



Board of Supervisors Memorandum

June 7, 2016

Lease of 97 E. Congress Street to Caterpillar Global Mining LLC

Background

Through our ongoing economic development efforts and in accordance with Action Item 11.2 of the Board of Supervisors adopted Economic Development Plan to expand basic employment in the downtown area, the County, along with the Arizona Commerce Authority, Sun Corridor Inc. and the City of Tucson, worked to attract the Surface Mining and Technology Division of Caterpillar to Tucson and Pima County.

"11.2 Encourage new or expanded primary employment in the downtown by making available for such the County-owned office buildings at 97 E. Congress Street and 160 N. Stone Avenue, as well as the County's vacant property at Broadway Boulevard and Scott Avenue and 332 S. Freeway."

This process began in early December 2015 and culminated with Caterpillar's announcement of the relocation of their Surface Mining and Technology Division to Tucson on May 3, 2016.

This relocation will result in approximately 650 new, high-wage and highly skilled jobs in Tucson. This will complement the existing 350 jobs at the Caterpillar Proving Grounds south of Green Valley. We believe Caterpillar's consolidation and relocation will set the stage for significant additional growth of this unit of Caterpillar based on mining activities in the southwest and Mexico.

Over the next two years Caterpillar will be relocated approximately 300 to 350 employees to 97 E. Congress. As you will recall 97 E. Congress formerly housed the Regional Flood Control District that was relocated to the County/City Public Works Building; Pima Vocational High School will be relocated to the El Pueblo Neighborhood Center; and the remaining two tenants are now being relocated to 160 N. Stone.

Caterpillar Lease Terms

Caterpillar plans to utilize 97 E. Congress as an interim facility and plans to locate to a significantly larger facility built by Rio Nuevo and then leased to Caterpillar. This new building is expected to accommodate the 650 or more employees. This lease arrangement where a company temporarily uses a County building for several years, is very similar to our lease with Accelerate Diagnostics.

The lease term for 97 E. Congress is four years with two, one-year options. Caterpillar will pay the County an annual lease rate of \$13.72 per square foot of occupied space and \$7.12 per square foot of unoccupied space.

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **Lease of 97 E. Congress Street to Caterpillar Global Mining LLC**
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It is anticipated Caterpillar will take between one and two years to fill the entire building. The building will remain the County's property; and it is currently being improved and modernized, which will include a façade upgrade. Tenant improvements to meet Caterpillar's space and design needs are estimated to cost \$2 million; and Caterpillar has agreed to repay 30 percent of the capital tenant improvement costs over the four-year period, which is equivalent to the depreciated value of the tenant improvements over the same period. Caterpillar will also pay all operating and maintenance costs associated with the building, as well as the standard government property excise fees.

The County will also provide up to 200 parking spaces in the adjacent County Legal Services Garage.

The proposed lease is attached for your information and review. This proposed lease has been approved by Caterpillar officials (Attachment 1).

Also attached for your review is my May 3, 2016 memorandum to the Board advising of Caterpillar's relocation and consolidation announcement (Attachment 2).

Consistency with Adopted County Economic Development Plan

The primary objective of the County's Economic Development Plan is to grow and expand the tax base by increasing export-based primary employment. The attraction of Caterpillar to this community accomplishes this objective.

Expected Economic Benefits, Direct and Indirect

The total value of the 10-year economic impact of Caterpillar is estimated to be \$1.9 billion, with total new annual tax revenue of \$69.6 million (\$39.7 million local and \$29.9 million State).

Recommendation

I recommend the Board of Supervisors approve the lease with Caterpillar Global Mining LLC for 97 E. Congress Street.

Respectfully submitted,



C.H. Huckelberry
County Administrator

CHH/mjk – June 3, 2016

Attachments

ATTACHMENT 1

LEASE AGREEMENT

This Lease Agreement (this "Lease"), is made as of June 7, 2016, by and between Pima County, a political subdivision of the State of Arizona ("Landlord"), and Caterpillar Global Mining LLC, a Delaware limited liability company ("Tenant").

RECITALS:

- A. Landlord is the owner of that certain building situated at 97 E. Congress Street, in the City of Tucson, Arizona, which contains approximately forty-one thousand (41,000) rentable square feet ("RSF") of interior space as well as an exterior landscaped courtyard area (the "Building"). Landlord is in the process of renovating the interior of the Building. A site plan for the Building is attached as Exhibit A.
- B. Tenant has, in part because of Landlord's willingness to enter into this Lease, decided to locate its reorganized Surface Mining & Technology division to Tucson. Tenant plans to construct a new facility for this operation, but anticipates that project taking several years to complete.
- C. The Pima County Board of Supervisors (the "Board") has authority under A.R.S. § 11-254.04 to engage in any "activity that the board of supervisors has found and determined will assist in the creation or retention of jobs or will otherwise improve or enhance the economic welfare of the inhabitants of the county," including specifically the "acquisition, improvement, leasing or conveyance of real or personal property."
- D. Based on its review of an economic impact report prepared by Applied Economics, LLC, the Board has determined that locating Tenant's operation in Pima County will significantly improve and advance the economic welfare of the County's inhabitants.
- E. Tenant desires to lease the Building from Landlord, and Landlord desires to lease the Building to Tenant, on and subject to the terms and conditions contained in this Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

AGREEMENT:

1. Premises; Common Areas; Landlord Improvements; Condition of Premises; Parking

- a. Leased Premises. Landlord, for and in consideration of the rent and covenants, conditions and agreements hereinafter described to be kept and performed by Tenant, does hereby rent, demise and lease to Tenant, and Tenant does hereby rent and lease from Landlord, the Building. Tenant will initially occupy approximately twenty thousand (20,000) RSF of office space on the second and third floors of the Building, as shown on the concept plans attached to this Lease as Exhibit B. Tenant may occupy additional space in the Building as renovations are completed by Landlord, and will occupy the remainder of the Building as early as November/December 2016 or as late as the first anniversary of the Commencement Date (as defined in Section 2.a. below). Areas occupied by Tenant will be referred to in this Lease as the "Premises," while the remainder of the interior Building space will be referred to as the "Reserved Space." For purposes of measuring rentable square footage, certain areas as shown on Exhibit A, are treated as "common

areas” including corridors, restrooms, stairwells, elevators, and the courtyard. All measurements shall be substantially in accordance with the Building Owners and Management Association standards.

- b. Landlord Improvements. Landlord will, at Landlord’s sole cost, improve the Premises generally as described in Exhibit C. The improvement of the top two (2) floors will be substantially complete by the Commencement Date, and the remainder of the Building will be improved thereafter. The improvements will utilize County-standard floor coverings, colors, fixtures, and office configurations. Landlord will provide office furniture at Landlord’s sole cost for use at the Premises. This property will remain the property of Landlord and may not be removed by Tenant. Preliminary plans and specifications will be provided to Tenant for Tenant’s review and input before the plans are finalized and the work done. Timely review by Tenant is essential in order for Landlord to complete the improvements on the schedule requested by Tenant. The parties will work together to keep the cost of the improvements to Fifty and 00/100 Dollars (\$50.00) per square foot.
- c. Condition of the Premises. Landlord will deliver the Premises to Tenant on the Commencement Date in clean and water tight condition with all Building Structural Components and Systems (as defined below) in good working order and all improvements completed in accordance with Exhibit C. Landlord represents and warrants that, as of the Commencement Date, the Building is in compliance with all Legal Requirements (as defined below). Tenant will examine the Premises before taking possession thereof and such taking of possession shall be conclusive evidence as against the Tenant that at the time thereof the Premises were in good order and satisfactory condition, except for those deficiencies set out in a written list prepared by Tenant and Landlord at the time of the Tenant taking possession of the Premises.
- d. Parking. Tenant will be allowed to use one (1) parking space per two hundred (200) RSF of Premises. Parking will be provided in the garage located next to 97 E Congress commonly referred to as “LSB garage”. The LSB garage will be accessible during Tenant’s business hours as defined in Section 7(b) below. Tenant will be provided electronic access cards for the garage(s). Tenant will provide Landlord with a list of names and contact information for the employees to whom it issues electronic access cards and Tenant will apprise Landlord of any changes in the contact information as needed. Additional spaces may be rented from Landlord at normal Pima County rates, currently Eighty-Five and 00/100 Dollars (\$85.00) per month. Said rate subject to change by Landlord with thirty (30) days’ advance written notice to Tenant. If Tenant uses all the spaces in the LSB garage and needs additional parking, Tenant can rent spaces in the Public Service Garage located at 38 E. Alameda St.

2. Term; Extension Rights; Early Termination

- a. Term of Lease. The term of this Lease will commence on September 1, 2016 (the “Commencement Date”), and will extend until August 31, 2020 (the “Initial Term”), subject to extension or early termination as provided in this Lease. Tenant shall have limited access to the 2nd and 3rd floors on August 1, 2016 to begin Caterpillar installation of IT equipment.
- b. Extension Rights. Provided Tenant is not then in default under this Lease, Tenant may extend this Lease for up to two (2) additional terms of one (1) year each (each, an “Extension Period,” and together with the Initial Term, the “Term”) by giving Landlord written notice of its intention to do so not less than six (6) months prior to the end of the then current Term (the “Extension Notice”).

- c. Early Termination. Tenant may terminate this Lease as of the third anniversary of the Commencement Date (the "Termination Option") by delivering to Landlord written notice of its election to terminate not less than one hundred eighty (180) days prior to the date on which such early termination shall be effective, together with a one-time payment of One Hundred Sixty-Eight Thousand and 00/100 Dollars (\$168,000.00) (the "Early Termination Fee").

