiles
- Patch all damaged drywall
- New HVAC in all of office space and in front warehouse space (13,274 SF bay)
- New toilets, partitions, and accessories in restrooms
- Plumbing & electrical systems serviced
- General cleaning of the office and warehouse throughout
- Per Building Official, a second exit must be added from the 2<sup>nd</sup> floor office space to the exterior of the building to meet building Code
- Perform any and all work necessary to deliver an Approved Report.