

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268

In the Matter of:

Freistatt Post Office  
Freistatt, MO. 65654

Docket No. A2013-8

Deborah Schoen, Petitioner  
(Acting as Representative for  
USPS Mail Customers of  
The Village of Freistatt, MO.)

**REPLY TO MOTION OF UNITED STATES POSTAL SERVICE TO DISMISS  
PROCEEDINGS**

Comes now the Petitioner in reply to the Motion to Dismiss Proceedings filed by the United States Postal Service and requests the Postal Regulatory Commission to deny the Motion to Dismiss, grant the extension for the late filing and accept the Petitioner's Appeal on the basis that the Postal Regulatory Commission, as the ruling body over issues brought before them regarding the USPS, has the authority to grant extensions and make exceptions to the rules when the facts presented to them are warranted.

The facts regarding the request for extension and exception are based upon the following:

1. The Final Determination to Close the Freistatt Post Office was not posted in an appropriate place for public viewing. It was posted on the back of the Freistatt CBU's on June 17, 2013, and out of sight from the public and in a place where the public had no reason to look. Additionally, there was no sign in front of the CBU's to inform the public that the Final Determination had been posted on the back of the CBU's. Most of the public to this date still does not know the Final Determination is posted because of this failure to place it for open viewing. (See "Exhibit B" and "Exhibit C")
2. Shortly after Petitioner noticed the Final Determination posting, Petitioner was called away for a family emergency and did not return until after the deadline.
3. There was no other capable person available to file the Appeal in a timely manner.
4. Even city business was put on hold during this time.
5. Petitioner did not have access to a computer during this family emergency to communicate to the Postal Regulatory Commission and express the problem of meeting the deadline.

6. As soon as physically possible after returning from the family emergency, the Petitioner prepared the Appeal and filed same.

The USPS has requested similar exceptions and extensions from the Postal Regulatory Commission. Granting such exceptions and extensions are well within the scope of the Postal Regulatory Commission's discretionary authority.

Additionally, the Postal Regulatory Commission has an obligation to the public to hear and consider any and all irregularities brought to their attention. There were too many irregularities that occurred over the course of this Final Determination to Close the Freistatt Post Office that it would be an injustice to the public if this Appeal is not allowed to go forward. By denying the Motion to Dismiss, this Postal Regulatory Commission will enable itself to hear and review the various allegations made in this appeal for the purpose of determining if this closing should be remanded for further review to the USPS. More importantly, the hearing of this Appeal will allow the Postal Regulatory Commission to consider implementing better procedures for Emergency Closings and Final Determinations and prevent the alleged irregularities from occurring in the future.

Denying the Motion to Dismiss and going forward with this Appeal will allow the Postal Regulatory Commission to review and consider the following irregularities that occurred and the procedures followed that did not conform with USPS Rules and Regulations for Emergency Closing and Final Determinations:

1. The rules and regulations are confusing and tend to contradict one another when an Emergency Closing takes place. CFR Section 241.3 (3) Requirements (i) states "The public must be given 60 days' notice of a proposed action to enable the persons served by a USPS-operated retail facility to evaluate the proposal and provide comments." Yet CFR Section 241.3 (5) (iv) states "Customers formerly served by the suspended facility should receive notice under paragraph (2)(5)(iii) of this section, including by mail, to the same extent that they would have if the facility were not in suspended status at the time of the initial feasibility study, proposal, or final determination." Freistatt's Emergency Suspension notification was posted and sent in letter form to the customers only two days before (March 27, 2013) the actual closing for the suspension took place (March 29, 2013). No time was given to the public for comments. (See "Exhibit A" attached hereto and made a part of this Reply to Motion to Dismiss.)
2. The Postal Service did not follow the procedure required by law as follows:
  - a. Pursuant to the CFR and the USC, references are made several times to the effect that posting of a final determination must be posted prominently for public viewing.
    - i. On the front of the "Final Determination To Close....," the date of posting noted is "06/14/2013" when the actual date the notice was physically posted at Freistatt was "06/17/2013."

- ii. The final determination was posted on the back side of Freistatt's CBU's with no sign letting the public know the final determination was placed on the back and out of sight from the public. There is no reason for mail customers to look at the back of the CBU's as there is nothing for the customers to access. Furthermore, there was no sign in front of the CBU's to inform the public that the Final Determination had been posted on the back of the CBU's. The final determination was hidden from view and, to this date, there are many customers in Freistatt who still are not aware of the posting. (See "Exhibit B" and "Exhibit C" attached hereto and made a part of this Reply to Motion To Dismiss.)
  - iii. The USPS failed to post the final notice in an adequate and public place for other frequent customers of the Freistatt Post Office could view it and, therefore, denied these other customers the chance to offer comments. The Freistatt Post Office is located along H Highway (a/k/a Main Street within the corporate limits) which is the corridor for travelers to get from Interstate 44 to the state line. In the past several years, the Freistatt Post Office had gained more and more business from truckers who traveled thru Freistatt and found the Freistatt Post Office to be the most convenient (due to the parking available along H Highway) place to stop and mail in their delivery records. The USPS did not post their Final Determination where these customers could view it and, therefore, these customers were denied a voice in the closing.
  - iv. The feasibility study results (which may also be called the Administrative Record) have not been made available until just recently when the specific request was submitted by the Postal Regulatory Commission for the USPS to produce such records. The final determination filed by the USPS states "Copies of all materials upon which this final determination is based are available for public inspection at the Monett Post Office and Stotts City Post Office during normal office hours." The material contained in the feasibility study is a part of the basis for the USPS final determination to close Freistatt's Post Office. However, when Mary Hopkins, Monett Postmaster, was asked earlier to produce the feasibility study, she stated it was not available at the Monett Post Office for public viewing. Further, when she was asked to produce it, she did not even know what the administrative record was.
3. The Postal Service did not adequately consider certain issues it is required to consider:
- b. The false statement contained in the Final Determination and located under "II Effect on Community" stating "Freistatt is an unincorporated community" is proof they did not consider Freistatt is, indeed, a corporate village (Incorporated 1916).
  - c. Effect on Community

- i. The Freistatt Post Office was first established on August 14, 1884. It has remained an active business in Freistatt throughout until March 29<sup>th</sup>, 2013. Closing the Freistatt Post Office would mark the end of one of the oldest businesses established in Freistatt. To say that our community is not affected by taking this part of our history away is unconscionable and proves further that the USPS did not fully consider the effect this closing would have on our community.
- ii. Having a Post Office in Freistatt was one of our community's selling points to draw people and business to our town. Closing the Freistatt Post Office will leave us with much left to offer as incentives to potential new residents and/or businesses.
- iii. The Freistatt Post Office was centrally located in the heart of Freistatt and became a very popular place for residents to gather and communicate to one another. For some it was the only place they looked forward to being able to catch up on news and socialize. Since the emergency suspension on March 29<sup>th</sup>, 2013, there has been a marked decrease in members of the community communicating with each other. The USPS has not considered these negative effects on the people in our community. Nor has the USPS even considered visiting Freistatt to observe how suspension of our Post Office has negatively affected the physical and mental health especially evident in the elderly residents of Freistatt.
- iv. The Freistatt Post Office was first established on August 14, 1884. It has remained an active business in Freistatt to present day making it the oldest sustained business in Freistatt. To say that our community is not affected by taking this part of our history away from us is unconscionable and shows further proof of inadequate consideration by the USPS.
- v. The USPS did not consider the effect on businesses within the community. Freistatt's population in the 2010 US Census was established as 163 people.
  1. Although Freistatt is small in size and population, we take pride in the fact that we have a parochial school. This school conducted business at the Freistatt Post Office on a daily basis.
  2. Freistatt also has an insurance business which utilized the post office on a daily business to send out correspondence as well as mailing monthly statements.
  3. The Freistatt Exchange is one of Freistatt's major businesses contributing to the revenue received by the Post Office. The Freistatt Exchange is a five and a half million dollar business annually.
  4. Larson Farm and Lawn is another major business. It is one of five satellite John Deere stores in the Ozarks which brings in an annual income of well over a million dollars. They, too, will be affected by the closing as they conducted business at

