

FINAL LOT  
810 5th ST

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF GENERAL SERVICES**



**Office of the Director**

February 26, 2014

Gary Schlager  
Rock Creek – 810 5<sup>th</sup> LLC  
1155 Connecticut Avenue, NW  
Suite 700  
Washington, DC 20036

**Re: Letter of Intent for the lease of premises at 808-810 5<sup>th</sup> Street, NW, Washington, DC**

Dear Mr. Schlager:

The Department of General Services (“DGS”), on behalf of the District of Columbia, presents this Letter of Intent (“LOI”) to Rock Creek – 810 5<sup>th</sup> LLC for the lease of certain premises in the building located at 808-810 5<sup>th</sup> Street, NW, Washington, DC (“Building”). Outlined below are the principal economic terms and conditions that would serve as the basis for a lease (“Lease”) for premises at the Building.

**TENANT:**

The District of Columbia, a municipal corporation, acting by and through its Department of General Services.

The District of Columbia agency initially occupying the Premises will be Department of Human Services (“DHS”). However, Tenant retains the right to change occupying agencies without such substitution constituting a sublet of the Premises or an assignment of the Lease or otherwise require Landlord’s consent.

**LANDLORD:**

Rock Creek – 810 5<sup>th</sup> LLC, which is authorized to do business in the District of Columbia.

**PREMISES:**

Tenant shall lease approximately 32,246 gross square feet of space encompassing the entire Building and associated land (“Premises”). The Premises shall have direct access from street level on the 5<sup>th</sup> Street side of the building and 4-6 surface parking spaces. All measurements shall be confirmed and Tenant shall be provided with Landlord’s architect’s written certification of same.

**USE:**

The Premises shall be used for any lawful use and for no other purposes whatsoever without Landlord's prior written consent. Tenant shall comply with all Building Rules and Regulations.

**LEASE TERM:**

The term of the Lease shall commence on the Lease Effective Date and shall extend for twenty (20) Lease Years beginning with the Rent Commencement Date. The term "Lease Year" shall mean each twelve (12) month period beginning with the Rent Commencement Date, and each anniversary thereof, provided the Rent Commencement Date occurs on the first day of a month. If the Rent Commencement Date occurs on a day other than the first day of a month, then the first Lease Year shall begin on the first day of the month following the Rent Commencement Date.

**OPTION TO RENEW:**

So long as Tenant is not in monetary default beyond any applicable notice and cure periods, Tenant shall have the option to extend the term for one (1) additional period of five (5) years upon not less than twelve (12) full calendar months and not greater than twenty-four (24) full calendar months prior written notice, time being of the essence. In order to prevent the inadvertent failure of Tenant to exercise such renewal option within the time specified above, the term of the Lease shall not expire unless and until Tenant fails to exercise such renewal option within the later to occur of fifteen (15) business days after receiving notice from Landlord that the renewal option has not been exercised or the date immediately preceding the last Lease Year of the initial term (Landlord's notice shall not be given prior to the 730<sup>th</sup> day prior to the expiration date), or unless and until Tenant gives notice to Landlord that it will not be exercising its renewal option. If such option is not timely exercised, Tenant's right to renew shall expire and the Lease shall terminate at the end of the Term, or the then-current option period, as the case may be. All terms and conditions of this Lease shall remain unchanged and apply during the option period. Tenant's Base Rent shall continue to escalate annually in the same manner as the original lease.

**LEASE EFFECTIVE DATE:**

The Lease Effective Date shall be contingent upon (1) the full execution and delivery of the Lease, subject to prior Council Approval (if required); and (2) the Landlord providing proof satisfactory to the Tenant of the following: (a) Landlord's due and valid organization; (b) Landlord's qualification to conduct business in the District of Columbia; and (c) Landlord's authority to enter in the Lease and perform all of its obligations thereunder.

**RENT COMMENCEMENT DATE:**

The Rent Commencement Date shall be the date of delivery of the entire Premises to Tenant with all of Landlord's Work (defined below) substantially completed. Tenant shall have ten (10) business days to approve plans and specifications. Any Tenant delay shall not delay the Rent Commencement Date. Landlord and Tenant agree to create a standard form for change orders to be used throughout Landlord's Work and said form shall be attached to the lease agreement. In addition, any cost over-runs incurred due to Tenant changes in plans, materials or specifications (a "Tenant Change Order") following approval shall be funded by Tenant to Landlord, within sixty (60) days following Tenant's receipt of the final invoices after completion of Landlord's Work. Tenant shall only be responsible for the incremental costs over and above Landlord's cost in performing Landlord's Work. Landlord shall assess a six

percent (6.0%) project management fee to the net cost of any approved change order. If change orders are not approved as to cost and design by Tenant, in writing, within such ten (10) day period as above provided, Landlord is authorized to proceed with the original plans/specifications without change or amendment. In addition, any time or delivery delay incurred by Landlord due to a Tenant Change Order shall not delay or amend the Rent Commencement Date.

