



## ARLINGTON COUNTY, VIRGINIA

### County Board Agenda Item Meeting of May 18, 2019

**DATE:** May 6, 2019

**SUBJECT:** First Amendment to Deed of Lease between Art Property Associates, LLC, a Delaware limited liability company, as landlord, and the County Board of Arlington County, Virginia, as tenant, for 11,132 square feet of office space located at 1501 Wilson Blvd., Arlington (RPC # 16-033-001) and related Storage License.

#### **C. M. RECOMMENDATIONS:**

1. Approve the attached First Amendment to Deed of Lease between Art Property Associates, LLC, a Delaware limited liability company, as landlord, and the County Board of Arlington County, Virginia, as tenant, for 11,132 square feet of office space located at 1501 Wilson Blvd., Arlington;
2. Approve the attached Storage License between Art Property Associates, LLC, a Delaware limited liability company, as licensor, and the County Board of Arlington County, Virginia, as licensee, for 1,600 square feet of storage space located at 1515 Wilson Blvd., Arlington; and
3. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee to execute the Office Lease, the Storage License, and any related documents on behalf of the County Board, subject to approval as to form by the County Attorney.

**ISSUES:** There are no known issues associated with this matter as of the date of this report.

**SUMMARY:** Approval and execution of the attached First Amendment to Deed of Lease (the "Amendment") and the Storage License would extend the County's lease of office space at 1501 Wilson Blvd. for an additional ten years.

**BACKGROUND:** The County leases the 11<sup>th</sup> floor of 1501 Wilson Blvd., containing approximately 11,132 rentable square feet of office space (the "Premises") pursuant to a lease signed in 2009. The County's Arlington Transportation Partners and Commuter Information Center programs occupy the Premises. Arlington Transportation Partners provides transportation

County Manager:

*MJS / Muc*

County Attorney:

*[Signature]* *[Signature]*

38.

Staff: Doug Raiden, DES – Real Estate

demand management services focused on promoting transportation options that remove people from single-occupancy vehicles, such as ART buses, Metrorail, Metro bus, biking, walking teleworking, and carpools. The Commuter Information Center provides consumer information services, including operating the County's Commuter Stores.

The County's Consumer Information Center contractor additionally licenses storage space at 1515 Wilson Blvd. from the same landlord for the storage of pamphlets and other materials used by both programs. The lease for 1501 Wilson Blvd. expires on November 30, 2019.

**DISCUSSION:** The Amendment would permit the County to continue to provide space for the Arlington Transportation Partners and Commuter Information Center programs. These are the Amendment's principle terms:

Term	Provision
Term length	Through November 30, 2029
Base rent	\$439,680 per year (approximately \$39.50 per rentable square foot) plus 2.5% annual escalations.
Extension options	One five-year option at market rent.
Free rent period	December 1, 2019 - September 30, 2020.
Improvement allowance	\$445,280 (approximately \$40 per rentable square foot).
Common area maintenance charges	County will pay for common area maintenance expenses and real estate taxes in excess of the base year amount. The base year will be reset to 2020. Increases in controllable common area maintenance expenses will be capped at 5% over the previous year's amount.

The Storage License would bring the storage space under County control, so that if the County changed contractors, it could retain the storage space for the new contractors' use. These are the Storage License's principle terms:

Term	Provision
Term length	Through November 30, 2029
Base rent	\$28,800 per year (\$18 per rentable square foot) plus 2.5% annual escalations.
Extension options	One five-year option, with base rent continuing to escalate at 2.5% per year.
Free rent period	December 1, 2019 - September 30, 2020.
Common area maintenance charges	None.

The County's brokers will rebate to the County around \$30,000 of their commission from this transaction.

## **PUBLIC ENGAGEMENT:**

### *Level of Engagement:*

#### **Communicate**

This level of engagement is appropriate because the Amendment is not anticipated to adversely affect the neighborhood. There will be no change in the use of the Premises.

### *Outreach Methods:*

Outreach consisted of including this item in the published agenda for this meeting and making this Board report available to the public on the County's meeting agenda web site.

### *Community Feedback:*

No community feedback has been received.

**FISCAL IMPACT:** There is no fiscal impact to the County as the lease amendment and storage license represent an extension of the existing lease agreements with Art Property Associates, LLC. The annual rent amount is included in the Fiscal Year 2020 Department of Environmental Services Commuter Services program budget. The aforementioned lease includes an annual base rent escalation of 2.5% which will be factored into the Commuter Services future budget appropriations which are fully offset by funding from a combination of sources that include Federal, State and user fees.

## FIRST AMENDMENT TO DEED OF LEASE

This First Amendment to Deed of Lease (this "Amendment"), dated \_\_\_\_\_, 2019, is between ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company ("**Landlord**"), and the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("**Tenant**").

### RECITALS:

A. Landlord and Tenant entered into that certain Deed of Lease dated January 28, 2009 (the "**Original Lease**") pursuant to which Tenant leases from Landlord eleven thousand one hundred thirty-two (11,132) square feet of rentable area, commonly known as Suite 1100 (the "**Premises**"), comprising the entire eleventh (11<sup>th</sup>) floor of a building located at 1501 Wilson Boulevard, Arlington, Virginia (the "**Building**"). The Original Lease as amended hereby shall be referred to as the "**Lease**."

B. The Lease Commencement Date occurred on November 2, 2009.

C. The Initial Term of the Lease expires on November 30, 2019.

D. Landlord and Tenant wish to amend the Lease to (i) extend the Term of the Lease for a period ten (10) years, and (ii) otherwise revise and modify the Lease upon the terms and conditions more particularly set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Lease Term. The Initial Term is hereby extended for a period of ten (10) years commencing on December 1, 2019 and expiring on November 30, 2029, unless earlier terminated pursuant to the provisions of the Lease or pursuant to law.

2. [Intentionally Omitted.].

3. Rent.

(a) Base Rent. Notwithstanding anything to the contrary in the Lease, Base Rent shall be as follows for the periods set forth below:

Dates		Annual Rate	Monthly Rate
12/1/19	6/30/20	\$439,680	\$36,640
7/1/20	6/30/21	\$446,160	\$37,180
7/1/21	6/30/22	\$457,320	\$38,110
7/1/22	6/30/23	\$468,720	\$39,060
7/1/23	6/30/24	\$480,480	\$40,040
7/1/24	6/30/25	\$492,480	\$41,040

7/1/25	6/30/26	\$504,720	\$42,060
7/1/26	6/30/27	\$517,320	\$43,110
7/1/27	6/30/28	\$530,280	\$44,190
7/1/28	6/30/29	\$543,600	\$45,300
7/1/29	11/30/29	\$557,160	\$46,430

(b) Base Rent Annual Escalation Percentage. Effective December 1, 2019, Section 1.07 of the Original Lease shall be deleted and replaced with the following:

**1.07.** *Base Rent Annual Escalation Percentage:* Two and one-half percent (2.5%).

(c) Base Rent Abatement. Notwithstanding anything to the contrary in the Lease, no Base Rent shall accrue or be due or payable for the period from December 1, 2019 through September 30, 2020.

4. Landlord's Work. Landlord shall perform and complete the following work (collectively, "Landlord's Work") at Landlord's sole cost within one hundred eighty (180) days after the mutual execution and delivery of this Amendment, subject to Tenant Delay (as hereinafter defined) and Unavoidable Delay.

(a) Cause the eleventh-(11<sup>th</sup>)-floor base building (core) restrooms to satisfy all ADA and Arlington County Building Code requirements with respect to the core restrooms for the floor.

(b) Alteration of the Common Areas as necessary to provide an ADA-compliant path of travel to the Premises from the Building's main lobby.

(c) Removal from the Property all Hazardous Material whose presence violates Applicable Law.

(d) Cause the Property to be free from violations of Applicable Law that affect Tenant's use of the Premises for general office use or Tenant's ability to obtain a certificate of occupancy for the Premises or any part thereof.

As used herein, a "**Tenant Delay**" shall mean one (1) or more delays in the performance of Landlord's Work which are caused by (a) Tenant's failure to timely approve any items related to Landlord's Work for which Tenant's approval is required, (b) Tenant's request for changes in Landlord's Work, (c) Tenant's request for materials, finishes or installations which are other than Building standard materials, or (d) the result of Tenant's or its agents', contractors' or employees' act, failure to act, or failure to act in a timely manner with respect to any matter affecting Landlord's Work.

Notwithstanding anything contained in this Section 4 to the contrary, Tenant hereby acknowledges that Landlord's Work shall be performed while Tenant is in occupancy of the Premises, and Landlord's actions in connection with Landlord's Work shall in no way constitute a constructive eviction of Tenant from the Premises, nor entitle Tenant to any abatement of rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the performance of Landlord's Work (not including bodily injury or

property damage), nor shall Tenant be entitled to any compensation or damages from Landlord for any inconvenience or annoyance occasioned by such construction or Landlord's actions in connection with such construction, except for Rent abatement for any time in which Tenant is not reasonably able to use (and in fact does not use) the Premises for the Permitted Use after having first given Landlord notice of the condition prohibiting such use and Landlord's failure to correct such condition within one (1) business day following receipt of such notice. Tenant acknowledges that Landlord and Tenant may have to relocate items of Tenant's furniture, equipment, and personal property in order for Landlord to complete Landlord's Work, and that Tenant will be responsible for packing and unpacking any such items, which may cause temporary inconvenience in the use of the Premises during the performance of Landlord's Work, and Tenant agrees to coordinate with Landlord's property manager and to reasonably cooperate with such activities.

Except as expressly provided in the Lease, Landlord shall have no obligation to make any additional improvements to the Premises or the Building.

5. Allowances.

(a) Extension Allowance. Landlord shall provide an allowance to Tenant in the amount of four hundred forty-five thousand two hundred eighty dollars (\$445,280) (the "**Extension Allowance**"), which is an amount equal to \$40.00 multiplied by the number of square feet of rentable space comprising the Premises. Tenant may utilize the Extension Allowance for costs associated with improvements to any part of the Premises ("**Tenant's Work**"), including without limitation architectural and engineering services, construction permits, and Tenant's staff time. Tenant's Work shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned, or delayed with respect to items that do not affect the Building's structure or systems. Tenant may apply up to twenty percent (20%) of the Extension Allowance to the purchase and installation of telecommunications equipment, computers, office furniture, and stationery and Tenant's staff time. Tenant may submit from time to time (but not more than once in any thirty (30) day period) written requests for payment of all or part of the Extension Allowance, provided that any such request shall be accompanied by (i) invoices reasonably evidencing work or services performed with respect to the portion of Tenant's Work for which payment of a portion of the Extension Allowance is being requested, and (ii) waivers or releases of liens in a form acceptable to Landlord from each of Tenant's contractors, subcontractors and suppliers in connection with the work performed or materials supplied as evidenced by the aforesaid invoices (which lien waivers may be conditioned solely upon the payment of a sum specified therein) and by a written certification (including an AIA certification at Landlord's option) executed by Tenant's general contractor, describing in reasonable detail the items of Tenant's Work which is the basis of Tenant's request for payment of the portion of the Extension Allowance; and (iii) such other supporting documentation evidencing costs incurred with respect to the Tenant's Work as Landlord may reasonably require. Within forty-five (45) days after receiving any such request and supporting documentation, Landlord shall pay Tenant the amount requested. Tenant shall have the right after the completion of Tenant's Work to apply to Rent any part of the Extension Allowance that is not applied to the cost of Tenant's Work upon not less than thirty (30) days' prior written notice to Landlord; provided, however, that any unapplied portion of the Extension Allowance following the processing of all requests submitted before January 1, 2022 shall be applied to Rent.

(b) HVAC Rebalancing. Within ninety (90) days following the completion of Tenant's Work, Tenant may rebalance the Premises' heating, ventilation, and air conditioning ("**HVAC**")

system. Within thirty (30) days after Tenant has performed the rebalancing and notifies Landlord of the same, Landlord shall pay Tenant seven thousand five hundred dollars (\$7,500).

6. Parking. Tenant shall be entitled to fifteen (15) parking passes for the Building's parking garage, up to three (3) of which may be reserved, in mutually-acceptable locations. Tenant may reduce or increase its number of reserved and unreserved passes at any time upon at least thirty (30) days' notice, but may not exceed three (3) reserved-space passes or fifteen (15) total passes without Landlord's consent. The rates charged for the foregoing parking passes shall not exceed the posted rates for the Building's parking garage. Section 1.17 of the Original Lease is hereby deleted.

7. Late Fee. Section 4.03 of the Original Lease is hereby deleted, and the following is substituted in lieu thereof:

**4.03 Late Fee:** If Tenant fails to make any payment of Rent on or before the date when payment is due, then Tenant also shall pay to Landlord a late fee equal to three percent (3%) of the amount that is past due. If any amount remains past due for more than one (1) month, then thereafter Tenant shall pay to Landlord a late fee in an amount equal to one percent (1%) of the amount that is past due for each month or part thereof until such Rent is fully paid; provided, however, that on the first (1<sup>st</sup>) occasion (but not on any subsequent occasion) during any twelve (12)-month period, such late fee shall not be assessed on a payment of Rent which is not made on the due date therefor if such payment of Rent is made on or before the ninth (9<sup>th</sup>) day following such due date, and thereafter the aforesaid late fee shall be applied to each subsequent required payment which is not received by the date on which such payment is due, rather than deferring such late fee until after the ninth (9<sup>th</sup>) day following the date when such payment is due. Said late fee shall be deemed reimbursement to Landlord for its costs of carrying and processing Tenant's delinquent account. Acceptance by Landlord of said late fee shall not waive or release any other rights or remedies to which Landlord may be entitled on account of such late payment.