3. **Base Rent**

- a. Base Rent. Tenant will pay rent in an amount equal to Thirteen and 72/100 Dollars (\$13.72) per RSF per year for the Premises, plus Seven and 12/100 Dollars (\$7.12) per RSF per year for the Reserved Space, payable in equal monthly installments (the "Rent"). These rates will increase by Eights Cents (\$0.08) for each dollar by which the average square-foot cost of the Landlord's improvements exceeds Fifty and 00/100 Dollars (\$50.00). The square footage of the Premises and any adjustment to the rental rates will be confirmed in a written document signed by the parties as of the Commencement Date and as space is periodically added to the Premises thereafter. These documents may be approved and signed on behalf of the County by the County Administrator.
- b. Payment of Rent. Tenant will pay each installment of Rent to Landlord in advance on the first day of each month of the Term, beginning on the Commencement Date, at the following address, or such other place as Landlord may from time to time designate in writing: Pima County Government Finance, Revenue Management Division, 33 N. Stone Avenue, 6th Floor, Mail Stop: DT-BAB6-404, Tucson, Arizona 85701. Or Tenant may utilize the ACH system to make rent payments. Tenant will pay a late fee in the amount of \$100.00 if a monthly Rent payment is not received by Landlord on or before the 10th day of the month. Landlord shall give tenant written notice if the Rent payment is not received by the 5th day of the month. Tenant shall have 5 days to remedy the payment.

4. **Use of Premises.**

- a. Permitted Use. The Premises will be used by Tenant as its headquarters for its Surface Mining & Technology division. Tenant's use of the Building will comply with all covenants and restrictions of record, any applicable building codes, laws, ordinances, orders, rules and regulations whether state, federal, municipal or promulgated by other agencies or bodies having jurisdiction over the Building, including, without limitation, Environmental Laws (as defined below), the Americans with Disabilities Act of 1990, and the Pima County Board of Supervisors Policy C 3.19 Tobacco Free Environment ("Legal Requirements"). Tenant shall not permanently place or store unsightly objects or materials within the Premises in a location clearly visible from the outside.
- b. Preservation of Premises. Tenant will not use, suffer, or permit the Building, or any portion thereof, to be used by Tenant, any third party or the public in such manner as might impair Landlord's title to the Building or any portion thereof, or in such manner as is likely to cause a claim or claims of adverse usage or adverse possession by the public, as such, or third persons, or of implied dedication of the Building or any portion thereof.

5. **Tenant Taxes; Government Property Lease Excise Tax.**

- a. Tenant Taxes. Tenant will pay when due all taxes charged against trade fixtures, furnishings, equipment and any other personal property belonging to Tenant.

- b. Government Property Lease Excise Tax. Tenant will also pay the state government property lease excise tax (“GPLET”) (A.R.S. §§ 42-6201 through 42-6210) on the Premises. Tenant will, on or before December 1 each year during the Term, file a return with the Pima County Treasurer, using the form prescribed by the Arizona Department of Revenue, along with payment of the tax, as required by A.R.S. § 42-6204. Tenant’s failure to pay such GPLET when due will constitute a default under this Lease.

6. Insurance; Indemnification.

- a. Landlord’s Insurance Obligations. Landlord will maintain and keep in effect the following insurance coverages throughout the Term:
- i. commercial general public liability insurance against liability for personal injury, death and property damage arising out of Landlord’s ownership of the Building or the acts or omissions of Landlord, its employees, contractors, subcontractors or agents while in the Building, with a combined single amount of not less than Two Million Dollars (\$2,000,000.00);
 - ii. workers’ compensation insurance in at least the statutorily required amounts and employers liability (with umbrella liability if necessary) but, in all events, with limits not less than One Million Dollars (\$1,000,000.00) each accident/disease - policy limit/disease - each employee;
 - iii. business automobile liability insurance and umbrella liability (if necessary) including owned, hired and non-owned automobiles, on an occurrence basis and with limits not less than Two Million Dollars (\$2,000,000.00) combined single limit; and
 - iv. all risk property insurance covering the Building at one hundred percent (100%) of the full insurable value, written on a full replacement cost basis.

Landlord may satisfy any of the above insurance requirements through its self-insurance program. Landlord will provide to Tenant a letter evidencing adequate self-insurance capabilities for the above insurance requirements.

- b. Tenant's Insurance Obligations. Tenant, at Tenant’s sole cost and expense, shall maintain and keep in effect the following insurance coverages throughout the Term:
- i. insurance against liability for bodily injury (including death) in or about the Building under a policy of commercial general liability insurance and umbrella liability (if necessary), on an occurrence basis and with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence;
 - ii. business automobile liability insurance and umbrella liability (if necessary) including owned, hired and non-owned automobiles, on an occurrence basis and with limits not less than One Million Dollars (\$1,000,000.00) combined single limit;
 - iii. workers’ compensation insurance in at least the statutorily required amounts and employers liability (with umbrella liability if necessary) but, in all events, with limits not less than One Million Dollars (\$1,000,000.00) each accident/disease - policy limit/disease - each employee; and

- iv. property insurance upon Tenant's personal property, fixtures and leasehold improvements (installed by or for Tenant or Tenant's expense) and items stored in the Premises by Tenant for the full replacement costs thereof.

Notwithstanding the foregoing, Tenant may self-insure against all or any portion of those risks contemplated above and for the insurance limits set forth in this Section 5b provided that Tenant's parent company, Caterpillar Inc., maintains a net worth (as shown by its financial statements audited in accordance with generally accepted accounting principles) of not less than One Hundred Million Dollars (\$100,000,000.00). Certificates of Insurance will not be issued for any coverage as to which Tenant is self-insuring.

- c. Waiver of Subrogation. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant each hereby waives on behalf of itself and its property insurers (none of which shall ever be assigned any such claim or be entitled thereto due to subrogation or otherwise) any and all rights of recovery, claim, action, or cause of action, against the other, its agents, officers, servants, partners, shareholders, or employees for any loss or damage that may occur to the Building, or any personal property of such party therein, by reason of fire, the elements, or any other cause of origin, which is insured against under any property insurance policy actually being maintained from time to time, even if not required hereunder, or which would be insured against under the terms of any insurance policy required to be carried or maintained hereunder, whether or not such insurance coverage is actually being maintained by Tenant and regardless of the cause or origin, including in every instance negligence by the other party hereto, its agents, officers, or employees. Landlord and Tenant each agree to cause appropriate clauses to be included in their property insurance policies necessary to implement the foregoing provisions.
- d. Indemnification. Tenant hereby agrees to defend, indemnify and hold harmless Landlord, its officers, employees and agents, from and against all claims and demands of any nature whatsoever arising out of the injury to or death of any person or damage to property related to the Building and not caused by the acts or omissions of Landlord, its employees, agents, guests, licensees or invitees during the Term of this Lease. To the extent permitted by law, Landlord hereby agrees to defend, indemnify and hold harmless Tenant, its officers, employees and agents, from and against all claims and demands of any nature whatsoever arising out of the injury to or death of any person or damage to property, to the extent caused by the acts or omissions of Landlord, its employees, agents, guests, licensees or invitees, but excluding Tenant, during the Term of this Lease.

This indemnity and hold harmless agreement shall include indemnity against all reasonable costs, expenses and liabilities incurred in or in connection with any such claim or proceeding brought thereon, the reasonable expense of investigating the same and the defense thereof.

7. Utilities and HVAC.

- a. Landlord shall pay, when due, all utility costs for the Building. This does not include data and communications services, which will be obtained and paid for directly by Tenant.
- b. Landlord will provide heating, ventilation, and air-conditioning. Normal Tenant occupancy is between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturday. Tenant will pay Landlord Thirty Five and 00/100 Dollars (\$35.00) per hour for electrical use on other days or hours ("after hours"). Only Landlord's Facilities Management Director or Deputy Director can authorize usage of HVAC or lighting outside the hours listed

above. Tenant must contact the Director or Deputy Director and arrange for any such after hours usage at least forty-eight (48) hours in advance.

The heating, ventilation and air conditioning (“HVAC”) system servicing the Premises shall maintain conditions as follows:

Acceptable Ranges of Temperature During Summer and Winter¹

Relative Humidity	Winter Temperature Unoccupied - Occupied	Summer Temperature Occupied - Unoccupied
30%	68.5°F - 76.0°F	74.0°F - 80.0°F
40%	68.5°F - 75.5°F	73.5°F - 79.5°F
50%	68.5°F - 74.5°F	73.0°F - 79.0°F
60%	68.0°F - 74.0°F	72.5°F - 78.0°F

¹Applies for persons clothed in typical summer and winter clothing, at light, mainly sedentary activity.
Source: Adapted from ASHRAE Standard 55-1981, Thermal Environmental Conditions for Human Occupancy

Outdoor Air Requirements for Ventilation - Commercial Facilities²

Application	Estimated Maximum Occupancy P/1000 ft ² or 100 m ²	Outdoor Air Requirements	
		cfm/person	L/s ! person
Offices			
Office space	7	20	10
Reception areas	60	15	8
Telecommunication centers and data entry areas	60	20	10
Conference rooms	50	20	10
Public Spaces			
Corridors and utilities		0.05 cfm/ft ²	0.25 L/s!m ²
Public Restrooms, cfm/wc or urinal		75	32.5
Smoking Lounge	70	60	30
Elevators		1.0 cfm/ft ²	5.0 L/s!m ²

²Source: Adapted from ASHRAE Standard 62-1989

- c. Landlord shall provide equipment startup reports and a report for system testing, adjusting, and balancing to engineered design before occupancy.
- d. Landlord shall provide a fundamental commissioning report indicating the performance of the HVAC equipment. The commission report should indicate how operational performance compares to the intended design.
- e. Comply with 2011 ASHRAE Handbook *HVAC Applications Chapter 48* Design Guidelines for HVAC related background noise (Table 1).