- the Freistatt Post Office on a daily basis mailing and receiving packages as well as mailing monthly statements.
5. The city of Freistatt sent out monthly billings and received mail on a daily basis. The city also utilized the Post Office for sending timely water samples which must be sent as soon as possible after water is collected.
    - vi. Freistatt is a thriving town with great potential. The fact that they qualified for a USDA Loan to build a Senior Housing Facility, another USDA loan for their sewer system (paid in full), another USDA loan for its first water system (also paid in full), and yet another USDA loan to for their second well and extension to the water system proves that the USDA has had every confidence in Freistatt's potential growth. The USPS's actions to take away the Freistatt Post Office proves they have not considered any accomplishments in the past and has no confidence in its future whatsoever.
    - vii. The USPS also did not consider the effect on the elderly and disabled residents of the Freistatt Housing Authority. Many of these residents do not own vehicles mostly due to disabilities. They heavily relied on the convenience of the Post Office being within walking distance and/or close enough to use wheel chairs to get to the Post Office. Most importantly, these residents relied upon having a Post Office close enough they could receive their medications by mail. With the CBU's now in place, they must wait their turn to receive a key to the package box at the bottom of the pedestals to retrieve their medications.
  - d. Effect on Employees
    - i. Although Freistatt's Postmaster has maintained her employment status with the USPS, she has been relocated to the Reeds Springs Post Office. She presently drives her own personal vehicle to and from work each day which is the sum of driving approximately 75 miles roundtrip and adds an additional hour and forty-five minutes (driving time) to her regular hours she must work at the Post Office. Additionally, the road contains sharp and dangerous curves along with morning and evening fog. The hazardous driving conditions will become especially evident when the winter months set in and weather conditions worsen. This effect on the USPS main full-time employee was not taken into consideration in the final determination made by the USPS.
4. The facts relied on by the Postal Service have not been established. This is due to the fact no documents have been made available to the public to determine the basis of any facts stated.
  - e. The facts in the Postal Service's Final Determination may or may not be true. When the feasibility study was being conducted and all data was being collected with regard to daily business transactions, our Freistatt Postmaster stated she was not allowed to count all the

transactions. She was not given the reason for this, but did question the outcome of the survey because of this. Petitioner also questions the validity of the feasibility study based upon the Freistatt Postmaster's statements regarding what she was allowed to count in the final tally. If all postings of business transactions had to be recorded as a matter of accounting procedure, the question arises as to how the feasibility study can possibly show true and accurate figures for account balances. (i.e.: Pieces of mail dropped in the collection box after hours were not counted in the total pieces of mail going thru the Freistatt Post office even though Freistatt's Postmaster worked that collected mail; If money orders purchased at the Freistatt facility were a part of the daily transactions, but were not allowed to be counted as a business transaction in the feasibility study, it is difficult to understand how the feasibility report could be compared to the money collected daily and still show true and accurate figures.) For this reason, Petitioner can reasonably state the facts in the Postal Service's Final Determination may not accurately prove what the Postal Service says they prove. Regardless of whether or not the facts accurately prove anything, the USPS has failed to make the feasibility study available to the public for viewing making accuracy of the facts impossible to determine.

- f. Another example of inaccuracy stated in the final determination regarding figures can be found comparing (1) "The revenue trend for the office during the last several years" (totals shown by year and found on the first page of the Final Determination) and (2) the statement given in "IV SUMMARY at paragraph #3 of the USPS's Final Determination stating "the mail volume has declined." The fact that revenue has increased over the years indicated strongly contradicts the possibility of mail volume declining unless all daily business transactions were not counted during the feasibility study as stated by the Freistatt Postmaster. A review and audit of the findings in the feasibility report should be made to determine the accuracy of facts stated.

In addition to these irregularities, there are other situations that occurred during the Emergency Closing and the Final Determination that the Postal Regulatory could not know about or consider unless the Motion to Dismiss is denied:

1. The reason given by the USPS for its Emergency Suspension and ultimate Final Determination to close the Freistatt Post Office is not truthful.

The USPS (at Page 1 of their "Final Determination") states "The office is being studied for possible closing or consolidation due to the following reasons: Failed lease negotiations."

Petitioner contends this statement to be false. In support of the claim, the following detailed information is being provided based upon telephone conversations

and e-mails exchanged between the owner of the property during the course of the Emergency Suspension and Petitioner regarding the lease agreement and reflects the property owner's rendition of the events that took place during negotiations of the lease and signing of the lease:

- a. Negotiations began December 18<sup>th</sup>, 2012 with several offers being exchanged.
- b. The Lease expired on March 31, 2013.
- c. On March 18, 2013, the USPS drafted their own Lease Agreement listing the terms acceptable to the USPS. This Lease Agreement was sent to the owner for consideration of acceptance and signing.
- d. After reviewing the Lease Agreement that same day (March 18, 2013), the owner agreed to the terms, signed and dated the Lease Agreement and returned one copy by e-mail the following day (March 19, 2013) and forwarded three signed and dated originals (paper form) by regular U.S. mail to the USPS. (See "Exhibit D" attached hereto and made a part of this Reply to Motion To Dismiss)
- e. On March 22, 2013, the owner received a second and revised Lease Agreement (drafted by the USPS listing the terms acceptable to the USPS). The owner stated he was confused with the sending of the second revised agreement after signing the first one offered, but due to the fact the expiration date was nearing, he signed and dated the second Lease Agreement offered by the USPS and returned it in the same manner as the first Agreement was sent. (See "Exhibit E" attached hereto and made a part of this Reply to Motion To Dismiss)
- f. On March 28, 2013, the owner called the USPS to ask about the two Lease Agreements he executed and returned. The USPS replied with no explanation about the executed lease agreements. Instead, the USPS simply told the owner the local residents of Freistatt were just notified of the Emergency Suspension of the Freistatt Post Office and the Freistatt Post Office would officially close the following day or Friday, March 29, 2013.

Exhibits D and E were provided to the Petitioner by the owner after the closing of the Post Office. Attached respectively to each exhibit are the printed e-mails from Andrew Spodek (owner) that accompanied the attachments (Lease Agreements). Please note that Mr. Spodek did not feel comfortable sending his signed agreement thru e-mail to me, but he can confirm his execution and mailing of both leases by his originals on file and e-mails sent returning the executed documents. Mr. Spodek stated he would also provide the Postal Regulatory Commission a copy of the signed documents if requested.

Contact information for Andrew Spodek is given with Mr. Spodek's permission and is as follows: Andrew Spodek, Nationwide Postal Management (formerly Brush Creek Partners), 123 Grove Ave, Suite 222, Cedarhurst, NY 11516, Phone: 516-295-7820, E-mail Address: [aspodek@nationwidepostal.com](mailto:aspodek@nationwidepostal.com)

Petitioner respectfully requests the Postal Regulatory Commission to contact Mr. Andrew Spodek for confirmation of the events stated above and documents attached. He can also confirm the USPS completely disregarded the executed Lease Agreements (even though the Lease Agreements were written by the USPS on their own form and under their own USPS terms offered to Mr. Spodek. This would also confirm

Petitioner's contention that the statement made to the Postal Regulatory Commission (Failed Lease Negotiations) and given as the reason for Emergency Suspension and Final Determination to Close is, indeed, false.

Petitioner believes the actions by the USPS mentioned above to be arbitrary, capricious and should be considered an abuse of discretion. Petitioner further believes it to be in the best interest the public for the Postal Regulatory Commission to investigate any and all "failed lease negotiations" claims made by the USPS for all Emergency Suspensions and/or Final Determinations to Close to insure the integrity of all claims made by the USPS. There is a distinct pattern developing that shows the USPS targeting each Post Office as the Lease Expiration Date approaches and claiming Emergency Suspensions and/or Closings are warranted based upon "failed lease agreements." This reason should be verified by the Postal Regulatory Commission in order to prevent any more abuse.