8. Permitted Use. In addition to the uses permitted under the Original Lease, Tenant may use the Premises to hold meetings and events to which the public is invited and, on an ancillary basis, for storage.

9. Maintenance.

(a) By Tenant. Article 7 of the Original Lease is hereby deleted and replaced with the following:

#### **ARTICLE 7. CARE OF PREMISES**

Subject to Landlord's repair and janitorial service obligations hereunder and to the casualty damage provisions hereof, Tenant shall keep the non-structural, interior portions of the Premises in good order, condition, and repair during the Term. Tenant shall have the right to request that Landlord, at Tenant's cost and upon Tenant's prior approval,

make such repairs and replacements as are required of Tenant by this Article 7. Landlord agrees to perform such requested repairs and replacements on an "open book" basis, that is, prior to the acceptance of any bid or contract for any such work, Landlord shall furnish Tenant with the price of the proposed work and a copy of each accompanying bid (to the extent that the work requires multiple bids). If performed in a good and workmanlike manner and in accordance with Tenant's requirements, plans, and specifications and with a budget approved by Tenant (subject to change orders approved by Tenant), then Tenant shall reimburse Landlord for its actual out-of-pocket costs paid to third parties for the performance of such work, plus an additional ten percent (10%) of such out-of-pocket costs. Landlord may bill Tenant on a monthly basis as performance of the work progresses. Payment shall be due within thirty (30) days following Landlord's written demand therefor accompanied by documentation reasonably evidencing Landlord's out-of-pocket costs and payment thereof. Tenant shall surrender the Premises at the end of the Term in substantially as good order and in substantially the same condition as they were in on December 1, 2019, excepting ordinary wear and tear, casualty damage, permitted Alterations not requiring Landlord's consent, and Alterations as to which Landlord excuses removal in writing.

(b) By Landlord. Section 12.01(6) of the Original Lease is hereby deleted and replaced with the following:

(6) Landlord shall maintain in first-class condition and in compliance with Applicable Law (and shall make such repairs and replacements as are necessary to keep the Property in first-class condition and in compliance with Applicable Law) the Common Areas, the Property's landscaping, the Building's foundation, floors, exterior walls, roof, roof membrane, garage, elevators, windows, window frames, and entry doors (to the Building and the Premises), the structural components of the Premises, all base Building systems and equipment (whether inside or outside the Premises) (but not any supplemental systems exclusively serving the Premises, regardless of whether located inside or outside of the Premises), such as, without limitation, base Building light, utility, mechanical, HVAC, life-safety, and access control systems, lines, fixtures, and equipment, and all other base Building structural components of the Property; provided, however, that (i) the costs of Landlord's obligations hereunder shall be included in Operating Expenses to the extent permitted by Section 1.31 hereof, and (ii) to the extent that the need for any repair, maintenance, or replacement that would otherwise be the responsibility of Landlord results from Tenant's use of the Premises for purposes other than general office use or storage use (including but not limited to Tenant's Alterations (including Tenant's Work)) and Landlord is not otherwise reimbursed through insurance, warranties, or other means, then Tenant shall reimburse Landlord for its reasonable, out-of-pocket costs paid for such repair, maintenance, or replacement (it being agreed that if any such costs are paid by



Landlord to an affiliate of Landlord's, such costs will be reimbursed by Tenant only to the extent such costs are consistent with market costs that would have been incurred if paid to an unaffiliated third party on an arms-length basis).

10. Additional Rent.

(a) Operating Expenses. Operating Expenses, as defined in Section 1.31 of the Original Lease shall not include the cost of repairs, maintenance, or replacement when the need therefor results from the use of the Building for purposes other than general office use. For purposes of this section, alterations constitute a non-general office use.

(b) [Intentionally Omitted.]

(c) Base Year. Effective December 1, 2019, both the Operating Expenses Base Year and the Real Estate Tax Expenses Base Year shall be calendar year 2020.

(d) Additional Rent Abatement. Notwithstanding anything to the contrary in the Lease, no Increased Operating Expenses or Increased Real Estate Tax Expenses shall accrue for the period from December 1, 2019 through December 31, 2020; provided, however, that Tenant shall remain obligated to pay for any Additional Rent that accrues prior to December 1, 2019 in accordance with the provisions of the Lease. Tenant shall resume paying Tenant's Share of Increased Operating Expenses and Tenant's Share of Increased Real Estate Tax Expenses on January 1, 2021.

(e) Gross-Up. Effective January 1, 2020, the second-to last and third-to-last sentences of the second paragraph of Section 1.31 of the Original Lease, commencing "In the event that, during any calendar year or portion thereof during the Term, Landlord shall furnish" and ending "compute the Operating Expenses for such calendar year accordingly," are hereby deleted and replaced with the following:

In the event that, during any calendar year or portion thereof during the Term, Landlord shall furnish any utility or service that is included in the definition of Operating Expenses to less than ninety-five percent (95%) of the rentable area of the Building because (i) less than ninety-five percent (95%) of the rentable area of the Building is occupied, (ii) any such utility or service is not desired or required by any tenant, or (iii) any tenant is itself obtaining or providing any such utility or service, then the Operating Expenses for such calendar year shall be increased to equal the total expenses that Landlord reasonably estimates it would have incurred if Landlord had provided such utilities and services to ninety-five percent (95%) of the rentable area of the Building for the entire calendar year. In no event shall the provisions of this section be used (A) to enable Landlord to collect from Building tenants more than one hundred percent (100%) of the costs and expenses incurred by Landlord in managing, operating, and maintaining the Property, or (B) to enable Landlord to collect from Building tenants the same expenditure more than once for any calendar year, i.e., there shall be no "double counting" of expenses.

(f) Controllable Operating Expenses Cap. Notwithstanding anything to the contrary in the Lease, for purposes of calculating Tenant's Share of Increased Operating Expenses for any year after 2021, the Controllable Operating Expenses charged to Tenant for the year shall not exceed the

Controllable Operating Expenses charged to Tenant for the preceding year by more than five percent (5%). “**Controllable Operating Expenses**” means all Operating Expenses except for taxes, base property insurance premiums, utility (water, gas, electric, sewer) service costs, the cost of removing and controlling ice and snow or other related weather-removal expenses, and costs of compliance with governmental requirements adopted after December 1, 2019.

(g) Lapsed Charges. No charge shall be included in Increased Operating Expenses or Increased Real Estate Tax Expenses unless contained in the total used to calculate Tenant’s Share of Increased Operating Expenses or Tenant’s Share of Increased Real Estate Tax Expenses in a reconciliation statement submitted to Tenant pursuant to Section 5.04 of the Original Lease within one (1) year after the date such charge is incurred.

(h) Audit Rights. Section 5.05 of the Original Lease is hereby deleted and replaced with the following:

**5.05 Audit Rights.** Tenant may audit from time to time Landlord’s books and records pertaining to Operating Expenses, Real Estate Tax Expenses, and Tenant’s Share thereof with respect to any year of the Term upon at least thirty (30) days’ notice (an “Audit Notice”) given within one (1) year after receiving Landlord’s reconciliation statement for the year pursuant to Section 5.04 hereof. On or about the date specified in the Audit Notice, Landlord shall, as elected by Tenant in the Audit Notice, either (i) make available to Tenant in the Washington, DC metropolitan area Landlord’s books and records, as well as all reasonable backup documentation that Tenant requests (to the extent that Landlord has such documents in its possession), for Tenant to perform an audit of the Operating Expenses and Real Estate Tax Expenses (collectively, “Expense Records”), (ii) deliver to Tenant hard copies of all of the Expense Records, or (iii) submit the Expense Records to Tenant electronically. If Landlord overcharged Tenant for Tenant’s Share of Increased Operating Expenses or Tenant’s Share of Increased Real Estate Tax Expenses with respect to any year, Landlord shall credit the overcharge to Tenant on the next installment of Base Rent coming due under this Lease (or pay the overcharge to Tenant if this Lease has terminated). In addition, if a review of Expense Records identifies an overstatement of Tenant’s Share of Increased Operating Expenses or Tenant’s Share of Increased Real Estate Tax Expenses greater than five percent (5%) for any year, Landlord shall reimburse Tenant for all expenses reasonably incurred in connection with the review, including without limitation accountants’ fees and charges not to exceed ten thousand dollars (\$10,000) per year in question. The reimbursement shall be due within thirty (30) days after Landlord receives an invoice and documentation reasonably evidencing Tenant’s expenditures. Landlord must retain sufficient Expense Records to reasonably enable Tenant to audit Landlord’s Operating Expenses and Real Estate Tax Expenses during the time in which Tenant is entitled to audit such records.

11. Alterations.

(a) Ownership and Removal. Tenant shall own all equipment that it installs in the Premises, whether or not attached. Tenant may remove such equipment at any time. Tenant shall repair any damage to the Premises that it causes in removing its attached equipment. Tenant shall not be required to remove cables, conduits, or wiring at the termination of the Lease. If requested by Tenant at or before installation of any Alterations, Landlord shall advise Tenant in writing, within thirty (30) days after receiving the request, whether Tenant shall be required to remove such Alterations at the termination of the Lease.

(b) Construction Oversight Fee. The following sentence is hereby deleted from the second paragraph of Section 8.01 of the Original Lease: "If Landlord does not perform the Alterations, Tenant shall pay Landlord a construction oversight fee in an amount equal to one percent (1%) of the hard costs of such Alterations, which fee shall be payable to Landlord on a monthly basis as performance of such Alterations progress." However, in connection with Landlord's reviewing and approving Tenant's construction drawings, Tenant shall reimburse Landlord for its actual out-of-pocket third-party review fees, not to exceed five thousand dollars (\$5,000) with respect to any Alteration approval request. Landlord shall provide an estimate of such fees before conducting the review and shall not proceed with the review unless Tenant approves the estimate.

(c) De Minimis Alterations. Tenant may make nonstructural, cosmetic Alterations to the Premises that cost twenty thousand dollars (\$20,000) or less without Landlord's approval. Tenant must notify Landlord of such Alterations at least ten (10) days before commencing the installation thereof in the Premises.

(d) Communications Equipment. Landlord hereby grants Tenant all rights necessary to connect the Premises to Tenant's communications facility in the public right of way, including without limitation the right to install and maintain conduits with pull boxes, communications cables, and fiber patching and splicing equipment on the Property and in the Building, including without limitation in the Building's main telephone room. The location of such items shall be subject to Landlord's review and approval, not to be unreasonably withheld, conditioned, or delayed. Tenant shall not install in the Building's main telecommunications room, without Landlord's consent, any equipment that requires direct Tenant access after initial installation, other than conduits and wiring. Notwithstanding the foregoing, if Tenant would like to have a third-party telecommunications or internet service provider (in either case, an "ISP") bring new service to the Building, and if the ISP needs to place switch gear in the Building's main telecommunications room, Landlord shall allow such placement, but may condition access on the ISP's signing a right of entry agreement. Landlord agrees not to charge any ISP a fee in connection with its use of the Building.

12. Electricity. The following new subsection (12) is hereby added to Section 12.01 of the Original Lease:

(12) Electricity twenty-four (24) hours per day, seven (7) days per week sufficient for the Premises' lighting fixtures and for typical office equipment and machinery (such as computers, copiers, servers, facsimile machines, and similar items) at the level defined in 1.32 hereof (4.5 [four and one-half] watts per square foot).

13. Janitorial Services. Landlord, at no additional cost to Landlord, shall use reasonable efforts to coordinate with Landlord's cleaning vendor in an effort to avoid disruption to after-hours functions in the Premises.

14. Subordination. Section 22.01 of the Original Lease is hereby amended by deleting the following language therefrom:

"Landlord shall use commercially reasonable efforts to obtain from any current or future Mortgagee or Ground Lessor a non-disturbance agreement for the benefit of Tenant in such Mortgagee's or Ground Lessor's, as the case may be, which form (a) shall provide, at a minimum, that in the event of a foreclosure of the Property (as hereinafter defined) or granting of a deed in lieu of foreclosure to the Property, or in the event of a termination of any Ground Lease, the Mortgagee or Ground Lessor, as applicable, shall not disturb or restrict Tenant's possession of the Demised Premises or any of Tenant's other rights under this Lease as long as no Default shall have occurred and be continuing, and (b) shall not vary the terms of this Lease, except for possibly requiring notices to the Mortgagee or Ground Lessor which are different from, or in addition to, those requirements set forth herein; provided, however, that (i) Tenant shall pay all costs incurred by Landlord which are imposed by such Mortgagee or Ground Lessor, as the case may be, with respect to such non-disturbance agreement and (ii) in the event that Landlord does not obtain such non-disturbance agreement, this Lease shall be and remain subject and subordinate to the lien of said Mortgage or Ground Lease, as the case may be, and to any and all renewals, extensions, modifications, recastings and refinancings thereof".

Except as deleted above, the language set forth in Section 22 of the Original Lease remains in full force and effect and is hereby reaffirmed by Landlord and Tenant in all respects; provided, however, that simultaneously with its execution and delivery of this First Amendment, (i) Landlord shall cause the current Mortgagee to deliver a Subordination, Nondisturbance, and Attornment Agreement ("SNDA") substantially in the form attached hereto as Exhibit I, and (ii) provided that Tenant is not then in Default under the Lease, Landlord shall use commercially reasonable efforts to obtain an SNDA from any future Mortgagee of the Property that comports in all material respects with the SNDA attached hereto as Exhibit I; further provided, however, that if Landlord does not obtain such SNDA despite Landlord's commercially reasonable efforts to obtain the same, Landlord shall have no liability for such failure, and this Lease shall be and remain subject and subordinate to the lien of said Mortgage and to any and all renewals, extensions, modifications, recastings and refinancings thereof. In the case of any conflict between the terms of Section 22 of the Lease and the terms of any such SNDA from the current or any future Mortgagee, the terms of said SNDA shall govern.