8. **Repairs; Maintenance.**

- a. Landlord Obligations. Landlord will maintain and repair, in the same condition as on the date Tenant takes occupancy of the full building understanding that those dates are not the same as the Commencement Date, in accordance with all Legal Requirements, the exterior of the Building and all structural components and members, including exterior and load-bearing walls, curtain walls, the roof, roof trusses, exterior glass and mullions, columns, beams, shafts (including elevator shafts) stairs, stairwells, escalators, elevator cabs, entrances, washrooms, mechanical, electrical and telephone closets, sprinkler system, floor/ceiling slabs, foundation, gutters and downspouts, the LSB parking garage, plazas, pavement, sidewalks, curbs, landscaping, all building mechanical equipment and systems (including, without limitation, plumbing and electrical systems and the heating, ventilation and air-conditioning systems) (collectively, the “Building Structural Components and Systems”). Landlord shall, at its sole cost and expense, replace and restore the Building Structural Components and Systems as necessary to maintain the Building in the same condition as on the date Tenant takes occupancy of the full building understanding that those dates are not the same as the Commencement Date, and in accordance with all Legal Requirements.
- b. Tenant’s Obligations. During the Term of the Lease, subject to ordinary wear and tear and casualty, Tenant shall maintain and repair the Premises in a good and safe condition, provide all janitorial services for the Premises and repair any damage done to the Building by Tenant or Tenant’s employees, contractors, agents or invitees. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to make any repair to, modification of, or addition to the Building structure and/or the Building systems, except and to the extent required because of Tenant’s use of all or a portion of the Premises for other than normal and customary business office operations and/or to the extent required because of Tenant’s installation of improvements or alterations which do not constitute normal, typical and customary business office improvements.
- c. Prohibition of Waste. Tenant shall not do or suffer any waste or damage, disfigurement or injury to the Building, or to the fixtures or equipment therein, or permit or suffer any overloading of the floors or other use of the Premises that would place an undue stress on the same or any portion thereof beyond that for which the same was designed.
- d. Sustainability. In accordance with Landlord’s Sustainability Plan, Tenant will make a reasonable effort to use recycled products or reuse and recycle materials used in the Premises.
- e. Security. Tenant will provide all security systems and personnel for the Building at its own expense.

9. **Compliance with Legal Requirements.**

- a. Tenant's Obligations. Tenant will, at Tenant's sole cost and expense, comply with all Legal Requirements in its use and occupancy of the Building.
- b. Landlord's Obligations. During the Term, Landlord shall, at its sole expense, undertake such modifications, alterations or repairs required to ensure that the Premises, Building and Parcel are in compliance with all Legal Requirements. Landlord to provide to Tenant current occupancy permit required by all applicable governing authorities before the Tenant takes occupancy of the relevant area.
- c. Environmental. Landlord hereby warrants and represents that, except as disclosed in writing to Tenant prior to the Commencement Date, to the best of Landlord's actual knowledge, the Building does not contain any Hazardous Materials. "Hazardous Materials" shall mean any substance that is regulated by any Environmental Laws as a contaminant, or as a threat or potential threat to human health, safety or the environment, that would cause non-compliance with such Environmental Laws. "Environmental Laws" shall mean all federal, state, or local laws, regulations, ordinances, orders, or other pronouncements now in effect or as hereafter amended, that have the force or effect of law, relating to human health or safety and the protection, preservation, or remediation of the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., the Federal Hazardous Substances Act, 15 U.S.C. Section 1261 et seq., and the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11011 et seq.

Landlord hereby covenants and agrees to indemnify and hold harmless Tenant and its directors, officers, employees, successors, legal representatives and assigns from and against all claims, damages, liabilities, losses, judgments, settlements and costs (including, without limitation, reasonable consultant's and attorney's fees and disbursements) in connection with any release, as defined in 42 U.S.C. §9601(22) (a "Release"), or potential Release of Hazardous Materials, or any violation of or liability under any Environmental Law, to the extent arising out of or resulting from (a) the ownership, operation, use or occupancy of the Building by the Landlord or any previous owner/occupant/user of the Building, or any portion thereof, prior to Tenant's occupancy of the Premises, including, but not limited to, any Hazardous Materials concerns raised in any environmental audits or investigations; (b) the use or occupancy of the Building by any subsequent occupant or user of the Building, or any portion thereof, after Tenant's occupancy of the Building terminates; and (c) contamination of the Building by Landlord or by its agents or employees during the Term hereof.

Tenant shall, at all times during the Lease term, comply with all Environmental Laws applicable to the Building and shall not, in the use and occupancy of the Building, cause or contribute to, or permit or suffer any other party to cause or contribute to, any Release or potential Release of Hazardous Materials on or about the Building.

Tenant hereby covenants and agrees to indemnify and hold harmless Landlord and its directors, officers, employees, successors, legal representatives and assigns from and against all claims, damages, liabilities, losses, judgments, settlements and costs (including, without limitation,

reasonable attorney's fees and disbursements) in connection with any Release or potential Release of Hazardous Materials, or any violation of or liability under any Environmental Law, to the extent arising out of, or resulting from the use of the Building by the Tenant, its employees, agents or assigns during the Term of this Lease. The indemnification provided by Tenant in the preceding sentence shall not be applicable to the extent it can demonstrate that such Hazardous Materials were Released prior to the Commencement Date (including, but not limited to, through reference to due diligence materials developed in connection with this Lease that reference concerns relating to such Hazardous Materials), nor shall it be applicable to the extent that the source of any contamination is from adjacent properties not under the ownership, operation or control of Tenant, or otherwise as a result of the actions of, or failure to act by, the Landlord, its agent or employees. Tenant shall not be deemed an "operator" of any part of the Building over which it does not exercise daily operational control, unless Tenant, its employees', agents' or assigns' activities cause a Release or potential Release of Hazardous Materials onto such part of the Building.

Tenant, at Tenant's expense, and at any time and from time to time during the Term of the Lease, may conduct an appropriate environmental inquiry, including but not limited to a Phase 1 environmental site assessment for the purpose of identifying the existence in, on or about the Building of Hazardous Materials. Tenant shall not conduct any invasive sampling or testing of soil, subsoil, groundwater or building materials in or under the Building without Landlord's prior written approval, such approval not to be unreasonably withheld. Landlord may at any time and from time to time during the Term of the Lease, to conduct non-invasive or invasive inspections, testing or sampling of the Building for the purpose of identifying the existence in, on or about the Building of Hazardous Materials; provided, however, that such inspections, testing or sampling shall not unreasonably interfere with Tenant's use or operation of the Premises. It is understood, however, that neither Landlord nor Tenant shall have any obligation to make such inspection, tests, surveys and studies and the fact that Landlord or Tenant does not make them shall in no way reduce the Landlord's or Tenant's rights or obligations under this Lease.

- d. Survival. The respective rights and obligations of Landlord and Tenant under this Section 9 shall survive the expiration or earlier termination of this Lease.

10. **Liens**. Tenant shall not suffer or permit any mechanic's lien or other lien to be filed against the Building, or any portion of it, by reason of work, labor, skill, services, equipment or materials supplied or claimed to have been supplied to the Building at the request of Tenant, or anyone holding the Building, or any portion thereof, through or under Tenant. If any such mechanic's lien or other lien shall at any time be filed against the Building, or any portion of it, Tenant shall cause the same to be discharged of record or bonded off, as permitted by statute, on or before sixty (60) days after Tenant's receipt of notice of the same. In the event that Tenant shall not cause the discharge or bonding off of any lien as provided above, Landlord shall have the right, but not the obligation, to cause such lien to be released by such means as Landlord deems reasonably proper, including payment of the claim giving rise to such lien. All such reasonable sums paid and all reasonable expenses incurred by Landlord in connection therewith shall be due and payable to Landlord by Tenant within thirty (30) days after receipt of an invoice and evidence that Landlord has paid such reasonable sums or expenses. Tenant may obtain financing of its acquisition of its trade fixtures and equipment. Landlord agrees to subordinate its landlord's lien to the rights of the lender using a form reasonably acceptable to Landlord.

11. **Defaults; Remedies.**

- a. Tenant's Default. If any one or more of the following events shall happen:
- i. Tenant shall fail to pay any payment of Rent when due or shall fail to make when due any other payment required by this Lease;
 - ii. Tenant shall violate or fail to perform any term, condition, covenant or agreement to be performed or observed by such party under this Lease;
 - iii. Tenant shall take any action for voluntary dissolution;
 - iv. Tenant shall make a general assignment for the benefit of creditors;
 - v. Tenant shall liquidate substantially all of Tenant's assets; or
 - vi. Tenant shall have instituted against it proceedings in a court of competent jurisdiction for the adjudication of Tenant as a bankrupt or insolvent or for the appointment of a receiver of the property of Tenant.
 - vii. Tenant defaults on an obligation, under any agreement between Tenant and the Arizona Commerce Authority, to meet specified employment and salary levels, and fails to timely cure that default as permitted under the terms of that agreement, or as provided below.

then, such occurrence shall constitute a "Tenant Event of Default", (x) in the case of subsection i. above, following the passage of ten (10) business days from Tenant's receipt of written notice from Landlord of the occurrence of said default, provided such default is not cured during such cure period, and (y) in the case of subsections ii. through vii. above, following the passage of thirty (30) days from Tenant's receipt of written notice from Landlord of the occurrence of said default, provided such default is not cured during such cure period (provided that in the case of any default that cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period, if Tenant shall proceed promptly to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time within which such default may be cured shall be extended so long as Tenant diligently prosecutes the same to completion). Upon a Tenant Event of Default, Landlord shall have all rights and remedies at law and in equity, including the right to cure or attempt to cure such Tenant Event of Default, and the right to evict Tenant and retake possession with or without court order and collect the balance of Rent or any other sums which may be due under this Lease, provided that Landlord shall have an obligation to use commercially reasonable efforts to mitigate its damages.

- b. Surrender of Premises. Upon expiration or termination of this Lease, Tenant shall, at Tenant's sole cost and expense, (i) remove Tenant's personal property, equipment and trade fixtures from the Building, (ii) repair any damage to the Building caused by the removal, (iii) quit and deliver up the Building peaceably and quietly in clean condition excluding normal wear and tear and casualty, and subject to Landlord's maintenance, repair, replacement and restoration obligations, and (iv) deliver all Building and Premises key or access cards and parking garage access cards to Landlord.
- c. Reletting by Landlord. At any time, or from time to time after any such expiration or termination, Landlord may relet the Premises, or any portion thereof, in the name of Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include

concessions or free rent) as Landlord may determine and may collect and receive the rents therefore. Landlord shall in no way be responsible or liable for any failure to relet the Premises, or any part thereof, or for any failure to collect any rent due upon any such reletting; *provided, however,* that Landlord agrees to use commercially reasonable efforts to mitigate its damages.

