

**ORDINANCE NO. 6516-08**

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN LEASE BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA, AND NEWPORT NEWS MUNICIPAL EMPLOYEES CREDIT UNION, INC., DATED THE 1<sup>ST</sup> DAY OF JULY, 2008.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Lease by and between the City of Newport News, Virginia, and Newport News Municipal Employees Credit Union, Inc., dated the 1<sup>st</sup> day of July, 2008.

2. That a copy of the said Lease is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JULY 8, 2008

Mabel V. Washington, CMC  
City Clerk

Joe S. Frank  
Mayor

A true copy, teste:

City Clerk

## LEASE

This LEASE is made this 1<sup>st</sup> day of July, 2008, by and between the City of Newport News, Virginia, a municipal corporation of the Commonwealth of Virginia ("Lessor"), and the Newport News Municipal Employees Credit Union, Inc., a credit union authorized to transact business in the Commonwealth of Virginia ("Lessee").

### WITNESSETH

1. **DEMISED PREMISES.**

For and in consideration of the terms, conditions, covenants, promises and agreements herein made, Lessor hereby leases and demises unto Lessee the following described improved real property (the "demised premises"): 1900 square feet of office space consisting of a one-story building (the "building"), and the grounds thereof, located at 210 25<sup>th</sup> STREET, NEWPORT NEWS, VA 23607.

2. **TERM.**

The demised premises are leased to Lessee for a period of five (5) years (the "initial term"), beginning on the 1<sup>st</sup> day of July, 2008 and terminating on the 30<sup>th</sup> day of June, 2013.

3. **RENT.**

(A) **AMOUNT:** Beginning July 1, 2008, the Lessee shall pay to the Lessor as annual rent for the demised premises described above the sum of \$1,900.00, which amount shall be payable in monthly installments, due and payable on the first day of each month. Rent shall increase annually, effective as of July 1<sup>st</sup> of each year, by the amounts specified below:

<u>Term</u>	<u>Rate/Per Sq. Feet</u>	<u>Total for Initial Term</u>	<u>Monthly</u>
First Year	\$1.00	\$1,900.00	\$158.33
Second Year	\$2.00	\$3,800.00	\$316.67
Third Year	\$2.25	\$4,275.00	\$356.25
Fourth Year	\$2.50	\$4,750.00	\$395.83
Fifth Year	\$3.00	\$5,700.00	\$475.00

Rent payments are due and payable on or before the 1<sup>st</sup> day of each month and if not paid by the end of ten (10) days after the due date, Lessee shall pay a late charge to the Lessor of ten percent (10%) of the late payment.

(B) PAYMENT: All rent payments shall be made payable to the "City of Newport News, Virginia," and sent to: Director, Department of Development, 2400 Washington Avenue, City Hall, Newport News, VA 23607, or to such other party and such other place as Lessor may, from time to time, designate in writing as provided herein.

4. PURPOSE AND USE OF DEMISED PREMISES.

The demised premises is to be used and occupied by Lessee for the sole purpose of providing credit union services.

Lessee, during the term of this Lease, agrees not to use or keep or allow the demised premises, or any portion thereof, to be used or occupied for any unlawful or immoral purposes or in violation of any certificate of occupancy or certificate of compliance covering or affecting the use of the demised premises, or any portion thereof, and will not suffer any act to be done or any condition to exist on the demised premises or any portion thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force on the demised premises.

5. TAXES.

During the term of this Lease, Lessee shall pay and discharge any taxes, assessments, duties, or impositions assessed, charged or imposed upon Lessee's leasehold interest in the demised premises and all improvements and equipment installed or constructed by Lessee thereon.

6. PARKING.

Lessor agrees to provide five (5) parking spaces in the adjacent parking lot for exclusive use by Lessee. An additional nine (9) spaces in the adjacent parking lot shall be made available to the Lessee until 2 p.m. daily, at which time these nine (9) spaces revert to the Emergency Communications Department. Lessee agrees to enforce parking restrictions applicable to the designated spaces and shall make its best effort to encourage employees and customers to park only in spaces designated for their use.