15. Insurance. Section 17.02(3) of the Original Lease is hereby deleted and replaced with the following:

(3) Notwithstanding any term or condition of this Lease to the contrary, Tenant shall, for so long as Tenant is the County Board of Arlington County, Virginia, a body politic, be entitled to meet all of Tenant's insurance requirements under this Lease through self-insurance. Notwithstanding anything

to the contrary set forth in this Section 17.02(3), Tenant's right to self-insure shall be applicable only to Tenant originally named hereunder and not to any assignee thereof or any future assignee with respect to this Lease.

"[O]ther than Section 17.02(3), with respect to Tenant self-insuring a risk in excess of the Five Million Dollar (\$5,000,000.00) self-insurance cap)" is hereby deleted wherever it appears in Section 19.01(2) of the Original Lease.

16. Tenant's Cure Period. The final seven (7) lines of Section 19.01(2) of the Original Lease, commencing "provided, however, that if the failure on the part of Tenant is not capable of being cured" and ending "described in clause (ii) of this Section 19.01 (2)," are hereby deleted and replaced with "provided, however, that if the failure on the part of Tenant is not capable of being cured within such thirty (30)-day period but Tenant expeditiously commences to cure same and diligently proceeds with such cure, Tenant's time to cure such failure shall be extended for the time necessary to cure same, but in no event longer than one hundred eighty (180) days, inclusive of the original thirty (30)-day period, it being agreed that the proviso in this clause (iii) shall be inapplicable to any failure by Tenant to comply with or perform any covenant or obligation of Tenant's under this Lease which is described in clause (ii) of this Section 19.01(2)."

17. Assignment and Subletting.

(a) Consent Standard. Landlord shall not unreasonably withhold, delay, or condition its consent to any proposed assignment of the Lease by Tenant provided that the proposed assignee (1) is creditworthy, (2) will use the Premises for the Permitted Use and will not use the Premises in any manner that would conflict with any exclusive use agreement or other similar agreement entered into by Landlord with any other tenant of the Building as of the time of the assignment, (3) will not use the Premises or the Building in a manner that would materially increase Operating Expenses or the pedestrian or vehicular traffic to the Premises or the Building (it being agreed that uses which require a significant number of visitors, such as a Social Security Administration office, department of motor vehicles office, U.S. Passport Service, or Immigration Office shall not be permitted), (3) is not currently and has not in the past been an opposing party in litigation against Landlord or any of its Affiliates, (4) is of a type typically found in first-class office buildings in Arlington, Virginia, (5) is not affiliated with the Department of Defense, Department of Homeland Security, Central Intelligence Agency, Federal Bureau of Investigations, National Security Agency, or any other governmental agency which requires any special security measures, such as magnometers, body scanners, x-rays, or electric screening, and (6) meets Landlord's reasonable standards for tenants of the Building and is otherwise compatible with the character of the occupancy of the Building; otherwise, Landlord may withhold its consent in its sole discretion. Additionally, Landlord may withhold its consent in its sole discretion to any proposed assignment if: (a) An uncured Default by Tenant exists at the time of the proposed assignment; or (b) The use of the Premises by the proposed assignee would attract a volume or frequency of visitors' or employees' visits to the Building that is not consistent with the standards of a Comparable Building (it being agreed that the use of the Premises as a place for people to apply for or receive benefits, including but not limited to payroll, Social Security, unemployment compensation, or public assistance, shall be deemed activities which attract a volume or frequency of visitors' or employees' visits to the Building which is not consistent with the standards of a Comparable Building).

In addition, if the assignee is not a government or governmental agency, Landlord may condition its consent on the assignee's agreeing to modify the Lease to delete the provisions that apply solely to Tenant in its capacity as a local government and to add commercially-reasonable insurance and indemnity provisions. Any assignee must covenant and agree to perform the obligations of Tenant under the Lease and to occupy the Premises subject to the provisions of the Lease.

(b) Recapture. Section 23.02 of the Original Lease is hereby deleted.

(c) Assignment Fees. Subsection (2) of Section 23.04 of the lease is hereby revised in its entirety to provide as follows:

(2) Tenant shall reimburse Landlord for its reasonable out-of-pocket attorneys' fees incurred in approving an assignment or sublease of this Lease, not to exceed ten thousand dollars (\$10,000) for an assignment of this Lease or five thousand dollars (\$5,000) for a sublease. The reimbursement shall be due within thirty (30) days following Landlord's demand accompanied by complete copies of the invoices submitted to Landlord and documentation reasonably evidencing Landlord's payment thereof.

18. Recordation. Tenant, at Tenant's sole cost and expense, may record a memorandum of this Amendment. Landlord shall sign, notarize, and return to Tenant any such memorandum so long as the form is reasonably acceptable to Landlord.

19. Signs. Landlord shall provide Tenant with entries in the Building's lobby directory.

20. Option to Extend. Tenant shall continue to have the Renewal Option as set forth in Article 42 of the Original Lease. The first paragraph of Article 42 of the Original Lease is hereby deleted, and the following is substituted in lieu thereof:

Provided that Tenant is not in default at the time of exercise of the Renewal Option, as hereinafter defined, or at the time of the commencement of the Renewal Term, as hereinafter defined, Tenant shall have one (1) option (the "Renewal Option") to extend the Term for one (1) additional five (5)-year period (the "Renewal Term"). Notwithstanding the foregoing, in the event that Tenant is in default at the time of the exercise of the Renewal Option or at the time of the commencement of the Renewal Term, but (i) such default has not then continued beyond any applicable notice and cure period, and (ii) such default does not remain uncured beyond the expiration of any applicable notice and cure period, then Tenant's exercise of the Renewal Option or the commencement of the Renewal Term shall not be negated or in any way affected by the fact that Tenant had been in default at such time, as applicable. The Renewal Option shall be exercisable only by notice given by Tenant to Landlord not later than twelve (12) months, nor earlier than eighteen (18) months, prior to the expiration of the Term (the "Renewal Notice"). Tenant shall provide a copy of any notice sent to Landlord under this Article 42 to Landlord's Mortgagee pursuant to Article 31 of this Lease. If Tenant does not timely exercise the Renewal Option, then the Renewal Option shall be null and void and of no further force or effect, time being of the essence in the exercise of the Renewal Option and it being acknowledged and agreed by Tenant that Landlord shall be entitled to

rely on any failure by Tenant to give the Renewal Notice by the date set forth herein for exercise of the Renewal Option. All terms and conditions of this Lease shall be applicable during the Renewal Term except that the Operating Expenses Base Year and the Real Estate Tax Expenses Base Year shall be calendar year 2030 and the amount of Base Rent charged for the Renewal Term shall be the then FMV Rental Rate, which shall be the net effective rent (including but not limited to Base Rent escalations) for comparable tenants leasing comparable office space in Comparable Buildings, taking into account all tenant concessions then prevailing for tenancies in Comparable Buildings (the "FMV Rental Rate"). If within thirty (30) days following delivery of the Renewal Notice (such thirty (30)-day period being hereinafter referred to as the "Renewal Rent Negotiation Period"), Landlord and Tenant have not mutually agreed on the FMV Rental Rate for the Renewal Term, then within ten (10) days after the expiration of such thirty (30)-day period, each party shall give written notice to the other setting forth the name and address of a Broker selected by such party who has agreed to act in such capacity, to determine the FMV Rental Rate. If either party fails to select a Broker as aforesaid, and such failure continues for more than ten (10) days after receiving notice from the other party detailing such failure, the FMV Rental Rate shall be determined by the Broker selected by the other party. Each Broker shall thereupon independently make his or her determination of the FMV Rental Rate within twenty (20) days after the appointment of the second Broker. If the two Brokers' determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower of them, then the FMV Rental Rate shall be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two Brokers shall jointly appoint a third Broker within ten (10) days after the second of the two determinations described above has been rendered. If the two Brokers do not agree upon the third Broker within such ten (10)-day period, then the third Broker shall be selected by arbitration in Arlington, Virginia in accordance with the then-current commercial rules of the American Arbitration Association. The third Broker shall independently make his or her determination of the FMV Rental Rate within thirty (30) days after his or her appointment. The highest and the lowest determinations of value among the three Brokers shall be disregarded and the remaining determination shall be deemed to be the FMV Rental Rate.

21. Amenities. Tenant, its staff, and the staff of any occupants of the Premises shall have daily access to the current fitness facility located on the fourth floor of the Building at no charge throughout the Term. Subject to the limitations on Operating Expenses set forth in the Lease, fitness center expenses shall be included in Operating Expenses in the Operating Expenses Base Year, and may be included in subsequent years of the Term. In addition, Landlord is constructing a secure bike room in the Building's parking garage with lockers. Tenant, its staff, and the staff of any occupants of the Premises may use the bike room and lockers at all times at no charge.

22. Lender Approval. Landlord represents and warrants to Tenant as of the date of this Amendment that Landlord has obtained any Mortgagee approval required for this Amendment.

23. Brokerage Fees. Tenant has engaged CB Richard Ellis ("**Tenant's Broker**") in connection with this Amendment. Landlord shall pay, pursuant to a separate agreement between Landlord and Tenant's Broker, any brokerage commission attributable to Tenant's Broker. Landlord

additionally shall pay the commissions of any brokers engaged by Landlord. Landlord shall indemnify, defend, and hold harmless Tenant, any corporate entity or governmental or political subdivision or authority affiliated with Tenant, any contractor, employee, officer, principal, member, partner, agent, or elected or appointed official of any of the foregoing, and the successors and assigns of each of them against any liability arising from or relating to any claims for broker's commissions, finder's fees, or similar compensation made by Tenant's Broker or by persons engaged by, or alleged to be engaged by, Landlord, including without limitation reasonable attorneys' fees and costs. Tenant hereby represents and warrants to Landlord that, except for Tenant's Broker, Tenant has not engaged any other Broker in connection with this Amendment. Tenant hereby agrees to reimburse Landlord for any costs incurred by Landlord resulting from a breach of the foregoing representation and warranty.

24. Delegation of Authority to County Manager. Except to the extent prohibited by Applicable Law, the County Manager or his or her designee is hereby authorized to grant or withhold, on behalf of Tenant, any consents and approvals that Landlord is required to obtain from Tenant, or that Tenant may provide, under the Lease. This specific authority shall not be construed to limit the general authority invested by law in the County Manager to manage public property and to perform acts related thereto.

25. Defined Terms. Except as otherwise defined herein, terms that are defined in the Original Lease shall have the same meanings when such terms are used in this Amendment.

26. Confirmation of Terms. All of the terms, covenants, and conditions of the Original Lease, except as are specifically modified, amended, or deleted by this Amendment, shall remain in full force and effect, and are hereby adopted and reaffirmed by the parties hereto.

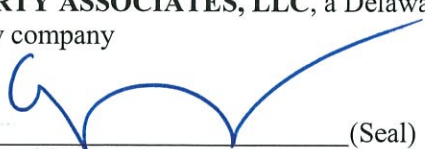
[Signatures Appear on Following Page.]



IN WITNESS WHEREOF, the parties hereto have set their hands and seals on this First Amendment to Deed of Lease the day and date first set forth above.

LANDLORD:

**ART PROPERTY ASSOCIATES, LLC**, a Delaware limited liability company

By:  (Seal)  
Name: Timothy Helmig  
Title: Vice President  
Date: April 9, 2019

TENANT:

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body public

Approved as to Form:

\_\_\_\_\_  
County Attorney

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2019

## EXHIBIT I

### SUBORDINATION, NONDISTURBANCE, AND ATTORNMENMENT AGREEMENT

Recording Requested by  
and when Recorded return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Loan No.: 308070001

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

Tenant's Trade Name: \_\_\_\_\_

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE SECURITY DOCUMENTS (DEFINED BELOW).**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2019, by and between COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("Tenant"), and U.S. Bank National Association, solely in its capacity as Trustee for the benefit of the Holders of the Rosslyn Portfolio Trust 2017-ROSS, Commercial Mortgage Pass-Through Certificates, Series 2017-ROSS ("Lender").

### RECITALS

- A. ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company ("Owner") is the owner of the land and improvements located at 1501 Wilson Boulevard, Arlington, Virginia and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").
- B. Tenant is the lessee under a Deed of Lease dated January 28, 2009, as amended by First Amendment to Deed of Lease dated \_\_\_\_\_, 2019, executed by Owner (or its predecessor in interest), as landlord, and Tenant, as Tenant (as the same may have been amended, the "Lease"), covering certain premises (the "Premises") located at the Property.
- C. Lender is the current holder of a mortgage loan (the "Loan") previously made to Owner, evidenced by a note (the "Note") and secured by, among other things: (a) a first mortgage, deed of trust or deed to secure debt encumbering the Property (the "Mortgage"); and (b) a first priority assignment of leases and rents on the Property (the "Assignment of Leases and Rents") contained in the Mortgage or in a separate document. The Mortgage and the Assignment of Leases and Rents are collectively referred to as the "Security

Documents.” The Note, the Security Documents and all other documents executed in connection with the Loan are collectively referred to as the “Loan Documents.”

