

November 12, 2020

STATE OF GEORGIA
COUNTY OF DEKALB

**AMENDMENT NO. 2
TO
CONTRACT NO. 10-902062**

THIS AMENDMENT is made and entered into this 12th day of November, 2020, to be effective as of September 1, 2020, by and between **IVL GROUP, LLC, IN ITS SOLE CAPACITY AS RECEIVER (“Receiver”) FOR THOR GALLERY AT SOUTH DEKALB, LLC, PURSUANT TO THAT CONSENT ORDER APPOINTING RECEIVER DATED OCTOBER 30, 2019**, in the case **WELLS FARGO BANK, N.A., AS TRUSTEE FOR THE REGISTERED HOLDERS OF CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-C5, BY AND THROUGH CWCAPITAL ASSET MANAGEMENT, LLC, SOLELY AS SPECIAL SERVICER** (hereinafter referred to as “Lessor” or “Landlord”), and **DEKALB COUNTY**, a political subdivision of the State of Georgia (hereinafter referred to as the “County” or “Lessee” or “Tenant”).

WITNESSETH:

WHEREAS, by virtue of that certain Rental Agreement (DeKalb County No. 10-902062) dated August 24, 2010, as amended by that First Amendment to Rental Agreement (the “First Amendment”) dated as of August 25, 2015 (hereinafter referred to collectively as the “Agreement” or “Lease”), Thor Gallery of South DeKalb, LLC (“Original Landlord”) leased to Tenant certain office space designated as Space No. 66 containing approximately 2,727 square feet (hereinafter referred to as the “Premises”) in the Shopping Center known as The Gallery at South DeKalb, 2801 Candler Road, Suite 66, Decatur, Georgia 30034; and

WHEREAS, Landlord is the receiver of Original Landlord; and

WHEREAS, the County and Landlord desire to amend the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises and undertakings contained herein, the parties hereto do hereby agree and consent to the following:

1. **Recitals and Definitions.** All capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the Rental Agreement. The defined term “Rental Agreement” as defined above shall include the First Amendment and this Amendment. The parties acknowledge that the Recitals set forth above are true and correct and are incorporated into this Amendment in their entirety by reference.

2. The Rental Agreement is hereby amended by deleting Section II in its entirety and inserting therein the following:

Term and Termination.

This Agreement, upon complete execution by all parties, is for an initial term not to exceed twelve (12) months, commencing on the 1st day of September, 2020 and ending at 12:00 o'clock midnight on the 31st day of August, 2021, unless terminated beforehand as hereinafter provided. If this Agreement is terminated pursuant to this section, Landlord will be limited to receiving only the prorated rental payments due up to and including the effective date of termination, as determined by the County.

Notwithstanding the above, as required by O.C.G.A §36-60-13, this Agreement shall (i) terminate without further obligation on the part of the County each and every December 31st, as required by O.C.G.A. § 36-60-13, as amended, unless terminated earlier in accordance with the termination provisions of this Agreement; (ii) automatically renew on each January 1st, unless terminated in accordance with the termination provisions of this Agreement; and (iii) terminate absolutely, with no further renewals, on August 31, 2025, unless extended by Change Order adopted and approved by the DeKalb County Governing Authority and the Landlord in accordance with the terms of this Agreement.

3. The Rental Agreement is hereby amended by deleting Section III in its entirety and inserting therein the following:

Rental Payments.

(a) The County agrees to pay Landlord, at Landlord's address stated herein, or at such address as may be designated in writing from time-to-time by Landlord, a total rental sum not to exceed Five Hundred Seventy-Seven Thousand, Six Hundred Sixty-Nine Hundred and 17/100 (\$577,669.17). If this Agreement is terminated pursuant to the provisions hereof, Landlord will be limited to receiving only the prorated rental payments due up to and including the effective date of the termination, as determined by the County.

(b) All payments shall be made prior to the first day of each month to: Thor Gallery at South DeKalb, LLC, P.O. Box 712370, Cincinnati Ohio 45271-2370.