- d. Landlord's Defaults. If Landlord breaches or fails to observe, keep, or perform any term, covenant or condition of this Lease on its part to be observed, kept or performed, Landlord shall be in default. The occurrence of any monetary default shall be a "Landlord Event of Default" following the passage of ten (10) business days from Landlord's receipt of written notice from Tenant of the occurrence of such default, provided such default is not cured during such cure period. The occurrence of any non-monetary default shall be a "Landlord Event of Default" following the passage of thirty (30) days (or any shorter period of time specifically described in this Lease) from Landlord's receipt of written notice from Tenant of the occurrence of such default, or if such breach cannot be cured with the payment of money and cannot, with due diligence, be cured within such period, if Landlord shall commence promptly to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity, then the time shall be extended so long as Landlord diligently prosecutes the same to completion. Upon the occurrence and during the continuation of a Landlord Event of Default, in addition to any other legal or equitable rights or remedies to which Tenant may be entitled, all of which shall be cumulative, Tenant shall have the right to cure or attempt to cure such Landlord Event of Default. Landlord shall, within thirty (30) days following receipt of a written statement from Tenant, accompanied by valid copies of paid invoices, reimburse Tenant for all reasonable costs and expenses incurred by Tenant in affecting such cure. If Landlord fails to reimburse Tenant within thirty (30) days, Tenant shall have the right to offset such costs against Base Rent until such costs are fully recovered by Tenant.

In the event Landlord's act or omission which constitutes a Landlord Event of Default hereunder results in an immediate threat of bodily harm to Tenant's employees, agents or invitees, or damage to Tenant's property (a "Special Landlord Default"), Tenant may proceed to cure the default without prior notice to Landlord, *provided, however,* in that event Tenant shall give written notice to Landlord as soon as possible after commencement of such cure. Landlord shall reimburse Tenant the reasonable costs of Tenant's cure of the Special Landlord Default within thirty (30) days after Tenant's invoice for the reasonable costs of such cure. If Landlord fails to reimburse Tenant within such thirty (30) day period, Tenant shall have the right to offset such costs against Rent until such costs are fully recovered by Tenant.

- e. No Waiver. No failure by Landlord or by Tenant to insist upon the performance of any term of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance by Landlord of full or partial Rent from Tenant or any third party during the continuance of any such breach, shall constitute a waiver of any such breach or of any of the terms of this Lease. None of the terms of this Lease to be kept, observed or performed by Landlord or by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord and/or by Tenant, as the case may be. No waiver of any breach shall affect or alter this Lease, but each of the terms of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach of this Lease. No waiver of any default of a party herein shall be implied from any omission by the non-defaulting party to take any action on account of such default, if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by a non-defaulting

party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

12. Damage or Destruction. If the Building is damaged or destroyed by fire or other casualty,:

- a. should the Building be rendered wholly unfit for occupancy by fire or other casualty and (in the reasonable opinion of a reputable contractor or architect designated by Landlord and reasonably acceptable to Tenant) not be susceptible of complete repair within ninety (90) days from the date of such damage or destruction, Landlord and Tenant shall each have the option to terminate this Lease (by so advising the other, in writing) within ten (10) days after said contractor or architect delivers written notice of its opinion to Landlord and Tenant;
- b. should the Building be rendered wholly unfit for occupancy by fire or other casualty and (in the reasonable opinion of a reputable contractor or architect designated by Landlord and reasonably acceptable to Tenant) not be susceptible of complete repair within ninety (90) days from the date of such damage or destruction, but neither Landlord nor Tenant terminates pursuant to Section 12a above, then Landlord shall repair the damage and restore and rebuild the Building within the time period estimated for such work by the designated contractor or architect. Landlord shall use its diligent and good faith efforts to make such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises. Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant while such repairs or restoration is in progress;
- c. should the Building, however, be (in the reasonable opinion of a reputable contractor or architect designated by Landlord) susceptible of complete repair within ninety (90) days from the date of such damage or destruction then Landlord shall repair the damage and restore and rebuild the Building within such period. Landlord shall use its diligent and good faith efforts to make such repair or restoration promptly and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises. Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant while such repairs or restoration is in progress. Notwithstanding the foregoing, if Landlord does not complete or is unable to repair and restore the Building within ninety (90) days from the date of such damage or destruction, then Tenant shall have, at its sole option, the right to terminate this Lease by delivering written notice of its election to terminate not more than thirty (30) days after the end of the ninety (90) day period, and shall specify a date not less than thirty (30) days after the giving of such notice as the date for such termination; and
- d. should twenty-five percent (25%) or more of the Building be damaged or destroyed during the last twelve (12) months of the Term, notwithstanding anything to the contrary above, Tenant shall have the right to terminate this Lease. Tenant shall effect such termination by giving notice in writing to Landlord not more than thirty (30) days after the date of such damage or destruction, and shall specify a date not less than thirty (30) days after the giving of such notice as the date for such termination.

Damage to the Building affecting Tenant's access to the Premises or Tenant's use of the Premises shall be treated as damage to the Premises pursuant to subparagraphs a. through d. above.

13. Condemnation.

- a. Condemnation of Entire Building. If, during the term of this Lease, the entire Building is taken or condemned for any public purpose, or purchased under threat of such taking or condemnation (hereinafter referred to as the "Proceedings"), this Lease and all right, title and interest of Tenant hereunder shall cease and come to an end on the date of vesting of title pursuant to such Proceedings and Landlord shall be entitled to and shall receive the total award made in such Proceedings; *provided, however*, that Tenant may make a separate claim for Tenant's lost trade fixtures and equipment, damages for interruption of business and its relocation expenses.
- b. Partial Condemnation/Termination of Lease. If, during the Term less than the entire Building, but more than twenty-five percent (25%) of the Building's square footage, shall be taken in any Proceedings, this Lease shall, upon vesting of title in the Proceedings, terminate as to the portion of the Building so taken, and Tenant may, at its option, terminate this Lease as to the remainder of the Building. Such termination as to the remainder of the Building shall be effected by notice in writing given not more than sixty (60) days after the date of vesting of title in such Proceedings, and shall specify a date not more than sixty (60) days after the giving of such notice as the date for such termination. Upon the date specified in such notice, the Term and all right, title and interest of Tenant hereunder shall cease and come to an end. If this Lease is terminated pursuant to this Section 13b, Landlord shall be entitled to and shall receive the total award made in such Proceedings; *provided, however*, that Tenant may make a separate claim for Tenant's lost trade fixtures and equipment, damages for interruption of business and its relocation expenses. In the event that Tenant elects not to terminate this Lease as to the remainder of the Building, the rights and obligations of Landlord and Tenant shall be governed by the provisions of Section 13c hereof.
- c. Partial Condemnation/Continuation of Lease. If twenty-five percent (25%) or less of the Building is taken in such Proceedings, or if more than twenty-five percent (25%) of the Building is taken (but less than the entire Building) and this Lease is not terminated as provided in Section 13b hereof, this Lease shall, upon vesting of title in the Proceedings, terminate as to the parts so taken. Landlord, in such case, covenants and agrees, at Landlord's sole cost and expense, promptly to restore that portion of the Building not so taken to a complete architectural and mechanical unit for the use and occupancy of Tenant as contemplated in this Lease. Notwithstanding anything to the contrary in this Section 13c, if Landlord does not complete or is unable to repair and restore the Building within one hundred twenty (120) days after the date of vesting of title in such Proceedings, then Tenant shall have, at its sole option, the right to terminate this Lease. Such termination by Tenant shall be effected by notice in writing given not more than one hundred fifty (150) days after the date of vesting of title in such Proceedings, and shall specify a date not more than sixty (60) days after the giving of such notice as the date for such termination.
- d. Adjustment of Rent. In the event of a partial taking of the Building under Section 13c hereof, or a partial taking of the Building under Section 13b hereof followed by Tenant not exercising its right to terminate this Lease, the Rent payable hereunder during the period from and after the date of vesting of title in such Proceedings to the termination of this Lease shall be equitably reduced in proportion to the reduction in the Premises RSF and/or the Reserved Space as applicable.

14. Assignment; Subletting.

- a. Restriction on Transfer. Except as otherwise provided in this Section 14, Tenant agrees not to assign, or in any manner transfer this Lease or any interest hereunder, and further agrees not to

sublet the Leased Premises or any portion thereof without the written consent of Landlord in each instance. Tenant acknowledges that, due to the special nature of this Lease, Landlord may withhold its consent to any such requested assignment or sublease in its sole discretion.

- b. Tenant's Failure to Comply. Tenant's failure to comply with all of the foregoing provisions and conditions of this Section 14 shall (whether or not Landlord's consent is required under this Article), at Landlord's option, render any purported assignment or subletting null and void and of no force and effect.
- c. Assignment to Affiliates. Tenant shall have the right to assign this Lease to another legal entity of Caterpillar Inc. Within fifteen (15) days of such an assignment, Tenant shall give Landlord written notice of such assignment. From and after the date of the assignment, Tenant will be released from all of its obligations under this Lease.

15. **Signs.** Tenant may erect signs on the exterior or interior of the Building, provided that such sign or signs (a) do not cause any structural damage or other damage to the Building; (b) do not violate Legal Requirements; and (c) do not violate any existing restrictions affecting the Building.

16. **Changes or Alterations.** Tenant shall have the right at any time, and from time to time during the term of this Lease, to make non-structural alterations to the Premises subject to the following conditions:

- a. Permits. No change or alteration shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all municipal, state and federal permits and authorizations of the various governmental bodies and departments having jurisdiction thereof, and Landlord agrees to join in the application for such permits or authorizations whenever such action is necessary, all at Tenant's sole cost and expense, provided such applications do not cause Landlord to become liable for any cost, fees or expenses.
- b. Compliance with Plans and Specifications. Before commencement of any change, alteration, restoration or construction (hereinafter sometimes referred to as "Work"), Tenant shall (i) furnish Landlord with detailed plans and specifications of the proposed change or alteration; and (ii) obtain Landlord's prior written consent. Landlord may not withhold or condition its consent to the making of an alteration or improvement unless the making or installation of the improvements or alterations would (a) adversely affect the Building structure, (b) adversely affect the Building systems, (c) not comply with applicable laws, (d) affect the exterior appearance of the Building, or (e) be inconsistent with County standards, it being understood that this is a relatively short-term lease and that Landlord will need to repurpose the Building after expiration of this Lease with minimal cost and expense
- c. Value Maintained. Any change or alteration shall, when completed, be of such character as not to materially reduce the value of the Premises or the Building to which such change or alteration is made below its value to Landlord immediately before such change or alteration, nor shall such change or alteration reduce the area or cubic content of the Building, nor change the character of the Premises or the Building as to use without Landlord's express written consent.
- d. Compliance with Legal Requirements. All Work done in connection with any change or alteration shall be done promptly and in a good and workmanlike manner by a contractor appropriately licensed by the Arizona Registrar of Contractors and in compliance with all building and zoning ordinances and regulations of the place in which the Building is situated, and

with all Legal Requirements, including compliance with Title 34 of the Arizona Revised Statutes. The cost of any such change or alteration shall be paid in cash so that the Building and all portions thereof shall at all times be free of liens for labor and materials supplied to the Building or any portion thereof.

