

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:

REHRIG-UNITED INTERNATIONAL :  
SITE :  
County of Chesterfield, Virginia :

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: Docket No. CERC-03-2013-0018DC

Bank of America, N.A.,

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Respondent.

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Proceeding under Section 122(h)(1)  
of the Comprehensive Environmental  
Response, Compensation and  
Liability Act of 1980, as amended,  
42 U.S.C. § 9622(h)(1)

SETTLEMENT AGREEMENT FOR RECOVERY OF PAST RESPONSE COSTS

**TABLE OF CONTENTS**

**I. JURISDICTION .....3**  
**II. BACKGROUND .....3**  
**III. PARTIES BOUND .....4**  
**IV. DEFINITIONS .....4**  
**V. PAYMENT OF RESPONSE COSTS.....6**  
**VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT .....6**  
**VII. COVENANTS BY EPA .....8**  
**VIII. RESERVATIONS OF RIGHTS BY EPA .....8**  
**IX. COVENANTS BY RESPONDENT .....9**  
**X. EFFECT OF SETTLEMENT/CONTRIBUTION .....10**  
**XI. RETENTION OF RECORDS .....11**  
**XII. NOTICES AND SUBMISSIONS .....12**  
**XIII. INTEGRATION .....13**  
**XIV. PUBLIC COMMENT .....13**  
**XV. EFFECTIVE DATE .....13**

## **I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the President of the United States by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(h)(1); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); delegated to the Regional Administrators of the EPA on April 15, 1994, by EPA Delegation No. 14-14-D. This authority was further re-delegated by the Regional Administrator of EPA Region III to the Director of the Hazardous Site Cleanup Division on April 27, 1999, by EPA Region III Delegation No. 14-14-D.
2. This Settlement Agreement is made and entered into by the United States Environmental Protection Agency (“EPA”) and Bank of America, N.A. (“Respondent”). Respondent consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. Respondent is a corporation, organized and incorporated under the laws of the State of Delaware in 1998, with its principal office located in Charlotte, NC.
4. This Settlement Agreement concerns the Rehrig-United International Superfund Site (“Site”) located at 1301 Battery Brooke Parkway in Chesterfield County, Virginia. EPA alleges that the Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
5. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. EPA first responded to conditions at the Site after a burst pipe caused water to gush from the Rehrig facility. Walkthroughs conducted at the Site discovered the presence of numerous hazardous substances left behind by the facility’s previous operator. Additionally, walkthroughs discovered plating liquids had leaked from their containment. These plating liquids contained nickel and chromium.
6. J&P Keegan LLP (“Keegan”), the owner of the Site property, conducted a removal action and paid for EPA’s oversight of the removal action pursuant to an Administrative Settlement Agreement and Order on Consent for Removal Response Action (“AOC”), No. CERC-03-2009-0148DC, dated July 23, 2009.
7. In performing its response actions, EPA has incurred additional response costs at or in connection with the Site, including, but not limited to, providing security and responding to conditions at the Site.

8. EPA alleges that Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site.
9. EPA has determined that the total past and projected response costs of the United States at or in connection with the Site will not exceed \$500,000, excluding interest.
10. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

11. This Settlement Agreement shall be binding upon EPA, and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

12. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:
  - a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-6975.
  - b. "Day" or "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
  - c. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XV (Effective Date).
  - d. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

- e. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- f. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- g. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.
- h. “Parties” shall mean EPA and Respondent.
- i. “Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through November 9, 2011, plus accrued Interest on all such costs through such date.
- j. “Respondent” shall mean Bank of America, N.A. and its successors and assigns.
- k. “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).
- l. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- m. “Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.
- n. “Site” shall mean the Rehrig-United International Superfund Site, consisting of the former Rehrig-United International Facility (“Facility”) and surrounding property, located at 1301 Battery Brooke Parkway in Chesterfield County, Virginia. Although physically located in Chesterfield County, the Facility has a Richmond, Virginia mailing address. The approximate geographical coordinates are 37°23’35.31” north longitude and 77°24’23.72” west latitude.
- p. “United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

**V. PAYMENT OF RESPONSE COSTS**

13. Payment by Respondent for Past Response Costs. Within 30 days after the Effective Date, Respondent shall pay to EPA \$80,398.48, plus an additional sum for Interest on that amount calculated from November 28, 2011 through the date of payment.
14. Payment by Respondent shall be made to EPA by Fedwire Electronic Funds Transfer (“EFT”) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency”

and shall reference Site/Spill ID Number A3ML and the EPA docket number for this action.

15. At the time of payment, Respondent shall send notice that payment has been made to EPA in accordance with Section XII, and to the EPA Cincinnati Finance Office by email at [acctreceivable.cinwd@epa.gov](mailto:acctreceivable.cinwd@epa.gov), or by mail to

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference the Site/Spill ID Number A3ML and EPA docket number for this action.