- D. Tenant has requested Lender’s agreement that if Lender forecloses the Mortgage or otherwise exercises Lender’s remedies under the Security Documents, Lender will not disturb Tenant’s right to quiet possession of the Premises under the terms of the Lease.
- E. Lender is willing to so agree on the terms and conditions provided in this Agreement, including, without limitation, Tenant’s agreement to subordinate the Lease and attorn to Lender as provided herein.

NOW, THEREFORE, for mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **SUBORDINATION.** The Lease is and shall remain unconditionally subject and subordinate to (a) the liens or charges imposed by the Security Documents, (b) all currently outstanding or future advances secured by the Security Documents, and (c) all renewals, amendments, modifications, consolidations, replacements and extensions of the Security Documents. The subordination described herein is intended by the parties to have the same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions of the Security Documents had been executed, acknowledged, delivered and recorded prior to the Lease and any amendments or modifications thereof.
- 2. **NON-DISTURBANCE.** If Lender exercises any of its rights under the Security Documents, including any right of entry on the property pursuant to the Mortgage or upon a foreclosure of or deed in lieu of foreclosure of the Mortgage, Lender shall not disturb tenant’s right of quiet possession of the Premises under the terms of the Lease, so long as Tenant is not in default beyond any applicable cure period under the Lease.
- 3. **ATTORNMEN**. Notwithstanding anything to the contrary contained in the Lease, should title to the Premises and the landlord’s interest in the Lease be transferred to lender or any other person or entity by foreclosure of or deed in-lieu of foreclosure of the Mortgage, tenant shall, for the benefit of Lender or such other person or entity, effective immediately and automatically upon the occurrence of any such transfer, attorn to Lender or such other person or entity as landlord under the Lease and shall be bound under all provisions of the Lease including, but not limited to, the obligation to pay all rent required to be paid by Tenant pursuant to the terms of the Lease, for the remainder of the Lease term.
- 4. **PROTECTION OF LENDER.** If Lender succeeds to the interest of Owner under the Lease, Lender shall not be:
  - (a) liable for any act or omission of any previous landlord under the Lease except as provided in Subsection (i) below;
  - (b) subject to any offsets or defenses which Tenant may have against any previous landlord under the Lease;
  - (c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any previous landlord;
  - (d) obligated to make any payment to Tenant which any previous landlord was required to make before Lender succeeded to the landlord’s interest;
  - (e) accountable for any monies deposited with any previous landlord (including security deposits), except to the extent such monies are actually received by Lender;

- (f) bound by any amendment or modification of the Lease or any waiver of any term of the Lease made without Lender's written consent, not to be unreasonably withheld, conditioned, or delayed;
- (g) bound by any surrender or termination of the Lease made without Lender's written consent (unless effected unilaterally by Tenant pursuant to the express terms of the Lease);
- (h) obligated to complete any improvement or construction on the Property or to pay or reimburse Tenant for any Tenant improvement allowance, construction allowance or leasing commissions;
- (i) liable for any default of any previous landlord under the Lease except to the extent that (i) Lender is aware of such default, (ii) such event of default is continuing, and (iii) Lender fails to cure such landlord default within the applicable cure period, provided that Lender's cure period shall commence upon Lender's succession to the landlord's interest under the Lease;
- (j) bound by any provision in the Lease granting Tenant a purchase option or first right of refusal or offer with regard to the Property. Furthermore, notwithstanding anything to the contrary contained in this Agreement or the Lease, upon any such succession, the Lease shall be deemed to have been automatically amended to provide that Lender's obligations and liabilities under the Lease shall be limited solely to Lender's interest, if any, in the Property, and the proceeds from any sale or disposition of the Property by Lender (collectively, "Lender's Interest") and, following such succession, Tenant shall look exclusively to Lender's Interest for the payment or discharge of any obligations of Lender under the Lease.

5. **LENDER'S RIGHT TO CURE.** Tenant shall deliver to Lender a copy of any notice of any default(s) by Owner under the Lease in the same manner as, and whenever, Tenant shall give any such notice to Owner, and no such notice shall be deemed given to Lender unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy, or cause to be remedied, any default by Owner under the Lease within the same cure period as is applicable to Owner. Tenant shall accept performance by Lender of any covenant or condition to be performed by Owner under the Lease with the same force and effect as though performed by Owner. Notwithstanding anything contained in this agreement or in the Lease to the contrary, Tenant shall not terminate the Lease as a result of a landlord default under the Lease (a) so long as Lender, in good faith, shall have notified Tenant of Lender's intent to cure, and actually commenced to cure, such default within the above-referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (b) if possession of the Premises is required to cure a default, or if the default is not susceptible to cure by Lender, then Tenant shall not terminate the Lease based on the default so long as Lender notifies Tenant in writing that Lender intends to institute enforcement proceedings under the security documents within sixty (60) days after receiving notice of the default and thereafter pursues curing the default with reasonable diligence, subject to force majeure. Lender shall have the right, without notice to Tenant or Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or otherwise realize upon the Mortgage or to exercise any other remedies under the Security Documents or state law.
6. **ASSIGNMENT OF LEASES AND RENTS.** Tenant consents to the assignment of leases and rents and acknowledges Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Upon Tenant's receipt of a written notice from Lender of a default by Owner under the loan, Tenant shall thereafter, if requested by Lender in writing, pay rent to Lender in accordance with the terms of the Lease. Lender's delivery of such notice to Tenant, or Tenant's compliance therewith, shall not be deemed to (a) cause Lender to succeed to or assume any obligations or responsibilities of Owner under the Lease or (b) relieve Owner of any of its obligations under the Lease.

7. **INSURANCE PROCEEDS AND CONDEMNATION AWARDS.** Notwithstanding anything to the contrary contained in this Agreement or the Lease, the terms of the Loan Documents shall continue to govern with respect to the disposition of Owner's interest in any insurance proceeds or condemnation awards, and any obligations of Owner to restore the property following a casualty or condemnation shall, insofar as they apply to Lender, be limited to the amount of any insurance proceeds or condemnation awards received by Lender or Owner after the deduction of all costs and expenses incurred in obtaining such proceeds or awards. Following the foreclosure or deed in lieu of foreclosure of the Mortgage, the provisions of this section shall remain in full force and effect unless and until fee title to the Premises becomes vested in a person or entity other than (a) the holder of the loan at the time of such foreclosure or deed in lieu of foreclosure or (b) a parent, subsidiary or affiliate of such holder.
8. **ASSIGNMENT OF LEASE BY TENANT.** Tenant shall not assign any right or interest of Tenant under the Lease (except for an assignment that is permitted under the Lease without Owner's consent), without Lender's prior written consent, not to be unreasonably withheld, conditioned, or delayed.
9. **MISCELLANEOUS.**
- 9.1 **Heirs, Successors and Assigns.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, trustees and agents, as well as any single purpose entity established by Lender to take title to the Property by reason of such foreclosure or deed in lieu of foreclosure. The terms "Tenant" and "Owner" as used herein include any successor or assign of the named Tenant and Owner herein, respectively; provided, however, that such reference to Tenant's or Owner's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Owner.
- 9.2 **Addresses; Request for Notice.** All notices and other communications that are required or permitted to be given to a party under this Agreement shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, or by certified first class mail, return receipt requested, to the address below. All such notices and communications shall be effective upon receipt of such delivery. The addresses of the parties shall be:
- |  |  |
|--|--|
| <p><b><u>Tenant:</u></b></p> <p>County Manager<br/>Arlington County, VA<br/>2100 Clarendon Boulevard, Suite 302<br/>Arlington, VA 22201</p> <p>With a copy to:</p> <p>Real Estate Bureau Chief<br/>Department of Environmental Services<br/>Real Estate Bureau<br/>2100 Clarendon Boulevard, Suite 800<br/>Arlington, VA 22201</p> | <p><b><u>Lender:</u></b></p> <p>WELLS FARGO BANK, N.A.<br/>Commercial Mortgage Servicing<br/>Attn: Lease Reviews<br/>MAC D1050-084<br/>401 South Tryon Street, 8<sup>th</sup> Floor<br/>Charlotte, NC 28202<br/>CMSLeaseReviews@wellsfargo.com</p> |
|--|--|
- provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement.

- 9.3 **Entire Agreement.** This Agreement constitutes the entire agreement between Lender and Tenant with regard to the subordination of the Lease to the Security Documents and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement, and shall supersede and cancel, but only insofar as would affect the priority between the Security Documents and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust, a mortgage or mortgages, a deed or deeds to secure debt or a trust indenture or trust indentures.
- 9.4 **Disbursements.** Lender, in making disbursements of any funds pursuant to the Loan Documents, is under no obligation to, nor has Lender represented that it will, monitor or control the application of such funds by the recipient and any application of such funds, including, without limitation, any application of such funds for purposes other than those provided for in the Loan Documents, shall not defeat this agreement to subordinate in whole or in part.
- 9.5 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.
- 9.6 **Section Headings.** Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.
- 9.7 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.
- 9.8 **Termination; Amendment.** Neither this Agreement nor any of the terms hereof may be terminated, amended, or modified orally, but only by an instrument in writing executed by the parties hereto.
- 9.9 **Waiver.** No waiver of any right under this Agreement shall bind any party hereto unless reduced to a writing signed by such party.
- 9.10 **Governing Law.** This Agreement and any claim, controversy or dispute arising under or related to or in connection with this Agreement, the relationship of the parties or the interpretation and enforcement of the rights and duties of the parties shall be governed by the law of the state where the Property is located, without regard to any conflicts of law principles.
- 9.11 **Authority.** Each party hereto warrants to the other party that the persons executing this Agreement on its behalf are authorized to do so and that such execution hereof is the binding act of such party and enforceable against such party.
- 9.12 **Form of Agreement.** Tenant acknowledges that Lender enters into numerous agreements of this type on a regular basis, both in its own capacity and as a commercial mortgage servicer on behalf of other lenders, and that the specific provisions contained in any agreement of this type entered into by Lender will vary depending on numerous transaction-specific factors, including, without limitation, the borrowers, loan documents, Tenants, leases, servicers, servicing agreements and property and market conditions involved in the transaction. Accordingly, Tenant further acknowledges that the specific provisions contained in this Agreement will not necessarily be acceptable to Lender in connection with any other transaction.

- 9.13 **Sovereign Immunity.** Notwithstanding any other provisions of this Agreement to the contrary, neither anything in this Agreement, nor any action taken by Tenant pursuant to this Agreement, nor any document that arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or the governmental immunity of Tenant or its elected and appointed officials, officers, and employees.
- 9.14 **Venue.** The General District Court and the Circuit Court of Arlington County, Virginia shall be the exclusive venues for any dispute or claim by or between Lender and Tenant arising out of or related to this Agreement. All actions, suits, and other causes concerning or arising out of this Agreement shall be brought in the above-described courts and in no other courts.

**LENDER:**

By: Wells Fargo Bank, N.A., a national banking association,  
as servicer

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[illegible]

On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named \_\_\_\_\_, a \_\_\_\_\_ of \_\_\_\_\_, acting in its authorized capacity as Servicer for and on behalf of **U.S. Bank National Association, solely in its capacity as Trustee for the benefit of the Holders of the Rosslyn Portfolio Trust 2017-ROSS, Commercial Mortgage Pass-Through Certificates, Series 2017-ROSS**, and acknowledged the foregoing to be the free act and deed of said association, before me.

Notary Public  
My commission expires: \_\_\_\_\_



**TENANT:**

COUNTY BOARD OF ARLINGTON COUNTY,  
VIRGINIA, a body politic

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
County Attorney

\_\_\_\_\_, ss.  
On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named \_\_\_\_\_, the  
\_\_\_\_\_, of COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic and  
acknowledged the foregoing to be the free act and deed of COUNTY BOARD OF ARLINGTON COUNTY,  
VIRGINIA, a body politic, before me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

The undersigned Owner hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement and the acknowledgement contained in Section 9.12 of the foregoing Agreement.

**OWNER:**

ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_, ss.

On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named \_\_\_\_\_, the \_\_\_\_\_, of ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company and acknowledged the foregoing to be the free act and deed of ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company, before me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**IT IS RECOMMENDED THAT, PRIOR TO EXECUTING THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

**ALL SIGNATURES MUST BE ACKNOWLEDGED.**

EXHIBIT A  
(Description of Property)

EXHIBIT A to SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated as of \_\_\_\_\_, 2019 executed by COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic, as "Tenant", and U.S. Bank National Association, solely in its capacity as Trustee for the benefit of the Holders of the Rosslyn Portfolio Trust 2017-ROSS, Commercial Mortgage Pass-Through Certificates, Series 2017-ROSS, "Lender."

All that certain land located in the County of Arlington, State of Virginia, described as follows:

1501 – 1515 Wilson

All those certain lots or parcels of land, together with the improvements thereon, lying and being situate in the County of Arlington, State of Virginia, being more particularly described as follows:

PART I:

All of Lots 1 to 20, both inclusive, of the Subdivision known as EDDY'S SUBDIVISION OF VILLA SITE "A" OF ROSSLYN FARM, as the same is duly dedicated, platted and recorded among the Land Records of Arlington County, Virginia, in Deed Book N, No. 4, at page 170.

TOGETHER WITH AND SUBJECT TO the beneficial, non-exclusive easement for underground construction below the surface of North Oak Street granted by the County Board of Arlington County, Virginia, in Deed of Easement recorded among the aforesaid Land Records in Deed Book 1642 at page 315.

PART II:

Those certain alleys vacated by the County Board of Arlington County, Virginia, by ordinance adopted June 22, 1968, and recorded in Deed Book 1689 at page 587, among the aforesaid Land Records.

