

ORDINANCE NO. 7570-19

AN ORDINANCE AUTHORIZING AN ENCROACHMENT UPON THE 23<sup>rd</sup> STREET RIGHT OF WAY IN THE CITY OF NEWPORT NEWS, AS MORE PARTICULARLY SET FORTH HEREIN, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENCROACHMENT AGREEMENT BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA AND RAILHOUSE, LLC.

WHEREAS, the Council of the City of Newport News, Virginia is authorized pursuant to Virginia Code §15.2-2009 and Va. Code §15.2-2011 to permit encroachments upon certain public ways within the City of Newport News, Virginia; and

WHEREAS, Railhouse, LLC (“Railhouse”), owns a parcel of real estate in the City of Newport News known as 206 23<sup>rd</sup> Street, Newport News, Virginia (Tax ID No.315010319) (“the Property”); and

WHEREAS, the City obtained title to an sixty foot right-of-way upon execution and recording of a plat entitled, “MAP OF THE CITY OF NEWPORT NEWS, VIRGINIA,” duly of record in the Clerk’s Office of the Circuit Court of the City of Newport News, Virginia, Plat Book 1, page 4; and

WHEREAS, Railhouse has asked for an encroachment to allow it to construct an awning within the right-of-way just to the west of the paved surface, which appear in the proposed Encroachment Agreement and attachments as Exhibit 1; and

WHEREAS, this encroachment can be facilitated without causing undue public danger or inconvenience, and with no adverse effects on the maintenance of the right-of-way, given the terms incorporated in the Encroachment Agreement; and

WHEREAS, Railhouse has requested that City Council authorize the encroachment and the execution of the Encroachment Agreement; and

WHEREAS, the City Manager recommends that the Council authorize the encroachment requested by Railhouse and authorize the execution of the Encroachment Agreement.

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

1. That it desires to, and hereby does, authorize a non-permanent, revocable encroachment upon the right-of-way.

2. That the non-permanent, revocable encroachment is authorized subject to compliance by the parties with the terms of the Encroachment Agreement between the City of Newport News, Virginia and Railhouse, LLC.

3. 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 Encroachment Agreement between the City of Newport News, Virginia and Railhouse, a copy of which is attached hereto and made a part hereof.

4. That a copy of this ordinance and the Encroachment Agreement be recorded in the Clerk's Office of the Circuit Court of the City of Newport News, Virginia.

5. That this ordinance be in effect on and after the date of its adoption, August 13, 2019.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON AUGUST 13, 2019

Mabel Washington Jenkins, MMC  
City Clerk

McKinley L. Price, DDS  
Mayor

A true copy, teste:

City Clerk

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**PREPARED BY AND  
RETURN TO:  
Office of the City Attorney  
2400 Washington Ave, 9<sup>th</sup> Floor  
Newport News, VA 23607  
(757) 926-8416 phone  
(757) 926-8549 fax**

**Tax ID No. 315.01-03-19  
206 23<sup>rd</sup> Street, Newport News, VA 23607**

**Consideration: \$0**

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**ENCROACHMENT AGREEMENT**

**THIS ENCROACHMENT AGREEMENT** (the "Agreement") is made and entered into as of August \_\_\_\_\_, 2019, by the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation in the Commonwealth of Virginia whose mailing address is 2400 Washington Avenue, Newport News, Virginia 23607 (hereinafter referred to as "Grantor"), in favor of **RAILHOUSE, LLC, 208 W. 25<sup>th</sup> Street, Norfolk, VA 23517** (hereinafter referred to as "Grantee"). The property at issue is located at 206 23<sup>rd</sup> Street, Newport News, VA 23607, Newport News, Virginia 23607, Tax ID No. 315.01-03-19.

**WITNESSETH:**

**WHEREAS**, Grantor owns the property known as the 23<sup>rd</sup> Street Right-of-way

**WHEREAS**, Grantor obtained title to an sixty foot right-of-way upon execution and recording of a plat entitled, "MAP OF THE CITY OF NEWPORT NEWS, VIRGINIA," duly of record in the Clerk's Office of the Circuit Court of the City of Newport News, Virginia, Plat Book 1, page 4; and

**WHEREAS**, Grantee acquired the property by deed from Duefer Enterprises, LLC, Grantor, dated September 6, 2018, and recorded as Instrument number 180013699 on October 18, 2018; and

WHEREAS, Grantee wishes to install an awning attached to the property that will extend over the sidewalk at the North end of the building; and

WHEREAS, a copy of the survey of the property showing the location of the proposed awning is attached as Exhibit A to the Agreement; and

WHEREAS, Grantor, at the request of the Grantee, is willing to enter into this Encroachment Agreement with Grantee; and

WHEREAS, the City Council of the City of Newport News approved execution by the City Manager of the Agreement following a public hearing on August 13, 2019.