**SNDA/RECOGNITION AGREEMENT:**

Landlord shall provide Tenant, prior to the Rent Commencement Date, with (i) a subordination, non-disturbance and attornment agreement (on a mutually agreed upon, commercial reasonable form) executed by each holder of any mortgage or deed of trust encumbering or affecting the Building and (ii) a fee owner recognition agreement, if applicable, executed by any existing ground lessor on such forms as are reasonably acceptable to Tenant. Receipt of such agreements shall be a condition of the Rent Commencement Date.

**BASE RENT AND ECONOMIC TERMS**

The Base Rent with respect to the Premises shall be \$37.00 per gross square foot (excluding FF&E) of the Premises per annum payable in equal monthly installments in arrears. It is understood and agreed to by the parties that the cost for all of Tenant's "approved" furniture, fixtures and equipment (collectively the "FF&E") which is purchased for Tenant by Landlord shall be reimbursed by Tenant in the form of an increase to the Base Rent hereunder, amortized over the Lease Term at 6.0% interest. Said Base Rent increase shall be made prior to lease execution and incorporated in the final version as Base Rent. Changes to the scope or spec of any Tenant FF&E shall be subject to the same Tenant Change Order provisions as described above in Rent Commencement Date. The Base Rent shall be triple net subject to certain Landlord costs described below in Additional Rent. Commencing one year following the Rent Commencement Date, and continuing on each anniversary thereafter, Base Rent shall be increased by three percent (3.0%) of the previous year's Base Rent, as escalated.

**ADDITIONAL RENT**

Base Rent shall be triple net to the Landlord. All operating costs, real estate taxes, BID taxes, insurance, vault taxes, utilities, fees, charges, expenses, reimbursements and obligations of every kind and nature whatsoever either relating to the operation, use, maintenance, repair, improvement, or taxation of the Premises, Property and grounds, which may arise or become due during the term of this Lease, shall be paid or discharged by Tenant as Additional Rent. Said Additional Rent shall be paid either directly by Tenant (such as, for example, in the case of utility costs, maintenance, costs for security, etc.) or paid to Landlord within sixty (60) days following receipt of Landlord's invoice by Tenant (such as, for example, in the case of real estate taxes, building insurance, HVAC or maintenance contracts, etc.).

Landlord shall provide 24/7 emergency management services specifically for, and limited to, the Building's hot and cold water supply and HVAC system(s) (collectively the "Critical Building Systems"). In the event there is a failure of any Critical Building Systems, Tenant shall contact Landlord, or Landlord's designee (collectively the "Emergency Provider"), and said Emergency Provider shall dispatch qualified personnel to assess and rectify the situation in a commercially reasonable and timely fashion. All costs, including labor and material, to rectify the problem or issue shall be reimbursed to Landlord by Tenant as Additional Rent.

1 PAID

Landlord shall, at its option, administer and hold service contracts for the roof and HVAC system. Additional Rent shall include reimbursement of Landlord's costs for the service contracts, plus a ten percent (10%) administrative/oversight fee. Tenant may request that Landlord hold additional service or maintenance contracts on the same terms as set forth herein. Tenant shall only have an obligation to reimburse Landlord for any maintenance or service contracts if Tenant has approved such costs in advance and certified the availability of funds for the reimbursement. In the event Tenant fails to approve such costs in advance, then Tenant shall administer and hold the service contracts at its sole cost and expense directly. All reimbursements due to Landlord shall be paid within 60 days of billing Tenant.

In the event Tenant does not timely pay reimbursements for Additional Rent or an approved Tenant Change Order, Tenant shall incur penalty amounts equal to five percent (5.0%) of the amount overdue and not paid within 60 days.

It is the intent of the parties that Tenant shall provide its own property management and maintenance services, and hold all service contracts (with the exception of the roof and HVAC system) and self-perform, either directly or through a professional management/maintenance company, the majority of the maintenance agreements required to maintain the Property in a first class, professional manner. Tenant shall not perform any mechanical, electrical or plumbing ("M.E.P.") work (reasonable, customary or emergency maintenance work excepted) at the Property without first gaining Landlord's prior written approval.

