

**DRAFT**



**Lease**

TRIBOROUGH STATION - TEMPORARY SPACE (359623-901)  
TBD, NEW YORK, NY 10035-9998



Facility Name/Location  
TRIBOROUGH STATION - TEMPORARY SPACE (359623-901)  
TBD, NEW YORK, NY 10035-9998

County:DUPLIN  
Lease:Q90000429144

This Lease made and entered into by and between TBD hereinafter called the Landlord, and the United States Postal Service, hereinafter called the Postal Service:

In consideration of the mutual promises set forth and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. The Landlord hereby leases to the Postal Service and the Postal Service leases from the Landlord the following premises, hereinafter legally described in paragraph 7, in accordance with the terms and conditions described herein and contained in the 'General Conditions to U.S. Postal Service Lease,' attached hereto and made a part hereof.

Upon which is a brick/block building and which property contains areas, spaces, improvements, and appurtenances as follows:

AREA	SQ. FEET
Gross Total USPS Leased SF	20,111

The USPS is leasing-back the entire Property for a term of upto twelve (12) months to allow time for the USPS to prepare its New Space (whether that be a re-configured space within the building or a relocation).

**Total Site Area:** 10,100.00

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the following term:  
FIXED TERM: ~~The term becomes effective July 01, 2014 with an expiration date of June 30, 2015, for a total of 1 Year.~~  
**SEE ADDENDUM ITEM #8**

3. RENTAL: ~~The Postal Service will pay the Landlord an annual rental of: \$0.00 (Zero and 00/100 Dollars) payable in equal installments at the end of each calendar month. Rent for a part of a month will be prorated.~~  
**SEE ADDENDUM ITEM #9**

Rent checks shall be payable to:



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This Addendum is annexed to and made a part of that certain Lease between the United States Postal Service and \_\_\_\_\_ (the "Lease"). Terms used in this Addendum and not defined herein have the meaning given to them in the Lease, or in the Agreement of Purchase and Sale ("the Agreement"), dated \_\_\_\_\_, 2014. If there is any conflict or ambiguity between any terms of the Lease, Agreement or Addendum, the terms of this Addendum shall control.

(8) Page 1, Paragraph 2 of the Lease is amended as follows:

This is a twelve (12) month lease term (the "Term") effective at the time of Closing of the sale of the Property to Landlord pursuant to that certain Agreement of Purchase and Sale between the United States Postal Service and \_\_\_\_\_, which Term is to allow time for the Postal Service to prepare its new space (whether that be a reconfigured space within the building or a relocation, the "New Space").

Should the New Space not be ready for occupancy at the end of the Term, the Postal Service shall have the right to extend the term for a period of three (3) calendar months provided written notice of such extension is received by the Landlord on or before the first (1st) day of the eleventh (11th) calendar month of the Term of this Lease. Notwithstanding any provision herein to the contrary, the Postal Service may terminate this Lease at any time with thirty (30) days prior written notice to the Landlord.

(9) Page 1, Paragraph 3 of the Lease is amended as follows:

The Postal Service will pay one dollar (\$1.00) in rent for the Temporary Lease.

(10) Page 2, Paragraph 5 of the Lease is amended by the addition of the following:

The Postal Service is responsible for the following: utility expenses and operating costs; real estate taxes per the attached Tax Rider - Reimbursement of Paid Taxes; maintaining the Property in its "AS IS" condition as of the Closing Date, ordinary wear and tear excepted. The Postal Service accepts the Property in its "AS IS" and "WHERE IS" condition and agrees that the Landlord shall have no obligation to undertake any repairs, renovations, improvements or remediation for conditions existing prior to the commencement of this Lease, or replacements of all or any part of the Property.

There is no Maintenance Rider with this Lease. The Postal Service shall be responsible for the maintenance of the Property and such maintenance shall be at the sole discretion of the Postal Service as to what repairs/maintenance are necessary and the extent of any such repairs/maintenance.

(11) Page 1, Paragraph 4c of the General Conditions to USPS Lease is deleted in its entirety and replaced with the following:

Notwithstanding any provision herein to the contrary, the Postal Service may not assign or sublet any part of the Property.

(12) Page 1, Paragraph 6 of the General Conditions to USPS Lease is deleted in its entirety.

