



41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346
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MEMORANDUM

To: Honorable Mayor and City Council
From: Eric Linton, ICMA-CM, AICP
City Manager
Date: March 23, 2015
Subject: First Amendment to Office Lease

ITEM DESCRIPTION

The first amendment to office lease is an agreement to lease an additional 1,897 square feet of office space in Suite 340 for the Police Department.

BACKGROUND

The City of Dunwoody entered into a lease for space on February 6, 2009, which consisted of 24,785 rentable square feet of space in our current building located at 41 Perimeter Center East consisting of Suites 100, 103 and 250.

The City Council authorized the addition of two new Major positions and one new Lieutenant position in the 2015 budget for the Police Department. These new positions become effective on July 1, 2015. After reviewing the current space available for the police department, it was determined that the department needed additional space to make room for these new positions.

A check of our facility identified 1,897 square feet of space available on the 3rd floor of our building in Suite 340. This space includes the office space needed as well as conference room space available for all departments.

FUNDING

The cost of the lease is in line with the rate we pay for our current space. The monthly lease begins on May 1, 2015 at \$3,346.63 per month, which is \$21.17 a square foot, and escalates the final year of the lease to \$3,579.01, which is \$22.64 a square foot. The lease amendment terminates the same time as our current lease.

The first amendment provides \$10.71 per square foot (\$20,316.87) for tenant improvements. We do not expect the cost for those improvements to exceed this amount. The 2015 Budget will have to be amended to include \$26,773.04 for the first years rent.

RECOMMENDED ACTION

At this time, staff recommends the City Council approve this first amendment to the office lease.

FIRST AMENDMENT TO OFFICE LEASE

THIS FIRST AMENDMENT TO OFFICE LEASE (this “**Amendment**”) is made and entered into as of the ____ day of _____, 2015, by and between **APG PCE, LLC**, a Georgia limited liability company (“**Landlord**”), and **CITY OF DUNWOODY**, a Municipal corporation of the State of Georgia (“**Tenant**”).

W I T N E S S E T H :

WHEREAS, RB 41/47 PCE, LLC (“**Original Landlord**”) and Tenant entered into that certain Office Lease dated February 6, 2009, as amended by that certain Confirmation of Lease Term dated January 5, 2010 (collectively, the “**Lease**”), for certain premises in the building known as Park at Perimeter Center East and located at 41 Perimeter Center East, Dunwoody, Georgia 30346 (the “**Building**”), consisting of approximately 24,785 rentable square feet of space on the first and second floors of the Building known as Suites 100, 103 and 250 (the “**Original Premises**”);

WHEREAS, Landlord acquired the Building and succeeded to the interest of Original Landlord as the “Landlord” under the Lease;

WHEREAS, Landlord has agreed to lease additional premises to Tenant and Tenant has agreed to lease from Landlord such additional premises; and

WHEREAS, Landlord and Tenant desire to evidence such expansion of the Original Premises and to amend certain other terms and conditions of the Lease and evidence their agreements and other matters by means of this Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lease is hereby amended and the parties hereto do hereby agree as follows:

1. **Recitals; Capitalized Terms.** The recitals set forth herein above are incorporated herein as if restated in their entireties. All capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

2. **Grant of Expansion Space.** Effective upon the earlier of (i) five business days from the date on which the improvements to the Expansion Space, as defined below, are Substantially Complete, as defined in Exhibit C, (ii) Tenant’s occupancy of the Expansion Space (as hereinafter defined) for the purpose of conducting business therefrom, (iii) the date that Substantial Completion would have occurred in the absence of Tenant Delay, as defined in Exhibit C, or (iv) one hundred twenty (120) days following May 1, 2015 (the earlier of such dates being the “**First Offer Lease Commencement Date**”), Landlord hereby leases to Tenant and Tenant hereby leases from Landlord an additional 1,897 rentable square feet of space as shown on Exhibit A attached hereto and by this reference made a part hereof (the “**Expansion Space**”). As of the First Offer Lease Commencement Date, the total rentable square feet of space leased pursuant to the Lease shall be 26,682 rentable square feet. From and after the First Offer Lease

Commencement Date, the Expansion Space shall be subject to all the terms and conditions of the Lease, as amended herein, and all references in the Lease to the “Premises” shall be deemed to include the Original Premises and the Expansion Space. Landlord and Tenant acknowledge and agree that the foregoing expansion is pursuant to an exercise by Tenant of its First Offer Right in Special Stipulation No. 4 of Exhibit B to the Lease.