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee do hereby agree as follows:

1. **Acknowledgement and Agreement Regarding Encroachment.** Grantor does hereby consent to the Encroachment, pursuant to Va. Code §15.2-2009 and §15.2-2011, and hereby agrees to allow Grantee permission to install and maintain the awning which are located within the Existing Right of Way provided such use does not interfere with the safe and efficient construction, operation, maintenance or use of Grantor's sidewalk, water mains, pipes, laterals, and appurtenances ("Grantor's Facilities"), nor contaminate the area, and further provided that such use is not inconsistent with any laws, ordinances, regulations or codes pertaining to the construction, operation or maintenance of Grantor's Facilities.

2. **Defective Condition.** If the Encroachment is determined by the Grantor to be in such a defective condition as to cause damage to or to otherwise adversely affect Grantor's Facilities and the safety and health of pedestrians using the sidewalk and the general safety and health of the public, within the existing Right-of-way, Grantee shall cause the condition to be corrected, remedied or removed at no expense to Grantor within thirty (30) days after written notification by Grantor. Grantee agrees to reimburse Grantor all costs incurred by Grantor in repairing any damage to Grantor's Facilities arising out of the use of the Encroachment within thirty (30) days of receiving an invoice from Grantor for such costs.

3. **Indemnity.** The Grantees hereby agrees to defend, indemnify and save harmless the Grantor and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the use of the Encroachment under the consent hereby granted, except to the extent caused by the gross negligence or willful misconduct of Grantor.

4. **Insurance.** The Grantees will maintain general liability coverage endorsed to name the Grantor as an additional insured, and shall continue to provide the Grantor with updated certificates upon each renewal of the coverage. Failure to renew within thirty (30) days notice shall result in termination of this Encroachment Agreement.

5. **Termination.** This Agreement shall in no way be construed as the granting of a perpetual easement or any type of property right by Grantor. The Agreement is revocable at will by either party upon one hundred eighty (180) days' notice.

6. **Reservation.** The Grantor expressly reserves all rights, privileges, and immunities granted to it under the laws and statutes of the United States and the Commonwealth of Virginia and under the Code of Ordinances of the City of Newport News as to any claims made against it.

7. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Virginia, without regard to its conflicts laws or choice of law rules.

8. **Survival.** This Agreement will be binding upon Grantor and Grantee and inure to the benefit and obligation of their respective successors in title.

9. **Exhibits.** The Exhibits attached to this Agreement are incorporated herein by reference and made a part hereof.

*[Signature Pages Follows]*

WITNESS the following signatures and seals

**GRANTOR**

CITY OF NEWPORT NEWS, VIRGINIA

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

Name: Cynthia D. Rohlf

Title: City Manager

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
Mabel Washington Jenkins,  
City Clerk

\_\_\_\_\_  
Joseph M. DuRant  
Deputy City Attorney

COMMONWEALTH OF VIRGINIA  
City of Newport News, to wit:

I, \_\_\_\_\_, a Notary Public in and for the City and Commonwealth aforesaid, whose commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, do hereby certify that the CITY OF NEWPORT NEWS, VIRGINIA, by Cynthia D. Rohlf, as City Manager, and attested by Mabel Washington Jenkins, as City Clerk, whose names are signed to the foregoing writing, have acknowledged the same before me in my City and Commonwealth aforesaid.

GIVEN under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
NOTARY PUBLIC

Registration No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**GRANTEE**

RAILHOUSE, LLC

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

Jonathan A. Provost

Title: Manager

STATE OF \_\_\_\_\_  
CITY OF \_\_\_\_\_

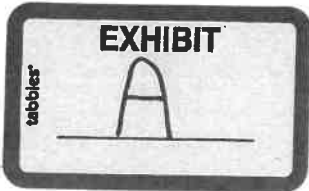
Personally appeared before me, the undersigned authority in and for the said county and state, on this \_\_\_\_ day of \_\_\_\_\_, 2019, within my jurisdiction, the within named Railhouse, LLC, by Jonathan A. Provost, who acknowledged that he is the Manager of the Property, and that for and on behalf of himself he executed the above.