- e. Insurance. Tenant must furnish Landlord with a Certificate of Insurance from the contractor showing that contractor has builder's risk, general, automobile liability, and worker's compensation coverage for its work on the Building, for which Landlord has been named as an Additional Insured and Certificate Holder.
- f. Written Notification Required. Except as otherwise provided herein, Tenant shall notify Landlord in writing thirty (30) days prior to commencing any alterations, additions or improvements to the Building pursuant hereto.
- g. Locks. Tenant shall not alter any lock or install any new or additional locks on any doors or windows of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall provide Landlord with access keys or cards for any installed locks so that Landlord may access the Premises as provided in this Lease.

17. **Miscellaneous Provisions.**

- a. Entry by Landlord. Tenant agrees to permit Landlord and authorized representatives of Landlord to enter upon the Premises at all reasonable times during ordinary business hours after at least one (1) day prior notice (except in the case of emergency) for the purpose of inspecting the same and making any necessary repairs to comply with any Legal Requirements or with this Lease. Tenant shall have the right to accompany Landlord in connection with any such entry. Landlord must follow Tenant's procedure for entering into the Premises. Landlord may, at its sole risk, during the progress of any work, keep and store upon the Premises all necessary materials, tools and equipment. Unless caused by Landlord's negligence or willful misconduct, Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, or loss of business to Tenant by reason of making repairs or the performance of any work in or about the Premises or on account of bringing material, supplies and equipment into, upon or through the Premises during the course thereof, and the obligations of Tenant under this Lease shall not be thereby affected in any manner whatsoever, *provided, however*, that Landlord agrees to use commercially reasonable efforts not to interfere with Tenant's business operations. Tenant will consent to inspection of the Premises as requested by the state fire marshal under A.R.S. § 41-2164.
- b. Exhibition of Premises. Landlord is hereby given the right during usual business hours at any time during the term of this Lease after giving Tenant reasonable prior notice to enter upon the Premises and to exhibit the same for the purpose of mortgaging or selling the same. During the last six months of the term, Landlord shall be entitled to display on the Premises, in such manner as to not unreasonably interfere with Tenant's business, signs indicating that the Premises are for rent or sale and suitably identifying Landlord or its agent. Tenant agrees that such signs may remain unmolested upon the Premises and that Landlord may exhibit said premises to prospective tenants during said period.
- c. Notices. All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other shall be in writing. All notices, demands and requests

shall be sent by United States registered or certified mail, postage prepaid, by facsimile or by an overnight courier service, addressed as follows:

To Landlord:

Pima County Administrator
130 W. Congress Street, 10th Floor
Tucson, Arizona 85701
Attn: Pima County Administrator
Fax: 520-724-8171

with a copy to: Pima County Attorney's Office, Civil Division, 21st Floor
32 North Stone Avenue
Tucson, Arizona 85701
Attn: Chief Civil Deputy
Fax: 520-620-6556

and: Pima County Facilities Management
150 W. Congress Street, 5th Floor
Tucson, Arizona 85701

To Tenant: Caterpillar Global Mining LLC
97 E. Congress Street
Tucson, Arizona 85701
Attn: Facility Manager

with a copy to: Caterpillar Inc.
100 N.E. Adams Street
Peoria, Illinois 61629-9320
Attn: Corporate Real Estate Manager
Fax: 309-494-4577

and a copy to: Caterpillar Inc.
100 N.E. Adams Street
Peoria, Illinois 61629-9600
Attn: Deputy General Counsel, Commercial Section
Fax: 309-675-1795

or at such other place as Landlord may from time to time designate by written notice to Tenant. Notices, demands and requests which shall be served upon Landlord by Tenant, or upon Tenant by Landlord, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed or delivered to a courier.

- d. Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the Rent, and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the Premises (subject to the provisions of this Lease) during the term of this Lease without hindrance or molestation by Landlord or by any person or persons claiming under Landlord.

- e. Tenant Representations and Warranties. Tenant hereby represents and warrants Landlord that (i) Tenant is a limited liability company_ duly organized, validly existing, and in good standing under the laws of the State of Delaware, (ii) this Lease has been duly authorized, executed, and delivered by Tenant, and (iii) this Lease is binding in all respects on Tenant.
- f. Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant that (i) Landlord is a political subdivision of the State of Arizona, (ii) Landlord owns fee simple title to the Building free and clear of all monetary mortgages, liens, and encumbrances, and of any conditions, exceptions, restrictions or other matters that would prevent Tenant's use of the Building for the purpose describe in this Lease; (iv) this Lease has been duly authorized, executed, and delivered by Landlord, (v) this Lease is binding in all respects on the Landlord, and (vi) as of the Commencement Date, Landlord will have possession of the Premises, and the Premises will not be subject to occupancy rights, including, without limitation, leases, subleases, license agreements, rights of first refusal, expansion options and otherwise.
- g. Memorandum of Lease. Upon not less than ten (10) days prior written request by either party, the parties hereto agree to execute and deliver to each other a Memorandum Lease, in recordable form, setting forth the following:
 - i. The date of this Lease;
 - ii. The parties to this Lease;
 - iii. The term of this Lease and options to extend;
 - iv. The legal description of the Premises; and
 - v. Such other matters reasonably requested by either party to be stated therein.
- h. Severability. If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.
- i. Successors and Assigns. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant and its permitted successors and assigns.
- j. Captions. The caption of each article of this Lease is for convenience and reference only, and in no way defines, limits or describes the scope or intent of such article or of this Lease.
- k. Relationship of Parties. This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of landlord and tenant.
- l. Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this Lease. This Lease together with the Exhibits contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.
- m. Possession and Use. Tenant acknowledges that the Building is the property of Landlord and that Tenant has only the right to possession and use thereof upon the covenants, conditions, provisions, terms and agreements set forth in this Lease.

- n. Holding Over. In the event Tenant remains in possession of the Premises after expiration of this Lease, and without the execution of a new lease, it shall be deemed to be occupying the Leased Premises as a tenant from month-to-month, subject to all the provisions, conditions and obligations of this Lease insofar as the same can be applicable to a month-to-month tenancy.
- o. Broker. Each party represents that it utilized the services of no broker and/or agent in connection with this Lease who is entitled to a commission in connection therewith. Tenant shall indemnify and hold Landlord harmless from and against any and all commissions, fees and expenses and all claims therefore by any broker, salesman or other party in connection with or arising out of Tenant's action in entering into this Lease.
- p. Governing Law. This Lease shall be governed by the laws of the State of Arizona.
- q. Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.
- r. Consent of the Parties. Wherever consent or approval of either party is required, that party shall not unreasonably withhold, condition or delay such consent or approval.
- s. Counterparts. This Lease may be executed in one or more counterparts, and by different parties hereto on separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- t. No Relocation. Landlord shall not have the right to relocate Tenant from the Premises during the Term.
- u. Cancellation for Conflict of Interest. This Lease may be cancelled for conflict of interest pursuant to A.R.S. § 38-511, the provisions of which are incorporated in this Lease by this reference.
- v. Non-Discrimination. Tenant will comply with applicable local, state and federal laws, rules and regulations concerning equal employment opportunity and non-discrimination; with the Americans with Disabilities Act; and with all provisions and requirements of Arizona Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this Lease by reference.
- w. Non-Appropriation. Landlord's performance of its obligations under this Lease may be dependent upon the appropriation of funds by the Board of Supervisors of the County, or the availability of funding from other sources. Should the Board fail to appropriate the necessary funds, or if funding becomes otherwise not legally available to Landlord for the purpose of fulfilling Landlord's obligations under this Lease, Landlord will be relieved of that obligation and Tenant may terminate this Lease.
- x. Storage. Tenant will limit its personal property stored on the patio to outdoor furniture such as table and chairs. Tenant shall not store, at any time, any refuse containers or other such items on the patio area.

IN WITNESS WHEREOF, each of the parties hereto has caused this Lease to be duly executed as of the day and year first above written.

LANDLORD:

PIMA COUNTY, ARIZONA

By: _____

Sharon Bronson

Chair, Pima County Board of Supervisors

TENANT:

CATERPILLAR GLOBAL MINING LLC

By: _____

Its: _____

Exhibits:

Exhibit A: Site Plan

Exhibit B: Floor Plan

Exhibit C: Landlord Improvements

EXHIBIT A TO LEASE AGREEMENT

Site Plan

EXHIBIT A

BUILDING SITE AT 97 EAST CONGRESS

BUILDING SITE

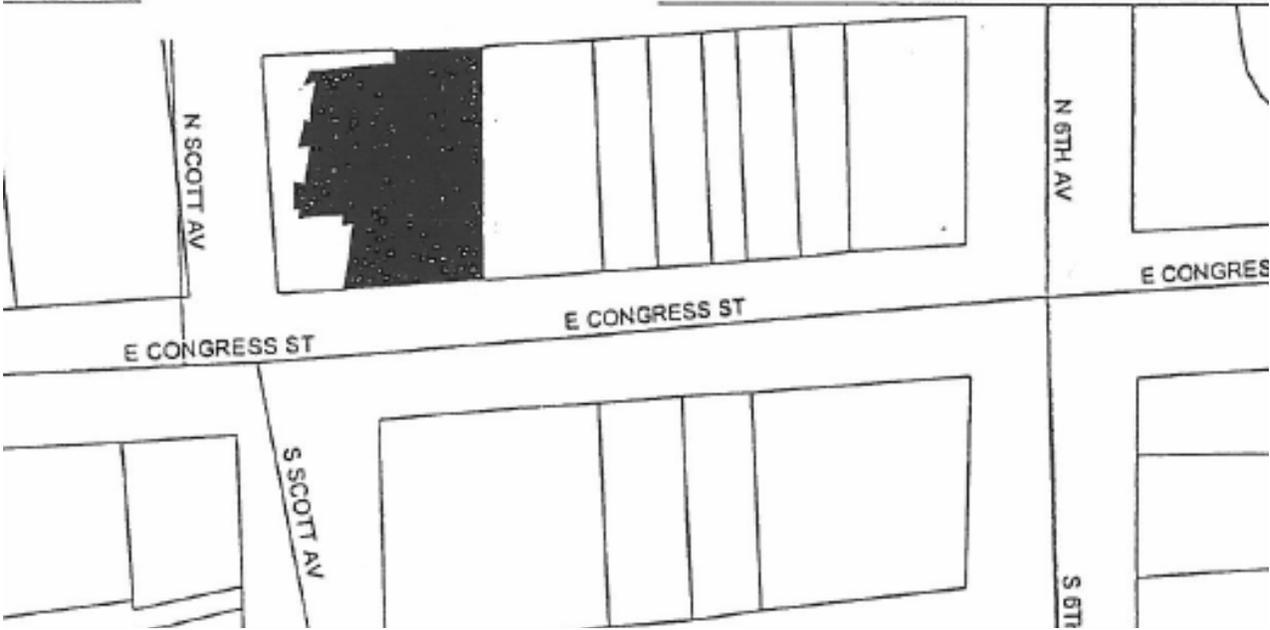


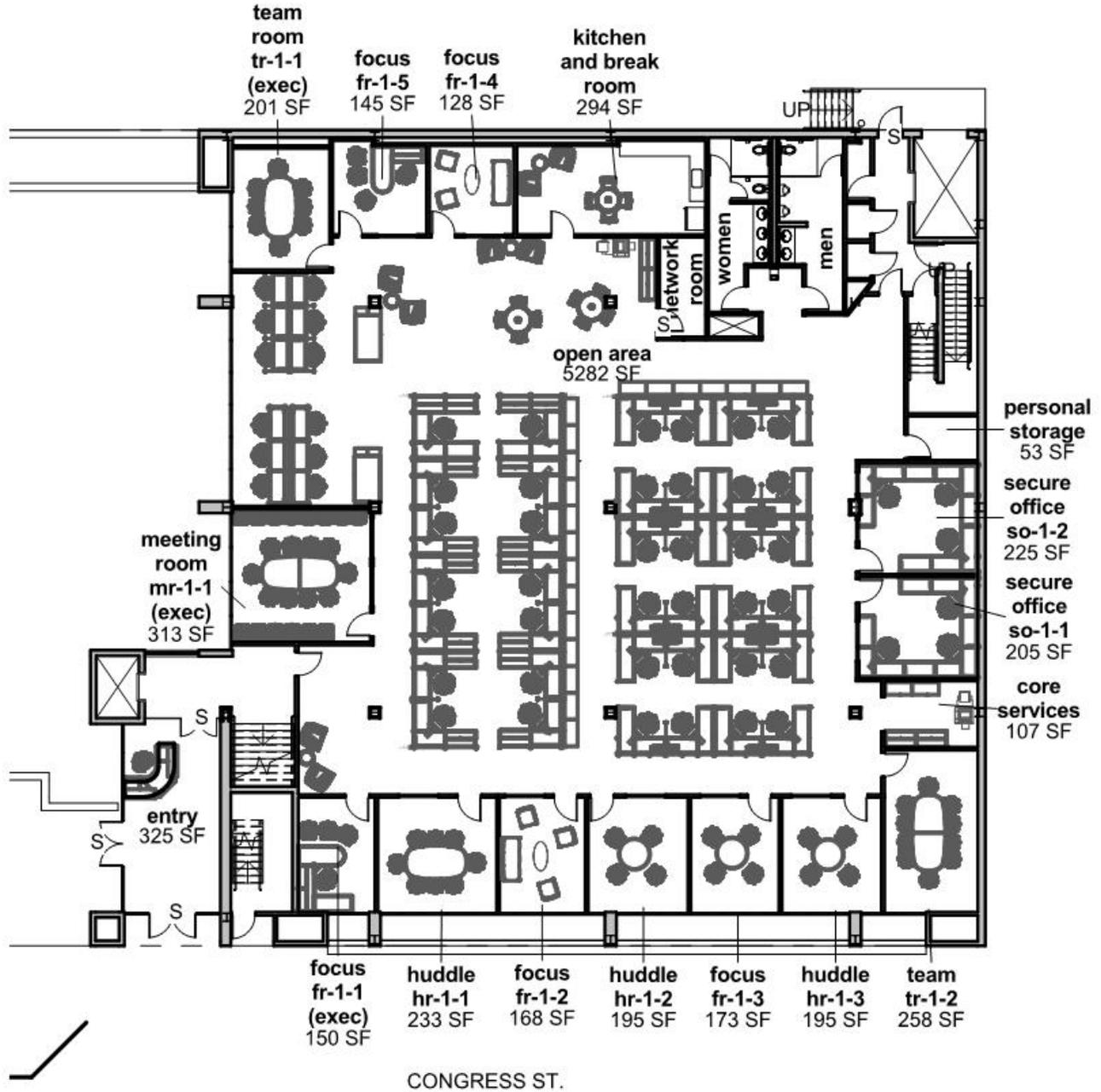
EXHIBIT B TO LEASE AGREEMENT

Floor Plan

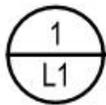
not for construction - 5.12.16

swaim

ASSOCIATES LTD
ARCHITECTS AIA



first floor



3/64" = 1'-0"

first floor area: 9,815 SF

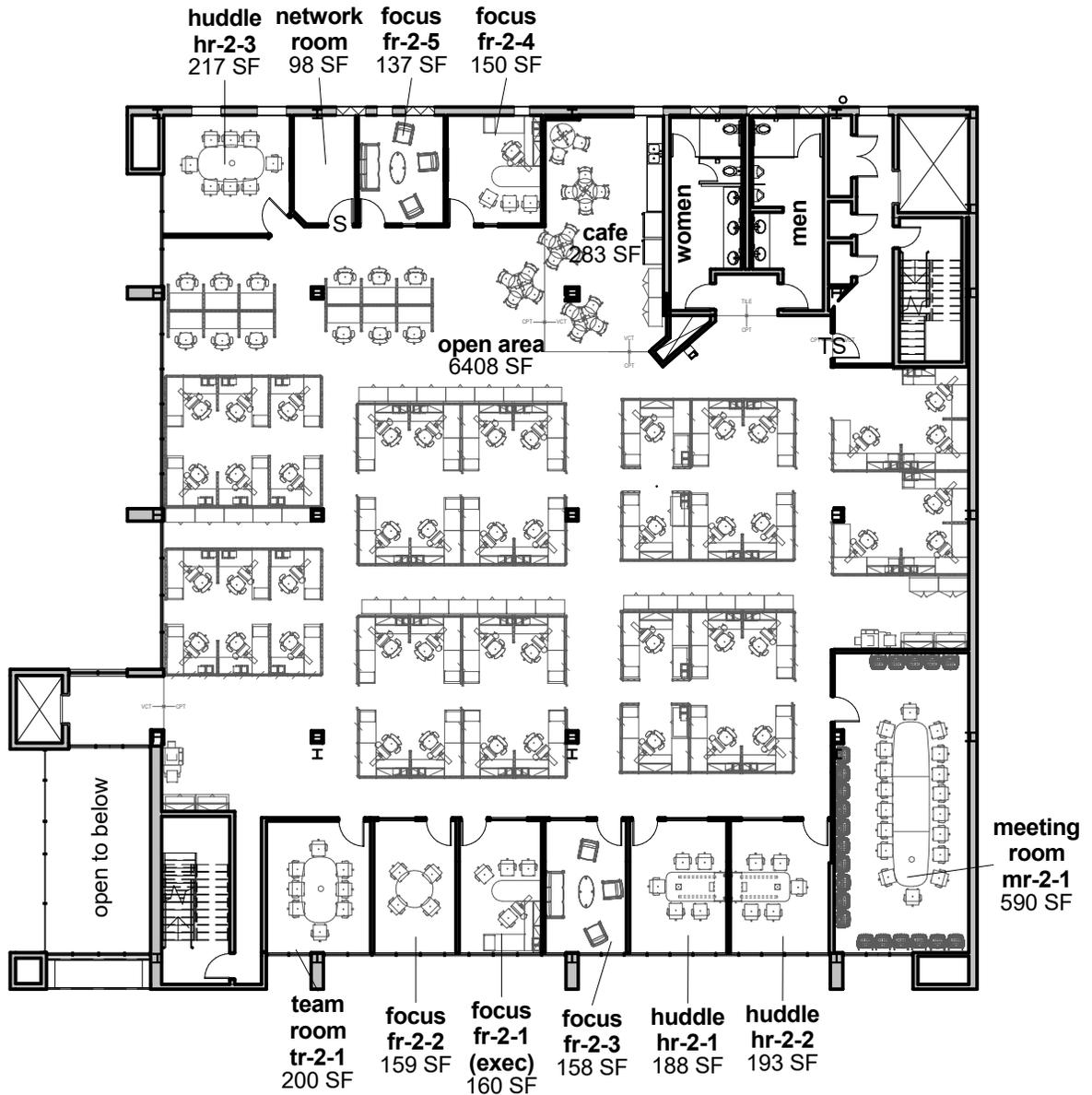


workstation count:

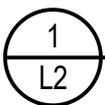
hotel style:	12 workstations
office style:	24 workstations
engineering style:	14 workstations

work room count:

focus:	5
huddle:	3
meeting:	1
team:	2



second floor



3/64" = 1'-0"

second floor area: 9,868 SF

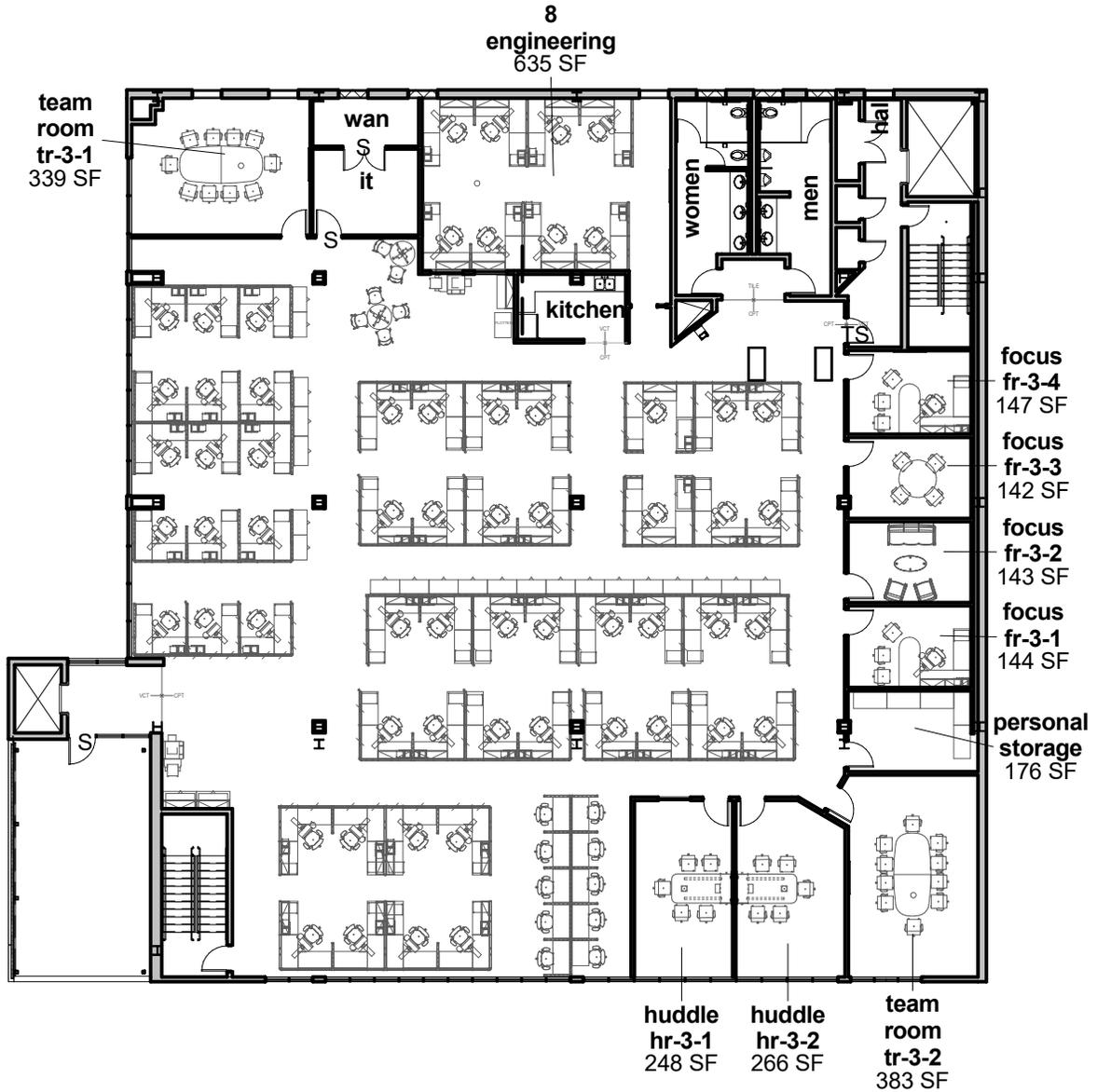


workstation count:

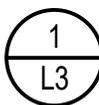
hotel style:	12 workstations
office style:	12 workstations
engineering style:	34 workstations

work room count:

focus:	5
huddle:	3
meeting:	1
team:	1



third floor



3/64" = 1'-0"

third floor area: 10,051 SF

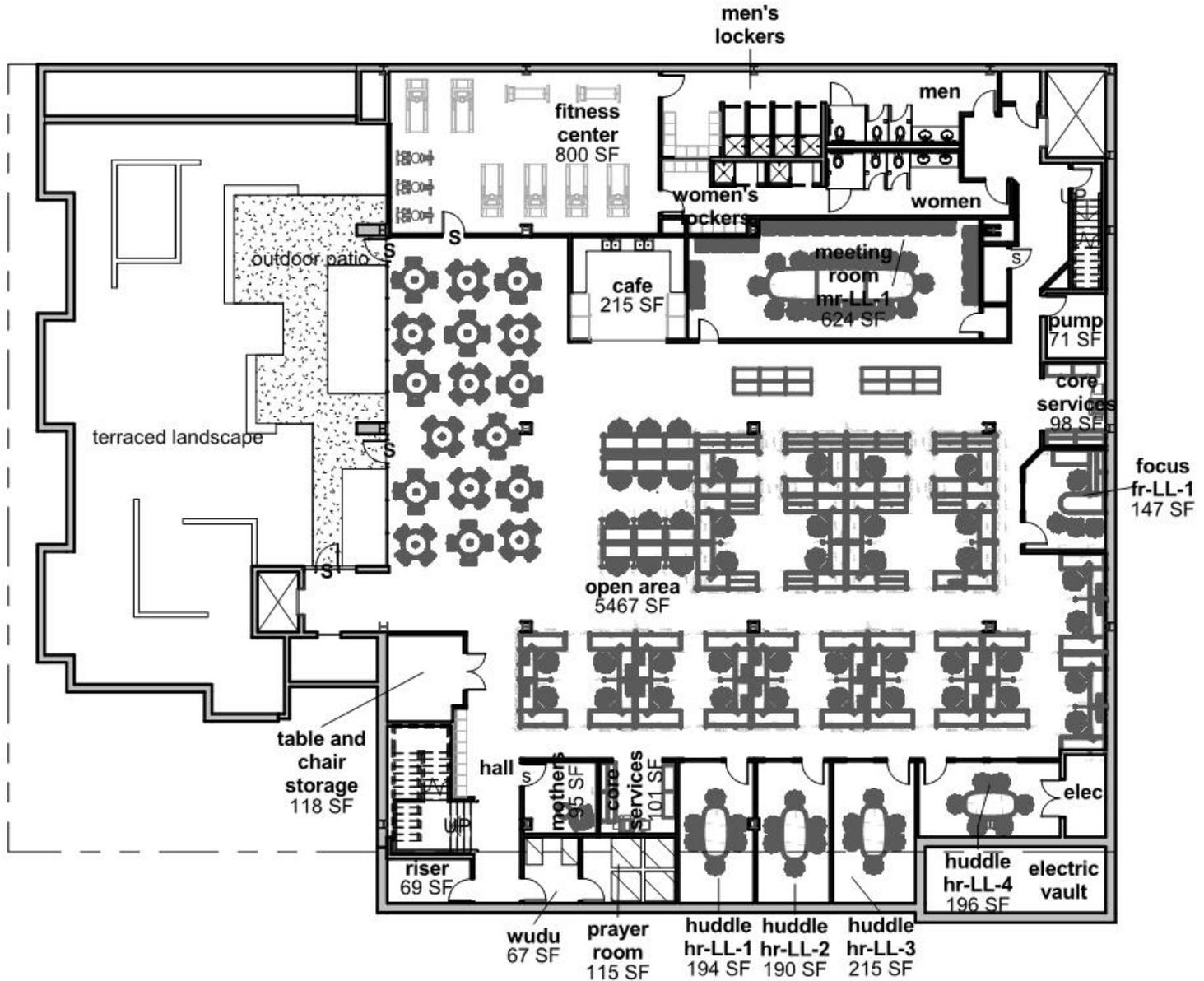


workstation count:

hotel style: 10 workstations
office style: 15 workstations
engineering style: 46 workstations

work room count:

focus: 4
huddle: 2
meeting: 0
team: 2



lower level plan



3/64" = 1'-0" lower level area: 10,424 S.F.



workstation count:

hotel style:	12 workstations
office style:	22 workstations
engineering style:	12 workstations

work room count:

focus:	1
huddle:	4
meeting:	1
team:	0

EXHIBIT C TO LEASE AGREEMENT

LANDLORD IMPROVEMENTS

1. Walls
2. Doors and Door Hardware
3. Casework and Casework Hardware
4. Acoustic and Drywall Ceilings
5. Floor coverings (Carpet, Tile, and VCT)
6. Wall coverings and paint
7. Furniture
8. Window Shades
9. Sprinkler System
10. Plumbing Fixtures
11. HVAC Distribution and Controls
12. HVAC Testing, Adjusting, and Balancing
13. HVAC Commissioning
14. Electrical Power Distribution
15. Lighting
16. Network Communication Cable
17. Sound Masking System
18. Fire Alarm System

ATTACHMENT 2



MEMORANDUM

Date: May 3, 2016

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator *CHH*

Re: **Relocation of the Surface Mining and Technology Division of Caterpillar, Inc. to Tucson and Pima County, Arizona**

Introduction

Chapter 11 of the County's Adopted Economic Development Plan 2015 through 2017 discusses enhancing the downtown by increasing the opportunity for locating corporate headquarters in the downtown by leasing or selling certain County buildings that are no longer needed for County purposes at the present time. In fact, Action Item 11.2 specifically discusses this issue:

"11.2 Encourage new or expanded primary employment in the downtown by making available for such the County-owned office buildings at 97 E. Congress Street and 160 N. Stone Avenue, as well as the County's vacant property at Broadway Boulevard and Scott Avenue and 332 S. Freeway."

In addition, Chapter 7 of the Plan discusses Mining and calls for modernizing a traditional Arizona economic activity.

As part of the County's Plan, County representatives, along with representatives of Sun Corridor, the Arizona Commerce Authority, the Rio Nuevo Multipurpose Facilities District and the City of Tucson, have been meeting with representatives of Caterpillar, Inc. to discuss possible relocation of Caterpillar's Surface Mining & Technology (SM&T) Division to Tucson.

We believe attracting the SM&T Division of Caterpillar will significantly enhance our opportunity to support modern and advanced mining technology, as well as advance sustainable industry practices. Promoting more efficient resource extraction, while minimizing impacts, is the future of mining as an economic driver of job creation. Caterpillar has long been committed to developing mining technologies at the cutting edge of science, while remaining mindful of the need to keep workers safe and protect the natural environment.