3. Expansion Space Term. On the First Offer Lease Commencement Date, the Expansion Space shall be added as part of the Premises for all purposes, except as set forth herein, including the payment of any additional rent. The term of the Lease with respect to the Expansion Space shall commence on the First Offer Lease Commencement Date and shall be coterminous with the term of the Lease of the Original Premises and subject to annual renewals as set forth in Section 2.1(iii) of the Lease. In furtherance of the foregoing, if Tenant provides notice that it will not renew for the next renewal term as provided for in Section 2.1(iii) of the Lease then the minimum rent installment payable in December of the last year of the term of the Lease with respect to the Expansion Space shall be supplemented to include a reimbursement of Landlord’s unamortized costs and expenses incurred in connection with the lease of the Expansion Space, which unamortized amount shall be determined by amortizing Landlord’s actual costs and expenses incurred in connection with the lease of the Expansion Space, including, without limitation, leasing commissions, tenant improvement costs, allowances, and legal fees and expenses, together with interest thereon at the rate of eight percent (8%) per annum, over the period commencing on the First Offer Lease Commencement Date and expiring April 30, 2019.

4. Minimum Rent. From and after the First Offer Lease Commencement Date through the expiration of the term of the Lease, as herein amended, minimum rent with respect to the Expansion Space (and only the Expansion Space) shall be as follows, which amounts shall be paid simultaneously with Tenant’s payments of minimum rent for the Original Premises in accordance with the terms of the Lease, and which are subject to Tenant’s termination rights contained in Section 2.1(iii) of the Lease:

<u>Lease Period</u>	<u>Annual Minimum Rent Per Square Foot</u>	<u>Period Minimum Rent</u>	<u>Monthly Minimum Rent</u>
ED – 4/30/15	\$20.70	N/A	\$3,272.33
5/1/15 – 4/30/16	\$21.17	\$40,159.44	\$3,346.62
5/1/16 – 4/30/17	\$21.65	\$41,070.00	\$3,422.50
5/1/17 – 4/30/18	\$22.14	\$41,999.64	\$3,499.97
5/1/18 – 4/30/19	\$22.64	\$42,948.12	\$3,579.01

5. Base Year. The Base Year with respect to the Expansion Space shall be calendar year 2009 for purposes of the payment by Tenant of Tenant’s Share of Taxes and Operating Expenses for the Expansion Space.

6. Tenant’s Proportionate Share. All references in the Lease for purposes of determining Tenant’s Proportionate Share shall include the Expansion Space for purposes of calculating such percentage. Including the Expansion Space, as of the First Offer Lease Commencement Date, Tenant’s Proportionate Share shall be 28.26%.

7. Parking. The parking ratio for Tenant shall remain four (4) parking spaces for each one thousand (1,000) rentable square feet of space. Except as set forth herein, Tenant's additional parking spaces in the parking facilities pursuant to this Amendment shall be upon the terms and conditions set forth in Section 1.4 of the Lease.

8. Expansion Space Commencement Memorandum. Within twenty (20) days after the First Offer Lease Commencement Date, Landlord and Tenant agree to execute a First Offer Lease Commencement Date Memorandum confirming the First Offer Lease Commencement Date, the date minimum rent commences or commenced for the Expansion Space, and the rentable square feet comprising the Expansion Space. Such Expansion Space Commencement Memorandum shall be in the form attached hereto as Exhibit B and by this reference incorporated herein.

9. Acceptance of Premises. Tenant hereby accepts the Premises, as expanded herein, in its "AS IS," "WHERE IS" condition, and without any representations or warranties (express or implied) whatsoever, during the term of the Lease, and acknowledges and agrees Landlord shall have no obligation to construct any tenant improvements to the Premises, or make any alterations or additions thereto, and Landlord shall have no obligation to provide any tenant improvement allowance, credit, set-off, or other concession to Tenant, except as otherwise provided for on Exhibit C attached hereto and incorporated herein by this reference.

10. Other Amendments. Tenant agrees that Exhibit F to the Lease and its associated Tenant Improvement Allowance has no further relevancy or application to the Lease and such Exhibit is hereby deleted in its entirety (except the heading) and replaced with the words "Intentionally Deleted."