The total monetary obligation for use of the Subject Property for the initial term and each succeeding renewal term shall not exceed the following amounts:

Initial Term:

September 1, 2010-August 31, 2011: \$2,620.00 per month (\$31,440.00 per year)

First renewal:

September 1, 2011-August 31, 2012: \$2,672.00 per month (\$32,064.00 per year)

Second renewal:

September 1, 2012-August 31, 2013: \$2,726.00 per month (\$32,712.00 per year)

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Third renewal: September 1, 2013-August 31, 2014:	2,780.00 per month (\$33,360.00 per year)
Fourth renewal: September 1, 2014-August 31, 2015:	\$2,836.00 per month (\$34,032.00 per year)
Fifth renewal: September 1, 2015-August 31, 2016:	\$3,000.00 per month (\$36,000.00 per year)
Sixth renewal: September 1, 2016-August 31, 2017:	\$3,090.00 per month (\$37,080.00 per year)
Seventh renewal: September 1, 2017-August 31, 2018:	\$3,182.70 per month (\$38,192.40 per year)
Eighth renewal: September 1, 2018-August 31, 2019:	\$3,278.18 per month (\$39,338.16 per year)
Ninth renewal: September 1, 2019-August 31, 2020:	\$3,376.53 per month (\$40,518.36 per year)
Tenth renewal: September 1, 2020-August 31, 2021:	\$3,715.54 per month (\$44,586.45 per year)
Eleventh renewal: September 1, 2021-August 31, 2022:	\$3,715.54 per month (\$44,586.45 per year).
Twelfth renewal: September 1, 2022-August 31, 2023:	\$3,715.54 per month (\$44,586.45 per year)
Thirteenth renewal: September 1, 2023-August 31, 2024:	\$3,715.54 per month (\$44,586.45 per year)
Fourteenth renewal: September 1, 2024-August 31, 2025:	\$3,715.54 per month (\$44,586.45 per year)

4. Exhibit "A" of the Rental Agreement is hereby amended by deleting the Paragraph 4 in its entirety and inserting therein the following:

Service of Notice.

All notices, statements, demands, requests, consents, approvals, or authorizations, hereunder given by either party to the other shall be in writing and sent by registered or certified mail, postage prepaid and addressed as follows:

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To Landlord: IVL Group, LLC, 24 Church Street, Montclair, New Jersey 07042, Attention: Ian V. Lagowitz or Maegan Kalbermatten, with a copy to: CWC Capital Asset Management LLC, 900 19th Street, NW, 8th Floor, Washington, DC 20006, Attention: Jeremy Zinn.

To Tenant: c/o Director of the Department of Purchasing and Contracting, The Maloof Center, Second Floor, 1300 Commerce Drive, Decatur, Georgia 30030 and DeKalb County Tax Commissioner, 4380 Memorial Drive, Decatur, Georgia 30030, or to such other addresses as the parties may from time to time designate.

5. **Limitation On Liability.** Tenant agrees to look solely to Receiver to the extent of Receiver's interest in the Premises for the satisfaction of any liability or obligation arising under this Amendment or the transactions contemplated hereby, or for the performance of any of the covenants, warranties, obligations or other agreements contained herein.

6. **Tenant's Relocation.** Tenant and Landlord hereby reaffirm the terms of Sub-Paragraph (b) of Section IV – Stipulations of the Rental Agreement, which states that in the event of a need of the Premises by Landlord for any reason during occupation and possession of the Premises by DeKalb County Tax Commissioner, the Landlord shall have the right to relocate the Tenant to a comparable space at the Landlord's expense. The Landlord agrees to give the Tenant six (6) month's notice of such relocation, and the comparable space shall be located on the Premises in a ground level space, unless a different location is agreed to by the Tax Commissioner.

7. **Utilities.** Tenant reaffirms its duty to pay any additional amounts due pursuant to the Rental Agreement including without limitation, water, electricity, and trash.