(13) Page 1, Paragraph 7.a. and Paragraph 7.b. of the General Conditions to USPS Lease are deleted in their entirety and replaced with the following:

If Landlord provides written notice within thirty (30) days of the expiration or termination of this

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Lease, the Postal Service and Landlord shall negotiate and reach agreement on necessary items of restoration and the reasonable cost of such restoration. The Postal Service shall pay Landlord this agreed-upon amount and shall have no further restoration duties under this Lease. At the end of the Term the Postal Service shall remove all of its equipment, furniture, and trade fixtures, unless agreed upon otherwise in writing, and leave the Property in "broom clean" condition, excepting the following: reasonable and ordinary wear and tear, and damages by the elements or by circumstances over which the Postal Service has no control.

(14) Landlord acknowledges that the Postal Service does not routinely purchase commercial insurance or maintain a separate account for potential claims, as is required to technically be considered "self-insured". Rather, the Postal Service is authorized to pay proper claims against it out of its general revenue fund and available credit, and is subject to suit for damages. Liability claims against the Postal Service are governed by the Federal Tort Claims Act, 39 U.S.C. Section 409(c), with specific provisions being set forth at 28 U.S.C. Sections 1346(b), 2401(b), and 2671-2680. With respect to the issue of Workers' Compensation coverage, pursuant to 39 U.S.C. Section 1005(c), the Federal Employees' Compensation Act ("FECA"), 5 U.S.C. Sections 8801 et seq., is the exclusive remedy for all postal employees who sustain personal injuries on the job. While the Landlord is hereby waiving its standard insurance requirements for the Postal Service, if at any time the Postal Service assigns or subleases any portion of the demised premises in accordance with the terms of this Lease to a non-governmental entity, Landlord may impose its standard insurance requirements on the assignee and/or subtenant.



# General Conditions to USPS Lease

## 1. CHOICE OF LAW

This Lease shall be governed by federal law.

## 2. RECORDING

Not Required

## 3. MORTGAGEE'S AGREEMENT

If there is now or will be a mortgage on the property which is or will be recorded prior to the recording of the Lease, the Landlord must notify the contracting officer of the facts concerning such mortgage and, unless in his sole discretion the contracting officer waives the requirement, the Landlord must furnish a Mortgagee's Agreement, which will consent to this Lease and shall provide that, in the event of foreclosure, mortgagee, successors, and assigns shall cause such foreclosures to be subject to the Lease.

## 4. ASSIGNMENTS

a. The terms and provisions of this Lease and the conditions herein are binding on the Landlord and the Postal Service, and all heirs, executors, administrators, successors, and assigns.

b. If this contract provides for payments aggregating \$10,000 or more, claims for monies due or to become due from the Postal Service under it may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any assignment or reassignment must cover all amounts payable and must not be made to more than one party, except that assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing this contract. No assignment or reassignment will be recognized as valid and binding upon the Postal Service unless a written notice of the assignment or reassignment, together with a true copy of the instrument of assignment, is filed with:

1. the contracting officer; and
2. the surety or sureties upon any bond.

~~c. Assignment of this contract or any interest in this contract other than in accordance with the provisions of this clause will be grounds for termination of the contract for default at the option of the Postal Service.~~ **SEE ADDENDUM ITEM #11**

d. Nothing contained herein shall be construed so as to prohibit transfer of ownership of the demised premises, provided that:

1. such transfer is subject to this Lease agreement; and
2. both the original Landlord and the successor Landlord execute the standard *Certificate of Transfer of Title to Leased Property and Lease Assignment and Assumption* form to be provided by the USPS Contracting Officer; and in the case of new leased space projects, the lease may only be assigned or ownership of the property transferred following commencement of the fixed term, unless prior written consent is obtained from the Postal Service.

## 5. APPLICABLE CODES AND ORDINANCES

The Landlord, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the building in which the rented space is situated and to obtain all necessary permits and related items at no cost to the Postal Service. When the Postal Service or one of its contractors (other than the Landlord) is performing work at the premises, the Postal Service will be responsible for obtaining all necessary and applicable permits, related items, and associated costs.