\_\_\_\_\_  
NOTARY PUBLIC

Registration No. \_\_\_\_\_

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

(Affix official seal, if applicable)



210 W. BOSTWICK THOROUGHFARE, SUITE 101  
 FREDERICKSBURG, VA 22401  
 FOR THE PEOPLE PROJECTS.COM

DESIGNER OF RECORD:



206 TWENTY-THIRD STREET

206 23RD STREET  
 NEWPORT NEWS, VA

PROJECT NO: 2018-178  
 DRAWN BY: VLR/JSK  
 DATE: 02.12.2019  
 REVISIONS:  
 REV # DESCRIPTION

REFLECTED  
 CEILING PLAN

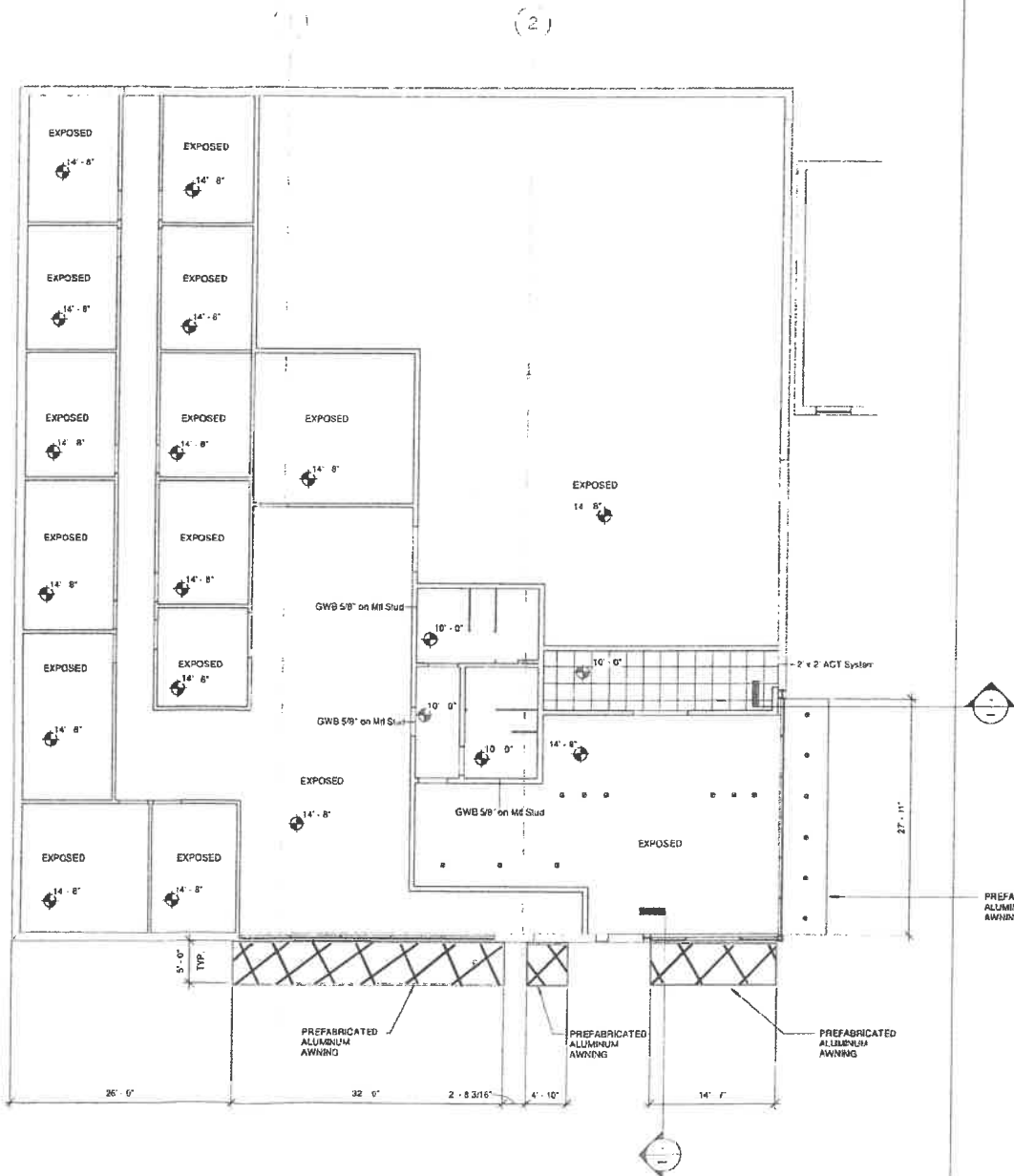
A130

GENERAL REFLECTED CEILING

- A. ALL LAY-IN ACOUSTICAL CEILINGS SHALL BE INSTALLED AT 9" ABOVE FINISH FLOOR UNLESS NOTED OTHERWISE.
- B. ALL LAY-IN ACOUSTICAL CEILINGS SHALL BE TYPE ACT1, UNLESS NOTED OTHERWISE.
- C. ALL GYPSUM DRYWALL BULKHEADS SHALL BE INSTALLED AT 8" ABOVE FINISH FLOOR UNLESS NOTED OTHERWISE.
- D. REFER TO XXX-XX FOR TYPICAL BULKHEAD DETAIL.

PLAN

MARK NOTE



1 REFLECTED CEILING PLAN  
 1/8" = 1'-0"

Denotes Encroachment Area