2. Petitioner claims questionable actions taken by the USPS during and after the Emergency Suspension of the Freistatt Post Office were a direct result of extreme and uncalled for hardships to the mail customers in Freistatt, as follows:

The one and only Notice of Emergency Suspension mailed to Freistatt mail customers and posted on the Freistatt Post Office facility was dated March 27, 2013. Freistatt's Post Office was Emergency Suspended two days later or March 29, 2013. (Exhibit A)

Prior to the posting, District Manager Rick Belcher met with the Village Board of Trustees to request CBU's be installed on the city property so mail delivery could get started again as soon as possible. Asked about the possibility of door-to-door service, Rick Belcher stated he would not let that happen. CBU's were the only alternative and until the city agreed to install them or an alternative location was found to place them, mail would continue to be held at the Monett Post Office for patrons to pick up their mail. Mr. Belcher gave his word that once the board agreed to the CBU's he would work on getting them installed as soon as possible. The District Manager was asked specifically about his obligation and responsibility as a USPS representative and employee to continue delivery service to the Freistatt residents. He responded by informing the Board of Trustees that by his allowing mail for the Freistatt customers to be delivered to the Monett Post Office and held for pickup, he would be fulfilling his duties.

On March 29, 2013, the Freistatt Post Office was closed and everything moved out including the collection box located outside the Post Office. The flag pole installed with a concrete base was cut off at the ground leaving the concrete in place.

March 30<sup>th</sup>, 2013, was the first day Freistatt mail was held at the Monett Post Office for customers to pick up.

There is a service all USPS postal patrons pay for in the form of a stamp on each piece of first class mail which guarantees the delivery of that piece of correspondence to be delivered to the person to whom it is addressed.

On March 30<sup>th</sup>, 2013, Freistatt customers stopped receiving that service and all persons who sent mail to Freistatt customers stopped receiving that service as well.

As a result of the USPS's failure to deliver mail to Freistatt customers, the following extreme hardships were felt by the residents and business owners in Freistatt:

- Approximately ninety customers in Freistatt were forced to drive approximately sixteen miles roundtrip to mail correspondence and pick up their own mail every day for a period of seventy-six days (the time it took USPS representatives to get the CBU's installed and activated into service – Date of recovered service was June 13, 2013).
- Many senior residents living at the Freistatt Housing Authority and other locations in Freistatt either do not own vehicles, do not drive or are incapacitated to a point which prevents them from driving. These residents were forced to rely on friends to drive them to Monett to pick up their mail. Many were forced to rely on an OATS bus which comes to town on a weekly basis to provide transportation to and from Monett for picking up their mail.
- Many senior residents receive prescriptions thru the United States mail. For those who had to rely on "other" transportation to pick up their mail, health became a great concern for many who could not pick up their prescriptions before they ran out of their supply at home.
- A former Freistatt Postmaster became so concerned about the seniors not receiving their medications in a timely manner that she went beyond her responsibilities as an employee and, as a citizen on her own time, got permission from the seniors to pick up their mail and deliver it when she had the time to spare.

Petitioner contends that all of these extreme hardships imposed on the mail customers in Freistatt could have been prevented if mail delivery had not been stopped in Freistatt for a total of seventy-six days.

Petitioner respectfully requests the Postal Regulatory Commission to review the procedures followed during the time the Freistatt businesses and residents were without mail delivery service, investigate as to whether or not the USPS failed to fulfill their responsibilities for the services paid for by all mail customers, require the USPS to identify the person or person(s) responsible for negligence in their duties and hold them accountable so these undue hardships are never experience by customers in another town.

Petitioner also contends the length of time for the installation was delayed beyond the reasonable time frame for the CBU's to be installed. Petitioner requests the Postal Regulatory Commission to review the length of time (April 11, 2013 or the date of execution of the lease agreement for the CBU installation thru June 13, 2013 or the date the installation was completed and service returned to the customers or a total of sixty-four (64) days) it took for the CBU's to be installed to determine if there was negligence in getting the job completed. If negligence occurred on the part of the USPS in getting the job completed, the Petitioner asks that you require the USPS to hold the person or persons responsible accountable for their lack of actions to get the job completed so this delay in restoring of mail delivery service does not happen in any other town.

3. Petitioner contends discrimination may play a large part in the decision to install CBU's in Freistatt. This was the only option made available to us. However, alternative choices of mail delivery should be equal and fair to all, to wit:

- Monett, for only one example of towns, has offered many years of door-to-door delivery service to city residents in Monett.

- Freistatt is an incorporated village with corporate limits where door-to-door mail delivery service should be offered on an equal basis.
- A rural carrier presently delivers (and has been delivering for many years) mail to several residents living within the corporate limits of Freistatt by means of a box placed along the street and located in close vicinity of the residents' homes. When we inquired about this alternative mail delivery, we were told the USPS would not allow that type of service in Freistatt.
- Although we have not taken the time to explore the methods of delivery in other area towns, we strongly believe there were other choices that should have been made available to Freistatt that would have made the USPS appear to be acting more fair and equal to all. However, the residents of Freistatt were never given the chance to meet with USPS representatives to discuss choices of delivery that could have prevented undo hardships on the Freistatt mail customers. The only meeting held with a USPS representative to discuss mail delivery service after the Emergency Suspension was the one requested by Rick Belcher which offered (a) either to install CBU's, or (b) pick up mail in Monett.

#### SUMMARY FOR REPLY TO MOTION TO DISMISS

Petitioner strongly believes it is in the best interest of the Postal Regulatory Commission and all concerned parties to deny the Motion to Dismiss and Accept the Appeal so the Postal Regulatory Commission can become knowledgeable of the many irregularities (mentioned above) that occurred during the Freistatt Emergency Suspension and Final Determination to Close.

Petitioner respectfully requests the Postal Regulatory Commission to deny the Motion to Dismiss and Accept the Filing of the Appeal by the Petitioner for the purpose of enabling the people to be heard and allowing the Postal Regulatory Commission to gain a better knowledge of how the USPS is conducting Emergency Suspensions and Final Determinations.

Respectfully Submitted By:



Deborah Schoen, Petitioner  
(Acting as Representative for  
USPS Mail Customers of  
The Village of Freistatt, MO.)

POST OFFICE OPERATIONS



March 27, 2013

Dear Valued Postal Customer:

Effective Friday, March 29, 2013, Postal Services at the Freistatt, MO Post Office, 65654, will be discontinued at the close of business.

On March 30, 2013, postal customers of the Freistatt Post Office will be directed to the Monett Post Office located at 300 4<sup>th</sup> Street, Monett, MO, 65708, for all postal services and general mail delivery. Customers who have a Post Office Box at Freistatt will receive general mail delivery at the Monett Post Office. Post Office Box fees will be refunded accordingly, however, Freistatt customers may establish a PO Box at the Monett Post Office.

Freistatt, MO residents will maintain their current ZIP Code.

The Monett Post Office Retail Hours, excluding holidays, are 8:30 a.m. to 4:30 p.m. Monday through Friday and 8:30 a.m. to 11:30a.m. on Saturday. PO Boxes are accessible 24 hours a day.

The Postal Service has several methods of establishing postal services in areas where our services have been discontinued. We will explore alternatives that may allow us to establish a postal presence in Freistatt, as well as provide general delivery into the Freistatt community. Village Post Offices and Collection Box Units are some of the options we are looking into.

Village Post Offices are operated by community businesses to provide selected postal products and services, including Forever Stamps and Priority Mail Flat Rate packages and envelopes. These Approved Postal Providers also provide expanded access to PO Box customers at or near the business location.

We realize with change there can be concern. We value your business and sincerely apologize for any inconvenience this sudden move may cause.

Should you have questions or need additional information, please do not hesitate to contact Darrin R. Gadson, Manager, Consumer and Industry Contact, at (816) 374-9186.

Sincerely,

A handwritten signature in cursive script that reads "Rick Belcher".