## ~~6. SUBLEASE~~

~~The Postal Service may sublet all or any part of the premises or assign this lease but shall not be relieved from any obligation under this lease by reason of any subletting or assignment.~~

## 7. RESTORATION AND ALTERATIONS

~~a. Upon written notification by Landlord within 30 days of the expiration or termination of this Lease, the Postal Service shall restore the premises to a "broom clean" and usable condition, excepting the following: reasonable and ordinary wear and tear; and damages by the elements or by circumstances over which the Postal Service has no control. If Landlord provides the above notice, the Postal Service and Landlord shall negotiate and reach agreement on necessary items of restoration and the reasonable cost for restoration; the Postal Service shall pay Landlord this agreed-upon amount and shall have no further restoration duties under this Lease.~~

~~b. The Postal Service shall have the right to make alterations, attach fixtures and erect additions, structures or signs in or upon the premises hereby leased (provided such alterations, additions, structures, or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property or in the building in which said premises are located); which fixtures, additions or structures so placed in, upon or attached to the said premises shall be and remain the property of the Postal Service and may be removed or otherwise disposed of by the Postal Service.~~

**8. CLAIMS AND DISPUTES**

- a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) ("the Act").
- b. Except as provided in the Act, all disputes arising under or relating to this contract must be resolved under this clause.
- c. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Landlord seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph d below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- d. A claim by the Landlord must be made in writing and submitted to the contracting officer for a written decision. A claim by the Postal Service against the Landlord is subject to a written decision by the contracting officer. For Landlord claims exceeding \$100,000, the Landlord must submit with the claim the following certification:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the Landlord believes the Postal Service is liable, and that I am duly authorized to certify the claim on behalf of the Landlord."

The certification may be executed by any person duly authorized to bind the Landlord with respect to the claim.

- e. For Landlord claims of \$100,000 or less, the contracting officer must, if requested in writing by the Landlord, render a decision within 60 days of the request. For Landlord-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the Landlord of the date by which the decision will be made.
- f. The contracting officer's decision is final unless the Landlord appeals or files a suit as provided in the Act.
- g. When a claim is submitted by or against a Landlord, the parties by mutual consent may agree to use an alternative dispute resolution (ADR) process to assist in resolving the claim. A certification as described in subparagraph d of this clause must be provided for any claim, regardless of dollar amount, before ADR is used.
- h. The Postal Service will pay interest on the amount found due and unpaid from:
  1. the date the contracting officer receives the claim (properly certified if required); or
  2. the date payment otherwise would be due, if that date is later, until the date of payment.
- i. Simple interest on claims will be paid at a rate determined in accordance with the Act.
- j. The Landlord must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

**9. HAZARDOUS/TOXIC CONDITIONS CLAUSE**

"Asbestos containing building material" (ACBM) means any material containing more than 1% asbestos as determined by using the method specified in 40 CFR Part 763, Subpart E, Appendix E. "Friable asbestos material" means any ACBM that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

The Landlord must identify and disclose the presence, location and quantity of all ACBM or presumed asbestos containing material (PACM) which includes all thermal system insulation, sprayed on and troweled on surfacing materials, and asphalt and vinyl flooring material unless such material has been tested and identified as non-ACBM. The Landlord agrees to disclose, to the best of its knowledge, any information concerning the presence of lead-based paint, radon above 4 pCi/L, and lead piping or solder in drinking water systems in the building, to the Postal Service.

Sites cannot have any contaminated soil or water above applicable federal, state or local action levels or undisclosed underground storage tanks. Unless due to the act or negligence of the Postal Service, if contaminated soil, water, underground storage tanks or piping or friable asbestos material or any other hazardous/toxic materials or substances as defined by applicable Local, State or Federal law are subsequently identified on the premises, the Landlord agrees to remove such materials or substances upon notification by the Postal Service at Landlord's sole cost and expense in accordance with EPA and/or State guidelines; prior to accomplishing this task, Landlord must seek written approval by the USPS Contracting Officer of the contractor and scope of work, such approval not to be unreasonably withheld. If ACBM is subsequently found in the building which reasonably should have been determined, identified, or known to the Landlord, the Landlord agrees to conduct, at Landlord's sole expense, an asbestos survey pursuant to the standards of the Asbestos Hazard Emergency Response Act (AHERA), establish an Operations and Maintenance (O&M) plan for asbestos management, and provide the survey report and plan to the Postal Service. If the Landlord fails to remove any friable asbestos or hazardous/toxic materials or substances, or fails to complete an AHERA asbestos survey and O&M plan, the Postal Service has the right to accomplish the work and deduct the cost plus administrative costs, from future rent payments or recover these costs from Landlord by other means, or may, at its sole option, cancel this Lease. In addition, the Postal Service may proportionally abate the rent for any period the premises, or any part thereof, are determined by the Postal Service to have been rendered unavailable to it by reason of such condition.

The Landlord hereby indemnifies and holds harmless the Postal Service and its officers, agents, representatives, and employees from all claims, loss, damage, actions, causes of action, expense, fees and/or liability resulting from, brought for, or on account of any violation of this clause.