NOTE FOR INFORMATIONAL PURPOSES ONLY:

RPC Nos. 16-033-001 (Lots 1 – 10) & 16-033-004 (Lots 11 – 20 and Alleys)

## FIRST AMENDMENT TO DEED OF LEASE

This First Amendment to Deed of Lease (this "Amendment"), dated \_\_\_\_\_, 2019, is between ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company ("**Landlord**"), and the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("**Tenant**").

### RECITALS:

A. Landlord and Tenant entered into that certain Deed of Lease dated January 28, 2009 (the "**Original Lease**") pursuant to which Tenant leases from Landlord eleven thousand one hundred thirty-two (11,132) square feet of rentable area, commonly known as Suite 1100 (the "**Premises**"), comprising the entire eleventh (11<sup>th</sup>) floor of a building located at 1501 Wilson Boulevard, Arlington, Virginia (the "**Building**"). The Original Lease as amended hereby shall be referred to as the "**Lease**."

B. The Lease Commencement Date occurred on November 2, 2009.

C. The Initial Term of the Lease expires on November 30, 2019.

D. Landlord and Tenant wish to amend the Lease to (i) extend the Term of the Lease for a period ten (10) years, and (ii) otherwise revise and modify the Lease upon the terms and conditions more particularly set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Lease Term. The Initial Term is hereby extended for a period of ten (10) years commencing on December 1, 2019 and expiring on November 30, 2029, unless earlier terminated pursuant to the provisions of the Lease or pursuant to law.

2. [Intentionally Omitted.].

3. Rent.

(a) Base Rent. Notwithstanding anything to the contrary in the Lease, Base Rent shall be as follows for the periods set forth below:

Dates		Annual Rate	Monthly Rate
12/1/19	6/30/20	\$439,680	\$36,640
7/1/20	6/30/21	\$446,160	\$37,180
7/1/21	6/30/22	\$457,320	\$38,110
7/1/22	6/30/23	\$468,720	\$39,060
7/1/23	6/30/24	\$480,480	\$40,040
7/1/24	6/30/25	\$492,480	\$41,040

7/1/25	6/30/26	\$504,720	\$42,060
7/1/26	6/30/27	\$517,320	\$43,110
7/1/27	6/30/28	\$530,280	\$44,190
7/1/28	6/30/29	\$543,600	\$45,300
7/1/29	11/30/29	\$557,160	\$46,430

(b) Base Rent Annual Escalation Percentage. Effective December 1, 2019, Section 1.07 of the Original Lease shall be deleted and replaced with the following:

**1.07.** *Base Rent Annual Escalation Percentage:* Two and one-half percent (2.5%).

(c) Base Rent Abatement. Notwithstanding anything to the contrary in the Lease, no Base Rent shall accrue or be due or payable for the period from December 1, 2019 through September 30, 2020.

4. Landlord's Work. Landlord shall perform and complete the following work (collectively, "Landlord's Work") at Landlord's sole cost within one hundred eighty (180) days after the mutual execution and delivery of this Amendment, subject to Tenant Delay (as hereinafter defined) and Unavoidable Delay.

(a) Cause the eleventh-(11<sup>th</sup>)-floor base building (core) restrooms to satisfy all ADA and Arlington County Building Code requirements with respect to the core restrooms for the floor.

(b) Alteration of the Common Areas as necessary to provide an ADA-compliant path of travel to the Premises from the Building's main lobby.

(c) Removal from the Property all Hazardous Material whose presence violates Applicable Law.

(d) Cause the Property to be free from violations of Applicable Law that affect Tenant's use of the Premises for general office use or Tenant's ability to obtain a certificate of occupancy for the Premises or any part thereof.

As used herein, a "**Tenant Delay**" shall mean one (1) or more delays in the performance of Landlord's Work which are caused by (a) Tenant's failure to timely approve any items related to Landlord's Work for which Tenant's approval is required, (b) Tenant's request for changes in Landlord's Work, (c) Tenant's request for materials, finishes or installations which are other than Building standard materials, or (d) the result of Tenant's or its agents', contractors' or employees' act, failure to act, or failure to act in a timely manner with respect to any matter affecting Landlord's Work.

Notwithstanding anything contained in this Section 4 to the contrary, Tenant hereby acknowledges that Landlord's Work shall be performed while Tenant is in occupancy of the Premises, and Landlord's actions in connection with Landlord's Work shall in no way constitute a constructive eviction of Tenant from the Premises, nor entitle Tenant to any abatement of rent. Landlord shall have no responsibility or for any reason be liable to Tenant for any direct or indirect injury to or interference with Tenant's business arising from the performance of Landlord's Work (not including bodily injury or

property damage), nor shall Tenant be entitled to any compensation or damages from Landlord for any inconvenience or annoyance occasioned by such construction or Landlord's actions in connection with such construction, except for Rent abatement for any time in which Tenant is not reasonably able to use (and in fact does not use) the Premises for the Permitted Use after having first given Landlord notice of the condition prohibiting such use and Landlord's failure to correct such condition within one (1) business day following receipt of such notice. Tenant acknowledges that Landlord and Tenant may have to relocate items of Tenant's furniture, equipment, and personal property in order for Landlord to complete Landlord's Work, and that Tenant will be responsible for packing and unpacking any such items, which may cause temporary inconvenience in the use of the Premises during the performance of Landlord's Work, and Tenant agrees to coordinate with Landlord's property manager and to reasonably cooperate with such activities.

Except as expressly provided in the Lease, Landlord shall have no obligation to make any additional improvements to the Premises or the Building.

5. Allowances.

(a) Extension Allowance. Landlord shall provide an allowance to Tenant in the amount of four hundred forty-five thousand two hundred eighty dollars (\$445,280) (the "**Extension Allowance**"), which is an amount equal to \$40.00 multiplied by the number of square feet of rentable space comprising the Premises. Tenant may utilize the Extension Allowance for costs associated with improvements to any part of the Premises ("**Tenant's Work**"), including without limitation architectural and engineering services, construction permits, and Tenant's staff time. Tenant's Work shall be subject to Landlord's approval, which shall not be unreasonably withheld, conditioned, or delayed with respect to items that do not affect the Building's structure or systems. Tenant may apply up to twenty percent (20%) of the Extension Allowance to the purchase and installation of telecommunications equipment, computers, office furniture, and stationery and Tenant's staff time. Tenant may submit from time to time (but not more than once in any thirty (30) day period) written requests for payment of all or part of the Extension Allowance, provided that any such request shall be accompanied by (i) invoices reasonably evidencing work or services performed with respect to the portion of Tenant's Work for which payment of a portion of the Extension Allowance is being requested, and (ii) waivers or releases of liens in a form acceptable to Landlord from each of Tenant's contractors, subcontractors and suppliers in connection with the work performed or materials supplied as evidenced by the aforesaid invoices (which lien waivers may be conditioned solely upon the payment of a sum specified therein) and by a written certification (including an AIA certification at Landlord's option) executed by Tenant's general contractor, describing in reasonable detail the items of Tenant's Work which is the basis of Tenant's request for payment of the portion of the Extension Allowance; and (iii) such other supporting documentation evidencing costs incurred with respect to the Tenant's Work as Landlord may reasonably require. Within forty-five (45) days after receiving any such request and supporting documentation, Landlord shall pay Tenant the amount requested. Tenant shall have the right after the completion of Tenant's Work to apply to Rent any part of the Extension Allowance that is not applied to the cost of Tenant's Work upon not less than thirty (30) days' prior written notice to Landlord; provided, however, that any unapplied portion of the Extension Allowance following the processing of all requests submitted before January 1, 2022 shall be applied to Rent.

(b) HVAC Rebalancing. Within ninety (90) days following the completion of Tenant's Work, Tenant may rebalance the Premises' heating, ventilation, and air conditioning ("**HVAC**")

system. Within thirty (30) days after Tenant has performed the rebalancing and notifies Landlord of the same, Landlord shall pay Tenant seven thousand five hundred dollars (\$7,500).

6. Parking. Tenant shall be entitled to fifteen (15) parking passes for the Building's parking garage, up to three (3) of which may be reserved, in mutually-acceptable locations. Tenant may reduce or increase its number of reserved and unreserved passes at any time upon at least thirty (30) days' notice, but may not exceed three (3) reserved-space passes or fifteen (15) total passes without Landlord's consent. The rates charged for the foregoing parking passes shall not exceed the posted rates for the Building's parking garage. Section 1.17 of the Original Lease is hereby deleted.

7. Late Fee. Section 4.03 of the Original Lease is hereby deleted, and the following is substituted in lieu thereof:

**4.03 Late Fee:** If Tenant fails to make any payment of Rent on or before the date when payment is due, then Tenant also shall pay to Landlord a late fee equal to three percent (3%) of the amount that is past due. If any amount remains past due for more than one (1) month, then thereafter Tenant shall pay to Landlord a late fee in an amount equal to one percent (1%) of the amount that is past due for each month or part thereof until such Rent is fully paid; provided, however, that on the first (1<sup>st</sup>) occasion (but not on any subsequent occasion) during any twelve (12)-month period, such late fee shall not be assessed on a payment of Rent which is not made on the due date therefor if such payment of Rent is made on or before the ninth (9<sup>th</sup>) day following such due date, and thereafter the aforesaid late fee shall be applied to each subsequent required payment which is not received by the date on which such payment is due, rather than deferring such late fee until after the ninth (9<sup>th</sup>) day following the date when such payment is due. Said late fee shall be deemed reimbursement to Landlord for its costs of carrying and processing Tenant's delinquent account. Acceptance by Landlord of said late fee shall not waive or release any other rights or remedies to which Landlord may be entitled on account of such late payment.

8. Permitted Use. In addition to the uses permitted under the Original Lease, Tenant may use the Premises to hold meetings and events to which the public is invited and, on an ancillary basis, for storage.

9. Maintenance.

(a) By Tenant. Article 7 of the Original Lease is hereby deleted and replaced with the following:

#### **ARTICLE 7. CARE OF PREMISES**

Subject to Landlord's repair and janitorial service obligations hereunder and to the casualty damage provisions hereof, Tenant shall keep the non-structural, interior portions of the Premises in good order, condition, and repair during the Term. Tenant shall have the right to request that Landlord, at Tenant's cost and upon Tenant's prior approval,

make such repairs and replacements as are required of Tenant by this Article 7. Landlord agrees to perform such requested repairs and replacements on an "open book" basis, that is, prior to the acceptance of any bid or contract for any such work, Landlord shall furnish Tenant with the price of the proposed work and a copy of each accompanying bid (to the extent that the work requires multiple bids). If performed in a good and workmanlike manner and in accordance with Tenant's requirements, plans, and specifications and with a budget approved by Tenant (subject to change orders approved by Tenant), then Tenant shall reimburse Landlord for its actual out-of-pocket costs paid to third parties for the performance of such work, plus an additional ten percent (10%) of such out-of-pocket costs. Landlord may bill Tenant on a monthly basis as performance of the work progresses. Payment shall be due within thirty (30) days following Landlord's written demand therefor accompanied by documentation reasonably evidencing Landlord's out-of-pocket costs and payment thereof. Tenant shall surrender the Premises at the end of the Term in substantially as good order and in substantially the same condition as they were in on December 1, 2019, excepting ordinary wear and tear, casualty damage, permitted Alterations not requiring Landlord's consent, and Alterations as to which Landlord excuses removal in writing.

(b) By Landlord. Section 12.01(6) of the Original Lease is hereby deleted and replaced with the following:

(6) Landlord shall maintain in first-class condition and in compliance with Applicable Law (and shall make such repairs and replacements as are necessary to keep the Property in first-class condition and in compliance with Applicable Law) the Common Areas, the Property's landscaping, the Building's foundation, floors, exterior walls, roof, roof membrane, garage, elevators, windows, window frames, and entry doors (to the Building and the Premises), the structural components of the Premises, all base Building systems and equipment (whether inside or outside the Premises) (but not any supplemental systems exclusively serving the Premises, regardless of whether located inside or outside of the Premises), such as, without limitation, base Building light, utility, mechanical, HVAC, life-safety, and access control systems, lines, fixtures, and equipment, and all other base Building structural components of the Property; provided, however, that (i) the costs of Landlord's obligations hereunder shall be included in Operating Expenses to the extent permitted by Section 1.31 hereof, and (ii) to the extent that the need for any repair, maintenance, or replacement that would otherwise be the responsibility of Landlord results from Tenant's use of the Premises for purposes other than general office use or storage use (including but not limited to Tenant's Alterations (including Tenant's Work)) and Landlord is not otherwise reimbursed through insurance, warranties, or other means, then Tenant shall reimburse Landlord for its reasonable, out-of-pocket costs paid for such repair, maintenance, or replacement (it being agreed that if any such costs are paid by



Landlord to an affiliate of Landlord's, such costs will be reimbursed by Tenant only to the extent such costs are consistent with market costs that would have been incurred if paid to an unaffiliated third party on an arms-length basis).

10. Additional Rent.

(a) Operating Expenses. Operating Expenses, as defined in Section 1.31 of the Original Lease shall not include the cost of repairs, maintenance, or replacement when the need therefor results from the use of the Building for purposes other than general office use. For purposes of this section, alterations constitute a non-general office use.

(b) [Intentionally Omitted.]

(c) Base Year. Effective December 1, 2019, both the Operating Expenses Base Year and the Real Estate Tax Expenses Base Year shall be calendar year 2020.

(d) Additional Rent Abatement. Notwithstanding anything to the contrary in the Lease, no Increased Operating Expenses or Increased Real Estate Tax Expenses shall accrue for the period from December 1, 2019 through December 31, 2020; provided, however, that Tenant shall remain obligated to pay for any Additional Rent that accrues prior to December 1, 2019 in accordance with the provisions of the Lease. Tenant shall resume paying Tenant's Share of Increased Operating Expenses and Tenant's Share of Increased Real Estate Tax Expenses on January 1, 2021.