11. Landlord's Notice Address. From and after the date hereof and notwithstanding anything to the contrary in the Lease, Landlord acknowledges that its current address for notices and payment of rent under the Lease is as follows:

APG PCE, LLC
c/o Atlanta Property Group, LLC
Peachtree 25th Building, Suite 100
1718 Peachtree Street
Atlanta, Georgia 30309

12. Brokers. Tenant represents and warrants to Landlord that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker other than APG Real Estate Services, LLC, which represented Landlord, and Colliers International – Atlanta, Inc., which represented Tenant, in the negotiating and making of this Amendment, and Tenant agrees to indemnify and hold Landlord, its agents, employees, partners, directors, shareholders and independent contractors harmless, to the extent permitted by law, from all liabilities, costs, demands, judgments, settlements, claims, and losses, including reasonable attorneys' fees and costs, incurred by Landlord in conjunction with any such claim or claims of any other broker or brokers claiming to have interested Tenant in the Building, the Premises or the Expansion Space, or claiming to have caused Tenant to enter into this Amendment.

13. Ratification of Lease. Tenant hereby affirms that as of the date hereof, the Lease is in full force and effect, that the Lease has not been modified or amended (except as provided in this Amendment) and that all of Landlord's obligations accrued to date have been performed. Tenant hereby ratifies the provisions of the Lease on behalf of itself and its successors and assigns and agrees to attorn and be bound to Landlord and its successors and assigns as to all of the terms, covenants and conditions of the Lease as amended herein. Tenant further agrees to fulfill all of its obligations under the Lease as amended herein to Landlord throughout the remainder of the Term.

14. No Defaults. Tenant hereby agrees that there are, as of the date hereof, regardless of the giving of notice or the passage of time, or both, no defaults or breaches on the part of Landlord or Tenant under the Lease.

15. Headings. The headings used herein are provided for convenience only and are not to be considered in construing this Amendment.

16. Entire Agreement. This Amendment represents the entire agreement between the parties with respect to the subject matter hereof. Landlord and Tenant agree that there are no collateral or oral agreements or understandings between them with respect to the Original Premises, the Expansion Space or the Building other than the Lease and this Amendment. This Amendment supersedes all prior negotiations, agreements, letters or other statements with respect to the matters addressed herein.

17. Binding Effect. This Amendment shall not be valid and binding on Landlord and Tenant unless and until it has been completely executed by and delivered to both parties.

18. Confirmation of Lease. Except as expressly amended and modified hereby, the Lease shall otherwise remain unmodified and in full force and effect, the parties hereto hereby ratifying and confirming the same. To the extent of any inconsistency between the Lease and this Amendment, the terms of this Amendment shall control.

[SIGNATURES COMMENCE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have duly executed this Amendment under seal as of the day and year first above written.

LANDLORD:

APG PCE, LLC,
a Georgia limited liability company

By: _____
Name: _____
Title: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

TENANT:

CITY OF DUNWOODY,
a Municipal corporation of the State of Georgia

By: _____
Name: _____
Title: _____

EXHIBIT B

FIRST OFFER LEASE COMMENCEMENT DATE MEMORANDUM

This Agreement, made this ____ day of _____, 2015 between **APG PCE, LLC**, a Georgia limited liability company ("**Landlord**"), acting by and through its authorized representative, APG Real Estate Services, LLC, and the **CITY OF DUNWOODY** ("**Tenant**");

WITNESSETH THAT:

WHEREAS, Landlord and Tenant entered into an Office Lease dated February 6, 2009, as amended by that certain First Amendment to Office Lease dated _____, 2015 (the "**First Amendment**"; collectively, the "**Lease**") for Suites 100, 103, 250 and 340 (Suite 340 being known as the "**Expansion Space**"; collectively, Suites 100, 103, 250 and 340 being the "**Premises**") in the building located at 41 Perimeter Center East, Dunwoody, Georgia 30346; and

WHEREAS, Landlord and Tenant agreed to execute this Agreement to confirm the actual Expansion Space Commencement Date and for other purposes;

NOW, THEREFORE, pursuant to the provisions of Section 8 of the First Amendment; Landlord and Tenant mutually agree as follows:

1. The "First Offer Lease Commencement Date" is _____, 2015.
2. The number of rentable square feet of the Expansion Space is 1,897 square feet.
3. Tenant is in possession of, and has accepted, the Expansion Space demised by the First Amendment, and acknowledges that all the work to be performed by Landlord in the Expansion Space as required by the terms of the Lease except as set forth in Paragraph 4 below, if any, has been satisfactorily completed. Tenant further certifies that all conditions of the Lease required of Landlord as of this date have been fulfilled and there are no defenses or setoffs against the enforcement of the Lease by Landlord.
4. Landlord and Tenant acknowledge that the following items remain to be completed or corrected, which items Landlord agrees to accomplish within a reasonable time subsequent to the Expansion Space Commencement Date (if none, so state):

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES COMMENCE ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first stated above.