Rick Belcher  
Manager, Post Office Operations  
Mid-America District

101 NORTH MAIN STREET  
JOPLIN, MO 64801-9998  
(417) 623-5613 EXT 18  
FAX: (417) 650-578-3382

VISIT US @ [WWW.USPS.COM](http://WWW.USPS.COM)

Exhibit A

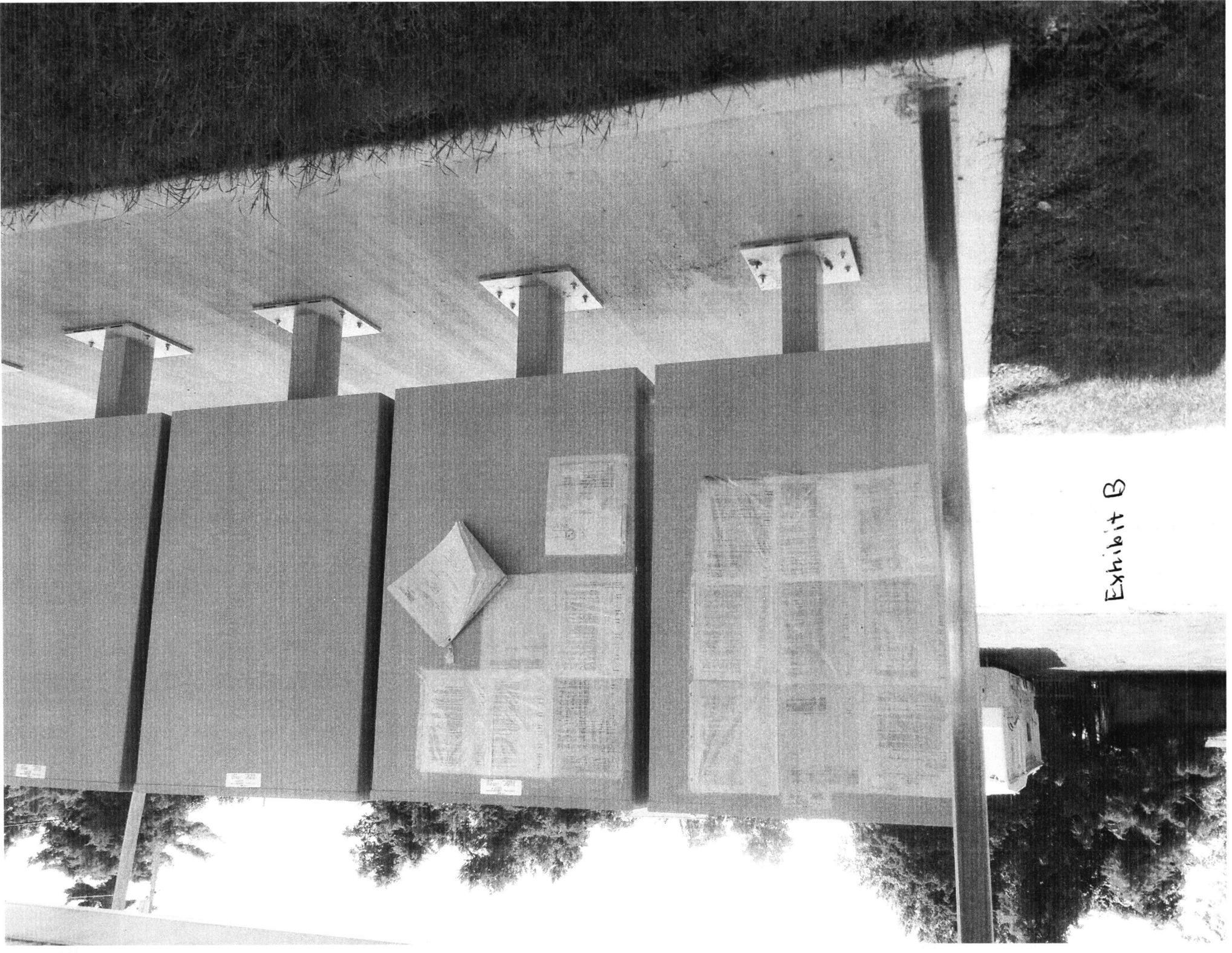


Exhibit B

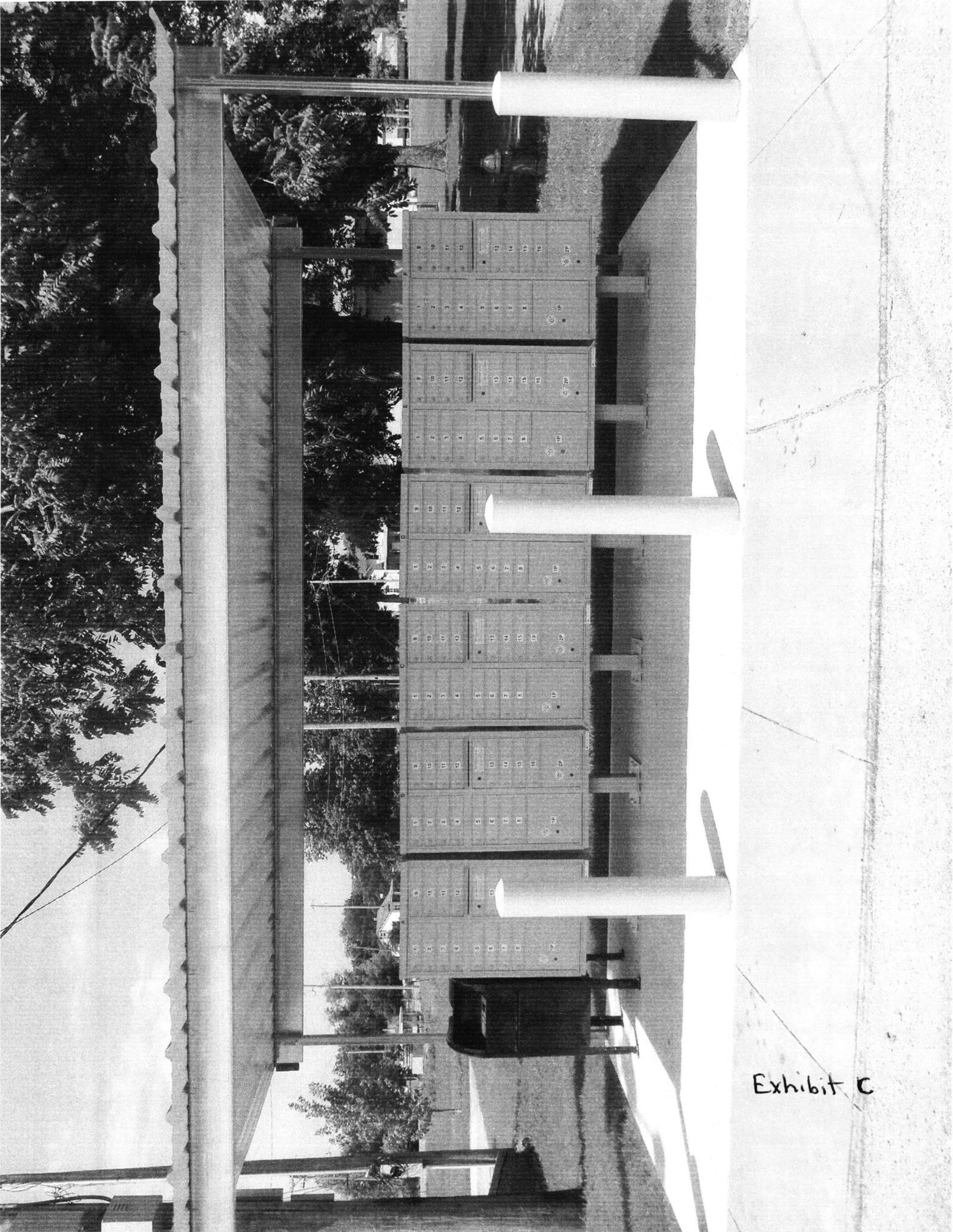


Exhibit C

## Village of Freistatt

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**From:** "Deborah Schoen" <dschoen@mo-net.com>  
**Date:** Sunday, August 04, 2013 9:29 PM  
**To:** "Village of Freistatt" <freistattvlg@mo-net.com>  
**Attach:** Lease Freistatt MO 4 1 13 - 3 31 18.pdf  
**Subject:** Fw: Freistatt MO Lease Package

**From:** A. Spodek  
**Sent:** Friday, April 19, 2013 10:40 AM  
**To:** dschoen@mo-net.com  
**Subject:** Freistatt MO Lease Package

This is the first lease provided to me on 3/18/13 which I returned executed the following day. I am providing this to you under the condition that it is ONLY provided to the Postal Service as part of your Appeal.