(e) Gross-Up. Effective January 1, 2020, the second-to last and third-to-last sentences of the second paragraph of Section 1.31 of the Original Lease, commencing "In the event that, during any calendar year or portion thereof during the Term, Landlord shall furnish" and ending "compute the Operating Expenses for such calendar year accordingly," are hereby deleted and replaced with the following:

In the event that, during any calendar year or portion thereof during the Term, Landlord shall furnish any utility or service that is included in the definition of Operating Expenses to less than ninety-five percent (95%) of the rentable area of the Building because (i) less than ninety-five percent (95%) of the rentable area of the Building is occupied, (ii) any such utility or service is not desired or required by any tenant, or (iii) any tenant is itself obtaining or providing any such utility or service, then the Operating Expenses for such calendar year shall be increased to equal the total expenses that Landlord reasonably estimates it would have incurred if Landlord had provided such utilities and services to ninety-five percent (95%) of the rentable area of the Building for the entire calendar year. In no event shall the provisions of this section be used (A) to enable Landlord to collect from Building tenants more than one hundred percent (100%) of the costs and expenses incurred by Landlord in managing, operating, and maintaining the Property, or (B) to enable Landlord to collect from Building tenants the same expenditure more than once for any calendar year, i.e., there shall be no "double counting" of expenses.

(f) Controllable Operating Expenses Cap. Notwithstanding anything to the contrary in the Lease, for purposes of calculating Tenant's Share of Increased Operating Expenses for any year after 2021, the Controllable Operating Expenses charged to Tenant for the year shall not exceed the

Controllable Operating Expenses charged to Tenant for the preceding year by more than five percent (5%). “**Controllable Operating Expenses**” means all Operating Expenses except for taxes, base property insurance premiums, utility (water, gas, electric, sewer) service costs, the cost of removing and controlling ice and snow or other related weather-removal expenses, and costs of compliance with governmental requirements adopted after December 1, 2019.

(g) Lapsed Charges. No charge shall be included in Increased Operating Expenses or Increased Real Estate Tax Expenses unless contained in the total used to calculate Tenant’s Share of Increased Operating Expenses or Tenant’s Share of Increased Real Estate Tax Expenses in a reconciliation statement submitted to Tenant pursuant to Section 5.04 of the Original Lease within one (1) year after the date such charge is incurred.

(h) Audit Rights. Section 5.05 of the Original Lease is hereby deleted and replaced with the following:

**5.05 Audit Rights.** Tenant may audit from time to time Landlord’s books and records pertaining to Operating Expenses, Real Estate Tax Expenses, and Tenant’s Share thereof with respect to any year of the Term upon at least thirty (30) days’ notice (an “Audit Notice”) given within one (1) year after receiving Landlord’s reconciliation statement for the year pursuant to Section 5.04 hereof. On or about the date specified in the Audit Notice, Landlord shall, as elected by Tenant in the Audit Notice, either (i) make available to Tenant in the Washington, DC metropolitan area Landlord’s books and records, as well as all reasonable backup documentation that Tenant requests (to the extent that Landlord has such documents in its possession), for Tenant to perform an audit of the Operating Expenses and Real Estate Tax Expenses (collectively, “Expense Records”), (ii) deliver to Tenant hard copies of all of the Expense Records, or (iii) submit the Expense Records to Tenant electronically. If Landlord overcharged Tenant for Tenant’s Share of Increased Operating Expenses or Tenant’s Share of Increased Real Estate Tax Expenses with respect to any year, Landlord shall credit the overcharge to Tenant on the next installment of Base Rent coming due under this Lease (or pay the overcharge to Tenant if this Lease has terminated). In addition, if a review of Expense Records identifies an overstatement of Tenant’s Share of Increased Operating Expenses or Tenant’s Share of Increased Real Estate Tax Expenses greater than five percent (5%) for any year, Landlord shall reimburse Tenant for all expenses reasonably incurred in connection with the review, including without limitation accountants’ fees and charges not to exceed ten thousand dollars (\$10,000) per year in question. The reimbursement shall be due within thirty (30) days after Landlord receives an invoice and documentation reasonably evidencing Tenant’s expenditures. Landlord must retain sufficient Expense Records to reasonably enable Tenant to audit Landlord’s Operating Expenses and Real Estate Tax Expenses during the time in which Tenant is entitled to audit such records.

11. Alterations.

(a) Ownership and Removal. Tenant shall own all equipment that it installs in the Premises, whether or not attached. Tenant may remove such equipment at any time. Tenant shall repair any damage to the Premises that it causes in removing its attached equipment. Tenant shall not be required to remove cables, conduits, or wiring at the termination of the Lease. If requested by Tenant at or before installation of any Alterations, Landlord shall advise Tenant in writing, within thirty (30) days after receiving the request, whether Tenant shall be required to remove such Alterations at the termination of the Lease.

(b) Construction Oversight Fee. The following sentence is hereby deleted from the second paragraph of Section 8.01 of the Original Lease: "If Landlord does not perform the Alterations, Tenant shall pay Landlord a construction oversight fee in an amount equal to one percent (1%) of the hard costs of such Alterations, which fee shall be payable to Landlord on a monthly basis as performance of such Alterations progress." However, in connection with Landlord's reviewing and approving Tenant's construction drawings, Tenant shall reimburse Landlord for its actual out-of-pocket third-party review fees, not to exceed five thousand dollars (\$5,000) with respect to any Alteration approval request. Landlord shall provide an estimate of such fees before conducting the review and shall not proceed with the review unless Tenant approves the estimate.

(c) De Minimis Alterations. Tenant may make nonstructural, cosmetic Alterations to the Premises that cost twenty thousand dollars (\$20,000) or less without Landlord's approval. Tenant must notify Landlord of such Alterations at least ten (10) days before commencing the installation thereof in the Premises.

(d) Communications Equipment. Landlord hereby grants Tenant all rights necessary to connect the Premises to Tenant's communications facility in the public right of way, including without limitation the right to install and maintain conduits with pull boxes, communications cables, and fiber patching and splicing equipment on the Property and in the Building, including without limitation in the Building's main telephone room. The location of such items shall be subject to Landlord's review and approval, not to be unreasonably withheld, conditioned, or delayed. Tenant shall not install in the Building's main telecommunications room, without Landlord's consent, any equipment that requires direct Tenant access after initial installation, other than conduits and wiring. Notwithstanding the foregoing, if Tenant would like to have a third-party telecommunications or internet service provider (in either case, an "ISP") bring new service to the Building, and if the ISP needs to place switch gear in the Building's main telecommunications room, Landlord shall allow such placement, but may condition access on the ISP's signing a right of entry agreement. Landlord agrees not to charge any ISP a fee in connection with its use of the Building.

12. Electricity. The following new subsection (12) is hereby added to Section 12.01 of the Original Lease:

(12) Electricity twenty-four (24) hours per day, seven (7) days per week sufficient for the Premises' lighting fixtures and for typical office equipment and machinery (such as computers, copiers, servers, facsimile machines, and similar items) at the level defined in 1.32 hereof (4.5 [four and one-half] watts per square foot).

13. Janitorial Services. Landlord, at no additional cost to Landlord, shall use reasonable efforts to coordinate with Landlord's cleaning vendor in an effort to avoid disruption to after-hours functions in the Premises.

14. Subordination. Section 22.01 of the Original Lease is hereby amended by deleting the following language therefrom:

"Landlord shall use commercially reasonable efforts to obtain from any current or future Mortgagee or Ground Lessor a non-disturbance agreement for the benefit of Tenant in such Mortgagee's or Ground Lessor's, as the case may be, which form (a) shall provide, at a minimum, that in the event of a foreclosure of the Property (as hereinafter defined) or granting of a deed in lieu of foreclosure to the Property, or in the event of a termination of any Ground Lease, the Mortgagee or Ground Lessor, as applicable, shall not disturb or restrict Tenant's possession of the Demised Premises or any of Tenant's other rights under this Lease as long as no Default shall have occurred and be continuing, and (b) shall not vary the terms of this Lease, except for possibly requiring notices to the Mortgagee or Ground Lessor which are different from, or in addition to, those requirements set forth herein; provided, however, that (i) Tenant shall pay all costs incurred by Landlord which are imposed by such Mortgagee or Ground Lessor, as the case may be, with respect to such non-disturbance agreement and (ii) in the event that Landlord does not obtain such non-disturbance agreement, this Lease shall be and remain subject and subordinate to the lien of said Mortgage or Ground Lease, as the case may be, and to any and all renewals, extensions, modifications, recastings and refinancings thereof".

Except as deleted above, the language set forth in Section 22 of the Original Lease remains in full force and effect and is hereby reaffirmed by Landlord and Tenant in all respects; provided, however, that simultaneously with its execution and delivery of this First Amendment, (i) Landlord shall cause the current Mortgagee to deliver a Subordination, Nondisturbance, and Attornment Agreement ("SNDA") substantially in the form attached hereto as Exhibit I, and (ii) provided that Tenant is not then in Default under the Lease, Landlord shall use commercially reasonable efforts to obtain an SNDA from any future Mortgagee of the Property that comports in all material respects with the SNDA attached hereto as Exhibit I; further provided, however, that if Landlord does not obtain such SNDA despite Landlord's commercially reasonable efforts to obtain the same, Landlord shall have no liability for such failure, and this Lease shall be and remain subject and subordinate to the lien of said Mortgage and to any and all renewals, extensions, modifications, recastings and refinancings thereof. In the case of any conflict between the terms of Section 22 of the Lease and the terms of any such SNDA from the current or any future Mortgagee, the terms of said SNDA shall govern.

15. Insurance. Section 17.02(3) of the Original Lease is hereby deleted and replaced with the following:

(3) Notwithstanding any term or condition of this Lease to the contrary, Tenant shall, for so long as Tenant is the County Board of Arlington County, Virginia, a body politic, be entitled to meet all of Tenant's insurance requirements under this Lease through self-insurance. Notwithstanding anything

to the contrary set forth in this Section 17.02(3), Tenant's right to self-insure shall be applicable only to Tenant originally named hereunder and not to any assignee thereof or any future assignee with respect to this Lease.

"[O]ther than Section 17.02(3), with respect to Tenant self-insuring a risk in excess of the Five Million Dollar (\$5,000,000.00) self-insurance cap)" is hereby deleted wherever it appears in Section 19.01(2) of the Original Lease.

16. Tenant's Cure Period. The final seven (7) lines of Section 19.01(2) of the Original Lease, commencing "provided, however, that if the failure on the part of Tenant is not capable of being cured" and ending "described in clause (ii) of this Section 19.01 (2)," are hereby deleted and replaced with "provided, however, that if the failure on the part of Tenant is not capable of being cured within such thirty (30)-day period but Tenant expeditiously commences to cure same and diligently proceeds with such cure, Tenant's time to cure such failure shall be extended for the time necessary to cure same, but in no event longer than one hundred eighty (180) days, inclusive of the original thirty (30)-day period, it being agreed that the proviso in this clause (iii) shall be inapplicable to any failure by Tenant to comply with or perform any covenant or obligation of Tenant's under this Lease which is described in clause (ii) of this Section 19.01(2)."

17. Assignment and Subletting.

(a) Consent Standard. Landlord shall not unreasonably withhold, delay, or condition its consent to any proposed assignment of the Lease by Tenant provided that the proposed assignee (1) is creditworthy, (2) will use the Premises for the Permitted Use and will not use the Premises in any manner that would conflict with any exclusive use agreement or other similar agreement entered into by Landlord with any other tenant of the Building as of the time of the assignment, (3) will not use the Premises or the Building in a manner that would materially increase Operating Expenses or the pedestrian or vehicular traffic to the Premises or the Building (it being agreed that uses which require a significant number of visitors, such as a Social Security Administration office, department of motor vehicles office, U.S. Passport Service, or Immigration Office shall not be permitted), (3) is not currently and has not in the past been an opposing party in litigation against Landlord or any of its Affiliates, (4) is of a type typically found in first-class office buildings in Arlington, Virginia, (5) is not affiliated with the Department of Defense, Department of Homeland Security, Central Intelligence Agency, Federal Bureau of Investigations, National Security Agency, or any other governmental agency which requires any special security measures, such as magnometers, body scanners, x-rays, or electric screening, and (6) meets Landlord's reasonable standards for tenants of the Building and is otherwise compatible with the character of the occupancy of the Building; otherwise, Landlord may withhold its consent in its sole discretion. Additionally, Landlord may withhold its consent in its sole discretion to any proposed assignment if: (a) An uncured Default by Tenant exists at the time of the proposed assignment; or (b) The use of the Premises by the proposed assignee would attract a volume or frequency of visitors' or employees' visits to the Building that is not consistent with the standards of a Comparable Building (it being agreed that the use of the Premises as a place for people to apply for or receive benefits, including but not limited to payroll, Social Security, unemployment compensation, or public assistance, shall be deemed activities which attract a volume or frequency of visitors' or employees' visits to the Building which is not consistent with the standards of a Comparable Building).

In addition, if the assignee is not a government or governmental agency, Landlord may condition its consent on the assignee's agreeing to modify the Lease to delete the provisions that apply solely to Tenant in its capacity as a local government and to add commercially-reasonable insurance and indemnity provisions. Any assignee must covenant and agree to perform the obligations of Tenant under the Lease and to occupy the Premises subject to the provisions of the Lease.