The remainder of this clause applies if this Lease is for premises not previously occupied by the Postal Service.

By execution of this Lease the Landlord certifies:

- a. that the property and improvements are free of all contamination from petroleum products or any hazardous/toxic or unhealthy materials or substances, including friable asbestos materials, as defined by applicable State or Federal law;
- b. that there are no undisclosed underground storage tanks or associated piping, ACBM, radon, lead-based paint, or lead piping or solder in drinking water systems, on the property; and
- c. it has not received, nor is it aware of, any notification or other communication from any governmental or regulatory entity concerning any environmental condition, or violation or potential violation of any local, state, or federal environmental statute or regulation, existing at or adjacent to the property.

## 10. FACILITIES NONDISCRIMINATION

- a. By executing this Lease, the Landlord certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform services at any location under its control where segregated facilities are maintained.
- b. The Landlord will insert this clause in all contracts or purchase orders under this Lease unless exempted by Secretary of Labor rules, regulations, or orders issued under Executive Order 11246.

## 11. CLAUSES REQUIRED TO IMPLEMENT POLICIES, STATUTES, OR EXECUTIVE ORDERS

The following clauses are incorporated in this Lease by reference. The text of incorporated terms may be found in the Postal Service's Supplying Principles and Practices, accessible at [www.usps.com/publications](http://www.usps.com/publications).

Clause 1-5, *Gratuities or Gifts* (March 2006)

Clause 1-6, *Contingent Fees* (March 2006)

Clause 9-3, *Davis-Bacon Act* (March 2006)<sup>1</sup>

Clause 9-7, *Equal Opportunity* (March 2006)<sup>2</sup>

Clause 9-13, *Affirmative Action for Handicapped Workers* (March 2006)<sup>3</sup>

Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* (March 2006)<sup>4</sup>

Clause B-25, *Advertising of Contract Awards* (March 2006)

Note: For purposes of applying the above standard clauses to this Lease, the terms "supplier," "contractor," and "lessor" are synonymous with "Landlord," and the term "contract" is synonymous with "Lease."

<sup>1</sup> For premises with net interior space in excess of 6,500 SF and involving construction work over \$2,000.

<sup>2</sup> For leases aggregating payments of \$10,000 or more.

<sup>3</sup> For leases aggregating payments of \$10,000 or more.

<sup>4</sup> For leases aggregating payments of \$25,000 or more.





DRAFT

Tax Rider  
Reimbursement of Paid Taxes

Facility Name/Location

TRIBOROUGH STATION - TEMPORARY SPACE (359623-901)  
TBD, NEW YORK, NY 10035-9998

County: DUPLIN

Lease: Q90000429144

Assessor's Parcel Number: 1-01773-0027

a. Definitions

Ad Valorem means according to the value of the property.

Property Tax Rate is an amount expressed as dollars and cents per \$100.00 or per \$1,000.00 of assessed value or as mills per \$1.00 of assessed value as set by authorities for tax jurisdictions.

Real Property Taxes, as used in this clause, shall mean those taxes, including Ad Valorem taxes, special assessments, fees and charges, that are assessed against any or all taxable real property appearing on the assessment roll or list in a taxing authority's jurisdiction and that are identified by a taxing authority for the support of government activities within its jurisdiction, whether such activities are general or specific. Real Property Taxes also include administrative charges or fees imposed by a taxing authority for the support of its tax assessment and collection activities.

- b. The Landlord agrees to pay all taxes of any kind, including Real Property Taxes, and charges and fees of every kind and nature levied on the demised premises.
- c. The Postal Service will reimburse Landlord for paid Real Property Taxes, as defined above, only under the following terms:
1. Landlord may submit not more than one request for reimbursement in any calendar year, irrespective of the number of taxing authorities included; and reimbursement will be made **not more than one time annually by the Postal Service.**
  2. No reimbursement will be made for fines, penalties, interest or costs imposed for late payment.
  3. Reimbursement will be made only for paid taxes, less the maximum discount allowed by the taxing authority for prompt or early payment, regardless of whether Landlord actually received any such discount.
  4. Reimbursement will be made only for taxes levied for periods of time within the term of this Lease.
  5. In order to qualify for reimbursement, the tax bill as issued by the taxing authority must pertain only to the demised premises, and to no other real property.
  6. **Landlord must provide copies of the front and back of the complete tax bill issued by the taxing authority,** along with satisfactory proof of payment. Satisfactory proof of payment shall be (i) a receipt for payment shown on the face of the tax bill, (ii) a copy of the front and back of the canceled payment check, (iii) a statement from a lender verifying payment of the tax, or (iv) other documentation satisfactory to the Postal Service.
  7. Incomplete or improper requests for reimbursement will be returned to Landlord without payment.
  8. **Landlord agrees to submit a request for reimbursement of taxes within 18 months after the close of the tax year. In the event Landlord fails to submit its request for reimbursement within that time period, the USPS is not required to reimburse paid taxes.**
- d. The Landlord must promptly furnish to the Postal Service copies of all notices that may affect the valuation of the demised premises for Real Property Tax purposes or that may affect the levy or assessment of Real Property Taxes thereon. If Landlord does not timely furnish such notices relating to valuation changes or the levy or assessment of taxes or fails to meet any legal prerequisite for appeal and the Postal Service loses the right to contest the validity or the amount of the taxes, then the Postal Service shall be responsible to reimburse Landlord for only 75% of the reimbursable taxes due for the year involved.