A. Spodek  
Nationwide Postal Mgt.  
123 Grove Ave. Suite 222  
Cedarhurst, NY 11516  
Tel (516) 295-7820 x13  
Fax(516) 295-2004

No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2013.0.2904 / Virus Database: 3204/6546 - Release Date: 08/02/13

Exhibit D

8/4/2013



**Lease**

FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

Exhibit D



Facility Name/Location  
FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County:Lawrence  
Lease:E00000409710

This Lease made and entered into by and between BRUSH CREEK PARTNERS 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 one story, multi-tenant, brick/block building and which property contains areas, spaces, improvements, and appurtenances as follows:

AREA	SQ. FEET
Net Total USPS Leased SF	426
Exterior, Platform and Ramp	20
Exterior Parking, USPS	1,061
Sidewalk	620

JOINT USE OF HANDICAPPED RAMP AND COVERED PORCH ON THE SOUTH ADJOINING BUILDING

**Total Site Area:** 426.00

- 2. TO HAVE AND TO HOLD the said premises with their appurtenances for the following term:  
FIXED TERM: The term becomes effective April 01, 2013 with an expiration date of March 31, 2018, for a total of 5 Years.
- 3. RENTAL: The Postal Service will pay the Landlord an annual rent of: See Addendum.

Rent checks shall be payable to:  
BRUSH CREEK PARTNERS  
123 GROVE AVE STE 222  
CEDARHURST, NY 11516-2302

Exhibit D

4. RENEWAL OPTIONS: None

5. OTHER PROVISIONS: The following additional provisions, modifications, riders, layouts, and/or forms were agreed upon prior to execution and made a part hereof:  
Utilities Services & Equipment Rider, Maintenance Rider - Landlord Responsibility.

6. TERMINATION:  
See Addendum.

7. LEGAL DESCRIPTION:  
WEST 1/2 OF LOTS 40 AND 41 OF THE ORIGINAL SURVEY TO THE CITY OF FREISTATT, LAWRENCE COUNTY, MISSOURI.

Exhibit D



## Addendum

Facility Name/Location  
FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County: Lawrence  
Lease: E00000409710

3. RENTAL: The Postal Service will pay the Landlord an annual rental of:  
\$6,603.00 beginning April 01, 2013 and ending September 30, 2015  
\$5,751.00 beginning October 01, 2015 and ending March 31, 2018  
payable in equal installments at the end of each calendar month. Rent for a part of a month will be prorated.

#### Page 2, Section 6: Termination

This Lease may not be terminated during the first twenty four (24) months of the base term except for cause pursuant to the general conditions, riders, addendums or other attachments made part of this Lease.

After the first twenty four (24) months this Lease may be terminated by the Postal Service upon one hundred eighty (180) days written notice to the Landlord. Notice cannot be sent prior to 04/01/2015.

Exhibit D



EXECUTED BY LANDLORD this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**PARTNERSHIP**

By executing this Lease, Landlord certifies that Landlord is not a USPS employee or contract employee (or an immediate family member of either), or a business organization substantially owned or controlled by a USPS employee or contract employee (or an immediate family member of either).

Name of Partnership: BRUSH CREEK PARTNERS

Name & Title: Andrew Spodek, Partner Name & Title:

Name & Title: Name & Title:

Landlord's Address: 123 GROVE AVE STE 222  
CEDARHURST, NY 11516-2302

Telephone No.: (516) 295 - 7820 Fax No.: \_\_\_\_\_ Tax ID: XX-XXX5671

E-mail Address: isaac@nationwidepostal.com

\_\_\_\_\_  
Witness Witness

- a. All co-owners and all other persons having or to have a legal interest in the property must execute the Lease. If the Landlord is married, the husband or wife of the Landlord must also execute the lease. The Landlord must submit adequate evidence of title.
- b. If the Landlord is a general partnership, each member must sign.
- c. If the Landlord is a limited partnership, all general partners must sign.
- d. Any notice to Landlord provided under this Lease or under any law or regulation must be in writing and submitted to Landlord at the address specified above, or at an address that Landlord has otherwise appropriately directed in writing. Any notice to the Postal Service provided under this Lease or under any law or regulation must be in writing and submitted to "Contracting Officer, U.S. Postal Service" at the address specified below, or at an address that the Postal Service has otherwise directed in writing.

**ACCEPTANCE BY THE POSTAL SERVICE**

\_\_\_\_\_  
Date Laureen A Yamakido \_\_\_\_\_  
Contracting Officer Signature of Contracting Officer

Pacific FSO 1300 EVANS AVE., SUITE 200, SAN FRANCISCO, CA 94188-8200  
Address of Contracting Officer

*Exhibit D*



## 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.

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.

Exhibit D



## General Conditions to USPS Lease

### 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.

Exhibit D



## General Conditions to USPS Lease

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.

Exhibit D



## Maintenance Rider Landlord Responsibility

1. The Landlord shall, except as otherwise specified herein and except for damage resulting from the act or negligence of Postal Service agents or employees, maintain the demised premises, including the building and any and all equipment, fixtures, systems, and appurtenances, whether severable or non-severable, furnished by the Landlord under this Lease, in good repair and tenantable condition, during the continuance of the Lease. Landlord's duties include repair and replacement as necessary.

Notwithstanding the above, the Postal Service will be responsible for regular cleaning of gutters and downspouts connected to the outer edge (i.e., the eaves area) of the roof; Landlord will be responsible for regular cleaning of any other gutters, downspouts, troughs, scuppers, roof drains, etc.

For the purpose of so maintaining said premises and property, the Landlord may, at reasonable times, and upon reasonable notice to the facility manager, enter and inspect the same and make any necessary repairs thereto.

2. Landlord is responsible for inspection, prevention and eradication of termites and any other wood-eating insects and for repairs of any damage resulting therefrom during the continuance of the Lease.
3. Landlord shall paint all interior and exterior previously painted surfaces as follows: no later than six (6) months following the start of the lease, and at least once every five (5) years during the continuance of the lease unless required more often because of damage from fire or other casualty, or unless the time period is specifically modified in writing by the Contracting Officer. Landlord is required to apply only one coat of paint. USPS will be responsible for cost of additional coats of paint, including application costs. USPS will be responsible for moving furniture and equipment away from walls as required.
4. Any heating system furnished by Landlord must be properly sized for the facility, must be in good working order, and must be maintained and, if necessary, replaced by Landlord to ensure proper operation during the continuance of the Lease and in accordance with this Maintenance Rider; such system must be capable of providing a uniform temperature of at least 65 degrees Fahrenheit (65°F.) in all enclosed portions of the demised premises (excluding the rear vestibule) at all times. Regardless of whether Landlord is required by the Lease to provide fuel for a heating system, any investigative or remediation cost associated with a release of fuel from the system, including any fuel tank, shall be the responsibility of the Landlord, unless the release is caused by the act or negligence of the Postal Service or its agents. The Postal Service shall be responsible for regular replacement of filters.

Boilers (heating and hot water supply) and unfired pressure vessels provided by the Landlord as part of the leased premises shall be maintained and, if necessary, replaced by the Landlord in accordance with ASME Boiler and Pressure Vessel Code, Sections IV, VI, and VIII; National Fire Prevention Association (NFPA)-70, National Electric Code; and/or ASME Safety Code No. CSD-1, Controls and Safety Devices for Automatically Fired Boilers; ASME A18.1, Safety Standard for Platform Lifts and Chairlifts; NFPA-54, National Fuel Gas Code; and NFPA-31, Oil Burning Equipment Code, as applicable, or as required by local ordinances. Current safety certificates issued by an organization recognized by the National Board of Boiler and Pressure Vessel Inspectors or a federal, state or municipal authority which has adopted the American National Standard Institute/American Society of Mechanical Engineers (ASME) Boiler and Vessel Code, must be provided by the Landlord for boilers and unfired pressure vessels. In the event local jurisdictions do not require periodic inspection of such equipment, the Postal Service shall have the right to conduct inspections in accordance with the aforesaid codes, and may issue safety certificates, as appropriate.

5. Any elevators, escalators and dumbwaiters provided by the Landlord as part of the leased premises shall be maintained, and, if necessary, replaced by the Landlord during the continuance of the Lease in accordance with ASME A17.1, Safety Code for Elevators, Escalators, Dumbwaiters, and Moving Walks; ASME A17.2, Elevator Inspectors Manual; ASME A17.3 Safety Code for Existing Elevators and Escalators; ASME A17.4, Emergency Evacuation Procedures for Elevators; and ASME A17.5, Elevator and Escalator Electrical Equipment. Landlord must ensure that current safety certificates for elevators, dumbwaiters and escalators are issued by an organization authorized to inspect in accordance with the ANSI/ASME Code for Elevators, Dumbwaiters and Escalators or appropriate federal, state or municipal authority. In the event local jurisdictions do not require periodic inspection of such equipment, the Postal Service shall have the right to conduct inspections in accordance with the aforesaid codes, and may issue safety certificates, as appropriate.