8. **Brokers.** Tenant and Landlord hereby warrant to each other that neither party has employed or dealt with a broker, agent or finder in connection with this Amendment other than The Shopping Center Group (representing Landlord). Landlord and Tenant shall each indemnify and hold the other harmless from and against any claim or claims for brokerage or other commissions asserted by any broker, agent, or finder claim by, through or under the indemnifying party in connection with this Amendment.

9. **Signage.** It is agreed by the parties that Tenant shall have the right, at its sole cost and expense, to install an exterior building sign, subject to prior approval by Landlord, which approval Landlord may withhold in its sole discretion, at a location designated by Landlord, and subject to compliance with the Rental Agreement, including without limitation Landlord's sign criteria, and applicable code and ordinances. Tenant shall be responsible for maintaining its exterior building sign in good condition and repair at its sole cost, and shall remove the exterior building sign at the expiration or earlier termination of the Term, repairing any damages resulting from said removal.

10. **Tenant Representations.** Tenant represents and warrants to Landlord that, as of the date hereof: (a) the Rental Agreement is in full force and effect and has not been modified except pursuant to this Amendment; (b) there are no defaults by Tenant existing under the Rental Agreement and there exists no condition or state of facts which, if continuing with the passage of time, would result in a default under the Rental Agreement; (c) there exists no valid abatements, causes of action, counterclaims, cross-claims, disputes, defenses, offsets, credits, deductions or claims against the enforcement of any of the terms and conditions of the Rental Agreement; (d)

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this Amendment has been duly authorized, executed, and delivered by Tenant and constitutes the legal, valid, and binding obligation of Tenant; (e) Landlord has paid all amounts and performed all work required to be paid or performed by Landlord under the Rental Agreement; and (f) Landlord is not in default of any of its obligations or covenants under the Rental Agreement.

11. **No Oral Modification.** This Amendment may not be modified, amended or terminated, nor may any of its provisions be waived, except by an agreement in writing signed by the party against whom enforcement of any modification, amendment, termination or waiver is sought.

12. **Successors and Assigns.** The covenants, agreements, terms, provisions and conditions contained in this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. **Ratification of Rental Agreement.** Except as modified and amended by this Amendment, all of the terms, covenants and conditions of the Rental Agreement are hereby ratified and confirmed and shall continue to be and remain in full force and effect. By execution hereof, Tenant acknowledges and agrees that time is of the essence. Landlord does and shall require strict compliance with all terms and conditions of the Rental Agreement. This Amendment shall be construed according to the laws of the State of Georgia.

14. **Complete Agreement.** This Amendment together with the Rental Agreement sets forth the entire agreement between the parties, superseding all prior agreements and understandings, written or oral.

15. **Counterparts.** This Amendment may be executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

16. **Authority.** The parties hereto represent and warrant that they have the authority and all requisite approvals to enter into this Amendment.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Amendment as of the date and year first above written.

IVL GROUP, LLC, IN ITS SOLE CAPACITY AS RECEIVER FOR THOR GALLERY AT SOUTH DEKALB, LLC, PURSUANT TO THAT CONSENT ORDER APPOINTING RECEIVER DATED OCTOBER 30, 2019

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)

Signature

Ian V. Lagowitz

Name (Typed or Printed)

Receiver

Title

Federal Tax I.D. Number

Date

_____ **by Dir.**(SEAL)
MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

_____ Date

ATTEST:

_____ BARBARA H. SANDERS, CCC, CMC
Clerk of the Chief Executive Officer
and Board of Commissioners of
DeKalb County, Georgia

NOTARY:

APPROVED AS TO SUBSTANCE:

Signed, sealed and delivered in the presence of:

_____ (Seal)

Notary Public

_____ Department Director

My Commission Expires:

APPROVED AS TO FORM:

WITNESS:

By: _____

Signature

_____ County Attorney Signature

_____ Name (Typed or Printed)

_____ County Attorney Name (Typed or Printed)