LANDLORD:

APG PCE, LLC, a Georgia limited
liability company

By: APG Real Estate Services, LLC,
its property manager

By: _____

Name: _____

Title: _____

TENANT:

CITY OF DUNWOODY,
a Municipal corporation of the State of
Georgia

By: _____

Name: _____

Title: _____

EXHIBIT C

EXPANSION SPACE WORK LETTER

1. **Landlord's Obligations.** Tenant has personally inspected the Expansion Space and accepts the same "**AS IS-WHERE IS**" without representation or warranty by Landlord of any kind and with the understanding that Landlord shall have no responsibility with respect thereto except to construct and install within the Expansion Space, in a good and workmanlike manner, the Tenant Improvements to the Expansion Space in accordance with this **Exhibit C**.

2. **Construction Drawings.** If applicable, as soon as is reasonably practical following the date hereof, Landlord shall prepare and submit to Tenant a set of construction drawings (the "**CD's**") covering all work to be performed by Landlord in constructing and installing the Tenant Improvements, which shall be based on the scope of work attached as **Exhibit C-1** hereto (the "**Scope of Work**"). Landlord will be responsible for completing the work described in **Exhibit C-1**. Tenant shall have five (5) days after receipt of the CD's in which to review the CD's and to give to Landlord written notice of Tenant's approval of the CD's or its requested changes to the CD's. Tenant shall have no right to request any changes to the CD's that would alter the exterior appearance or nature of the Building or the Building systems. If Tenant fails to approve or request changes to the CD's within five (5) days after its receipt thereof, Tenant shall be deemed to have approved the CD's and the same shall thereupon be final. If Tenant requests any changes to the CD's, Landlord shall make those changes which are reasonably requested by Tenant and shall within ten (10) days of its receipt of such request submit the revised portion of the CD's to Tenant. Tenant may not thereafter disapprove the revised portions of the CD's unless Landlord has unreasonably failed to incorporate reasonable comments of Tenant and, subject to the foregoing, the CD's, as modified by said revisions, shall be deemed to be final upon the submission of said revisions to Tenant. Tenant shall at all times in its review of the CD's, and of any revisions thereto, act reasonably and in good faith. Without limiting the foregoing, Tenant agrees to confirm Tenant's consent to the CD's in writing within five (5) days following Landlord's written request therefor.

3. **Allowance.** Tenant shall be responsible for the cost to construct and install the Tenant Improvements to the extent that, taking into account any increases or decreases resulting from any Change Orders (as hereinafter defined), the cost exceeds Ten and 71/100 Dollars (\$10.71) per rentable square foot of the Expansion Space, or Twenty Thousand Three Hundred Sixteen and 87/100 Dollars (\$20,316.87) in the aggregate (the "**Allowance**"). If, following Tenant's approval (or deemed approval) of the CD's, Landlord's budget shows that the cost to construct and install the Tenant Improvements will exceed the Allowance, Tenant shall deliver to Landlord, within ten (10) days following Landlord's written request, an amount equal to one-half (1/2) of such projected excess. Following Substantial Completion (as hereinafter defined) of the Tenant Improvements, Tenant shall pay to Landlord the remaining difference between Landlord's actual cost to construct the Tenant Improvements, inclusive of all architectural, engineering, construction oversight and other reasonable costs within ten (10) days of Landlord's request therefor. If the Allowance exceeds Landlord's actual cost to construct the Tenant Improvements

(taking into account any increases or decreases resulting from any Change Orders), such savings shall be the property of Landlord.

4. Tenant Cost. If any extraordinary costs are incurred during construction in order to meet special Tenant requirements or code requirements specific to Tenant's use and Tenant has not disclosed same prior to Lease execution, then such costs will be the responsibility of Tenant and Tenant will reimburse Landlord for all related costs within ten (10) days following presentation by Landlord to Tenant of an invoice supported by reasonable documentation. Tenant's failure to deliver the payments required in Paragraph 3 and this Paragraph 4 shall entitle Landlord to stop the construction and installation of the Tenant Improvements until such payment is received, and any resulting delay shall constitute a Tenant Delay (as hereinafter defined) hereunder. In addition, all delinquent payments shall accrue interest at 15% per annum.