All notices required under this paragraph must be delivered or mailed, using certified mail with a return receipt or other verified method of delivery, within ten (10) days from the receipt thereof by the Landlord to:

CONTRACTING OFFICER

or to such other office as the Postal Service may later direct in writing.

- e. The Postal Service may contest the validity of any valuation for Real Property Tax purposes or of any levy or assessment of any Real Property Taxes by appropriate proceedings either in the name of the Postal Service or of the Landlord or in the names of both. Notwithstanding any contest of valuation, levy, assessment, or Property Tax Rate, Landlord must pay under protest the Real Property Taxes involved when requested to do so by the Postal Service. The Landlord, upon reasonable notice and request by the Postal Service, must join in any proceedings, must cooperate with the Postal Service, and must execute and file any documents or pleadings as the Postal Service may require for such proceeding, provided the Landlord is reasonably satisfied that the facts and data contained therein are accurate. Landlord will not be responsible for the payment of penalties, costs, or legal expenses in connection with any protest or appeal proceedings brought by the Postal Service, and the Postal Service will indemnify and save harmless the Landlord from any such penalties, costs, or expenses. Landlord hereby authorizes the Postal Service as its agent to represent its interest in any appeal or protest proceeding authorized under this paragraph.
- f. Landlord shall promptly notify the Postal Service of any appeal or other action it takes or initiates to adjust any valuation of the property, Property Tax Rate, or levy or assessment of Real Property Taxes. The Postal Service is entitled to any and all monies obtained through such actions or any other refunds or remissions of Real Property Taxes paid in any year subsequent to the commencement of the lease. If any such refunded or remitted monies are paid or delivered to Landlord, Landlord must immediately forward them to the Postal Service. If Landlord is informed that he is entitled to a refund or remission of monies paid as Real Property Taxes upon the submission of an application, Landlord will promptly make and file such application, and upon receipt of such refund or remission, immediately forward it to the Postal Service. The Postal Service reserves the right to offset refund and remission payments not so obtained or forwarded, against rental or other payments due the Landlord.
- g. The Postal Service is entitled to the benefits of all tax exemptions or abatements authorized by law or regulation that may be available with respect to the demised premises. Landlord shall take all necessary steps to obtain such exemptions or abatements. The Postal Service reserves the right to offset against rental or other payments due the Landlord the amount or value of any abatement or exemption that would have been available if Landlord had properly applied for it, and any amount for which the Postal Service is not to be responsible under paragraph (d), above.
- h. Nothing herein contained shall operate to waive or deprive the Postal Service of any rights, privileges or immunities it enjoys under law.



NEW YORK METRO  
800-853-4803  
212-922-1593 fax  
stewartnewyork.com

## SCHEDULE A – DESCRIPTION

Title No.: ST12-15950

ALL that certain plot piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 124<sup>th</sup> Street, distant 150 feet westerly from the northwesterly corner of 124<sup>th</sup> Street and 3<sup>rd</sup> Avenue;

RUNNING THENCE northerly and parallel with 3<sup>rd</sup> Avenue 100 feet 11 inches to the center line of the block between 124<sup>th</sup> Street and 125<sup>th</sup> Street;

THENCE westerly along said center line, 100 feet;

THENCE southerly and parallel with 3<sup>rd</sup> Avenue, 100 feet 11 inches to the northerly line of 124<sup>th</sup> Street;

THENCE easterly along said northerly line of 124<sup>th</sup> Street, 100 feet to the point or place of BEGINNING.

**FINAL**