(b) Recapture. Section 23.02 of the Original Lease is hereby deleted.

(c) Assignment Fees. Subsection (2) of Section 23.04 of the lease is hereby revised in its entirety to provide as follows:

(2) Tenant shall reimburse Landlord for its reasonable out-of-pocket attorneys' fees incurred in approving an assignment or sublease of this Lease, not to exceed ten thousand dollars (\$10,000) for an assignment of this Lease or five thousand dollars (\$5,000) for a sublease. The reimbursement shall be due within thirty (30) days following Landlord's demand accompanied by complete copies of the invoices submitted to Landlord and documentation reasonably evidencing Landlord's payment thereof.

18. Recordation. Tenant, at Tenant's sole cost and expense, may record a memorandum of this Amendment. Landlord shall sign, notarize, and return to Tenant any such memorandum so long as the form is reasonably acceptable to Landlord.

19. Signs. Landlord shall provide Tenant with entries in the Building's lobby directory.

20. Option to Extend. Tenant shall continue to have the Renewal Option as set forth in Article 42 of the Original Lease. The first paragraph of Article 42 of the Original Lease is hereby deleted, and the following is substituted in lieu thereof:

Provided that Tenant is not in default at the time of exercise of the Renewal Option, as hereinafter defined, or at the time of the commencement of the Renewal Term, as hereinafter defined, Tenant shall have one (1) option (the "Renewal Option") to extend the Term for one (1) additional five (5)-year period (the "Renewal Term"). Notwithstanding the foregoing, in the event that Tenant is in default at the time of the exercise of the Renewal Option or at the time of the commencement of the Renewal Term, but (i) such default has not then continued beyond any applicable notice and cure period, and (ii) such default does not remain uncured beyond the expiration of any applicable notice and cure period, then Tenant's exercise of the Renewal Option or the commencement of the Renewal Term shall not be negated or in any way affected by the fact that Tenant had been in default at such time, as applicable. The Renewal Option shall be exercisable only by notice given by Tenant to Landlord not later than twelve (12) months, nor earlier than eighteen (18) months, prior to the expiration of the Term (the "Renewal Notice"). Tenant shall provide a copy of any notice sent to Landlord under this Article 42 to Landlord's Mortgagee pursuant to Article 31 of this Lease. If Tenant does not timely exercise the Renewal Option, then the Renewal Option shall be null and void and of no further force or effect, time being of the essence in the exercise of the Renewal Option and it being acknowledged and agreed by Tenant that Landlord shall be entitled to

rely on any failure by Tenant to give the Renewal Notice by the date set forth herein for exercise of the Renewal Option. All terms and conditions of this Lease shall be applicable during the Renewal Term except that the Operating Expenses Base Year and the Real Estate Tax Expenses Base Year shall be calendar year 2030 and the amount of Base Rent charged for the Renewal Term shall be the then FMV Rental Rate, which shall be the net effective rent (including but not limited to Base Rent escalations) for comparable tenants leasing comparable office space in Comparable Buildings, taking into account all tenant concessions then prevailing for tenancies in Comparable Buildings (the "FMV Rental Rate"). If within thirty (30) days following delivery of the Renewal Notice (such thirty (30)-day period being hereinafter referred to as the "Renewal Rent Negotiation Period"), Landlord and Tenant have not mutually agreed on the FMV Rental Rate for the Renewal Term, then within ten (10) days after the expiration of such thirty (30)-day period, each party shall give written notice to the other setting forth the name and address of a Broker selected by such party who has agreed to act in such capacity, to determine the FMV Rental Rate. If either party fails to select a Broker as aforesaid, and such failure continues for more than ten (10) days after receiving notice from the other party detailing such failure, the FMV Rental Rate shall be determined by the Broker selected by the other party. Each Broker shall thereupon independently make his or her determination of the FMV Rental Rate within twenty (20) days after the appointment of the second Broker. If the two Brokers' determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower of them, then the FMV Rental Rate shall be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two Brokers shall jointly appoint a third Broker within ten (10) days after the second of the two determinations described above has been rendered. If the two Brokers do not agree upon the third Broker within such ten (10)-day period, then the third Broker shall be selected by arbitration in Arlington, Virginia in accordance with the then-current commercial rules of the American Arbitration Association. The third Broker shall independently make his or her determination of the FMV Rental Rate within thirty (30) days after his or her appointment. The highest and the lowest determinations of value among the three Brokers shall be disregarded and the remaining determination shall be deemed to be the FMV Rental Rate.

21. Amenities. Tenant, its staff, and the staff of any occupants of the Premises shall have daily access to the current fitness facility located on the fourth floor of the Building at no charge throughout the Term. Subject to the limitations on Operating Expenses set forth in the Lease, fitness center expenses shall be included in Operating Expenses in the Operating Expenses Base Year, and may be included in subsequent years of the Term. In addition, Landlord is constructing a secure bike room in the Building's parking garage with lockers. Tenant, its staff, and the staff of any occupants of the Premises may use the bike room and lockers at all times at no charge.

22. Lender Approval. Landlord represents and warrants to Tenant as of the date of this Amendment that Landlord has obtained any Mortgagee approval required for this Amendment.

23. Brokerage Fees. Tenant has engaged CB Richard Ellis ("**Tenant's Broker**") in connection with this Amendment. Landlord shall pay, pursuant to a separate agreement between Landlord and Tenant's Broker, any brokerage commission attributable to Tenant's Broker. Landlord

additionally shall pay the commissions of any brokers engaged by Landlord. Landlord shall indemnify, defend, and hold harmless Tenant, any corporate entity or governmental or political subdivision or authority affiliated with Tenant, any contractor, employee, officer, principal, member, partner, agent, or elected or appointed official of any of the foregoing, and the successors and assigns of each of them against any liability arising from or relating to any claims for broker's commissions, finder's fees, or similar compensation made by Tenant's Broker or by persons engaged by, or alleged to be engaged by, Landlord, including without limitation reasonable attorneys' fees and costs. Tenant hereby represents and warrants to Landlord that, except for Tenant's Broker, Tenant has not engaged any other Broker in connection with this Amendment. Tenant hereby agrees to reimburse Landlord for any costs incurred by Landlord resulting from a breach of the foregoing representation and warranty.

24. Delegation of Authority to County Manager. Except to the extent prohibited by Applicable Law, the County Manager or his or her designee is hereby authorized to grant or withhold, on behalf of Tenant, any consents and approvals that Landlord is required to obtain from Tenant, or that Tenant may provide, under the Lease. This specific authority shall not be construed to limit the general authority invested by law in the County Manager to manage public property and to perform acts related thereto.

25. Defined Terms. Except as otherwise defined herein, terms that are defined in the Original Lease shall have the same meanings when such terms are used in this Amendment.

26. Confirmation of Terms. All of the terms, covenants, and conditions of the Original Lease, except as are specifically modified, amended, or deleted by this Amendment, shall remain in full force and effect, and are hereby adopted and reaffirmed by the parties hereto.

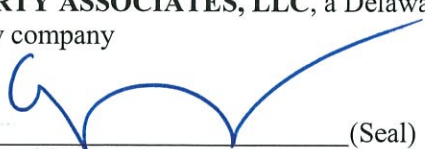
[Signatures Appear on Following Page.]



IN WITNESS WHEREOF, the parties hereto have set their hands and seals on this First Amendment to Deed of Lease the day and date first set forth above.

LANDLORD:

**ART PROPERTY ASSOCIATES, LLC**, a Delaware limited liability company

By:  (Seal)  
Name: Timothy Helmig  
Title: Vice President  
Date: April 9, 2019

TENANT:

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body public

Approved as to Form:

\_\_\_\_\_  
County Attorney

By: \_\_\_\_\_ (Seal)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2019

## EXHIBIT I

### SUBORDINATION, NONDISTURBANCE, AND ATTORNMENMENT AGREEMENT

Recording Requested by  
and when Recorded return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Loan No.: 308070001

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

Tenant's Trade Name: \_\_\_\_\_

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE SECURITY DOCUMENTS (DEFINED BELOW).**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is made as of \_\_\_\_\_, 2019, by and between COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic ("Tenant"), and U.S. Bank National Association, solely in its capacity as Trustee for the benefit of the Holders of the Rosslyn Portfolio Trust 2017-ROSS, Commercial Mortgage Pass-Through Certificates, Series 2017-ROSS ("Lender").

### RECITALS

- A. ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company ("Owner") is the owner of the land and improvements located at 1501 Wilson Boulevard, Arlington, Virginia and more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").
- B. Tenant is the lessee under a Deed of Lease dated January 28, 2009, as amended by First Amendment to Deed of Lease dated \_\_\_\_\_, 2019, executed by Owner (or its predecessor in interest), as landlord, and Tenant, as Tenant (as the same may have been amended, the "Lease"), covering certain premises (the "Premises") located at the Property.
- C. Lender is the current holder of a mortgage loan (the "Loan") previously made to Owner, evidenced by a note (the "Note") and secured by, among other things: (a) a first mortgage, deed of trust or deed to secure debt encumbering the Property (the "Mortgage"); and (b) a first priority assignment of leases and rents on the Property (the "Assignment of Leases and Rents") contained in the Mortgage or in a separate document. The Mortgage and the Assignment of Leases and Rents are collectively referred to as the "Security

Documents.” The Note, the Security Documents and all other documents executed in connection with the Loan are collectively referred to as the “Loan Documents.”

- D. Tenant has requested Lender’s agreement that if Lender forecloses the Mortgage or otherwise exercises Lender’s remedies under the Security Documents, Lender will not disturb Tenant’s right to quiet possession of the Premises under the terms of the Lease.
- E. Lender is willing to so agree on the terms and conditions provided in this Agreement, including, without limitation, Tenant’s agreement to subordinate the Lease and attorn to Lender as provided herein.

NOW, THEREFORE, for mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **SUBORDINATION.** The Lease is and shall remain unconditionally subject and subordinate to (a) the liens or charges imposed by the Security Documents, (b) all currently outstanding or future advances secured by the Security Documents, and (c) all renewals, amendments, modifications, consolidations, replacements and extensions of the Security Documents. The subordination described herein is intended by the parties to have the same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions of the Security Documents had been executed, acknowledged, delivered and recorded prior to the Lease and any amendments or modifications thereof.
- 2. **NON-DISTURBANCE.** If Lender exercises any of its rights under the Security Documents, including any right of entry on the property pursuant to the Mortgage or upon a foreclosure of or deed in lieu of foreclosure of the Mortgage, Lender shall not disturb tenant’s right of quiet possession of the Premises under the terms of the Lease, so long as Tenant is not in default beyond any applicable cure period under the Lease.
- 3. **ATTORNMEN**. Notwithstanding anything to the contrary contained in the Lease, should title to the Premises and the landlord’s interest in the Lease be transferred to lender or any other person or entity by foreclosure of or deed in-lieu of foreclosure of the Mortgage, tenant shall, for the benefit of Lender or such other person or entity, effective immediately and automatically upon the occurrence of any such transfer, attorn to Lender or such other person or entity as landlord under the Lease and shall be bound under all provisions of the Lease including, but not limited to, the obligation to pay all rent required to be paid by Tenant pursuant to the terms of the Lease, for the remainder of the Lease term.
- 4. **PROTECTION OF LENDER.** If Lender succeeds to the interest of Owner under the Lease, Lender shall not be:
  - (a) liable for any act or omission of any previous landlord under the Lease except as provided in Subsection (i) below;
  - (b) subject to any offsets or defenses which Tenant may have against any previous landlord under the Lease;
  - (c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any previous landlord;
  - (d) obligated to make any payment to Tenant which any previous landlord was required to make before Lender succeeded to the landlord’s interest;
  - (e) accountable for any monies deposited with any previous landlord (including security deposits), except to the extent such monies are actually received by Lender;

- (f) bound by any amendment or modification of the Lease or any waiver of any term of the Lease made without Lender's written consent, not to be unreasonably withheld, conditioned, or delayed;
- (g) bound by any surrender or termination of the Lease made without Lender's written consent (unless effected unilaterally by Tenant pursuant to the express terms of the Lease);
- (h) obligated to complete any improvement or construction on the Property or to pay or reimburse Tenant for any Tenant improvement allowance, construction allowance or leasing commissions;
- (i) liable for any default of any previous landlord under the Lease except to the extent that (i) Lender is aware of such default, (ii) such event of default is continuing, and (iii) Lender fails to cure such landlord default within the applicable cure period, provided that Lender's cure period shall commence upon Lender's succession to the landlord's interest under the Lease;
- (j) bound by any provision in the Lease granting Tenant a purchase option or first right of refusal or offer with regard to the Property. Furthermore, notwithstanding anything to the contrary contained in this Agreement or the Lease, upon any such succession, the Lease shall be deemed to have been automatically amended to provide that Lender's obligations and liabilities under the Lease shall be limited solely to Lender's interest, if any, in the Property, and the proceeds from any sale or disposition of the Property by Lender (collectively, "Lender's Interest") and, following such succession, Tenant shall look exclusively to Lender's Interest for the payment or discharge of any obligations of Lender under the Lease.