Notwithstanding the above, Tenant shall not be responsible for the following services or costs:

- Replacement of the roof or structure, unless said replacement is due to Tenant's work, equipment or roof penetrations or if said replacement is due to Tenant's or Tenant's clients, residents, guests, contractors, invitees or staff's negligence. Tenant is, however, responsible for maintenance and repair of the roof and agrees to reimburse Landlord for the cost of a quarterly maintenance contract in the event Landlord elects to hold said contract directly.
- Replacement of the HVAC system(s) servicing the Property. Tenant is, however, responsible for maintenance and repair costs of the HVAC system and agrees to reimburse Landlord for the cost of a quarterly maintenance contract in the event Landlord elects to hold said contract directly.
- Replacement of the exterior walls or structure unless said replacement is due to Tenant's negligence; and
- Replacement of the base building electrical, mechanical and plumbing systems, unless said replacement is due to Tenant's or Tenant's clients, residents, guests, contractors, invitees or staff's negligence.

#### **LANDLORD'S WORK**

Landlord shall deliver a turnkey building, subject to agreement and definition by Landlord and Tenant, which includes furniture, fixtures and equipment ("FF&E") and IT drops. The space leased from Landlord must be code compliant and be measured in accordance with 1996 BOMA standards.

It shall be Tenant's sole responsibility to obtain any licenses or approvals of any governmental agency as it relates to the use of the Building or Premises. Any failure to obtain the licenses or approvals shall not delay the Rent Commencement Date. Landlord and Tenant agree to work collaboratively to obtain a Certificate of Occupancy upon completion of Landlord's Work.

**SIGNAGE:**

Tenant at its sole cost will be permitted to install exterior government signage upon approval of design and placement by the Landlord.

**ASSIGNMENT/SUBLETTING:**

Tenant shall have the right, subject to Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, to assign the Lease or sublease all or any portion of the Premises. In the event Tenant subleases all or a portion of the Premises, Tenant and Landlord shall share equally on any net profit from such subleasing.

**BUILDING HOURS:**

Tenant shall be entitled to operate on a schedule necessary and proper for the use of the Building.

**ACCESS AND SECURITY:**

Tenant shall have access to the Building and the Premises twenty-four (24) hours each day of the year. Tenant will provide its own security as necessary for its use of the Building.

**LEASE:**

The Lease shall be on Tenant's standard lease form.

**BROKERAGE:**

Tenant has not been represented by any agent or broker with respect to this transaction. In the event Landlord is represented in this transaction by an agent or broker, Landlord shall pay such agent or broker its fees or commission pursuant to the terms of a separate written agreement between Landlord and its agent or broker. Landlord shall indemnify and hold Tenant harmless from and against all liabilities, obligations and damages arising, directly or indirectly, out of or in connection with a claim from a broker, finder or agent with respect to the Lease or the negotiation thereof, including costs and attorneys' fees incurred in the defense of any claim made by a broker alleging to have performed services on behalf of Landlord.

**ANTI-DEFICIENCY:**

1. Any obligations of the District to fulfill any financial responsibility under the Lease, or any subsequent agreement entered into pursuant to the Lease or referenced herein (to which the District is a party), are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2004) (the "Federal ADA"), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (2004 Supp.) (the "D.C. ADA" and (i) and (ii) collectively, as amended from time to time, the "Anti-Deficiency Acts"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001). Pursuant to the Anti-Deficiency Acts, nothing in the Lease shall create any obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal

liability for any payment under the Lease shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

2. No officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a default by the District under the Lease.
3. The Lease shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under the Lease unless such amount has been appropriated by Act of Congress and is lawfully available.

**AUTHORITY:**

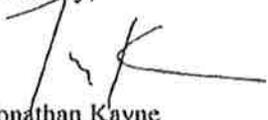
Execution of a lease or any other agreement between the parties is subject to authorization by the Council of the District of Columbia pursuant to § 451 of the District Charter (D.C. Official Code § 1-204.51 (2001)), D.C. Official Code § 10-1001 et seq. (2007 Supp.), and/or D.C. Official Code § 10-801 (2007 Supp.), each as applicable ("Council Approval").

**NON-BINDING PROVISIONS:**

Notwithstanding any other provision of this letter of intent, this letter of intent constitutes a general, non-binding letter of intent and is not intended to, and does not create a legal, binding commitment or obligation on the part of the parties or any of their affiliates to pursue the transaction contemplated by this letter of intent or any other transaction. It is understood that none of the parties hereto shall be legally bound to the other by reason of this letter of intent nor shall any rights, liabilities or obligations (including the obligation to negotiate in good faith) arise as a result of this letter of intent or any other written or oral communications between the parties. It is further understood that the only binding agreement would be the lease amendment, subject in all events to prior District of Columbia City Council Approval, if applicable.

If the terms and conditions stated above are acceptable to you, please sign and date below and return one (1) original to my office.

Sincerely,

  
Jonathan Kayne  
Deputy Director of Portfolio  
Department of General Services  
Date: 3/4/14

**AGREED AND ACCEPTED:**

**Rock Creek - 810 5<sup>th</sup> LLC**  
**By Rock Creek Fund Manager LLC, its Managing Member**

By: 

Title: Manager

Date: 3-6-2017