7. LIENS OR ENCUMBRANCES.

Lessee shall not suffer the demised premises or any improvements thereon to become subject to lien, charge or encumbrance, and shall defend, indemnify, and hold harmless Lessor against all such liens, charges or encumbrances. Lessee shall, within thirty (30) days after written notice thereof from Lessor, discharge or bond any mechanic's lien or other lien, charge, or order for the payment of money filed against demised premises as the result of the act or omission of Lessee.

8. **DELIVERY OF POSSESSION.**

(A) Lessor covenants to deliver quiet possession of the demised premises at the commencement of the initial term.

(B) Lessor shall deliver the demised premises to Lessee at the commencement of the initial term in "As Is" condition. Notwithstanding the above, Lessor warrants that all plumbing, heating, air conditioning, and electrical systems located upon or serving the demised premises shall be in good repair, condition and working order as of the commencement of the initial term.

9. **SERVICE AND MAINTENANCE.**

(A) Lessor covenants to keep, repair and maintain in working order and good condition, at Lessor's expense, the following building components and building systems: the roof, heating and air conditioning ("HVAC"), and exterior structure, suitable to the purpose and use for which Lessee has leased same, during the term. If Lessee is furnished additional services, or if Lessee's use of the demised premises causes additional expense, Lessee will pay the additional expense. Lessor shall have no responsibility for any new equipment, additions, or modifications to the aforementioned building systems (including plumbing, electrical, and HVAC) made or installed by or for Lessee.

(B) Lessee covenants to keep, repair and maintain, at Lessee's expense, all other components of the interior and exterior of the building and grounds of the demised premises, including but not limited to flooring, carpentry, plumbing (including damage to, and any stoppage or articles lost in, pipes, fixtures, or appurtenances caused by Lessee's actions), carpet, painting, electrical, exterior and interior glass and doors, and will repair and be responsible for all incidents of vandalism.

(C) Lessee will be responsible for Lessee's telephone and computer systems, glass cleaning, exterminating, janitorial, and trash disposal. Lessee will also be responsible for providing a fire alarm monitoring service with point of contact information in the event of alarms. All of the above items shall be provided at Lessee's expense.

(D) If Lessee wishes to install equipment, such as electrical heating or refrigeration equipment and electronic data processing machines using current which exceeds that usually furnished for use in general office space, Lessee will obtain prior written approval of Lessor and will pay any additional cost involved, including any necessary upgrades to the building and building systems. Lessor may request copies of plans and construction documents related thereto which will be provided by Lessee.

(E) Lessee will be responsible for providing building security services.

10. **UTILITIES.**

Lessee shall be responsible for payment of all utility expenses, including but not limited to gas, electricity, water, sewage, telephone, internet, trash disposal, and janitorial services to and for the demised premises during the initial term and any additional term.

11. **ALTERATIONS BY LESSEE.**

Lessee may make such alterations, modifications, additions and/or improvements upon or to the demised premises and may install or remove such fixtures and partitions as Lessee may deem proper; provided, however, that any structural alterations or penetrations of the roof, foundation or interior or exterior walls shall require the prior written consent of Lessor. Lessor may request copies of plans and construction documents related thereto which will be provided by Lessee. All material used in such alterations, modifications, additions or improvements, and all fixtures made or installed by Lessee shall remain the property of Lessor upon termination of this Lease, unless otherwise agreed in writing by Lessor. Upon termination of Lease, Lessee shall, at the Lessee's expense, restore the demised premises to its original condition, normal wear and tear excepted. All partitions, equipment and furniture that is not affixed to the building, and installed by Lessee, shall remain the property of Lessee and, upon termination of this Lease be removed by Lessee unless otherwise agreed in writing by the parties.

12. **DAMAGE OR DESTRUCTION OF DEMISED PREMISES.**

(A) If the demised premises are damaged by fire or other casualty so as to render the same, in the opinion of Lessee, untenable for the purpose or use for which Lessee has leased same, this Lease, and all obligations hereunder, shall immediately terminate upon Lessee's giving notice of that fact to Lessor by certified or registered mail, return receipt requested, as hereinafter provided. Lessor's obligations under the Lease shall end upon termination.