5. **LENDER'S RIGHT TO CURE.** Tenant shall deliver to Lender a copy of any notice of any default(s) by Owner under the Lease in the same manner as, and whenever, Tenant shall give any such notice to Owner, and no such notice shall be deemed given to Lender unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy, or cause to be remedied, any default by Owner under the Lease within the same cure period as is applicable to Owner. Tenant shall accept performance by Lender of any covenant or condition to be performed by Owner under the Lease with the same force and effect as though performed by Owner. Notwithstanding anything contained in this agreement or in the Lease to the contrary, Tenant shall not terminate the Lease as a result of a landlord default under the Lease (a) so long as Lender, in good faith, shall have notified Tenant of Lender's intent to cure, and actually commenced to cure, such default within the above-referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (b) if possession of the Premises is required to cure a default, or if the default is not susceptible to cure by Lender, then Tenant shall not terminate the Lease based on the default so long as Lender notifies Tenant in writing that Lender intends to institute enforcement proceedings under the security documents within sixty (60) days after receiving notice of the default and thereafter pursues curing the default with reasonable diligence, subject to force majeure. Lender shall have the right, without notice to Tenant or Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or otherwise realize upon the Mortgage or to exercise any other remedies under the Security Documents or state law.
6. **ASSIGNMENT OF LEASES AND RENTS.** Tenant consents to the assignment of leases and rents and acknowledges Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Upon Tenant's receipt of a written notice from Lender of a default by Owner under the loan, Tenant shall thereafter, if requested by Lender in writing, pay rent to Lender in accordance with the terms of the Lease. Lender's delivery of such notice to Tenant, or Tenant's compliance therewith, shall not be deemed to (a) cause Lender to succeed to or assume any obligations or responsibilities of Owner under the Lease or (b) relieve Owner of any of its obligations under the Lease.

7. **INSURANCE PROCEEDS AND CONDEMNATION AWARDS.** Notwithstanding anything to the contrary contained in this Agreement or the Lease, the terms of the Loan Documents shall continue to govern with respect to the disposition of Owner's interest in any insurance proceeds or condemnation awards, and any obligations of Owner to restore the property following a casualty or condemnation shall, insofar as they apply to Lender, be limited to the amount of any insurance proceeds or condemnation awards received by Lender or Owner after the deduction of all costs and expenses incurred in obtaining such proceeds or awards. Following the foreclosure or deed in lieu of foreclosure of the Mortgage, the provisions of this section shall remain in full force and effect unless and until fee title to the Premises becomes vested in a person or entity other than (a) the holder of the loan at the time of such foreclosure or deed in lieu of foreclosure or (b) a parent, subsidiary or affiliate of such holder.
8. **ASSIGNMENT OF LEASE BY TENANT.** Tenant shall not assign any right or interest of Tenant under the Lease (except for an assignment that is permitted under the Lease without Owner's consent), without Lender's prior written consent, not to be unreasonably withheld, conditioned, or delayed.
9. **MISCELLANEOUS.**
- 9.1 **Heirs, Successors and Assigns.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, trustees and agents, as well as any single purpose entity established by Lender to take title to the Property by reason of such foreclosure or deed in lieu of foreclosure. The terms "Tenant" and "Owner" as used herein include any successor or assign of the named Tenant and Owner herein, respectively; provided, however, that such reference to Tenant's or Owner's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Owner.
- 9.2 **Addresses; Request for Notice.** All notices and other communications that are required or permitted to be given to a party under this Agreement shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, or by certified first class mail, return receipt requested, to the address below. All such notices and communications shall be effective upon receipt of such delivery. The addresses of the parties shall be:
- |                                      |   |
|--------------------------------------|---|
| <b><u>Tenant:</u></b>                | <b><u>Lender:</u></b>                         |
| County Manager                       | WELLS FARGO BANK, N.A.                        |
| Arlington County, VA                 | Commercial Mortgage Servicing                 |
| 2100 Clarendon Boulevard, Suite 302  | Attn: Lease Reviews                           |
| Arlington, VA 22201                  | MAC D1050-084                                 |
|                                      | 401 South Tryon Street, 8 <sup>th</sup> Floor |
|                                      | Charlotte, NC 28202                           |
| With a copy to:                      | CMSLeaseReviews@wellsfargo.com                |
| Real Estate Bureau Chief             |   |
| Department of Environmental Services |   |
| Real Estate Bureau                   |   |
| 2100 Clarendon Boulevard, Suite 800  |   |
| Arlington, VA 22201                  |   |
- provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement.

- 9.3 **Entire Agreement.** This Agreement constitutes the entire agreement between Lender and Tenant with regard to the subordination of the Lease to the Security Documents and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement, and shall supersede and cancel, but only insofar as would affect the priority between the Security Documents and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust, a mortgage or mortgages, a deed or deeds to secure debt or a trust indenture or trust indentures.
- 9.4 **Disbursements.** Lender, in making disbursements of any funds pursuant to the Loan Documents, is under no obligation to, nor has Lender represented that it will, monitor or control the application of such funds by the recipient and any application of such funds, including, without limitation, any application of such funds for purposes other than those provided for in the Loan Documents, shall not defeat this agreement to subordinate in whole or in part.
- 9.5 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.
- 9.6 **Section Headings.** Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.
- 9.7 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.
- 9.8 **Termination; Amendment.** Neither this Agreement nor any of the terms hereof may be terminated, amended, or modified orally, but only by an instrument in writing executed by the parties hereto.
- 9.9 **Waiver.** No waiver of any right under this Agreement shall bind any party hereto unless reduced to a writing signed by such party.
- 9.10 **Governing Law.** This Agreement and any claim, controversy or dispute arising under or related to or in connection with this Agreement, the relationship of the parties or the interpretation and enforcement of the rights and duties of the parties shall be governed by the law of the state where the Property is located, without regard to any conflicts of law principles.
- 9.11 **Authority.** Each party hereto warrants to the other party that the persons executing this Agreement on its behalf are authorized to do so and that such execution hereof is the binding act of such party and enforceable against such party.
- 9.12 **Form of Agreement.** Tenant acknowledges that Lender enters into numerous agreements of this type on a regular basis, both in its own capacity and as a commercial mortgage servicer on behalf of other lenders, and that the specific provisions contained in any agreement of this type entered into by Lender will vary depending on numerous transaction-specific factors, including, without limitation, the borrowers, loan documents, Tenants, leases, servicers, servicing agreements and property and market conditions involved in the transaction. Accordingly, Tenant further acknowledges that the specific provisions contained in this Agreement will not necessarily be acceptable to Lender in connection with any other transaction.

- 9.13 **Sovereign Immunity.** Notwithstanding any other provisions of this Agreement to the contrary, neither anything in this Agreement, nor any action taken by Tenant pursuant to this Agreement, nor any document that arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or the governmental immunity of Tenant or its elected and appointed officials, officers, and employees.
- 9.14 **Venue.** The General District Court and the Circuit Court of Arlington County, Virginia shall be the exclusive venues for any dispute or claim by or between Lender and Tenant arising out of or related to this Agreement. All actions, suits, and other causes concerning or arising out of this Agreement shall be brought in the above-described courts and in no other courts.





**TENANT:**

COUNTY BOARD OF ARLINGTON COUNTY,  
VIRGINIA, a body politic

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
County Attorney

\_\_\_\_\_, ss.

On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named \_\_\_\_\_, the  
\_\_\_\_\_, of COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic and  
acknowledged the foregoing to be the free act and deed of COUNTY BOARD OF ARLINGTON COUNTY,  
VIRGINIA, a body politic, before me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

The undersigned Owner hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement and the acknowledgement contained in Section 9.12 of the foregoing Agreement.

**OWNER:**

ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_, ss.

On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named \_\_\_\_\_, the \_\_\_\_\_, of ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company and acknowledged the foregoing to be the free act and deed of ART PROPERTY ASSOCIATES, LLC, a Delaware limited liability company, before me.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**IT IS RECOMMENDED THAT, PRIOR TO EXECUTING THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

**ALL SIGNATURES MUST BE ACKNOWLEDGED.**

EXHIBIT A  
(Description of Property)

EXHIBIT A to SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated as of \_\_\_\_\_, 2019 executed by COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body politic, as "Tenant", and U.S. Bank National Association, solely in its capacity as Trustee for the benefit of the Holders of the Rosslyn Portfolio Trust 2017-ROSS, Commercial Mortgage Pass-Through Certificates, Series 2017-ROSS, "Lender."

All that certain land located in the County of Arlington, State of Virginia, described as follows:

1501 – 1515 Wilson

All those certain lots or parcels of land, together with the improvements thereon, lying and being situate in the County of Arlington, State of Virginia, being more particularly described as follows:

PART I:

All of Lots 1 to 20, both inclusive, of the Subdivision known as EDDY'S SUBDIVISION OF VILLA SITE "A" OF ROSSLYN FARM, as the same is duly dedicated, platted and recorded among the Land Records of Arlington County, Virginia, in Deed Book N, No. 4, at page 170.

TOGETHER WITH AND SUBJECT TO the beneficial, non-exclusive easement for underground construction below the surface of North Oak Street granted by the County Board of Arlington County, Virginia, in Deed of Easement recorded among the aforesaid Land Records in Deed Book 1642 at page 315.

PART II:

Those certain alleys vacated by the County Board of Arlington County, Virginia, by ordinance adopted June 22, 1968, and recorded in Deed Book 1689 at page 587, among the aforesaid Land Records.

NOTE FOR INFORMATIONAL PURPOSES ONLY:

RPC Nos. 16-033-001 (Lots 1 – 10) & 16-033-004 (Lots 11 – 20 and Alleys)

Vicinity Map  
1501 Wilson Blvd.  
RPC# 16-033-001

18TH ST N

16033001

N OAK ST

WILSON BLVD

0 50 Feet



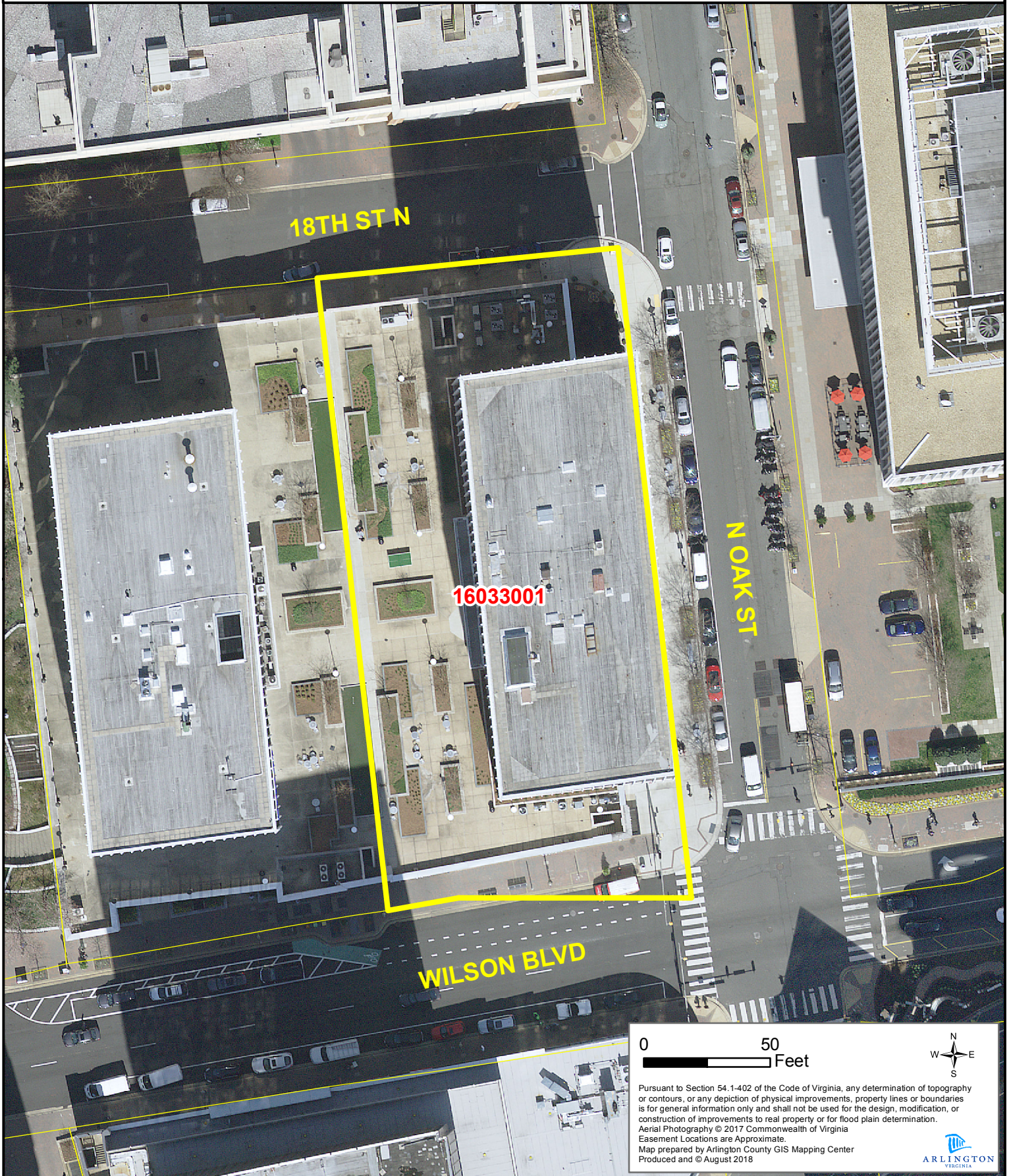
Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

Aerial Photography © 2017 Commonwealth of Virginia  
Easement Locations are Approximate.  
Map prepared by Arlington County GIS Mapping Center  
Produced and © August 2018





Vicinity Map  
1501 Wilson Blvd.  
RPC# 16-033-001



0 50  
Feet



Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.  
Aerial Photography © 2017 Commonwealth of Virginia  
Easement Locations are Approximate.  
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Vicinity Map  
1501 Wilson Blvd.  
RPC# 16-033-001