5. Schedule and Early Occupancy. Landlord will use commercially reasonable efforts to complete the Tenant Improvements within a reasonable period following the date hereof. Tenant agrees to coordinate with Landlord regarding the installation of Tenant's phone and data wiring and any other trade related fixtures that will need to be installed in the Expansion Space prior to Substantial Completion (the "**Tenant Work**"). In addition, if and to the extent permitted by applicable laws, rules and ordinances, Tenant shall have the right to enter the Expansion Space a reasonable period prior to the scheduled date for Substantial Completion (as may be modified from time to time) in order to install or construct the Tenant Work and otherwise prepare the Expansion Space for occupancy. During any entry prior to the Expansion Space Commencement Date: (a) Tenant shall comply with all terms and conditions of the Lease, as amended, other than the obligation to pay rent for the Expansion Space; (b) Tenant shall not interfere with Landlord's completion of the Tenant Improvements; (c) Tenant shall cause its personnel and contractors to comply with the terms and conditions of Landlord's rules of conduct (which Landlord agrees to furnish to Tenant upon request); and (d) Tenant shall not begin operation of its business in the Expansion Space. Tenant acknowledges that Tenant shall be responsible for obtaining all applicable permits and inspections relating to any such entry by Tenant.

6. Change Orders. Tenant shall have the right to request changes to the CD's at any time following the date hereof by way of written change order (each, a "**Change Order**", and collectively, "**Change Orders**"). Provided such Change Order is reasonably acceptable to Landlord, Landlord shall prepare and submit to Tenant a memorandum setting forth the impact on cost and schedule resulting from said Change Order (the "**Change Order Memorandum of Agreement**"). Tenant shall, within three (3) days following Tenant's receipt of the Change Order Memorandum of Agreement, either: (a) execute and return the Change Order Memorandum of Agreement to Landlord; or (b) retract its request for the Change Order. At Landlord's option and subject to Section 3 above, Tenant shall pay to Landlord (or Landlord's designee), within ten (10) days following Landlord's request, any projected increase in the cost to construct the Tenant Improvements resulting from the Change Order, as set forth in the Change Order Memorandum of Agreement. Landlord shall not be obligated to commence any work set forth in a Change Order until such time as Tenant has delivered to Landlord the Change Order

Memorandum of Agreement executed by Tenant and, if applicable, Landlord has been paid in full for said Change Order.

7. Tenant Delay. Notwithstanding anything to the contrary contained in the Lease, if Substantial Completion of the Tenant Improvements is delayed beyond the Target Expansion Commencement Date as a result of Tenant Delay (as hereinafter defined), then, for purposes of determining the Expansion Space Commencement Date, Substantial Completion of the Tenant Improvements shall be deemed to have occurred on the earliest date that completion of construction of the initial Tenant Improvements in the Landlord's reasonable judgment could have occurred but for such Tenant Delay. Without limiting the foregoing, Landlord shall use commercially reasonable speed and diligence to Substantially Complete the Tenant Improvements on or before the Target Expansion Commencement Date.

8. Letter of Understanding. Promptly following the Commencement Date, Tenant shall execute Landlord's First Offer Lease Commencement Date Memorandum in a form substantially consistent with Exhibit B, attached hereto and made a part hereof, acknowledging: (a) the First Offer Lease Commencement Date of the Lease; and (b) except for any punchlist items, that Tenant has accepted the Expansion Space. If Tenant takes possession of and occupies the Expansion Space, Tenant shall be deemed to have accepted the Expansion Space and that the condition of the Expansion Space and the Building was at the time satisfactory and in conformity with the provisions of the Lease, as amended, in all respects, subject to any punchlist items and any latent defects discovered within twelve months from the First Offer Lease Commencement Date.

9. Definitions. For purposes of the Lease, as amended:

(a) "Substantial Completion" (or any grammatical variation thereof) shall mean completion of construction of the Tenant Improvements in the Landlord's reasonable judgment, subject only to punchlist items to be identified by Landlord and Tenant in a joint inspection of the Expansion Space prior to Tenant's occupancy, as established by a certificate of occupancy for the Expansion Space or other similar authorization issued by the appropriate governmental authority, if required.

(b) "Tenant Work" shall mean installation of all phone and data equipment, trade fixtures, furniture, equipment and other installations not included in Exhibit C-1 and the Construction Drawings (if applicable). The installation and cost of all Tenant Work is the responsibility of Tenant and shall be considered an alteration for the purposes of the Lease, subject to the provisions the Lease.

(c) "Tenant Delay" shall mean any delay in the completion of the Tenant Improvements attributable to Tenant, including, without limitation: (i) Tenant's failure to meet any time deadlines specified herein; (ii) Change Orders; (iii) the performance of any other work in the Expansion Space by any person, firm or corporation employed by or on behalf of Tenant, or any failure to complete or delay in completion of such work; (iv) Landlord's inability to obtain an occupancy permit for the Expansion Space because of the need for completion of all or a

portion of improvements being installed in the Expansion Space directly by Tenant; and (v) any other act or omission of Tenant.

#8.

EXHIBIT C-1

SCOPE OF WORK

[TO BE PROVIDED]