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These commitments match Pima County's goal of supporting mining activities that provide well-paying jobs and meet the environmental standards established in our Sonoran Desert Conservation Plan.

As is always the case, the discussions with Caterpillar were subject to confidentiality requirements, and the selection process was highly competitive. Caterpillar discussed possible relocation with several other communities at the same time, and those communities offered attractive economic incentives to induce Caterpillar to choose them.

Ultimately, representatives of the Arizona agencies and political subdivisions noted above were able to assemble an economic incentive package that complies with all legal requirements and which is sufficiently attractive that Caterpillar representatives have agreed to relocate to Tucson. The package includes a four-year lease of the County's 97 E. Congress building to Caterpillar while it builds a permanent facility. As noted above, 97 E. Congress is specifically referenced in our Economic Development Plan to be leased or sold for increasing primary-based downtown employment. It is expected the building will accommodate approximately 300 to 350 of Caterpillar's employees.

Corporate Profile

With 2015 sales and revenues of over \$47 billion, Caterpillar is the world's leading manufacturer of construction and mining equipment, diesel and natural gas engines, industrial gas turbines and diesel-electric locomotives. The company has three main product segments - Construction Industries, Resource Industries and Energy & Transportation. Caterpillar's SM&T Division is one of four divisions within the Resource Industries Group. It was formed in 2015 when the company combined its surface-mining sales-and-support teams with its Hauling & Extraction Division, a reorganization that Caterpillar expects will improve performance.

As part of its reorganization and streamlining effort, Caterpillar began looking for a site to relocate and consolidate its SM&T Division. It explored potential sites in several different communities, including Denver, Colorado. As part of the competitive site selection process, those communities offered Caterpillar economic incentives.

Tucson was also on the list of potential sites. Caterpillar already operates its Tinaja Hills Demonstration & Learning Center, a training facility and mining-equipment proving ground that employs approximately 300 people, on a 6,500-acre site in Green Valley.

Sun Corridor, the Arizona Commerce Authority, Rio Nuevo, the City of Tucson, and Pima County all worked together to assemble a package of economic incentives that ultimately induced Caterpillar to select Tucson as the site for its reorganized SM&T Headquarters. This consolidated operation (the Operation) is expected to grow to include nearly 1,000 jobs

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within five years, which means this action will result in 650 new jobs. These jobs are highly skilled and highly paid, consisting primarily of engineers and those involved in research and development.

Caterpillar intends to begin consolidating and relocating its Operation to Tucson as soon as June 1, 2016. Although it intends, with the assistance of Rio Nuevo and the City, to build a large new facility in downtown Tucson to house its Operation, designing and constructing such a facility will take several years. It therefore needs office space for short- and long-term lease until its new permanent facility is ready for occupancy.

Temporary Location at 97 E. Congress

The County is proposing Caterpillar's lease of 97 East Congress for a four-year period, with two, one-year options; allowing the company to relocate employees and plan for a new, larger facility in the Rio Nuevo Multipurpose Facilities District.

The County-owned 97 East Congress building is no longer needed for housing of County employees, and existing tenants in the building will be relocated in the near future. The County has already begun necessary rehabilitative work on the building, and we are prepared to make additional building renovations based on Caterpillar's specifications. Caterpillar will be responsible for paying agreed upon rent, including all operating, maintenance and utility expenses. Parking will be provided in an adjacent parking structure.

We are preparing a draft lease to be transmitted to Caterpillar within the week and will work with Caterpillar at its convenience to finalize the lease. We hope to have a formal lease agreement submitted to the Board of Supervisors for consideration on May 17, 2016.

The County also offered to provide Caterpillar up to 9,000 square feet of temporary, as-is office space in the Bank of America Building at \$8,000 per month beginning June 1, 2016.

Attached to this memorandum is my May 2, 2016 letter to Caterpillar's site selector, which provides specific information regarding the proposed lease terms for 97 East Congress, as well as Floor 11 of the Bank of America Building.

Economic Impacts

An economic impact study commissioned by Sun Corridor has estimated Caterpillar's operation in Pima County would generate a total economic impact during its first five years of almost \$600 million.

The division Caterpillar is proposing to relocate to Tucson involves the relocation of approximately 650 jobs to the region within five years. Those jobs will pay an average

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annual wage of \$90,000. Caterpillar will also cause to be constructed a new headquarters building costing up to \$50 million in that same time period.

We welcome this division of Caterpillar to Tucson and Pima County, and we look forward to making the Company's relocation to their temporary facility at 97 East Congress as seamless as possible.

CHH/mjk

Attachment



COUNTY ADMINISTRATOR'S OFFICE

PIMA COUNTY GOVERNMENTAL CENTER
130 W. CONGRESS, FLOOR 10, TUCSON, AZ 85701-1317
(520) 724-8661 FAX (520) 724-8171

C.H. HUCKELBERRY
County Administrator

May 2, 2016

Mr. Wes Bowen, Esq.
Mr. Rudy N. Watkins
Harvest Group, LLC
3024 Centre Oak Way
Germantown, Tennessee 38138

Re: Lease of 97 East Congress and the 11th Floor of the Bank of America Building, Buildings Owned by Pima County, for the Headquarters of the Surface Mining and Technology Division of Caterpillar Inc.

Dear Messrs. Bowen and Watkins:

Since December 2015, County representatives have participated in numerous site visits and information exchanges with Harvest Group, LLC, the site locator for Caterpillar, Inc. We have also met with numerous Caterpillar staff over this same period. We are pleased to now make this formal proposal for a four-year lease of 97 East Congress for Caterpillar's relocation purposes, subject to approval by the Pima County Board of Supervisors, as well as a lease for the temporary occupancy of Floor 11 of the Bank of America Building at 33 North Stone Avenue. I understand these leases will be for a limited period, allowing the company to relocate employees and plan for construction of a new, larger facility, possibly in the Rio Nuevo Multipurpose Facilities District.

The County has an economic-development interest in promoting Tucson's downtown. In fact, Chapter 11 of our Board-adopted Pima County Economic Development Plan, 2015 through 2017, calls for encouraging new or expanded primary employment in the downtown by making available for lease or sale County-owned buildings such as 97 East Congress. Caterpillar's relocation, which will add 650 or more new or relocated employees to the downtown area, as well as its planned capital investment of up to \$50 million, will provide significant economic benefits for the region and State. We understand that the County's

Messrs. Wes Bowen and Rudy Watkins

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assistance in providing these temporary leases is a key element in Caterpillar's decision to relocate here.

The County-owned 97 East Congress building is no longer needed for housing of County employees, and existing tenants in the building will be relocated in the near future. The County has already begun necessary rehabilitative work on the building, and we are prepared to make additional building renovations based on Caterpillar's specifications. Caterpillar will be responsible for paying agreed upon rent, including all operating, maintenance and utility expenses. Parking will be provided in an adjacent parking structure. The proposed lease, which must be submitted to the Board of Supervisors for approval, would contain the following terms, which are reflective of the previous general discussions:

1. Term. Four years, with two one-year renewal options. After Year 3, Caterpillar will have the right to terminate the lease by paying a \$168,000 early termination fee.
2. Premises. 97 E. Congress is currently being rehabilitated by Facilities Management. Caterpillar would initially occupy at least 10,000 square feet or more on the second and/or third floors. It would occupy additional space as the building is rehabilitated, leasing at least 31,000 square feet by the beginning of the second year of the term and the remaining space (approximately 40,000 square feet total) by the beginning of the third year of the term. The County will endeavor to have the top two floors available for occupancy by August 2016 and will complete the total building renovation by January 1, 2017. These dates assume timely response from Caterpillar regarding ordering of certain building rehabilitation materials.
3. Rehabilitation. Caterpillar will be permitted to have input on the interior rehabilitation work being done by the County. This rehabilitation work is not expected to cost more than \$50 per square foot, and Caterpillar will work with the County to remain within that amount. (See Item 2 above regarding timely plans and materials approvals.)
4. Rent. Caterpillar will pay base rent at the rate of \$13.72 per rentable square foot per year for the occupied space, as well as \$4.12 per square foot on the unoccupied space over the lease period. If the cost of the rehabilitation work performed by the County exceeds \$50 per square foot, the base rental rate will increase by \$0.08 for each dollar in excess of \$50. Base rent during the two extension periods, if the option to extend is exercised by Caterpillar, will be at \$18 per square foot per year.
5. Government Property Lease Excise Tax (GPLET). Caterpillar will also pay any rental taxes, as well as the GPLET, which is estimated to be \$2.59 per square foot per year.

Messrs. Wes Bowen and Rudy Watkins

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6. Option Fee. Caterpillar will also pay an option fee (which is included in the base rent for the occupied space) on the unoccupied space in the building at the rate of \$6 per square foot per year, which will offset the County's carrying costs for the unoccupied space.
7. Operation and Maintenance Costs. The operating and maintenance expenses for the entire building, as well as utility costs, are now included in the base rent.
8. Parking. Caterpillar will have the right to utilize one County parking garage space for every 200 rentable square feet of space in the Premises. It is estimated the number of spaces used at full occupation of the building will be 200. If Caterpillar needs more than 200 spaces, additional parking spaces can be leased from the County at \$85 per month.

We are prepared to send Caterpillar a draft lease within the next week and work with Caterpillar at its convenience to finalize the lease. We hope to have a formal lease agreement submitted to the Pima County Board of Supervisors for their consideration at the scheduled meeting of May 17, 2016.

In addition, we are prepared to provide up to 9,000 square feet of temporary, "as is" office space with County-owned furnishings in the Bank of America Building at \$8,000 per month for Caterpillar beginning June 1, 2016 and continuing to January 1, 2017 or continuing on a month-to-month basis until terminated by Caterpillar, but in no event extending beyond 12 months.

We welcome Caterpillar to Tucson and Pima County, and we look forward to making the Company's relocation to their temporary facility at 97 East Congress as seamless as possible.

Sincerely,



C.H. Huckelberry
County Administrator

CHH/mjk

c: Regina Nassen, Deputy Pima County Attorney
Sandra Watson, President and CEO, Arizona Commerce Authority
Joseph Snell, President and CEO, Sun Corridor Inc.