Exhibit D

6. Any air-conditioning equipment furnished by Landlord must be properly sized for the facility, must be in good working order, and must be maintained and, if necessary, replaced by Landlord to ensure proper operation during the continuance of the Lease and in accordance with this Maintenance Rider; air-conditioning must be capable of providing a uniform temperature of no greater than 78 degrees Fahrenheit (78°F.) in all enclosed portions of the demised premises at all times. Landlord shall be responsible for servicing of the air-conditioning equipment during the continuance of the Lease, including, refrigerant as required for proper operation of the equipment. The Postal Service shall be responsible for regular replacement of filters.
7. Any electrical/power system furnished by Landlord must be properly sized for the facility, must be in good working order, and must be maintained and, if necessary, replaced by Landlord to ensure proper operation during the continuance of the Lease and in accordance with this Maintenance Rider.
8. Any wiring, including, but not limited to, wiring for the Electronic Security and Surveillance Equipment (ESS), Closed Circuit Television (CCTV), Very Small Aperture Terminal (VSAT), Criminal Investigation System (CIS), Intrusion Detection System (IDS), etc., installed by the Landlord shall be maintained, and if necessary, replaced by the Landlord during the continuance of the Lease. However, the Landlord shall not attempt any maintenance of, or repair of, or interfere with, the actual security, telephone, or telecommunications equipment, such as cameras, consoles, monitors, satellite dishes, telephone handsets, and Point-of-Service (POS) equipment.
9. Whether public or private water or sewer systems are provided, said systems are to be maintained and replaced by the Landlord during the continuance of the Lease, including any inspections that may be required.
10. If the demised premises or any portion thereof are damaged or destroyed by fire or other casualty, Acts of God, of a public enemy, riot or insurrection, vandalism, or are otherwise determined by the Postal Service to be unfit for use and occupancy, or whenever there is a need for maintenance, repair, or replacement which is the Landlord's obligation under this Maintenance Rider, the Postal Service will require the Landlord to rebuild or repair the premises as necessary to restore them to tenantable condition to the satisfaction of the Postal Service. The Postal Service will, except in emergencies, provide the Landlord with written notice stating a reasonable time period for completion of all necessary repairs. (A copy of any such notice shall be sent to the Landlord's mortgagee and any assignee of monies due or to become due under this Lease whose names and addresses have been furnished to the Postal Service by the Landlord. Failure to give such written notice to the Landlord or to the mortgagee or assignee shall not affect the Postal Service's rights to recover expended costs under this provision, provided that the costs expended by the Postal Service are reasonable in amount.) The Postal Service, acting through the Contracting Officer, may proportionately abate the rent for any period the premises, or any part thereof, are determined by the Postal Service to have been rendered untenable, or unfit for use and occupancy, by reason of such condition.

If the Landlord (or the mortgagee or assignee, on behalf of the Landlord) fails to prosecute the work with such diligence as will ensure its completion within the time specified in the notice (or any extension thereof as may be granted at the sole discretion of the Postal Service), or fails to complete the work within said time, the Postal Service shall have the right to perform the work (by contract or otherwise), and withhold the cost plus any administrative cost and/or interest, from rental payments due or to become due under this Lease. Alternatively, the Contracting Officer may, if the demised premises are determined to be untenable or unfit for use or occupancy, with reasonable discretion, cancel this Lease in its entirety, without liability.

The remedies provided in this section are non-exclusive and are in addition to any remedies available to the Postal Service under applicable law.

11. The Landlord must:
  - a. comply with applicable Occupational Safety and Health Standards, title 29 Code of Federal Regulations (CFR) (including but not limited to Parts 1910 and 1926), promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970 (OSHA); and

Exhibit D



## Maintenance Rider Landlord Responsibility

- b. comply with any other applicable federal, state, or local regulation governing workplace safety to the extent they are not in conflict with a; and
- c. take all other proper precautions to protect the health and safety of:
  - (1) any laborer or mechanic employed by the Landlord in performance of this agreement; and
  - (2) Postal Service employees; and
  - (3) the public.

The Landlord must include this clause in all subcontracts hereunder and require its inclusion in all subcontracts of a lower tier. The term "Landlord" as used in this clause in any subcontract must be deemed to refer to the subcontractor.

Exhibit D



## Utilities, Services, & Equipment Rider

Facility Name/Location

FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County: Lawrence

Lease: E00000409710

**1. HEAT**

Landlord must furnish heating system in good working order, together with all fuel required for proper operation of the system, in accordance with the Maintenance Rider, during the continuance of the Lease. Any investigative or remediation cost associated with a release of fuel from the system, including any fuel tank, shall be the responsibility of the Landlord, unless the release is caused by the act or negligence of the Postal Service or its agents.

**2. AIR CONDITIONING**

Landlord must furnish air-conditioning equipment in good working order, together with all power required for proper operation of the equipment, in accordance with the Maintenance Rider, during the continuance of the Lease.

**3. ELECTRICITY**

Landlord must furnish an electrical system in good working order, in accordance with the Maintenance Rider, and pay for all recurring electric bills, during the continuance of the Lease.

**4. LIGHT**

Landlord must provide light fixtures in good working order, in accordance with the Maintenance Rider, during the continuance of the lease. Landlord is not responsible for replacement of light bulbs.

*Exhibit D*

**5. WATER**

Landlord must furnish a potable water system in good working order, in accordance with the Maintenance Rider, and pay for all recurring water bills, during the continuance of the Lease.

**6. SEWER**

Landlord must furnish a sewer system in good working order, in accordance with the Maintenance Rider, and pay for all recurring sewer bills, during the continuance of the Lease.

**7. TRASH**

The Postal Service agrees to furnish and pay for all trash removal for the demised premises during the continuance of the Lease.

**8. SNOW**

The Landlord agrees to furnish and pay for the timely removal of snow and ice from the roof and the sidewalks, driveway, parking and maneuvering areas, and any other areas providing access to the postal facility for use by postal employees, contractors, or the public (including, but not limited to, stairs, handicap access ramps, carrier ramps, etc.) during the continuance of the Lease.

Exhibit D



**Mortgagee's Agreement**  
(To be executed and attached to lease)

Facility Name/Location  
FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County: Lawrence  
Lease: E00000409710

The undersigned, Holder(s) of a mortgage (or similar encumbrance, such as a Deed of Trust), in the sum of \_\_\_\_\_ on the property situated at: \_\_\_\_\_

hereby consent(s) to the leasing of said property to the U.S. Postal Service and agree(s) for itself, its successors, executors, administrators, and assigns that in the event it should become necessary to:

- a) foreclose said mortgage or similar encumbrance, the Mortgagee will cause the sale of said premises to be made subject to said lease; or,
- b) take any other action terminating the mortgage or transferring title, the Mortgagee will cause such action to be made subject to said lease.

MORTGAGEE

\_\_\_\_\_  
Name of Mortgage Company

By: \_\_\_\_\_  
Signature of Mortgagee's Officer

Its: \_\_\_\_\_  
Title of Mortgagee's Officer

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and ZIP+4

\_\_\_\_\_  
Witness

Subscribed and Sworn to before me, a notary public, in and for \_\_\_\_\_ County, State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

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

Exhibit D

**Village of Freistatt**

---

**From:** "Deborah Schoen" <dschoen@mo-net.com>  
**Date:** Sunday, August 04, 2013 9:29 PM  
**To:** "Village of Freistatt" <freistattvlg@mo-net.com>  
**Attach:** Lease Freistatt MO 4 1 13 - 3 31 18 (Final).pdf  
**Subject:** Fw: Freistatt, MO 65654

-----Original Message-----

From: A. Spodek  
Sent: Friday, April 19, 2013 10:41 AM  
To: [dschoen@mo-net.com](mailto:dschoen@mo-net.com)  
Subject: FW: Freistatt, MO 65654

After our conversations I agreed to lower the rate and change the lease terms so they wouldn't have an excuse to close. I am providing this to you under the condition that it is ONLY provided to the Postal Service as part of your Appeal.