16. The total amount to be paid by Respondent pursuant to Paragraph 13 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

**VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

17. Interest on Late Payments. If Respondent fails to make any payment required by Paragraph 13 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

18. Stipulated Penalty.

- a. If any amounts due to EPA under Paragraph 13 (Payment of Response Costs) are not paid by the required date, Respondent shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 15, \$1,000 per violation per day that such payment is late.
- b. Stipulated penalties are due and payable within 30 days after the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties,” shall reference the Site/Spill ID Number A3ML and the EPA docket number for this action, and shall be made by Fedwire Electronic Funds Transfer (“EFT”) to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York NY 10045  
Field Tag 4200 of the Fedwire message should read “D 68010727  
Environmental Protection Agency”

- c. At the time of payment, Respondent shall send notice that payment has been made to Robin Eiseman (3RC41), Office of Regional Counsel, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, and to the EPA Cincinnati Finance Office by email at [acctreceivable.cinwd@epa.gov](mailto:acctreceivable.cinwd@epa.gov), or by mail to

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number A3ML and the EPA docket number for this action.

- d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Respondent of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.
19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Respondent’s failure to comply with the requirements of this Settlement Agreement, any failure or refusal on Respondent’s

part to comply with the requirements of this Settlement Agreement shall subject Respondent to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Respondent shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Respondent from payment as required by Section V or from performance of any other requirements of this Settlement Agreement.

#### **VII. COVENANTS BY EPA**

21. Covenants for Respondent by EPA. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon receipt by EPA of the payment required by Paragraph 13 (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 17 (Interest on Late Payments) or 18 (Stipulated Penalty). These covenants are conditioned upon the satisfactory performance by Respondent of its obligations under this Settlement Agreement. These covenants extend only to Respondent and do not extend to any other person or entity.

#### **VIII. RESERVATIONS OF RIGHTS BY EPA**

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the Covenants for Respondent by EPA in Paragraph 21. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to:
  - a. liability for failure of Respondent to meet a requirement of this Settlement Agreement;
  - b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
  - c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
  - d. criminal liability; and



- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.
23. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

### **IX. COVENANTS BY RESPONDENT**

24. Covenants by Respondent. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs and this Settlement Agreement, including, but not limited to:
- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
  - b. any claims arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the Commonwealth of Virginia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
  - c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.
25. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).
26. The covenants in Paragraph 24 shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondent. These covenants also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:
- a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a

response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

- b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **X. EFFECT OF SETTLEMENT/CONTRIBUTION**

27. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).
28. The Parties agree that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability by Respondent. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II of this Settlement Agreement.
29. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Past Response Costs and other costs incurred by any party, including but not limited to Keegan, through the Effective Date of this Settlement Agreement. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for Past Response Costs.
30. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against

it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

31. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section VII.
32. Effective upon Respondent's signature of this Settlement Agreement, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment(s) required by Section V (Payment of Response Costs) and, if any, Section VI (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the "matters addressed" as defined in Paragraph 29, and that, in any action brought by the United States related to the "matters addressed," Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

#### **XI. RETENTION OF RECORDS**

33. Until five (5) years after the Effective Date, Respondent shall preserve and retain all non-identical copies of records, reports, or information (hereinafter referred to as "Records") (including records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.
34. After the conclusion of the five-year document retention period in the preceding Paragraph, Respondent shall notify EPA at least 90 days prior to the destruction of any such Records and, upon request by EPA, Respondent shall deliver any such Records to EPA. Respondent may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author

of the Record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the Record; and (6) the privilege asserted. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to EPA in redacted form to mask the privileged information only. Respondent shall retain all Records that they claim to be privileged until EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Respondent favor. However, no Records created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

35. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since Respondent was notified of its potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA and State requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

## **XII. NOTICES AND SUBMISSIONS**

36. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Respondent.

As to EPA:

Robin E. Eiseman  
Office of Regional Counsel (3RC41)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103

As to Respondent:

Elizabeth Fitzpatrick  
Assistant General Counsel  
Bank of America  
185 Asylum Ave.  
Hartford, CT 06103

**XIII. INTEGRATION**

37. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

**XIV. PUBLIC COMMENT**

38. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.


**XV. EFFECTIVE DATE**

39. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 38 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By:

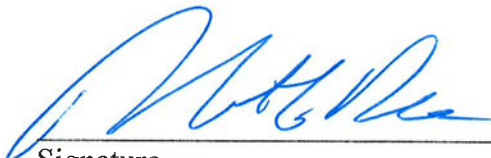
  
KATHRYN A. HODGKISS  
Acting Director, Hazardous Site Cleanup Division  
U.S. Environmental Protection Agency  
Region III

Date

01/24/2013

THE UNDERSIGNED SETTLING PARTY enters into this Settlement Agreement in the matter of CERC-03-2013-0018DC, relating to the Rehrig-United International Superfund Site in Chesterfield County, Virginia:

FOR SETTLING PARTY: Bank of America, N.A.  
100 N. Tryon Street  
Charlotte, NC 28255

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

\_\_\_\_\_ 12/20/12 \_\_\_\_\_  
Date

**Please Type the Following:**

Name: Robert G. Rose, III

Title: EVP

Address: 300 Galleria Pkwy #800  
Atlanta, GA 30339