(B) If the demised premises are damaged by fire or other casualty, but not so as to render same untenable, in the opinion of Lessee, for the purpose or use for which Lessee has leased the demised premises, upon being notified by Lessee by certified or registered mail, return receipt requested, Lessor may repair and restore within a reasonable time, at Lessor's sole option, the demised premises to its former condition. If Lessor decides not to repair and restore the demised premises, Lessor shall notify Lessee by certified or registered mail, return receipt requested, and the Lease shall terminate, and Lessor's obligations under the Lease shall end.

(C) If Lessor fails to make or fails to complete repair and restoration of the demised premises within a reasonable time after Lessee provides notice pursuant to sub-paragraph 13(B), then Lessee, at its option, may either (a) immediately terminate this Lease and all obligations of both parties hereunder, or (b) proceed to make, or cause to be made, such repair and restoration, at Lessee's sole expense.

13. CONDEMNATION.

If the Building, or such portion thereof as will make the demised premises unusable for the purposed leased, is condemned or sold under threat of condemnation, then this Lease will terminate as of the date of the vesting of title in the public condemning authority.

14. INSURANCE.

(A) It is understood and agreed that Lessee will be required to defend, indemnify, protect and save harmless the City of Newport News, Virginia, from and against all losses and claims of physical damages to any property (including the Premises) and bodily injury or death to any person or persons, and environmental damages which may arise out of or be caused by the occupancy, use or maintenance of said Premises by the Lessee or any claim as aforesaid growing out of the use and occupancy of the Premises by a Lessee. In addition, Lessee is to obtain, and continuously keep in force, an insurance policy with a company qualified to do business in the Commonwealth of Virginia. The policy so procured, and which shall be maintained during the entire Term of this Lease shall be comprehensive general public liability policy insuring against claims, demands or actions arising out of or in connection with: (i) the Premises; (ii) the condition of the Premises; and (iii) Lessee's operations in, maintenance and use of the Premises. Such insurance shall have such minimum limits in no event less than FIVE MILLION DOLLARS (\$5,000,000.00) to any one person on any one occurrence inclusive of bodily injury, personal injury or death, and to the limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) in respect to property damage. Said policy shall provide that the City of Newport News is added as an additional insured under the terms of the policy. Said policy shall include a provision that it may only be cancelled upon thirty (30) days written notice to the insured and all additional insured, including the City of Newport News.

(B) It is further understood and agreed that Lessee obtain, and continuously keep in force, a policy of hazard insurance with a company qualified to do business in the Commonwealth of Virginia, such insurance coverage to be in an amount of no less than THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000.00). The policy shall provide for a payment to the insured and all additional insureds of an amount sufficient to pay the costs necessary for reconstruction of all structures and structural improvements located upon the Premises that are fixtures by law, as a result of any damage or destruction from any hazard, including, but not limited to, fire, storm, flood, or an act of God. Said policy shall provide that the City of Newport News is an additional insured under the terms of the policy. Said policy shall include a provision that it may only be cancelled upon thirty (30) days written notice to the insured and all additional insured, including the City of Newport News.

(C) Evidence of policies of insurance affording the above coverage shall be submitted to the City Attorney's Office of the City of Newport News, Virginia, and shall be subject to the review and approval by Lessor upon the commencement of this Lease. Renewals of such insurance during the term of this Lease shall also be subject to review and approval by Lessor.