A. Spodek  
Nationwide Postal Mgt.  
123 Grove Ave. Suite 222  
Cedarhurst, NY 11516  
Tel (516) 295-7820 x13  
Fax(516) 295-2004

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No virus found in this message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 2013.0.2904 / Virus Database: 3204/6546 - Release Date: 08/02/13

Exhibit E



**Lease**

Facility Name/Location  
FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County:Lawrence  
Lease:E00000409710

This Lease made and entered into by and between BRUSH CREEK PARTNERS 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 one story, multi-tenant, brick/block building and which property contains areas, spaces, improvements, and appurtenances as follows:

AREA	SQ. FEET
Net Total USPS Leased SF	426
Exterior, Platform and Ramp	20
Exterior Parking, USPS	1,061
Sidewalk	620

JOINT USE OF HANDICAPPED RAMP AND COVERED PORCH ON THE SOUTH ADJOINING BUILDING

**Total Site Area:** 426.00

2. TO HAVE AND TO HOLD the said premises with their appurtenances for the following term:

FIXED TERM: The term becomes effective April 01, 2013 with an expiration date of March 31, 2018, for a total of 5 Years.

3. RENTAL: The Postal Service will pay the Landlord an annual rental of: \$3,195.00 (Three Thousand One Hundred Ninety Five 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.

Rent checks shall be payable to:  
BRUSH CREEK PARTNERS  
123 GROVE AVE STE 222  
CEDARHURST, NY 11516-2302

*Exhibit E*

4. RENEWAL OPTIONS: None

5. OTHER PROVISIONS: The following additional provisions, modifications, riders, layouts, and/or forms were agreed upon prior to execution and made a part hereof:

Utilities Services & Equipment Rider, Maintenance Rider - Landlord Responsibility, Mortgagee's Agreement.

See the attached Addendum.

6. TERMINATION:

The Postal Service may terminate this Lease at any time by giving 180 days written notice to the Landlord.

7. LEGAL DESCRIPTION:

WEST 1/2 OF LOTS 40 AND 41 OF THE ORIGINAL SURVEY TO THE CITY OF FREISTATT, LAWRENCE COUNTY, MISSOURI.

Exhibit E



**Addendum**

Facility Name/Location  
FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County: Lawrence  
Lease: E00000409710

The Postal Service agrees to pay the cost of Gas, Electric, Water, Sewer, and Trash for the entire building as long the remaining vacant space is unoccupied. If at any time the landlord leases any portion of the vacant space or uses it for his own purposes, the Postal Service will not be responsible for the payment of the Gas, Electric, Water, Sewer, and Trash, for the entire building, but will only be responsible for their prorata share (42.6%) unless the utilities are separately metered.

Exhibit E



EXECUTED BY LANDLORD this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**PARTNERSHIP**

By executing this Lease, Landlord certifies that Landlord is not a USPS employee or contract employee (or an immediate family member of either), or a business organization substantially owned or controlled by a USPS employee or contract employee (or an immediate family member of either).

Name of Partnership: BRUSH CREEK PARTNERS

Name & Title: Andrew Spodek, Partner Name & Title:

Name & Title: Name & Title:

Landlord's Address: 123 GROVE AVE STE 222  
CEDARHURST, NY 11516-2302

Telephone No.: (516) 295 - 7820 Fax No.: \_\_\_\_\_ Tax ID: XX-XXX5671

E-mail Address: isaac@nationwidepostal.com

Witness \_\_\_\_\_ Witness \_\_\_\_\_

- a. All co-owners and all other persons having or to have a legal interest in the property must execute the Lease. If the Landlord is married, the husband or wife of the Landlord must also execute the lease. The Landlord must submit adequate evidence of title.
- b. If the Landlord is a general partnership, each member must sign.
- c. If the Landlord is a limited partnership, all general partners must sign.
- d. Any notice to Landlord provided under this Lease or under any law or regulation must be in writing and submitted to Landlord at the address specified above, or at an address that Landlord has otherwise appropriately directed in writing. Any notice to the Postal Service provided under this Lease or under any law or regulation must be in writing and submitted to "Contracting Officer, U.S. Postal Service" at the address specified below, or at an address that the Postal Service has otherwise directed in writing.

**ACCEPTANCE BY THE POSTAL SERVICE**

Date \_\_\_\_\_ Shirley S Wheeler \_\_\_\_\_  
Contracting Officer Signature of Contracting Officer

Western FSO 7500 EAST 53RD PLACE, RM 1108, DENVER, CO 80266-9918  
Address of Contracting Officer

Exhibit E



## 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.

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.

Exhibit E

**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.

Exhibit E



## General Conditions to USPS Lease

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.

Exhibit E



## Maintenance Rider Landlord Responsibility

1. The Landlord shall, except as otherwise specified herein and except for damage resulting from the act or negligence of Postal Service agents or employees, maintain the demised premises, including the building and any and all equipment, fixtures, systems, and appurtenances, whether severable or non-severable, furnished by the Landlord under this Lease, in good repair and tenantable condition, during the continuance of the Lease. Landlord's duties include repair and replacement as necessary.

Notwithstanding the above, the Postal Service will be responsible for regular cleaning of gutters and downspouts connected to the outer edge (i.e., the eaves area) of the roof; Landlord will be responsible for regular cleaning of any other gutters, downspouts, troughs, scuppers, roof drains, etc.

For the purpose of so maintaining said premises and property, the Landlord may, at reasonable times, and upon reasonable notice to the facility manager, enter and inspect the same and make any necessary repairs thereto.

2. Landlord is responsible for inspection, prevention and eradication of termites and any other wood-eating insects and for repairs of any damage resulting therefrom during the continuance of the Lease.
3. Landlord shall paint all interior and exterior previously painted surfaces as follows: no later than six (6) months following the start of the lease, and at least once every five (5) years during the continuance of the lease unless required more often because of damage from fire or other casualty, or unless the time period is specifically modified in writing by the Contracting Officer. Landlord is required to apply only one coat of paint. USPS will be responsible for cost of additional coats of paint, including application costs. USPS will be responsible for moving furniture and equipment away from walls as required.
4. Any heating system furnished by Landlord must be properly sized for the facility, must be in good working order, and must be maintained and, if necessary, replaced by Landlord to ensure proper operation during the continuance of the Lease and in accordance with this Maintenance Rider; such system must be capable of providing a uniform temperature of at least 65 degrees Fahrenheit (65°F.) in all enclosed portions of the demised premises (excluding the rear vestibule) at all times. Regardless of whether Landlord is required by the Lease to provide fuel for a heating system, any investigative or remediation cost associated with a release of fuel from the system, including any fuel tank, shall be the responsibility of the Landlord, unless the release is caused by the act or negligence of the Postal Service or its agents. The Postal Service shall be responsible for regular replacement of filters.

Boilers (heating and hot water supply) and unfired pressure vessels provided by the Landlord as part of the leased premises shall be maintained and, if necessary, replaced by the Landlord in accordance with ASME Boiler and Pressure Vessel Code, Sections IV, VI, and VIII; National Fire Prevention Association (NFPA)-70, National Electric Code; and/or ASME Safety Code No. CSD-1, Controls and Safety Devices for Automatically Fired Boilers; ASME A18.1, Safety Standard for Platform Lifts and Chairlifts; NFPA-54, National Fuel Gas Code; and NFPA-31, Oil Burning Equipment Code, as applicable, or as required by local ordinances. Current safety certificates issued by an organization recognized by the National Board of Boiler and Pressure Vessel Inspectors or a federal, state or municipal authority which has adopted the American National Standard Institute/American Society of Mechanical Engineers (ASME) Boiler and Vessel Code, must be provided by the Landlord for boilers and unfired pressure vessels. In the event local jurisdictions do not require periodic inspection of such equipment, the Postal Service shall have the right to conduct inspections in accordance with the aforesaid codes, and may issue safety certificates, as appropriate.