15. **NO LIABILITY OF LESSOR.**

Lessor and its agents shall not be liable to Lessee or its agents for; and Lessee, for itself and its agents, does hereby release Lessor and its agents from; liability for, any damage, compensation or claim arising from (i) the necessity of repairing or maintaining any portion of the demised premises or any structural defects thereto, (ii) any interruption in the use of the demised premises for any reason including any interruption or suspension of utility service, (iii) fire or other casualty or personal or property injury, damage or loss resulting from the use or operation (by Lessor, Lessee, or any other person whomsoever) of the demised premises, (iv) the termination of this Lease, (v) any crime committed on the demised premises, or (vi) any leakage or flooding in or on the demised premises from water, rain, snow, other Acts of God or other cause whatsoever. Any goods, automobiles, equipment, records, personal property or personal effects stored or placed by Lessee and its agents in or about the demised premises shall be at the sole risk of Lessee, and Lessor and its agents shall not in any manner be held responsible thereof. Except to the extent expressly prohibited by law, Lessee hereby waives any claim it might have against Lessor or its agents for any consequential damages sustained by Lessee arising out of the loss or damage to any person or property of Lessee.

16. **INDEMNITY.**

Lessee shall defend, as determined in the sole discretion of the Lessor, indemnify and hold Lessor, and its agents harmless from and against any and all damage, claim, liability, cost or expense (including, without limitation, court costs, reasonable attorneys' or other professionals' fees) of every kind and nature (including, without limitation, those arising from any injury or damage to any person, property or business) incurred by or claimed against Lessor or its agents, directly or indirectly, as a result of, arising from or in connection with Lessee's or its agents use and occupancy of the demised premises.

17. **SURRENDER OF DEMISED PREMISES.**

At the expiration or termination of this Lease, Lessee will surrender the demised premises to Lessor, and remove within thirty (30) days of expiration or termination from the demised premises all of the equipment erected or installed by Lessee on the demised premises during the term of this Lease, unless otherwise agreed in writing. Except as provided in paragraph 11, Lessee shall restore the demised premises to its original condition, normal wear and tear excepted.

18. **REPRESENTATIVES BOUND.**

The covenants, stipulations and conditions herein contained shall inure to the benefit of and shall be binding upon the successors and assigns of Lessor and the successors and assigns of Lessee.

19. **ASSIGNMENT AND SUBLETTING.**

Lessee shall not, without the prior written consent of Lessor, assign or sublet all or any part of the demised premises to any other person or entity. Regardless of Lessor's consent, no assignment or subletting will release Lessee of its obligations under the Lease, and Lessee will remain primarily liable hereunder.

20. **COMPLIANCE WITH LAWS AND RULES.**

Lessee will comply with all (i) federal, state and local laws, ordinances, and regulations, including, without limitation, all environmental laws, rules, and regulations (collectively, the "environmental laws"), relating to the demised premises or the activities conducted therein, and (ii) any building rules and regulations promulgated by Lessor from time to time. The demised premises will not be used for the treatment, storage, use or disposal of toxic and hazardous wastes or substances, or any other substance, exposure to which is prohibited, limited or regulated by a governmental or quasi-governmental authority or which, even if not so regulated, could or does pose a hazard to the health and safety of the occupants of the building or surrounding property unless authorized by and in accordance with law. Lessee will indemnify and hold Lessor harmless to the extent allowed by law, from and against any expense or liability caused by Lessee's negligence or misconduct arising under the environmental laws resulting from Lessee's use of the demised premises or any acts and/or omissions of Lessee. This paragraph shall survive termination of the Lease.

21. **GOVERNING LAW; COURTS.**

This Lease shall be governed, construed, and enforced by and in accordance with the laws of the Commonwealth of Virginia. The parties irrevocably submit themselves to the original jurisdiction, forum, and venue of the state courts located within the City of Newport News, Virginia, with regard to any litigation arising out of, relating to, or in any way concerning this Lease.

22. **AMENDMENTS.**

This Lease may be amended or modified only by a writing signed by authorized agents of both Lessor and Lessee. Subject to Section 15.2-2105 of the Virginia Code, as amended, the City Manager is authorized to approve and sign the amendments to this Lease on behalf of Lessor.

23. **WAIVER.**

No failure or delay on the part of either party to exercise any right or privilege hereunder shall operate as a waiver thereof.

24. **DEFAULT.**

The following shall be considered events of default or breach by Lessee:

(A) The failure of Lessee to pay rent;

(B) The failure of Lessee to cure, within thirty (30) days after Lessor gives written notice of any breach of any covenant, undertaking, term or provision of this Lease; or

(C) Abandonment of the demised premises by Lessee. Failure of Lessee to use the demised premises for sixty (60) days shall be considered abandonment. In the event of such default or breach, Lessor shall be entitled, at Lessor's option, to remove all property and equipment of Lessee from the demised premises, without notice and without being guilty or liable in any manner for trespass, thereby terminating this Lease. Cumulatively and in addition to the foregoing, Lessor shall be entitled to enforce all other remedies provided at law or in equity.

25. **RIGHT OF ENTRY.**

Lessor shall have access to the demised premises, at reasonable hours, for the purposes of inspection, maintenance and repair and to show the building to prospective tenants, after reasonable notice, provided, Lessor does not thereby unreasonably interfere with Tenant's business on the leased premises, except no notice needs to be given in the case of an emergency.

26. **DAMAGES, ATTORNEYS FEES.**

If suit shall be brought by Lessor for recovery of possession of the demised premises, for the recovery of any rent or any other amount due under this Lease, or because of the breach of any other covenant by Lessee, or because of Lessee's default, and Lessor prevails in such action or a portion thereof, then Lessee shall pay Lessor all reasonable expenses incurred therefor, including reasonable attorney's fees.

27. **NOTICE.**

Any notice or other communication to Lessor or Lessee pursuant hereto shall be deemed validly given, served or delivered if sent by the United States Mail, certified and postage prepaid, addressed as follows:

To Lessee: Newport News Municipal Employees Credit Union, Inc.  
210 - 25<sup>th</sup> Street  
Newport News, VA 23607

To Lessor: City of Newport News, Virginia  
City Manager  
2400 Washington Avenue, 10<sup>th</sup> Floor  
Newport News, VA 23607

With Copy to: City of Newport News, Virginia  
City Attorney  
2400 Washington Avenue, 9<sup>th</sup> Floor  
Newport News, VA 23607

Or to such other addresses as the parties may designate in writing delivered in accordance with the provisions hereof.

28. **RECORDATION OF LEASE.**

Either Lessor or Lessee may record this Lease or a Memorandum hereof.

29. **INVALIDITY.**

If any provision of this Lease shall be held to be invalid, whether generally or as to specific facts or circumstances, the same shall not affect in any respect whatsoever the validity of the remainder of this Lease, which shall continue in full force and effect. Any provision held invalid as to any particular facts and circumstances shall remain in full force and effect as to all other facts and circumstances.

30. **ENTIRE AGREEMENT.**

This Lease, including any agreed upon attachments, contains the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein.

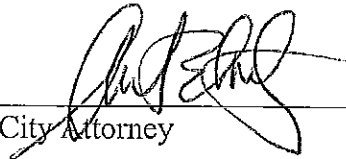
CITY OF NEWPORT NEWS (Lessor)

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

COMMONWEALTH OF VIRGINIA  
City of Newport News, to wit:

I, \_\_\_\_\_, a Notary Public for the City and Commonwealth aforesaid, do hereby certify that CITY OF NEWPORT NEWS, by Randy W. Hildebrandt, City Manager, and Mabel V. Washington, City Clerk, whose names are signed to the foregoing Lease bearing date of the 1<sup>st</sup> day of July, 2008, have acknowledged the same before me in my City and Commonwealth aforesaid.

Given under my hand this \_\_\_\_ day of \_\_\_\_\_, 2008.

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

My Commission expires: \_\_\_\_\_  
Registration No.: \_\_\_\_\_

Newport News Municipal Employees Credit Union, Inc. (Lessee)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
City/County of \_\_\_\_\_, to wit:

I, \_\_\_\_\_, a Notary Public for the City and Commonwealth aforesaid, do hereby certify that \_\_\_\_\_, by \_\_\_\_\_, its \_\_\_\_\_, whose name is signed to the foregoing Lease bearing date of the 1<sup>st</sup> day of July, 2008, has acknowledged the same before me in my City and Commonwealth aforesaid.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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

My Commission expires: \_\_\_\_\_  
Registration No.: \_\_\_\_\_