5. Any elevators, escalators and dumbwaiters provided by the Landlord as part of the leased premises shall be maintained, and, if necessary, replaced by the Landlord during the continuance of the Lease in accordance with ASME A17.1, Safety Code for Elevators, Escalators, Dumbwaiters, and Moving Walks; ASME A17.2, Elevator Inspectors Manual; ASME A17.3 Safety Code for Existing Elevators and Escalators; ASME A17.4, Emergency Evacuation Procedures for Elevators; and ASME A17.5, Elevator and Escalator Electrical Equipment. Landlord must ensure that current safety certificates for elevators, dumbwaiters and escalators are issued by an organization authorized to inspect in accordance with the ANSI/ASME Code for Elevators, Dumbwaiters and Escalators or appropriate federal, state or municipal authority. In the event local jurisdictions do not require periodic inspection of such equipment, the Postal Service shall have the right to conduct inspections in accordance with the aforesaid codes, and may issue safety certificates, as appropriate.

Exhibit E

6. Any air-conditioning equipment furnished by Landlord must be properly sized for the facility, must be in good working order, and must be maintained and, if necessary, replaced by Landlord to ensure proper operation during the continuance of the Lease and in accordance with this Maintenance Rider; air-conditioning must be capable of providing a uniform temperature of no greater than 78 degrees Fahrenheit (78°F.) in all enclosed portions of the demised premises at all times. Landlord shall be responsible for servicing of the air-conditioning equipment during the continuance of the Lease, including, refrigerant as required for proper operation of the equipment. The Postal Service shall be responsible for regular replacement of filters.
7. Any electrical/power system furnished by Landlord must be properly sized for the facility, must be in good working order, and must be maintained and, if necessary, replaced by Landlord to ensure proper operation during the continuance of the Lease and in accordance with this Maintenance Rider.
8. Any wiring, including, but not limited to, wiring for the Electronic Security and Surveillance Equipment (ESS), Closed Circuit Television (CCTV), Very Small Aperture Terminal (VSAT), Criminal Investigation System (CIS), Intrusion Detection System (IDS), etc., installed by the Landlord shall be maintained, and if necessary, replaced by the Landlord during the continuance of the Lease. However, the Landlord shall not attempt any maintenance of, or repair of, or interfere with, the actual security, telephone, or telecommunications equipment, such as cameras, consoles, monitors, satellite dishes, telephone handsets, and Point-of-Service (POS) equipment.
9. Whether public or private water or sewer systems are provided, said systems are to be maintained and replaced by the Landlord during the continuance of the Lease, including any inspections that may be required.
10. If the demised premises or any portion thereof are damaged or destroyed by fire or other casualty, Acts of God, of a public enemy, riot or insurrection, vandalism, or are otherwise determined by the Postal Service to be unfit for use and occupancy, or whenever there is a need for maintenance, repair, or replacement which is the Landlord's obligation under this Maintenance Rider, the Postal Service will require the Landlord to rebuild or repair the premises as necessary to restore them to tenantable condition to the satisfaction of the Postal Service. The Postal Service will, except in emergencies, provide the Landlord with written notice stating a reasonable time period for completion of all necessary repairs. (A copy of any such notice shall be sent to the Landlord's mortgagee and any assignee of monies due or to become due under this Lease whose names and addresses have been furnished to the Postal Service by the Landlord. Failure to give such written notice to the Landlord or to the mortgagee or assignee shall not affect the Postal Service's rights to recover expended costs under this provision, provided that the costs expended by the Postal Service are reasonable in amount.) The Postal Service, acting through the Contracting Officer, may proportionately abate the rent for any period the premises, or any part thereof, are determined by the Postal Service to have been rendered untenable, or unfit for use and occupancy, by reason of such condition.

If the Landlord (or the mortgagee or assignee, on behalf of the Landlord) fails to prosecute the work with such diligence as will ensure its completion within the time specified in the notice (or any extension thereof as may be granted at the sole discretion of the Postal Service), or fails to complete the work within said time, the Postal Service shall have the right to perform the work (by contract or otherwise), and withhold the cost plus any administrative cost and/or interest, from rental payments due or to become due under this Lease. Alternatively, the Contracting Officer may, if the demised premises are determined to be untenable or unfit for use or occupancy, with reasonable discretion, cancel this Lease in its entirety, without liability.

The remedies provided in this section are non-exclusive and are in addition to any remedies available to the Postal Service under applicable law.

11. The Landlord must:

- a. comply with applicable Occupational Safety and Health Standards, title 29 Code of Federal Regulations (CFR) (including but not limited to Parts 1910 and 1926), promulgated pursuant to the authority of the Occupational Safety and Health Act of 1970 (OSHA); and

Exhibit E

- b. comply with any other applicable federal, state, or local regulation governing workplace safety to the extent they are not in conflict with a; and
- c. take all other proper precautions to protect the health and safety of:
  - (1) any laborer or mechanic employed by the Landlord in performance of this agreement; and
  - (2) Postal Service employees; and
  - (3) the public.

The Landlord must include this clause in all subcontracts hereunder and require its inclusion in all subcontracts of a lower tier. The term "Landlord" as used in this clause in any subcontract must be deemed to refer to the subcontractor.

Exhibit E



## Utilities, Services, & Equipment Rider

Facility Name/Location

FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County: Lawrence

Lease: E00000409710

**1. HEAT**

Landlord must furnish heating system in good working order, in accordance with the Maintenance Rider, during the continuance of the lease. Any investigative or remediation cost associated with a release of fuel from the system, including any fuel tank, shall be the responsibility of the Landlord, unless the release is caused by the act or negligence of the Postal Service. The Postal Service pays all recurring fuel charges, provided such charges are separately metered for postal consumption.

**2. AIR CONDITIONING**

Landlord must furnish air conditioning equipment in good working order, in accordance with the Maintenance Rider, during the continuance of the lease. The Postal Service pays for recurring charges for power for the equipment, provided the power is separately metered for postal consumption.

**3. ELECTRICITY**

Landlord must furnish a separately metered electrical system in good working order for the demised premises, in accordance with the Maintenance Rider, during the continuance of the lease. The Postal Service will pay all recurring electric bills.

**4. LIGHT**

Landlord must provide light fixtures in good working order, in accordance with the Maintenance Rider, during the continuance of the lease. Landlord is not responsible for replacement of light bulbs.

Exhibit E

**5. WATER**

Landlord must furnish a potable water system in good working order, in accordance with the Maintenance Rider, during the continuance of the Lease. The Postal Service pays for all recurring water bills during the continuance of the Lease, provided a separate meter or separate invoice is furnished by the appropriate authority.

**6. SEWER**

Landlord must furnish a sewer system in good working order, in accordance with the Maintenance Rider, during the continuance of the Lease. The Postal Service pays for all recurring sewer bills during the continuance of the Lease, provided a separate meter, or separate invoice is furnished by the appropriate authority.

**7. TRASH**

The Postal Service agrees to furnish and pay for all trash removal for the demised premises during the continuance of the Lease.

**8. SNOW**

The Postal Service agrees to furnish and pay for the timely removal of snow and ice from the sidewalks, driveway, parking and maneuvering areas, and any other areas providing access to the postal facility for use by postal employees, contractors, or the public (including, but not limited to, stairs, handicap access ramps, carrier ramps, etc.) during the continuance of the Lease. The Landlord is responsible for timely removal of snow and ice from the roof.

Exhibit E



**Mortgagee's Agreement**  
(To be executed and attached to lease)

Facility Name/Location  
FREISTATT - MAIN OFFICE (282904-002)  
303 N MAIN ST, FREISTATT, MO 65654-9998

County: Lawrence  
Lease: E00000409710

The undersigned, Holder(s) of a mortgage (or similar encumbrance, such as a Deed of Trust), in the sum of \_\_\_\_\_ on the property situated at: \_\_\_\_\_

hereby consent(s) to the leasing of said property to the U.S. Postal Service and agree(s) for itself, its successors, executors, administrators, and assigns that in the event it should become necessary to:

- a) foreclose said mortgage or similar encumbrance, the Mortgagee will cause the sale of said premises to be made subject to said lease; or,
- b) take any other action terminating the mortgage or transferring title, the Mortgagee will cause such action to be made subject to said lease.

**MORTGAGEE**

\_\_\_\_\_  
Name of Mortgage Company

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Signature of Mortgagee's Officer

Its: \_\_\_\_\_  
Title of Mortgagee's Officer

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and ZIP+4

Subscribed and Sworn to before me, a notary public, in and for \_\_\_\_\_ County, State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

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

*Exhibit E*